Dicks v. State (Fla. 17th Cir. Ct. 2008)

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COLUMBUS DICKS, Appellant, v. STATE OF FLORIDA, Appellee. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Case No. 06-127AC10A. L.C. Case No. 05-8707MM10A. May 17, 2008. Counsel: Joseph Chloupek, Office of the Public Defender, for Appellant.

OPINION OF THE COURT (MARC H. GOLD, J.) THIS CAUSE comes before the Court, sitting in its appellate capacity, based on the timely appeal by Appellant, Columbus Dicks. The Court having reviewed Appellant's Initial Brief, the record on appeal, applicable law, and being otherwise fully advised in the premises, finds as follows:

Appellant was charged by Information with driving under the influence and a driver's license restriction violation. Appellant entered a plea of not guilty and proceeded to trial. The counts were bifurcated before the honorable Judge Zack. On September 18, 2006, Appellant proceeded to jury trial on the charge of DUI, with Judge Zack presiding, and was found not guilty. On November 14, 2006, the driver's license restriction violation count was held in a non-jury trial in front of Judge Gehl and Appellant was found guilty as charged. Notice of Appeal was thereafter filed on November 27, 2006. The record of appeal was completed January 24, 2007 and Appellant's Initial Brief was filed January 29, 2007. On January 21, 2008, Appellee was served with an Order to Show Cause within fifteen days why the briefing schedule should not be closed. Appellee failed to reply to the Order and the briefing schedule was closed.

During Appellant's non-jury trial, Appellant testified in his own behalf and explained that on August 13, 2004, he had driven to Port Everglades to determine whether his employer had any work for him on that day and to pick up his paycheck. After picking up his check, Appellant drove to a cash checking store to have it cashed. Appellant testified that after leaving the cash checking store, he drove to a shopping plaza to get something to eat at a Jamaican restaurant. As he was pulling into the shopping plaza, however, Appellant was rear-ended by another vehicle and police were called to the scene. Appellant further testified that he was aware he had a class C restriction on his driver's license, limiting the scope of his driving to “business purposes only.” On cross-examination, however, Appellant testified that after leaving the cash checking store, but prior to driving to the shopping plaza, he drove to his sister-in-law's house to give his girlfriend some money and to drink some beers. Furthermore, Appellant admitted that his sister-in-law's residence is not a location that is covered under the “business purposes” restriction of his driver's license. Appellant raised and renewed a motion for judgment of acquittal, arguing that his driving on that day fell within an exception to the license restriction because he was maintaining his livelihood. The motions for judgment of acquittal were denied.

On appeal, Appellant raises two issues before the Court. Appellant's first issue on appeal is that the trial court allegedly erred by failing the grant the motion for judgment of acquittal. Secondly, Appellant contends that a fundamental error occurred because the record does not support Appellant's waiver of jury trial on the charge of driver's license restriction violation.

Florida law provides that a court should not grant a motion for judgment of acquittal “unless the evidence is such that no view which the jury may lawfully take of it favorable to the opposite party can be sustained under the law.” Arnold v. State, 892 So. 2d 1172, 1173 (Fla. 5th DCA 2005).

Where there is room for a difference of opinion between reasonable men as to the proof of facts from which the ultimate fact is sought to be established, or where there is room for such differences as to the inference which might be drawn from conceded facts, the Court should submit the case to the jury for their finding, as it is their conclusion, in such cases, that should prevail and not primarily the views of the judge.

Darling v. State, 808 So. 2d 145, 155 (Fla. 2002).

The fact that some of the evidence conflicted does not render the evidence which supports the State's charge as insufficient. See Aman v. State, 486 So. 2d 14 (Fla. 4th DCA 1986). The credibility and probative value of the conflicting evidence should not be determined on a motion for judgment of acquittal. See State v. Lalor, 842 So. 2d 217 (Fla. 5th DCA 2003). Any conflicts in the evidence are properly resolved by a jury. See Sapp v. State, 913 So. 2d 1220 (Fla. 4th DCA 2005). Accordingly, a trial court's denial of a motion for judgment of acquittal, therefore, will generally not be reversed on appeal if there is competent substantial evidence to support the verdict. See Chamberlain v. State, 881 So. 2d 1087 (Fla. 2004).

In the case at bar, Appellant contends that driving to his sister-in-law's residence and to the Jamaican restaurant qualified as exceptions to the “business purposes only” restriction on his driver's license because he was maintaining his livelihood. This factual issue, however, should not be decided by a motion for judgment of acquittal. The trial court denied Appellant's motions for judgment of acquittal because there were factual issues regarding the veracity of the testimony and the interpretation of what constitutes as “maintaining one's livelihood” that needed to be decided by the fact finder. Additionally, Appellant conceded during crossexamination that his sister-in-law's residence was not a recognized business only location under the parameters of his driver's license restriction. As explained in Lalor and Sapp, deciding the issue based on the credibility of the testimony should be a decision made by the fact-finder and not decided on a motion for judgment of acquittal. Therefore, the trial court acted properly under Darling and Chamberlain in denying the motions for judgment of acquittal.

In addressing the second issue on appeal, Appellant contends that the non-jury trial was held without any record support for finding a waiver of his right to a jury trial. Florida law provides that the appellant has the duty of bringing an adequate record to support the appeal and to demonstrate a basis in the record for overturning the presumptively correct decision of the trial court. See Fla. R. App. P. 9.200(e), Moecker v. Antoine, 845 So. 2d 904 (Fla. 1st DCA 2003).

In the case at bar, the transcript of the non-jury trial proceedings reflects that trial counsel for Appellant never objected to the non-jury trial and proceeded without hesitation. Furthermore, the transcript reflects that the trial court acknowledged the proceedings as a previously scheduled non-jury trial. (T. 3). Additionally, the attorneys brought to the trial court's attention that the two charges were initially bifurcated in front of Judge Zack. (T. 3-4). Appellant, however, failed to

include the transcript of proceedings held in front of Judge Zack. Therefore, Appellant fails to provide any record support to refute the presumptively correct decision of the trial court to proceed as a non-jury trial. Id.

Accordingly, it is hereby ORDERED AND ADJUDGED that the trial court's rulings are hereby AFFIRMED.

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