

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

APPELLATE CASE NO: 2020-AP-2-A-O
Lower Case No.: 2018-MM-1527-A-O

STATE OF FLORIDA,

Appellant,

v.

ELEISON ALEXANDER FIGUEROA,

Appellee.

_____ /

Appeal from the County Court
for Orange County, Florida
Wayne Shoemaker, County Court Judge

Aramis D. Ayala, State Attorney,
and Merrilyn Elise Hoenemeyer, Assistant State Attorney
for Appellant

Robert Wesley, Public Defender,
and Kinsey Johnston, Assistant Public Defender
for Appellee.

Before WILSON, HIGBEE, and WHITE, J J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

The State of Florida appeals the trial court's order granting Eleison Figueroa's (herein "Appellee") pretrial motion in limine, which excluded from evidence a certified copy of the victim's driver's license record. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320 and reverse.

On February 18, 2019, the State charged Appellee with one count of battery. The victim passed away during the pendency of the case. During discovery, the State disclosed to the

defense a copy of the victim's certified driver and vehicle information (DAVID) record, which included a color photograph of the victim. On February 10, 2020, defense counsel filed a motion in limine, seeking to exclude the victim's DAVID record based on hearsay. The parties appeared before the trial court on February 14, 2020, and the trial court granted Appellee's motion, finding that the victim's DAVID record was hearsay without any exception and therefore inadmissible.

In this appeal, the State argues that under Section 322.201, Florida Statutes, and *Card v. State*, 927 So. 2d 200 (Fla. 5th DCA 2006), the certified copy of the victim's DAVID record, including the color photograph, is self-authenticating, because it is a complete driving record. Additionally, the State contends that the DAVID record is not hearsay because it falls within the public records exception under Section 90.803(8), Florida Statutes. The State avers the trial court abused its discretion when it granted Appellee's motion in limine.

Appellee argues that the State is using the DAVID record to identify the victim and satisfy an element of the charged crime. This document, Appellee claims, relies on an out of court statement by the deceased victim as to her identity, making it hearsay for which there is no exception, considering that the State does not have as a witness the Department of Motor Vehicles employee who provided the victim with her driver's license . Appellee states that the unavailability hearsay exceptions for when a declarant is unavailable "do not include public record, or, more specifically, driving records." Therefore, Appellee maintains the trial court did not abuse its discretion and argues that this Court should affirm the trial court's order granting the motion in limine.

We review the county court's order for an abuse of discretion. *See Dessauere v. State*, 891 So. 2d 455 (Fla. 2004) (citing *State v. Polak*, 598 So. 2d 150 (Fla. 1st DCA 1992) (standard of review on a lower tribunal's ruling on a motion in limine is abuse of discretion)).

"Section 322.201, Florida Statutes ... makes driving records issued by DHSMV self authenticating and admissible in evidence." *Card*, 927 So. 2d at 201. In addition, Section 90.902(4), Florida Statutes, states that extrinsic evidence of authenticity is not required for:

A copy of an official public record, report, or entry, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification by certificate complying with subsection (1), subsection (2), subsection (3), or complying with any act of the Legislature or rule adopted by the Supreme Court.

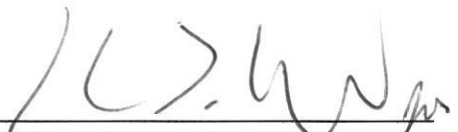
The Court finds the stamped signature on the certified copy of the victim's DAVID record sufficient to meet the requirements under Section 90.902(2), and the certification and signature sufficient under Section 90.902(4), thus making the document self-authenticating under Section 90.902.

Unlike a law enforcement lab report, prepared pursuant to a police investigation, or a breath-test affidavit written by a technician and prepared for use at trial, "[d]riving records are kept in Florida for the public benefit and are not solely prepared for trial purposes ... and [are] not made or kept for law enforcement or trial purposes." *Card*, 927 So. 2d at 203.

In this case, the victim's driving record was not prepared for use at trial, but is a record maintained by the Department of Highway Safety and Motor Vehicles (DHSMV). The certified copy of the victim's DAVID record is a self-authenticating public record. It was therefore an abuse of discretion for the trial court to exclude the certified copy of the victim's DAVID record, thus warranting reversal.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the trial court's order granting the motion in limine is **REVERSED**, and this cause is **REMANDED** for further proceedings. No motions for rehearing will be considered.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this
29 day of December, 2020.



TANYA DAVIS WILSON
Presiding Circuit Judge

HIGBEE and WHITE, J.J., concur.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of this Order has been furnished by U.S. Mail, hand delivery, or e-portal filing to: **The Honorable Wayne Shoemaker**, 425 N. Orange Avenue, Orlando, Florida 32801; **The Honorable Elizabeth Gibson**, 425 N. Orange Avenue, Orlando, Florida 32801; **Merrilyn Elise Hoenemeyer**, Assistant State Attorney, Post Office Box 1673, Orlando, Florida 32802; and to **Kinsey Johnston**, Assistant Public Defender, 435 N. Orange Avenue, Suite 400, Orlando, Florida 32801 on this 29 day of December, 2020.



Judicial Assistant