

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

ALISON LYNN WELSH,

Appellant,

APPELLATE DIVISION (CRIMINAL)
CASE NO.: 502007AP900045AXXXSB
L.T. NO.: 06CT040066AXXXSB

v.

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed: March 27, 2008

Appeal from Judge Mark Eissey,
County Court in and for Palm Beach County.

For Appellant, Paul Petillo, Esq., Office of the Public Defender, Criminal Justice Building, 421
Third Street, 6th Floor, West Palm Beach, FL 33401.

For Appellee, Michelle Zieba, Esq., Office of the State Attorney, 401 North Dixie Highway,
West Palm Beach, FL 33401.

PER CURIAM.

On December 27, 2006, Officer Brian Miller of the Delray Beach Police Department was on patrol when he pulled over an individual at the 4900 block of West Linton Boulevard for a suspended driver's license. Appellant was a passenger in the vehicle. Officer Miller issued the driver a citation for Driving on a Suspended Driver's License. Appellant also had a suspended driver's license. Officer Miller testified that Appellant's license had been suspended for 18 months on July 17, 2004, and was suspended for 5 years on November 5, 2004. These suspensions were active at the time of Appellant's citation.

Officer Miller informed both individuals that they would have to make other means to get

home because they were not allowed to drive on a suspended driver's license. Officer Miller informed them that they could call a taxi or that he could call a taxi for them. Appellant advised Officer Miller that she would call someone to come pick her up. Officer Miller drove around in his patrol vehicle and returned to the area to check on Appellant because the driver of the vehicle had walked home. Officer Miller then proceeded to an area called Shadywoods in order to back up another officer on a traffic stop. While at the traffic stop, Officer Miller observed Appellant driving the vehicle eastbound on Linton Boulevard. Appellant's vehicle was three lanes of travel from Officer Miller, traffic was very light and he had an unobstructed view of Appellant. Officer Miller testified that he was 100 percent sure that Appellant was driving the vehicle.

Officer Miller was forced to stay at the traffic stop in order to protect the safety of the other officer. Officer Miller then went to Appellant's residence where he found the vehicle parked. Officer Miller testified that the vehicle was still warm and the interior light in the vehicle was turned on.

The trial court denied Appellant's request for a necessity jury instruction. On appeal, the trial court's ruling on a jury instruction is presumed correct. Langston v. State, 789 So. 2d 1024, 1026 (1st DCA 2001). "A trial court's decision on the giving or withholding of a proposed jury instruction is reviewed under the abuse of discretion standard of review." Bozeman v. State, 714 So. 2d 570, 572 (Fla. 1st DCA 1998), citing Pozo v. State, 682 So. 2d 1124, 1126 (Fla. 1st DCA 1996), rev. denied, 691 So. 2d 1081 (Fla. 1997).

The record evidence established that the Appellant in fact had available alternatives to driving a motor vehicle while her driver's license was suspended. The trial evidence also reflected that the arresting officer also suggested alternatives to the Appellant. In sum, there was

an absence of sufficient record evidence to justify or mandate a “necessity” instruction, and we therefore affirm the trial court’s denial of such an instruction.

MARX, WENNET and McSORLEY, JJ. concur.