

[Cite as *State v. Al Hanandeh*, 2009-Ohio-5613.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 22976
v.	:	T.C. NO. 08 TRD 6838
	:	
AHMAD M. AL HANANDEH	:	(Criminal appeal from Municipal Court)
Defendant-Appellant	:	

OPINION

Rendered on the 23rd day of October, 2009.

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DONOVAN, P.J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Ahmad M. Al Hanandeh, filed September 23, 2008. On March 23, 2008, Al Hanandeh was cited by City

of Dayton Police Officer Kervin Velez for operating a motor vehicle without a valid license, in violation of R.C. 4510.12(A)(1), and wrongful entrustment, in violation of R.C. 4511.203.

On April 3, 2008, Al Hanandeh pled not guilty, and following a bench trial, he was convicted of both charges. Al Hanandeh appeals only from his conviction for wrongful entrustment.

{¶ 2} The events giving rise to this matter began when Velez, on routine patrol at approximately 4:45 p.m., performed a random license check on a blue taxi cab he observed in the area of Stanley Avenue and Leo Street. Upon learning that the plates on the cab had expired, and also that they were registered to another vehicle, Velez initiated a traffic stop. Danny Sergeant, with whom Velez was familiar, was driving the taxi cab, which was registered to Al Hanandeh. Sergeant phoned Al Hanandeh, who shortly arrived on the scene. When Velez checked Al Hanandeh's license, he learned that it too had expired, and he issued citations for the above violations.

{¶ 3} At trial, Velez and Al Hanandeh testified. During Velez's direct examination, the following exchange occurred:

{¶ 4} "Q. * * * Did you address the issue about Mister Sergeant being invalid licensed as well?

{¶ 5} "A. I did. I * * * asked him about it and he did not answer * * * my question at all.

{¶ 6} "Q. * * * At any time did he indicate that he was unaware that Mister Sergeant was not validly licensed?

{¶ 7} "A. No, he didn't tell me that [.]

{¶ 8} “Q. He made no claims of that whatsoever?”

{¶ 9} “A. No claims.”

{¶ 10} “Q. * * * Now, if Mister Hanandeh had ceded to you, ‘I didn’t know. He told me he was validly licensed,’ would you have issued him the ticket?”

{¶ 11} “A. No. There’d be no use to issue that citation.”

{¶ 12} “* * *

{¶ 13} “Q. Did Mister Hanandeh say anything to you when you issued him the ticket?”

{¶ 14} “A. No, he did not.”

{¶ 15} Velez stated that Al Hanandeh’s license was renewed at the time of trial. The following exchange occurred on cross-examination:

{¶ 16} “Q. In your previous testimony * * * what was the only statement that my client made to you during writing him a ticket?”

{¶ 17} “A. He didn’t make * * * any. He didn’t say anything at all.”

{¶ 18} “* * *

{¶ 19} “A. He wanted me to let him * * * drive the taxi cab. Not tow it but I couldn’t do that. * * *

{¶ 20} “Q. * * * But he never said that he knew that the individual you * * * stopped * * * didn’t have a valid license, did he?”

{¶ 21} “A. No, he didn’t tell me that.”

{¶ 22} “Q. He just didn’t tell you that he didn’t know that either?”

{¶ 23} “A. No. If he would have told me that he didn’t know I wouldn’t [have]

issued him the citation.

{¶ 24} “Q. * * * Did you tell him that (inaudible)?

{¶ 25} “A. No. ‘Cause he never asked.

{¶ 26} “* * *

{¶ 27} “A. He never said anything. I mean, no use in me telling him that.

{¶ 28} “* * *

{¶ 29} “Q. * * * Did Danny ever tell you what his position was in this company that he worked for?

{¶ 30} “A. He said that he just drove a taxi.

{¶ 31} “Q. That’s all?

{¶ 32} “A. Yeah. I don’t know what position he has, no.”

{¶ 33} Velez testified that he has been to Sergeant’s home, and that he knows that Sergeant and Al Hanandeh do not live together.

{¶ 34} At the conclusion of the State’s case in chief, Al Hanandeh moved for acquittal pursuant to Crim.R.29(A), arguing that there is no presumption that Al Hanandeh knew that Sergeant was not licensed, since the men do not live together, and that there was no evidence that Al Hanandeh knew that Sergeant’s license was invalid. The State responded that Al Hanandeh, as Sergeant’s employer, had an “affirmative responsibility to verify the status of drivers’ records before he employs them.” The trial court overruled the Crim.R. 29 motion.

{¶ 35} Thereafter, Al Hanandeh testified on his own behalf. He acknowledged that he has “a few cabs with a company called United Trans Corp. * * * doing business as Petra

Cab Company.” The cab at issue was registered to him and the keys to the cab were kept in the office. Al Hanandeh testified that Sergeant was hired as a dispatcher, not a driver, for the company. Sergeant worked the night shift, and when he was stopped by Velez, it was not during his normal work hours. Sergeant had only been employed for two weeks before the traffic stop occurred. Al Hanandeh indicated Sergeant was fired “because he drove that cab on that day without my permission.” Al Hanandeh stated that he told Sergeant that the cab was “not available to be on the road.” According to Al Hanandeh, the cab needed to be repaired, and he believed, since there was not a customer in the car when it was stopped, that Sergeant was attempting to fix it so his girlfriend, who needed a job, could drive it. Al Hanandeh testified that Sergeant never asked for permission to drive the cab. Al Hanandeh stated he did not ask Sergeant if he had a valid license since he was hired as a dispatcher, but he assumed Sergeant’s license was valid because Sergeant drove his own vehicle to work everyday.

{¶ 36} At the time of the incident, Al Hanandeh was working at the grocery store that he also owns, and he stated, “I don’t run the cab company. * * * I don’t deal with the cab company on [a] daily basis.” When asked on cross-examination if he discussed the possibility of pursuing theft or unauthorized use of a vehicle charges against Sergeant with Velez, Al Hanandeh replied, “I tried to talk to the officer and he told me shut your mouth and stay there.” Al Hanandeh testified that he was unaware that his own license expired the week before the incident.

{¶ 37} In determining Al Hanandeh’s guilt, the trial court noted, “ * * * it would be * * * important that a person that drives for a business * * * know who’s licensed. * * * I

mean, you'd actually let me see your license * * * . It's almost like a police going out there on the job and forgetting their gun or forget[ing] their bullets or something."

{¶ 38} Al Hanandeh asserts two assignments of error. His first assignment of error is as follows:

{¶ 39} "THE JUDGMENT OF CONVICTION AGAINST THE DEFENDANT-APPELLANT SHOULD BE REVERSED BECAUSE IT IS BASED ON LEGALLY INSUFFICIENT EVIDENCE AS A MATTER OF LAW."

{¶ 40} According to Al Hanandeh, there was insufficient evidence that he permitted Sergeant to drive his cab, there was insufficient evidence that he knew that Sergeant did not have a valid license, and there was insufficient evidence that he "acted with the requisite culpability of recklessness." The State concedes that Al Hanandeh's conviction for wrongful entrustment should be reversed "as it was based upon insufficient evidence with respect to the Appellant's mental state."

{¶ 41} "In reviewing a claim of insufficient evidence, '[t]he relevant inquiry is whether, after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.' *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560; see, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 678 N.E.2d 541." *State v. McKnight*, 107 Ohio St.3d 101, 112, 2005-Ohio-6046, ¶ 70.

{¶ 42} R.C. 4511.203 provides:

{¶ 43} "(A) No person shall permit a motor vehicle owned by the person or under

the person's control to be driven by another if any of the following apply:

{¶ 44} “(1) The offender knows or has reasonable cause to believe that the other person does not have a valid driver's license or permit or nonresident driving privileges.

{¶ 45} * *

{¶ 46} “(B) Without limiting or precluding the consideration of any other evidence in determining whether a violation of division (A)(1) * * * of this section has occurred, it shall be prima-facie evidence that the offender knows or has reasonable cause to believe that the operator of the motor vehicle owned by the offender or under the offender's control is in a category described in division (A)(1) * * * of this section if any of the following applies:

{¶ 47} “(1) Regarding an operator allegedly in the category described in division (A)(1) * * * of this section, the offender and the operator of the motor vehicle reside in the same household and are related by consanguinity or affinity.

{¶ 48} “* * *.”

{¶ 49} To establish a violation of R.C. 4511.203, the State must prove (1) Al Hanandeh owned or controlled the cab, (2) permitted Sergeant to drive the cab, (3) with actual knowledge or reasonable cause to believe, (4) that Sergeant “had no legal right to drive.” *State v. Tranovich*, Butler App. No. CA2008-09-242, 2009-Ohio-2338, ¶ 10.

{¶ 50} The State's burden is to prove, “beyond a reasonable doubt, that the defendant either knew or had reasonable cause to know that the driver to whom the car was entrusted had no legal right to drive it. * * * Thus, the culpable mental state required to be convicted of wrongful entrustment of a motor vehicle is knowingly or recklessly. * * * R.C. 2901.22(B) explains that a person acts knowingly when he is aware that his conduct will

probably cause a certain result. R.C. 2901.22(C) also describes that a person acts recklessly when he perversely disregards a known risk that such circumstances are known to exist.” *Bedford v. Davis*, Cuyahoga App. No. 89049, 2007-Ohio-5949, ¶ 34.

{¶ 51} Importantly, and contrary to the defense and the trial court’s suggestion, “while it might be prudent, there is no affirmative duty under R.C. 4511.203 for the owner of a vehicle to ascertain the status of the driver’s operating rights before lending his vehicle to be driven by another.” *Cleveland v. Elkins*, Cuyahoga App. No. 91378, 2008-Ohio-6288, ¶ 30. In other words, “mere ownership of the vehicle does not constitute a violation of the statute.” *Id.*, ¶ 31. “[G]enerally, defendant’s knowledge is proven by admissions of the defendant to police.” *State v. Gover* (2004), 127 Ohio Misc.2d 82, 2004-Ohio-1343, fn. 9.

{¶ 52} Here, it was undisputed that Al Hanandeh owned the taxi cab. The State failed to introduce any evidence, however, that Al Hanandeh had actual or constructive knowledge that Sergeant had no legal right to drive the vehicle, and no presumption exists to the contrary. Al Hanandeh remained silent on the issue after the stop, later testifying at trial that Sergeant had not been hired to drive the cab, and that he assumed Sergeant was licensed because he drove a vehicle everyday to work as a dispatcher. Al Hanandeh also testified that he specifically forbade Sergeant from driving the cab because it was in need of repair.

{¶ 53} Since insufficient evidence exists establishing Al Hanandeh’s guilt, his first assignment of error is sustained regarding the charge of wrongful entrustment, and the judgment of the trial court is reversed.

{¶ 54} Al Hanandeh’s second assignment of error is as follows:

{¶ 55} “THE JUDGMENT OF CONVICTION AGAINST THE DEFENDANT-APPELLANT IS VOID AND SHOULD BE VACATED ON THE GROUND THAT THE COMPLAINT WAS DEFICIENT AS A MATTER OF LAW AND THE DEFENDANT-APPELLANT NEVER RECEIVED NOTICE OF ALL ESSENTIAL ELEMENTS THAT THE PROSECUTION MUST PROVE CONTRARY TO THE GUARANTEES OF DUE PROCESS OF LAW.”

{¶ 56} Al Hanandeh’s second assignment of error has been rendered moot by our disposition of the first assignment of error.

Judgment reversed.

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FROELICH, J. and WOLFF, J., concur.

(Hon. William H. Wolff, Jr., retired from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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