County Criminal Court: CRIMINAL LAW – Evidence – The trial court did not err in finding Appellant guilty of driving a vehicle with knowledge that her driver's license was suspended. Judgment affirmed. *Nancy Everhart v. State, Appeal No.12-AP-0003-WS* (Fla. 6th Cir.App.Ct. June 20, 2013).

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

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION

NANCY EVERHART,
Appellant,

v.

UCN: 512012CF000364A000WS
Appeal No: CRC1200364CFAWS
L.T. No: 11-5174FKCTWS

STATE OF FLORIDA,
Appellee.
_____/

Appeal from Pasco County Court

County Judge Anne Wansboro

Simone Lennon, Esq.
for Appellant

Korey Milo, A.S.A.
for Appellee

ORDER AND OPINION

Appellant challenges her conviction that she drove a vehicle with knowledge that her driver's license was suspended. Specifically, Appellant argues that the county court erred in finding her guilty when Appellant presented evidence that she drove under the belief that she possessed a valid permit. Based on the county court's factual findings, this Court must affirm the county court as set forth below.

FACTUAL BACKGROUND

On August 4, 2011, Appellant was charged with driving while her license was suspended in violation of § 322.34(2). The traffic citation indicated that Appellant's license was suspended in November 2010 for failing to submit to a breath test with knowledge. Appellant waived her right to a jury trial on December 14, 2011. At the non-jury trial held before Judge Wansboro, the following was presented:

Sergeant Erik Jay with the New Port Richey Police Department for fourteen years testified. He was on duty August 4, 2011 when he conducted a traffic stop on a black Hyundai Sonata around 2:57 in the afternoon on Oelsner near Green Key Road. Since Appellant's car left a known drug house, Sergeant Jay ran the tag and discovered that Appellant had a suspended driver's license. Appellant was the sole occupant of the vehicle. Sergeant Jay advised Appellant that her license was suspended. Appellant admitted that she knew that, but that she had to talk to a friend about him seeing a pain doctor.

Appellant's driving record was introduced into evidence without objection. Appellant's license was suspended for a period of one year in November of 2010 for DUI and her refusal to submit. After Sergeant Jay issued Appellant a citation, Appellant parked her car and walked home. The traffic citation was also introduced into evidence with an objection that was later withdrawn.

On cross-examination, Sergeant Jay testified that he was with another officer in an unmarked Dodge Ram truck wearing all black and a police hat. Appellant's driver's license was issued on November 9, 2010 and would have expired on December 22, 2018. There was a disagreement as to whether the effective date of Appellant's suspension was November 6, 2010 or November 16, 2010.

On redirect, Sergeant Jay clarified that the refusal to submit breath test was on November 16, 2010. The reinstatement date would be November 21, 2011. Appellant's driver's license was suspended on the day that Sergeant Jay made the traffic stop.

After the State rested, defense counsel moved for judgment of acquittal. Defense counsel argued that the effective date of Appellant's suspension was November 6, 2010, and that the DHSMV issued Appellant a driver's license three days

later on November 9, 2010. As such, Appellant did not have knowledge of the suspension since she was issued a license three days later. The State contended that the effective date of the suspension was November 16, 2010 and that the documents do not indicate that the license was ever reissued. After the trial court took a recess, the trial court stated that the effective date was November 16, 2010 and that the motion for judgment of acquittal was denied.

Appellant testified that she made contact with several officers, one of which was Sergeant Jay, on August 4, 2011. Sergeant Jay was not the one who issued the citation. Appellant admitted that she was arrested for DUI on November 6, 2010 and was given a notice of suspension for refusing to blow. Appellant hired an attorney to represent her in the administrative and criminal proceedings. The attorney attempted to provide Appellant with a driver's license. First, Appellant got a permit. A couple weeks later Appellant received what she believed was a hardship permit; it looked just like a driver's license. Appellant did not receive any additional papers or documents relating to it. Based on what she received from the DHSMV, Appellant drove her vehicle. The police officer took the document that looked like a license from the DHSMV in February, but Appellant also showed the officer another document to which the officer stated that it was good for a year to allow Appellant to drive. In August, when Appellant made contact with Sergeant Jay, one of the officers took the paper document.

On cross-examination, Appellant testified that the officers did not tell her why they pulled her over. Appellant told them that she did not have a license, but she had a permit. She put her permit paperwork on the seat. Appellant did not realize it was gone until she came back to get her car. Appellant's suspension from the DUI occurred on November 6, 2010.

On redirect, Appellant clarified that she does not dispute that her driver's license was suspended and that she was driving because she had a permit.

After argument, the trial court found that the discrepancy in the November dates is explained by Florida Statute 322.2615, which gives a ten-day temporary permit from the time of the suspension for refusal. The trial court found Appellant's testimony to not be credible; she gave inconsistent answers. Sergeant Jay's testimony, however, was credible and credible as to the admission.

The trial court found Appellant guilty of driving while license suspended with knowledge on December 14, 2011. Appellant was sentenced to 10 days in jail. Appellant filed a timely notice of appeal on January 12, 2012.

LAW AND ANALYSIS

Appellant argues that the trial court erred in finding that she drove her vehicle with knowledge that her license was suspended when Appellant presented evidence that she drove under the belief that she possessed a valid permit. Appellant testified that the item she received from the DHSMV was taken from her by the police in February 2011; however, she continued to drive because the police officer told her that it was a permit to drive for a year. While Appellant presented testimony that she did not have knowledge of the suspension, the trial court specifically found Appellant's testimony not to be credible, but the officer's testimony to be credible.

In this case, the trial court acted as the trier of fact and was therefore in the best position to weigh the credibility of the witnesses and determine that Appellant drove with the knowledge that her license was suspended. Reynolds v. State, 934 So. 2d 1128 (Fla. 2006). The trial court, acting as a fact finder, is entitled to believe the testimony of a witness over that of a defendant to find a defendant guilty of the crime charged. Spataro v. State, 179 So. 2d 873 (Fla. 2d DCA 1965). Even if Appellant's testimony was unrebutted, the trial court still did not have to accept the testimony as truthful. State v. Paul, 638 So. 2d 537, 530 (Fla. 5th DCA 1994). Since an appellate court is bound by the lower court's factual findings if they are supported by competent, substantial evidence, the trial court must be affirmed. Cuervo v. State, 967 So. 2d 155, 160 (Fla. 2007); State v. Shuttleworth, 927 So. 2d 975, 978 (Fla. 2d DCA 2006). Therefore, it is

ORDERED that Appellant's conviction and sentence is hereby AFFIRMED.

DONE AND ORDERED in Chambers, at New Port Richey, Pasco County, Florida this 20th day of June 2013.

Original order entered on June 20, 2013 by Circuit Judges Stanley R. Mills, Daniel D. Diskey, and Shawn Crane.

Copies to:
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