

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED

**ON APPEAL TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

BRUCE HOLDEN LACEY,

Appellant,

Appeal Case No. CRC 08-00002 APANO

vs.

UCN: ~~522008MM033783XXXXNO~~

522008AP000002XXXXCR

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed: 7/21/10.

Appeal from a decision of the
Pinellas County Court
County Judge Donald E. Horrox

Peter A. Sartes, Esquire
Attorney for Appellant

Bernie McCabe, Esquire
State Attorney
Sixth Judicial Circuit of Florida
Attorney for Appellee

ORDER AND OPINION

PER CURIAM

This matter is before the Court on the Defendant's appeal from the Judgment and Sentence of the County Court. This Court has jurisdiction and affirms the Judgment and Sentence.

The Appellant was convicted of Leaving the Scene of an Accident with Property Damage and Driving Under the Influence. On August 16, 2007, the Appellee's eyewitness was in her

house when she heard a car crash. From her front door, she observed a man matching the Appellant's description standing next to the driver's side door of a car parked in the street, waving his hands in the air. She then observed the man walk down the street, away from the car.

Officer Hansen responded to the scene and testified that it appeared the car hit a pole. A K-9 unit tracked a scent that led to the Appellant several blocks away. Officer Cockeram was sent to question the Appellant. He noticed the Appellant was slurring his speech and staggering. Officer Citrano arrived to conduct a DUI investigation, while Officer Cockeram observed. The Appellant was arrested after failing a field sobriety test and refusing a breathalyzer. A video camera in Officer Citrano's vehicle documented the DUI investigation, including the Appellant's conduct as he sat in the back seat of Officer Citrano's vehicle.

At trial, the Appellee introduced a redacted portion of a recorded jail phone call between the Appellant and his girlfriend, Ashley Carro ("Carro"), in which the Appellant admitted to drinking. Specifically, the Appellant stated "I got all fucking pissed off again. Fucking, so I freaking get totally drunk." The Appellee introduced this portion of the jail phone calls to impeach Carro's statement that the Appellant never admitted he was drunk the night of his arrest. Carro indicated that the Appellant's statement did not pertain to the night of his arrest, so the court allowed the Appellee to play the entire phone call so the jury could hear the context in which the statement was made.

Officer Citrano was absent from trial, so the court allowed the Appellee to enter the DUI video into evidence through the testimony of Officer Cockeram. The court permitted the jury to watch the field sobriety tests, the implied consent warning, and a portion of the video showing the Appellant in the back seat of Officer Citrano's vehicle, shouting profanities and proclaiming that he had to urinate. Officer Cockeram testified that he observed the DUI investigation, but was

not present in the vehicle with the Appellant. The Appellant then moved for a mistrial based on the admission of the portion of the video showing the Appellant in the vehicle. The court denied the motion.

The Appellant appeals based on four grounds.

First, the Appellant argues that the trial court erred in extending his speedy trial period based on an unforeseeable and unavoidable absence of the Appellee's eyewitness. An extension of speedy trial involves a factual finding and is reviewed under the abuse of discretion standard, meaning the ruling will only be disturbed if it is arbitrary, fanciful, or unreasonable. *Westberry v. State*, 700 So.2d 1236, 1238 (1st DCA 1997). The trial court's factual finding was not arbitrary, fanciful, or unreasonable because it was based on the Appellee's assertion that the witness's daughter was released from the hospital into her sole 24-hour care. Although the Appellee did not offer any evidence to support that assertion, the Appellee is not required to do so. *Sullivan v. State*, 728 So.2d 290, 292 n. 2 (Fla. 2d DCA 1999).

Second, the Appellant argues that the trial court erred in deciding that Appellant's Motion for Continuance could be granted only if he waived his right to speedy trial. The trial court did not abuse its discretion in this ruling.

Third, the Appellant argues that the trial court erred in admitting un-redacted portions of the jail phone call into evidence. By saying that he "gets" drunk, it is unclear whether the Appellant was referring to getting drunk the night of his arrest or getting drunk in general, so it was necessary for the jury to hear the context of the Appellant's statement in order to determine the credibility of Carro's testimony that the Appellant never admitted he was drunk the night of his arrest.

Finally, the Appellant argues that the trial court erred in admitting into evidence the portion of the DUI video showing the Appellant in the back seat of Officer Citrano's vehicle. In order to authenticate photographic evidence, the testimony of a witness must be used to establish that, based upon personal knowledge, the photographs or tape fairly and accurately reflected the events or scene. *Dolan v. State*, 743 So.2d 544, 546 (Fla. 4th DCA 1999). Because Officer Cockeram was not present in the vehicle with the Appellant, he was not qualified to testify that the tape fairly and accurately reflected the events or scene. Therefore, the trial court erred in admitting the portion of the DUI video showing the Appellant in the back seat of Officer Citrano's vehicle.

However, the error was harmless. An error is harmless when it appears "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Chapman v. California*, 386 U.S. 18, 24 (1967). The video was used to show that the Appellant's normal faculties were impaired, yet there was sufficient other evidence to show impairment. For example, the Appellant hit a telephone pole, Officer Cockeram testified that the Appellant was slurring his speech and staggering, and the portion of the video showing the DUI investigation showed the Appellant's behavior and his failed field sobriety test.

ACCORDINGLY, this Court AFFIRMS the Judgment and Sentence.

ORDERED in Lacey v. State (Appellate Court No. CRC 08-00002 APANO) at Pinellas County, Florida this 20 day of July, 2010.

Original order entered on July 20, 2010 by Circuit Judges David A. Demers, Thane B. Covert, and Chris Helinger.

Copies to: Honorable Judge Donald E. Horrox

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