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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

EDUARDO AGUILERA, *Appellant*.

No. 1 CA-CR 16-0151
FILED 2-23-2017

Appeal from the Superior Court in Maricopa County
No. CR2014-147204-001
The Honorable David V. Seyer, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Gracynthia Claw
Counsel for Appellee

Ballecer & Segal, LLP, Phoenix
By Natalee Segal
Counsel for Appellant

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MEMORANDUM DECISION

Chief Judge Michael J. Brown delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Patricia A. Orozco¹ joined.

B R O W N, Chief Judge:

¶1 Eduardo Aguilera appeals from his convictions and sentences for three counts of aggravated driving while under the influence. He argues the trial court abused its discretion in precluding statements allegedly made by an employee of the Arizona Department of Transportation-Motor Vehicle Division (“MVD”) regarding the status of Aguilera’s driver’s license. Finding no error, we affirm.

BACKGROUND

¶2 In October 2013, a law enforcement officer served Aguilera with an Order of Suspension/Administrative Per Se (“2013 Suspension Order”) and confiscated Aguilera’s driver’s license on suspicion of driving while under the influence (“DUI”). The 2013 Suspension Order stated: “[Y]our Arizona driving privilege is suspended for not less than 90 consecutive days effective 15 days from Date Served This order is final unless a summary review or hearing is requested . . . and this suspension will not end until all reinstatement requirements are met.” The next day, Aguilera obtained a new driver’s license from an MVD office and confirmed his current address. While obtaining the new license, Aguilera discussed his license status with an employee; he testified at trial that he left the MVD with the impression that his license would not be suspended without a hearing. Aguilera, however, did not request a hearing within the 15-day period following service of the 2013 Suspension Order; thus, the order became effective on November 11, 2013.

¶3 On November 22, 2013, the MVD mailed an “Order of Suspension Reminder” to Aguilera at his current address on record. The “courtesy notice” stated that even though Aguilera obtained a new license on October 28, 2013, his driver’s license was suspended effective November

¹ The Honorable Patricia A. Orozco, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

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11, 2013 and it would be eligible for reinstatement in February 2014 if he completed the requirements associated with reinstatement.

¶4 Aguilera failed to reinstate his driver's license and in July 2014 he was arrested for suspicion of DUI. The State indicted Aguilera for (1) driving with a suspended license while under the influence of an intoxicating liquor or drug, (2) driving with a blood alcohol concentration of or exceeding .08, and (3) driving while under the influence of an impermissible drug or its metabolite. Because the State alleged that each of the three counts were committed while Aguilera's driving privileges were suspended, each count was charged as an aggravated offense.

¶5 Aguilera represented himself at trial with the assistance of advisory counsel. His principal defense was that his license was valid at the time of his arrest because it appeared valid upon initial inquiry by the arresting officer and because Aguilera was led to believe by MVD "that it takes a hearing to suspend [a] driver's license." Anticipating this defense, the State filed a motion in limine expressing its concern that Aguilera would attempt to offer "misstatements of law" and would refer to hearsay statements made by an unidentified MVD employee. Aguilera urged the trial court to deny the motion "based on the fact that they told me different[ly] at the MVD and I have proof of what they told me to back it up." To resolve the issue, the court permitted Aguilera to "discuss what occurred at the MVD, except for you telling what other people said to you." The court informed Aguilera that "you can explain what happened at MVD . . . but you cannot include statements . . . [A]s long as there's reasonable grounds of relevancy, I'm going to allow you to say, I went to MVD and here's what happened."

¶6 A jury found Aguilera guilty as charged and the trial court imposed concurrent mitigated six-year prison sentences on each of the three counts. This timely appeal followed.

DISCUSSION

¶7 Aguilera argues the statements of the MVD employee were not hearsay because they were not offered for the truth of the statements but for their effect on his understanding of his license status. He therefore contends the statements were improperly excluded and deprived him of his ability to challenge an element of the offense.

¶8 We will not reverse the trial court's rulings on "issues of the relevance and admissibility of evidence absent a clear abuse of its considerable discretion." *State v. Davis*, 205 Ariz. 174, 178, ¶ 23 (App. 2002).

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“To the extent [Aguilera] sets forth a constitutional claim in which he asserts that the information is necessary to his defense, however, we will conduct a de novo review.” *State v. Connor*, 215 Ariz. 553, 557, ¶ 6 (App. 2007).

¶9 “Driving under the influence is a strict liability offense, but aggravated DUI based on a suspended license requires proof that the defendant drove a motor vehicle under the influence of alcohol [or drugs] while his license was suspended, and that he knew or should have known of the suspension.” *State v. Cifelli*, 214 Ariz. 524, 527, ¶ 12 (App. 2007) (citation omitted); *see also* Arizona Revised Statutes (“A.R.S.”) section 28-1383(A)(1). Thus, Aguilera sought to persuade the jury that his license was not suspended, or if it was, that he was not aware of it when he was arrested in July 2014.

¶10 Aguilera’s attempt to offer testimony that an employee at MVD told him a hearing was required before his license could be suspended was subject to an admissibility determination by the trial court pursuant to the Arizona Rules of Evidence. *See State v. Dickens*, 187 Ariz. 1, 14 (1996) (explaining that a defendant’s fundamental right to present a defense “is limited to the presentation of matters admissible under ordinary evidentiary rules, including relevance”). Hearsay is an out-of-court statement that is offered in evidence by a party to prove the truth of the matter asserted in the statement and is not admissible unless the specific evidence falls within an exception to the rule against hearsay. *See* Ariz. R. Evid. 801(c), 802.

¶11 Here, the key inquiry for determining whether the statements were admissible is determining Aguilera’s purpose for offering them as evidence. *See* Ariz. R. Evid. 801. The statements of the MVD employee were relevant to Aguilera’s defense in two ways – to show he did not know his license was suspended, or to establish his license was actually not suspended at the time of the offense. *See* A.R.S. § 28-1383(A)(1); *Cifelli*, 214 Ariz. at 529, ¶ 19. If the statements were offered to show he did not know his license was suspended because he relied on the statements, regardless of whether they were true, the statements were not hearsay; however, if the statements were offered to show that his license was in fact valid on the date of offense, they were offered “to prove the truth of the matter asserted in the statement” and therefore constituted hearsay. Ariz. R. Evid. 801(c)(2); *see also State v. Rivera*, 139 Ariz. 409, 413-14 (1984) (“The hearsay rule is inapplicable where the statements are offered for some valid purpose other than to prove the matter asserted in the statement.”).

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¶12 Our review of the record indicates that Aguilera offered evidence of what the MVD employee said to him in 2013 for the purpose of proving his license was in fact valid and he believed it was valid. Aguilera did not subpoena the MVD employee to testify at trial; thus, if offered in evidence, the statements would arguably constitute inadmissible hearsay as to one element and admissible non-hearsay as to the other. The trial court found that the statements, if presented contextually and not verbatim, would not constitute inadmissible hearsay. Thus, the court appropriately allowed Aguilera to present the context of the conversation rather than the specific statements made by the MVD employee. Aguilera indicated that he understood the court's resolution of the hearsay conundrum and expressed an ability to comply with the court's ruling.

¶13 Aguilera testified that he believed his driver's license was not suspended on the date of the traffic stop because "for me going to the MVD to find out if the piece of paper [the 2013 Order of Suspension] was an accurate statement, I was led to believe that it takes a hearing to suspend my driver's license. That's what I was led to believe." Thus, the court permitted Aguilera to introduce the context of the conversation that took place at MVD and the reason why he believed his license was valid on the date of the offense. On this record, Aguilera has shown no abuse of the court's discretion in carefully fashioning a ruling that balanced the competing purposes for which the statements may have been offered.

¶14 Aguilera also asserts, by pointing to an ambiguous jury question, that the court's exclusion of the MVD employee's statements denied him "due process by depriving his challenge to an element of the offense." The Due Process Clause of the Fourteenth Amendment requires that "criminal defendants be afforded a meaningful opportunity to present a complete defense." *State v. Goudeau*, 239 Ariz. 421, 441, ¶ 43 (2016) (internal quotations and citation omitted). Our review of the record reveals that Aguilera was given a thorough and meaningful opportunity to present a complete defense through cross-examining witnesses and testifying on his own behalf. Further, as noted by the trial court, Aguilera could have subpoenaed the MVD employee to testify regarding their conversation in October 2013, but he did not.

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CONCLUSION

¶15 Because the trial court acted within its discretion by limiting the presentation of Aguilera's proffered evidence concerning out-of-court statements made by an MVD employee, we affirm Aguilera's convictions and sentences.



AMY M. WOOD • Clerk of the Court
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