IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

AARON CHAD BARNETT,
Appellant,

vs.

STATE OF FLORIDA,
Appellee,
_____/

APPELLATE DIVISION

Case No.: 21-AP-6-P
Lower Case No.: 20-TR-6408-A-P

APPELLATE OPINION

This matter is before the Court on appeal from a county court final judgment finding Aaron Chad Barnett ("Appellant") guilty of violating § 316.1925(1), Fla. Stat. The Court, having considered the Appellant's Initial Brief, the Answer Brief of Appellee, the record, pertinent legal authority, having heard argument of counsel for the parties, and being otherwise fully advised in the premises, finds and orders as follows:

On February 9, 2021, a traffic hearing was held before County Judge Sharon Hamilton. At the hearing, Trooper Jarrett and the crash victim- Javier Martinez, testified. At the conclusion of testimony, counsel for the Appellant made a motion to dismiss arguing that the testifying officer never testified that the infraction occurred in Monroe County and there was no testimony the Appellant was driving. The motion to dismiss was denied. The court found and adjudicated the Appellant guilty and imposed sentence. This appeal followed.

The Appellant raises three arguments on appeal. First, he argues the State did not prove that the alleged conduct occurred in Monroe County. Second, he argues the State did not present any evidence that the Appellant was driving, and as such, the allegation was not proven beyond a reasonable doubt. Third, Appellant

claims the court lacked personal jurisdiction over the Appellant because the State did not present any evidence that the Appellant was issued a citation. The Court will address each argument in turn.

I. Venue

Appellant argues that since there was no testimony that this incident occurred in Monroe County, he could not have been found to have violated a traffic law within the jurisdiction of Monroe County. The State responds that the testimony of Trooper Jarrett is sufficient to establish that the incident occurred in Monroe County. The Court agrees.

Venue does not need to be proved beyond a reasonable doubt; rather, venue may be proved simply by a preponderance of the evidence. *Ball v. State*, 204 So. 2d 523, 524 (Fla. 3d DCA 1967). Venue is sufficiently proved where, based on evidence presented, the trier of fact can reasonably infer that the offense was committed in the county where the case was brought. *Id*. Venue is sufficiently demonstrated where the evidence refers to localities and landmarks at or near the scene of the alleged offense, known or probably familiar to the trier of fact, from which they may reasonably infer that the offense was committed in the county. *Simmons v. State,* 934 So. 2d 1100, 1112 (Fla. 2006) (citing *Lowman v. State,* 80 Fla. 18, 85 So. 166, 167 (1920)).

In this case, Trooper Jarrett testified the "car crash occurred on U.S. Highway 1, State Road 5, Mile Marker 105. That would be north of 905, County Road 905." (Tr. P.3:22-25). Pursuant to case law, this testimony is sufficient for the court to conclude the offense occurred in Monroe County. *See Timmons v. State*, 97 Fla. 23, 119 So. 393 (venue sufficiently established by testimony that offense occurred "on the road between Sharpe's Ferry and Ocala about one mile west of the bridge");

Collingsworth v. State, 93 Fla. 1110, 113 So. 561 (1927) (venue sufficiently established by testimony that offense occurred about three-quarters of a mile from Laurel Hill). Although Appellant's counsel argues that County Road 905 extends into Miami-Dade County, the reference to Mile Marker 105 makes it clear that the offense occurred in Monroe County because all points south of U.S. Highway 1 mile marker 112.5 are within Monroe County.

II. Proof of Driving

Appellant alleges there was no evidence that Appellant was driving, and therefore, the allegation was not proven beyond a reasonable doubt. However, the testimony of the crash victim sufficiently establishes that the Appellant was driving. At the hearing, Javier Martinez testified that he was on his motorcycle, stopped in traffic, when he looked in his rearview mirror and saw a jeep coming towards him. (Tr. P. 5:21-25). He testified that he tilted the motorcycle on its side and the jeep ran into the back of it throwing him onto the street. (Tr. P. 6:1-4). The motorcycle was stuck to the front bumper of the jeep. (Tr. P. 7:19-20). Javier Martinez testified "Mr. Barnett got out of the car and he—he came over. He said, 'Oh, I'm sorry. My dog got in front of me.'" (Tr. P. 7:21-23). Again, at the conclusion of his testimony, Mr. Martinez testified that Mr. Barnett got out of the car and apologized to him. (Tr. P. 9:4-6). This testimony provides sufficient and competent evidence that Appellant was the driver. There was no testimony that there was anyone else, other than Mr. Barnett and the dog in the jeep. Further, at the hearing, Appellant's counsel objected to Trooper Jarrett's identification of the Appellant as the driver because he did not witness the Appellant driving but stated that he did not object to Mr. Martinez' identification of the Appellant as the driver. (Tr. P. 10:15-18).

Appellant cites to *Lee v. State*, 374 So. 2d 1094 (Fla. 4th DCA 1979), to support his argument that the evidence was insufficient to establish he was the driver involved in the traffic accident, but that case is distinguishable because in that case, there was absolutely no evidence presented to the court that the petitioner was involved in the matter. In *Lee*, none of the witnesses identified the driver by name, description, or otherwise, and as the court noted, "there is not one iota of evidence as to the defendant's involvement in this traffic accident." *Id*. at 1096. Here, the crash victim was able to identify the driver of the vehicle involved in the traffic accident as the Appellant whom he identified as the person who exited the vehicle and apologized to him, and he identified him by name.

III. Personal Jurisdiction

Appellant argues that the State did not prove the issuance of a traffic citation, and therefore, failed to establish personal jurisdiction. This argument was raised for the first time on appeal, and the State argues that since it was not raised below, the argument is waived. Appellant argues that he attempted to raise this argument at the traffic hearing but was prohibited from doing so by the court. Lack of personal jurisdiction is a waivable defense, *Brown v. State*, 263 So. 3d 48, 52 (Fla. 4th DCA 2018), and the Court finds it was waived in this case.

The transcript of the hearing shows that after the witnesses testified, everyone had an opportunity to be heard and defense counsel had an opportunity to make a motion to dismiss, which was denied. After the Defendant was found guilty and sentenced, defense counsel said he had something to put on the record and the court would not allow it. (Tr. P. 26:8-13). There was no proffer as to what counsel sought to put on the record. There is no indication that it was an argument regarding personal jurisdiction, and it would not have been timely in any event.

This case is analogous to *Desmond v. State*, 576 So. 2d 743 (Fla. 2d DCA 1991), where the court held the defendant waived objection to lack of personal jurisdiction by proceeding to trial without objection and only raising the issue after conviction. The court noted the defendant "submitted himself to the personal jurisdiction of the court and cannot now complain of a lack of jurisdiction over him." *Id*. at 744. The court cited *State v. King,* 426 So.2d 12, 15 (Fla. 1982) where the Florida Supreme Court held:

> There is good reason for requiring defendants to register their objections with the trial court. A defendant should not be allowed to subject himself to a court's jurisdiction and defend his case in hope of an acquittal and then, if convicted, challenge the court's jurisdiction on the basis of a defect that could have been easily remedied if it had been brought to the court's attention earlier. Neither the common law nor our statutes favor allowing a defendant to use the resources of the court and then wait until the last minute to unravel the whole proceeding.

Here, the Appellant waived objection to personal jurisdiction by submitting himself to the court and failing to raise the issue prior to adjudication and sentencing.

WHEREFORE, the Final Judgment of the County Court Judge is **AFFIRMED.**

DONE AND ORDERED at Key West, Monroe County, Florida this Monday, March 7, 2022.

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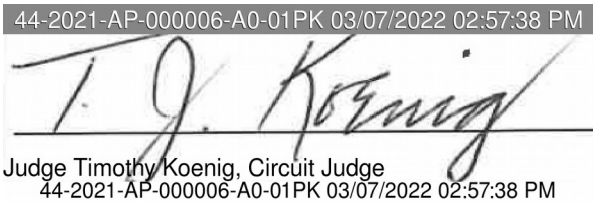

Judge Timothy Koenig, Circuit Judge

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cc:

Val E Winter
vwinter@keyssao.org
jmalcolm@keyssao.org

Halford G Schuhmacher
efiling@halschuhmacher.com
kris@halschuhmacher.com
alli@halschuhmacher.com