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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

APRIL LOPEZ, as Personal Representative)
of the Estate of Amalia Lozoya, Deceased,)
)
Appellant,)
)
v.)
)
WINK STUCCO, INC. and JESUS)
RIVERA, III,)
)
Appellees.)
_____)

Case No. 2D10-5181

Opinion filed September 18, 2013.

Appeal from the Circuit Court for
Hillsborough County; William P. Levens,
Judge.

Samuel R. Mandelbaum of Mandelbaum,
Fitzsimmons & Hewitt, P.A., Tampa, for
Appellant.

Michael S. Rywant and Kerry C. McGuinn,
Jr. of Rywant, Alvarez, Jones, Russo &
Guyton, P.A., Tampa, for Appellee Wink
Stucco, Inc.

No appearance for Appellee Jesus Rivera,
III.

SILBERMAN, Judge.

April Lopez, as personal representative of the Estate of Amalia Lozoya,
seeks review of the final judgment which was rendered after a defense verdict in this

automobile negligence action. We affirm the final judgment in all respects. We write to address the admissibility of evidence that one of the drivers was unlicensed at the time of the accident.

The accident occurred at the intersection of U.S. Highway 301 and S.R. 674 in Ruskin during the late afternoon of December 14, 2006. Lozoya was riding in a red Nissan Sentra driven by her eighteen-year-old nephew, Jesus Rivera, III. Rivera was driving northbound on U.S. 301. As Rivera was attempting to turn left onto S.R. 674, he collided with a white cargo van that was driving southbound on U.S. 301. Ramiro Pantoja-Vega, an employee of Wink Stucco, Inc., was driving the cargo van and was hauling a cement mixer affixed to a trailer.

Lozoya died at the scene from her injuries, and Lopez filed a complaint alleging negligence and wrongful death against Wink Stucco, Pantoja-Vega, Rivera, and Rivera's mother, Yvette Rivera. Lopez settled with Pantoja-Vega and voluntarily dismissed her claim against Yvette Rivera prior to trial. The remaining parties agreed to bifurcate the claims, and Lopez proceeded to trial against Wink Stucco and Jesus Rivera on the issue of liability.

Rivera testified that he was driving north on U.S. 301 in the Nissan with Lozoya on the way to pick up his little sister from daycare. When he first reached the intersection of U.S. 301 and S.R. 674, Rivera stopped at a red light in the left turn lane. He was the third car in line. The light changed to a green arrow, and Rivera started to turn behind the cars in front of him. He did not see the van coming until it was too late to avoid a collision. By that time, the two vehicles in front of him had already made the turn safely. He believed the van was speeding and that it had violated his right of way.

None of Lopez's other witnesses specifically confirmed Rivera's testimony that he turned on a green arrow, and certain witnesses testified that the light had changed from a green arrow to a green ball. But Lopez presented testimony of an expert accident reconstructionist and two eyewitnesses that Pantoja-Vega was speeding in the white cargo van. Lopez's accident reconstruction expert estimated that the white cargo van was traveling at least 60 mph at the time of impact, which was at least 15 mph over the 45 mph speed limit.

Wink Stucco presented the testimony of Pantoja-Vega, an expert accident reconstructionist, and an eyewitness. They testified that Pantoja-Vega was not speeding in the white cargo van, and the eyewitness stated that Pantoja-Vega had a green light. Wink Stucco defended on the theory that the red Nissan violated the white cargo van's right of way by turning left on a solid green light directly into the van's path. Wink Stucco claimed that eighteen-year-old Rivera was an untrained driver without enough experience to safely judge whether he had enough time to make the left turn.

The issue we address today is the admissibility of evidence that Rivera had never obtained a driver's license. This issue was first brought before the trial court in a pretrial motion in limine filed by Lopez. The court heard argument and reserved ruling on the issue. The court revisited the issue during the reading of Rivera's deposition testimony when Wink Stucco sought to read a series of questions to which Rivera had responded, "No Comment." The questions asked whether Rivera had a Florida driver's license, when he first drove a vehicle, and how many times he had driven a vehicle in the past. The court denied Lopez's motion to exclude the testimony.

The court also permitted the investigating officer to testify that Rivera had a Florida identification card, but he had not taken the written exam and driving proficiency test necessary to obtain a driver's license. The officer reported that Rivera said he started driving when he was fifteen or sixteen and had driven occasionally since then. Rivera told the officer he had lived in Miami before the accident and had driven the red Nissan to the auto parts store or around the neighborhood when the car made a weird sound to try to determine what was wrong. He also picked up his little sister from daycare. But for the most part, Rivera used public transportation because his parents did not like for him to drive the car.

The admissibility of evidence of a violation of a licensing statute is a question of law that turns on the relevancy of that evidence as it pertains to the facts of a particular case. Brackin v. Boles, 452 So. 2d 540, 545 (Fla. 1984). In order for such evidence to be admissible, there must be "a causal connection between that violation and the injuries incurred." Id. at 544. To establish this causal connection the driver's competence and experience must be placed at issue in the case. Id. at 545.

In Brackin, the negligence action arose after the plaintiff stopped at a three-way intersection, turned left, and was struck by the defendant's vehicle from the left. Id. at 542. The plaintiff's theory of negligence was that the defendant was speeding. Id. at 545. The plaintiff also sought to present evidence that, at the time of the accident, the defendant had been driving in violation of the terms of his restricted driver's license by failing to be accompanied by a licensed driver over eighteen years of age. Id. at 542.

The trial court held that evidence of the driver's violation of the licensing statute was inadmissible because there was no causal connection between the evidence and the injuries sustained in the accident. Id. at 544. The First District disagreed, holding that the evidence was admissible despite the lack of any causal connection. Id. at 545. The supreme court disagreed with the district court and concluded that the trial court had properly decided the issue.

The supreme court explained that, despite its precedent holding that a violation of a traffic law is evidence of negligence, the general rule that evidence must be relevant to be admissible still applied. Id. Thus, the court concluded that "a person's violating a traffic regulation is admissible evidence only if it tends to prove that that person has negligently operated an automobile." Id. And the court noted that in some cases, the violation of a licensing statute "may be relevant to show the driver's inexperience and incompetence in handling an automobile." Id. However, the plaintiff had not placed the defendant's experience and competency in issue but had argued that the accident was caused by the defendant's speeding. Thus, the supreme court determined that evidence of the licensing violation was not admissible.

In Brackin, the supreme court approved the reasoning of the Third District in two cases in which the court held that the violation of a licensing statute was relevant to the injuries incurred in those cases. See id. at 544 (citing Corbett v. Seaboard Coastline R.R. Co., 375 So. 2d 34 (Fla. 3d DCA 1979), and Dorsett v. Dion, 347 So. 2d 826 (Fla. 3d DCA 1977)). In Corbett, the district court held that evidence that the sixteen-year-old defendant was driving without a license was admissible when the plaintiff's theory of negligence was that the defendant collided with a crossing train

because she was speeding and "inattentive in that she failed to heed the warnings that were given" at the crossing. 375 So. 2d at 39. In Dorsett, evidence that the plaintiff was illegally driving with a learner's permit was similarly deemed relevant because the accident did not involve any contact between her vehicle and the defendant's vehicle and "the plaintiff's injury may well have resulted from her own inexperience and her inability to handle her own car." 347 So. 2d at 827; see also Lenhart ex rel. Chronister v. Basora, 100 So. 3d 1177, 1178-79 (Fla. 4th DCA 2012) (holding that evidence of a driver's unlicensed status and limited driving experience was relevant to the issue of the driver's comparative negligence when the driver caused the accident by abruptly turning into the plaintiff's lane); Klanseck v. Anderson Sales & Serv., Inc., 393 N.W.2d 356, 361 (Mich. 1986) (holding that the plaintiff's failure to have a motorcycle endorsement was relevant when the defense theory of the case was that the plaintiff could have avoided the accident by handling his tire blowout competently).

In this case, Wink Stucco's theory of defense was that Rivera was an unlicensed driver without sufficient experience to safely judge whether he had enough time to make the left turn in front of the white cargo van. In support of this theory, Wink Stucco presented testimony that Rivera followed other cars into the intersection after the green arrow went off and made a left turn directly in the path of the white cargo van. Rivera was eighteen years old and had only driven occasionally since he was fifteen or sixteen because his parents did not like for him to drive their car. Wink Stucco also presented testimony that the white cargo van had the right of way with a solid green light, was not speeding, and did not have enough time to avoid the collision. While there were factual disputes at trial, Wink Stucco's evidence and theory of defense

established the requisite causal connection to support the admission of evidence that Rivera was an unlicensed driver.

Affirmed.

VILLANTI, J., Concurs.

WALLACE, J., Dissents with opinion.

WALLACE, Judge, Dissenting.

In my view, there are two reasons why the trial court erred in allowing Wink Stucco to introduce evidence that Jesus Rivera, III, did not have a driver's license. First, Wink Stucco did not prove that Rivera was an inexperienced driver. Second, Wink Stucco did not establish a causal link between Rivera's asserted inexperience and his alleged failure to yield the right of way to the oncoming vehicle.

Rivera, the driver of the red Nissan Sentra, was eighteen years old when the crash occurred. Rivera moved to the Tampa area from South Florida approximately five to six months before the crash. He did not have a driver's license, and he relied primarily on public transportation. Nevertheless, Rivera began driving when he was fifteen or sixteen years of age. Thus, at the time of the crash, Rivera had been driving "for two years on and off." Rivera was simply not a new or inexperienced driver. At trial, the evidence did not establish that Rivera's driving experience was so limited that

his ability to drive safely was affected as in the cases relied upon by Wink Stucco and cited by the majority. Cf. Lenhart, 100 So. 3d at 1178 (observing that the unlicensed driver "had driven a car only once before the accident—on a joyride when he was thirteen"); Corbett, 375 So. 2d at 38 (noting that the unlicensed driver was only sixteen years old); Dorsett, 347 So. 2d at 827 (stating only that the driver "was illegally driving with a learner's permit"); Klanseck, 393 N.W.2d at 357-58 (explaining that the driver of a motorcycle who lacked the required motorcycle endorsement on his driver's license and had not previously owned a motorcycle was driving his new motorcycle home from the dealership when the accident occurred).

To be sure, Rivera's alleged failure to yield the right of way to the oncoming white van may have contributed to the fatal crash. But Wink Stucco did not present any evidence demonstrating that Rivera's claimed inexperience or incompetence as a driver led to his failure to yield the right of way. There was no evidence that Rivera drove recklessly, swerved back and forth on the road, failed to have his vehicle under control, drove off the roadway, drove at an excessive speed, or otherwise drove incompetently. Indeed, Jose Velasquez, an independent witness to the crash, testified that Rivera's "Sentra did nothing wrong," and "that [its] driving pattern was completely normal."

In addition, the evidence at trial suggested that the speed of the oncoming vehicle contributed to the accident. The speed at which Wink Stucco's employee, Ramiro Pantoja-Vega, was driving as he approached the intersection was a disputed issue at trial. Nevertheless, the plaintiff's accident reconstruction expert and two

independent witnesses testified that Pantoja-Vega was travelling in excess of the posted speed limit as he approached the intersection.

In support of its theory that Rivera's claimed inexperience as a driver contributed to his failure to yield the right of way, Wink Stucco relied exclusively on the occurrence of the crash itself. Wink Stucco's argument assumed the truth of the proposition it had undertaken to prove. As the majority explains, "Wink Stucco's theory of defense was that Rivera was an unlicensed driver without sufficient experience to safely judge whether he had enough time to make the left turn in front of the white cargo van." But the proposition that younger, less experienced drivers are more likely to be involved in left-turn intersection crashes than other drivers is not self-evident, and Wink Stucco did not introduce any evidence—as opposed to counsel's theorizing—to support it. Wink Stucco's accident reconstruction expert testified that "one of the most common crash scenarios" occurs when a vehicle turning left at an intersection is struck by an oncoming vehicle. However, Wink Stucco's expert did not testify that the lack of driving experience renders younger, inexperienced drivers less able to judge the speed and distance of oncoming vehicles at intersections than other drivers. To summarize, Wink Stucco did not establish that Rivera's asserted driving inexperience had anything to do with the accident.

Unfortunately, crashes involving left turns at intersections occur with disturbing frequency among drivers of all age groups. See U.S. Dep't of Transp., Nat'l Highway Traffic Safety Admin., Crash Factors in Intersection-Related Crashes: An On-Scene Perspective (Sept. 2010), <http://www-nrd.nhtsa.dot/gov/Pubs/811366.pdf>. Contrary to Wink Stucco's unsupported theory, it is equally plausible to suppose that a

younger, less experienced driver would be less likely to be involved in a left turn intersection collision than other drivers for two simple reasons. A younger, less experienced driver should be better able to judge the speed and distance of an oncoming vehicle than an older, more experienced driver because the younger driver will generally have better vision and depth perception than the older driver. In addition, the younger driver will have the benefit of a faster reaction time. Granted, this theory is speculative; but Wink Stucco's theory is no less so.

Because Wink Stucco's theory of defense as it related to the driver's license issue lacked any evidentiary support, I conclude that the trial court erred in allowing Wink Stucco to introduce evidence that Rivera was unlicensed at the time of the crash. I also conclude that the error was not harmless. Wink Stucco's counsel made Rivera's claimed driving inexperience and failure to have a valid driver's license major themes of his closing argument. Accordingly, I dissent. I would reverse the final judgment and remand for a new trial at which evidence that Rivera did not have a valid driver's license at the time of the crash must be excluded.