

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

ANTHONY WAYNE STILE, JR.,
Appellant,

UCN: 512017AP000015APAXWS
Appeal No.: 17-AP-15

v.

STATE OF FLORIDA,
Appellee.

_____/

On appeal from Pasco County Court,
Honorable Debra Roberts,

Jessica Stephans, Esq.,
for Appellant,

David M. Caples, Esq.,
Assistant State Attorney,
for Appellee.

ORDER AND OPINION

Appellant raises four arguments on appeal. The trial court's rulings on Appellant's motions for judgment of acquittal and motion for mistrial are affirmed without comment. We write only to address Appellant's argument that the trial court erred in ruling on the State's motion to reconsider Appellant's motion *in limine*. For the reasons detailed below, Appellant's conviction is affirmed as to this issue as well.

STATEMENT OF THE CASE AND FACTS

On July 4, 2016, Appellant was arrested and cited for driving under the influence ("DUI"). On March 29, 2017, an Information was filed charging Appellant with DUI in violation of section 316.193(1), Florida Statutes (2016). That same day, Appellant's motion *in limine* was heard. Appellant sought, in relevant part, to exclude any evidence, testimony, or reference to a be-on-the-lookout ("BOLO") call or report for a white Ford F-350 that was swerving all over the road. The trial court initially granted the motion in full.

But upon motion for reconsideration by the State, the trial court ruled that the State could reference that there was a “BOLO but you can’t say why . . . You can’t talk about why they were on the lookout, what reason they were looking for, absolutely nothing about it.” During the trial, Pasco Sheriff Deputy Sean White testified as follows:

STATE: Now, can you tell me what you were doing on July the 4th of last year at around 1:00 in the afternoon?

WITNESS: We had a BOLO for a vehicle and I was searching for it.

STATE: What do you mean by BOLO?

WITNESS: They gave a description of the vehicle and they advised that we need to locate the vehicle.

DEFENSE: Objection, Your Honor, hearsay.

COURT: Sustained.

STATE: What does the acronym BOLO mean?

WITNESS: Be on the lookout.

STATE: Now, were you able to find that vehicle?

WITNESS: Yes, sir.

STATE: And when you found that vehicle what did you do?

WITNESS: I observed a light on the roof of the vehicle, it was flashing so I conducted a traffic stop on the vehicle.

STATE: Now, the light on the vehicle, can you describe the light that was activated?

WITNESS: It was a light similar to one that you would find on top of a tow truck, just a warning light usually used in construction vehicles whenever they’re on the side of the road working on construction sites.

STATE: And the location that you stopped the vehicle was that a construction site?

WITNESS: No, sir. It was in a residential area.

The State did not adduce the reason for the BOLO’s issuance. Nor was the identification of Appellant or his vehicle a contested issue during this trial. The only contested issue was whether Appellant’s normal faculties were impaired by Oxycodone. During trial, the jury wanted to ask the deputy the following: “What was the reason for searching for the vehicle? Was there a report for reckless driving?” The trial court

responded that “none of the questions will be asked of any of the witnesses.” During deliberations, the jury asked the following: “Why was the BOLO called in?” The trial court instructed the jury that “all of the evidence has been submitted and you have to rely on whatever evidence has been submitted to make your decision.”

STANDARD OF REVIEW

The Court reviews a trial court’s ruling on a motion *in limine* for abuse of discretion. *Patrick v. State*, 104 So. 3d 1046, 1056 (Fla. 2012). A trial court abuses its discretion if its ruling is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence. *Id.* Even if a trial court abuses its discretion, the error is harmless and does not warrant reversal where there is no reasonable possibility that the error contributed to the conviction. *Partin v. State*, 82 So. 3d 31, 42 (Fla. 2011) (quoting *State v. DiGuilio*, 491 So. 2d 1129, 1135 (Fla. 1986)).

LAW AND ANALYSIS

Appellant argues that the trial court erred in permitting any reference to the BOLO or its issuance because such evidence constituted inadmissible hearsay. Appellant further argues that such error was not harmless because the State relied upon the BOLO in its closing argument and the jury was confused and curious about Appellant’s involvement in the BOLO as reflected by the above-detailed jury questions.

The Court need not address whether the trial court erred in ruling on the State’s motion to reconsider Appellant’s motion *in limine* because there is no reasonable possibility that the BOLO testimony that was elicited from Deputy White contributed to the conviction. The testimony that was adduced contained no accusatory information whatsoever, nor did it provide why the BOLO was issued. See *Law v. State*, 40 So. 3d 857, 859-860 (Fla. 4th DCA 2010); *Collier v. State*, 701 So. 2d 1197, 1198 (Fla. 3d DCA 1997). Furthermore, while the BOLO served to draw Deputy White’s attention to Appellant’s vehicle, the deputy testified that the reason he conducted the traffic stop that resulted in the DUI investigation was that Appellant’s truck had lights flashing on its roof similar to a construction vehicle, but Appellant was in a residential area and not a construction site. Finally, the reason for the BOLO’s issuance, that Appellant’s vehicle had been observed swerving all over the road, was not disclosed to the jury. Thus, the

BOLO testimony had no effect on the only contested issue: whether Appellant's normal faculties were impaired.

CONCLUSION

The BOLO testimony that was adduced during trial did not contribute to the conviction. Appellant's remaining claims are without merit. Therefore, Appellant's conviction is affirmed.

It is therefore, ORDERED and ADJUDGED that the order of the trial court is hereby AFFIRMED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this ____ day of December, 2017.

Original Order entered on January 16, 2018, by Circuit Judges Susan Barthle, Shawn Crane, and Daniel D. Diskey.

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