

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 502018AP000027AXXXMB
L.T. NO.: 502017CT017131AXXXNB

ANGELA VAN KELSON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

_____ /

Opinion filed: June 12, 2020

Appeal from the County Court in and for Palm Beach County,
Judge Sheree D. Cunningham.

For Appellant: Nancy Jack, Esq.
421 Third Street
West Palm Beach, FL 33401
njack@pd15.state.fl.us
appeals@pd15.org

For Appellee: Joseph Kadis, Esq.
401 North Dixie Highway
West Palm Beach, FL 33401
jkadis@sa15.org
criminalappeals@sa15.org

PER CURIAM.

Appellant, Angela Van Kelson, was convicted of one count of Driving while License Canceled, Suspended, or Revoked (“Count 1”), and of one count of Unregistered Motor Vehicle (“Count 2”). On appeal, Appellant solely challenges her conviction on Count 2, asserting that the trial court abused its discretion in basing her conviction entirely on impermissible hearsay evidence, to which the State concedes error. We hold the trial court abused its discretion in permitting hearsay testimony without any exception concerning Appellant’s vehicle registration

status.

During a non-jury trial, the State called its sole witness—a Riviera Beach Police Department Traffic Officer (“the Officer”)—to testify. The Officer testified that on the morning of August 29, 2017, he noticed a 2004 gold Honda with a temporary tag that appeared to have been expired for “at least about six months.” As a result, the Officer conducted a traffic stop of the vehicle, driven by Appellant, wherein Appellant provided an ID card, but did not provide a driver’s license nor her vehicle registration. The Officer testified he ran Appellant’s VIN through dispatch, which returned results indicating the temporary tag did not match the vehicle. Although defense counsel objected to the testimony on hearsay grounds, the trial court overruled the objection and allowed the Officer to further testify that the VIN matched the actual vehicle (a Honda), but that the temporary tag matched a separate vehicle (a Nissan). The trial court also allowed the Officer to testify that Appellant’s vehicle was unregistered. Based on the Officer’s testimony, the court found Appellant guilty on both counts and withheld adjudication.

“A trial court’s ruling on the admissibility of evidence is reviewed for an abuse of discretion, but the court’s interpretation of the evidence code is reviewed de novo.” *Jones v. State*, 127 So. 3d 622, 624 (Fla. 4th DCA 2013).

Section 320.02(1), Florida Statutes (2017), provides that, notwithstanding circumstances inapplicable to the instant case, “every owner or person in charge of a motor vehicle that is operated or driven on the roads of this state shall register the vehicle in this state.” § 320.02(1), Fla. Stat. (2017). Any individual convicted of violating section 320.02(1) is guilty of a misdemeanor of the second degree. *See* § 320.57(1), Fla. Stat. (2017); § 320.02(1), Fla. Stat. (2017). In order to convict Appellant “of the second-degree misdemeanor of operating an unregistered vehicle, the State had to prove by legally sufficient evidence that the vehicle [she] was driving was not, in fact, registered

in this state.” *Riggins v. State*, 67 So. 3d 244, 246 (Fla. 2d DCA 2010).

In *Riggins*, a defendant appealed his conviction and sentence for Unregistered Motor Vehicle on the grounds that the only evidence supporting his conviction was officer testimony that defendant’s car was not registered in the FCIC/NCIC database. *Id.* at 246. Defendant argued that this testimony was hearsay and, therefore, his conviction must be reversed. *Id.* The Second District agreed, holding that the officer’s “testimony that he accessed the FCIC/NCIC database and did not find any registration for [defendant’s] car, standing alone, is hearsay when offered to prove that the car was not actually registered, and the testimony does not fall into any exception to the hearsay rule.” *Id.* at 247.

Here, as in *Riggins*, the Officer testified that he determined Appellant’s vehicle was unregistered by running her VIN. Because the Officer’s testimony constituted hearsay without any exception, and because such testimony was the sole evidence for which Appellant was convicted of operating an unregistered motor vehicle, we hold that Appellant’s conviction under Count 2 requires reversal and a new trial as to that count.

Accordingly, we **REVERSE** Appellant’s conviction on Count 2 and **REMAND** to the trial court for a new trial as to that count.

J. MARX, SCHER, and WEISS, JJ., concur.

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ANGELA VAN KELSON,
Appellant,

Opinion/Decision filed: June 12, 2020

v.

Appeal from the County Court in and for
Palm Beach County, Florida;
Judge Sheree D. Cunningham

STATE OF FLORIDA,
Appellee.

Appeal Filed: February 27, 2018

_____/

DATE OF PANEL: NOVEMBER 19, 2019

PANEL JUDGES: J. MARX, SCHER, WEISS

AFFIRMED/REVERSED/OTHER: REVERSED

DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:)
	)	With/Without Opinion	)	With/Without Opinion)
)))
<u>/s/ Joseph Marx</u>)	_____)	_____)
DATE: 6/9/20 J.	)	J.	)	J.)
)))
<u>/s/ Rosemarie Scher</u>)	_____)	_____)
DATE: 6/9/20 J.	)	J.	)	J.)
)))
<u>/s/ Daliah H. Weiss</u>)	_____)	_____)
DATE: 6/12/20 J.	)	J.	)	J.)