

IN THE
MISSOURI SUPREME COURT

STATE OF MISSOURI,)
)
 Respondent,)
)
 vs.) No. SC 83880
)
 JOHN ROWE,)
)
 Appellant.)

APPEAL TO THE MISSOURI SUPREME COURT
FROM THE CIRCUIT COURT OF CLARK COUNTY, MISSOURI
FIRST JUDICIAL CIRCUIT
THE HONORABLE GARY DIAL, JUDGE

APPELLANT'S SUBSTITUTE STATEMENT, BRIEF AND ARGUMENT

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JURISDICTIONAL STATEMENT

John Rowe was convicted in the Circuit Court of Clark County, Missouri, of the class D felony of driving while his license was suspended or revoked, Section 302.321, RSMo 2000.¹ The Honorable Gary Dial sentenced Mr. Rowe to three years in the Missouri Department of Corrections. After the Eastern District Court of Appeals affirmed Mr. Rowe's conviction, this Court granted Mr. Rowe's transfer application pursuant to Rule 83.04, and it has jurisdiction over this cause pursuant to Article V, Section 10, Mo. Const. (as amended 1976).

¹ All references will be to the 2000 hardbound version of the Revised Statutes of Missouri unless otherwise noted.

STATEMENT OF FACTS

The Clark County Sheriff's Department and the LaBelle Police Department were operating an interdiction checkpoint at Highway 61 and the 136 spur on October 2, 1999 (Tr. 106-107, 125, 130-131).² Deputy Rick Davis was parked on a gravel road about fifty yards away (Tr. 107). Around 3:00 p.m., a white car pulled over to the shoulder before reaching the checkpoint, and Deputy Davis saw the driver and passenger change places inside the car (Tr. 110). Deputy Davis called Deputy Brian Lewis and LaBelle Police Chief Gary Grubb, who were in Chief Grubb's car behind a nearby building (Tr. 10, 127). These officers pulled up behind the white car, and Deputy Lewis contacted the passenger, John Rowe (Tr. 134). Deputy Lewis asked Mr. Rowe for identification, but Mr. Rowe replied that he did not have any identification with him (Tr. 135). The deputy asked Mr. Rowe why he had changed seats with the other person in the car (Tr. 135). Mr. Rowe said that he changed positions because he did not have a driver's license (Tr. 135). Deputy Lewis arrested Mr. Rowe for driving without a valid license (Tr. 13).

The State charged Mr. Rowe with the class D felony of driving while his license was suspended or revoked in violation of Section 302.321 (L.F. 27-28). The information further alleged that Mr. Rowe twice pleaded guilty in Scott

² The record on appeal consists of a legal file (L.F.) and trial transcript (Tr.).

County, Iowa, for driving with a suspended license, and once for driving while under the influence of alcohol (L.F. 27-28).

The State submitted Mr. Rowe's driving record in Iowa to establish that he was driving while "being barred" from having a license in Iowa (Tr. 18, 139). The State also provided the trial court with copies of the guilty pleas alleged in the information, but these exhibits were not shown to the jury (Tr. 16, 18). The State argued to the jury:

Second element of the offense is that [Mr. Rowe] drove this automobile while his license was suspended or revoked. Ladies and gentlemen, you have State's Exhibit No. 3 here. *** Right here: "Driver's – barred." He cannot have a driver's license from the State of Iowa. And he is an Iowa resident.

We have down here the various suspensions and revocations in effect against the defendant at this point in time. And that, State's Exhibit 3, you are free to take to the jury room ... if you wish.

(Tr. 158).

The jury found Mr. Rowe guilty (L.F. 51). The court sentenced Mr. Rowe on May 2, 2000, to three years in the Missouri Department of Corrections (L.F. 59-60). Mr. Rowe appealed on May 12 (L.F. 62).

POINT RELIED ON

The trial court erred in imposing judgment and sentence against Mr. Rowe for the offense of driving while revoked in violation of Section 302.321, thereby violating Mr. Rowe’s right to due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that the evidence failed to prove beyond a reasonable doubt that Mr. Rowe was operating a motor vehicle “when his license or driving privilege has been canceled, suspended or revoked under the laws of this state....”

State v. Johnson, 741 S.W.2d 70 (Mo. App., S.D. 1987);

State v. Bray, 774 S.W.2d 555 (Mo. App., W.D. 1989);

State v. Kozlowski, 692 P.2d 137 (Ariz. Ct. App., 1984);

State v. Marshall, 845 P.2d 659 (Kan. 1993);

U.S. Const., Amend. XIV;

Mo. Const., Art. I, Sec. 10;

Sections 302.010, 302.020, 302.080, 302.150, 302.321 and 302.600,

RSMo 2000;

Section 302.321, RSMo 1986;

Section 562.021, RSMo 1986 and RSMo Cum. Supp. 1993;

Arizona Revised Statutes 28-692; and

Kansas Statutes Annotated 8-262.

ARGUMENT

The trial court erred in imposing judgment and sentence against Mr. Rowe for the offense of driving while revoked in violation of Section 302.321, thereby violating Mr. Rowe’s right to due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that the evidence failed to prove beyond a reasonable doubt that Mr. Rowe was operating a motor vehicle “when his license or driving privilege has been canceled, suspended or revoked under the laws of this state....”

The State charged Mr. Rowe with driving while his license was suspended or revoked, in violation of Section 302.321, RSMo 2000.³ To establish the license revocation, the State relied upon Mr. Rowe’s driving record from the State of Iowa (Tr. 138-139). This record indicated that Mr. Rowe was “barred” from having an Iowa driver’s license (Tr. 18, 23):

Second element of the offense is that [Mr. Rowe] drove this automobile while his license was suspended or revoked. Ladies and gentlemen, you have State’s Exhibit No. 3 here. *** Right here: “Driver’s – barred.” He cannot have a driver’s license from the State of Iowa. And he is an Iowa resident.

³ Section 302.321 became effective August 28, 1999.

We have down here the various suspensions and revocations in effect against the defendant at this point in time. And that, State's Exhibit 3, you are free to take to the jury room ... if you wish. (Tr. 158). The State's conviction rests on Mr. Rowe's Iowa residency and the revocation of his Iowa license by the State of Iowa. This does not support a conviction under Missouri statute 302.321.

When reviewing the sufficiency of the evidence, this Court must consider the evidence and all reasonable inferences reasonably drawn from the evidence in the light most favorable to the verdict. *State v. Grim*, 854 S.W.2d 403, 411 (Mo. banc 1993). The test is whether the evidence, so viewed, was sufficient to make a submissible case from which rational jurors could have found beyond a reasonable doubt that Mr. Rowe was guilty. *State v. Hopkins*, 841 S.W.2d 803, 804 (Mo. App., S.D. 1992). To support the conviction, the State must prove beyond a reasonable doubt that Mr. Rowe committed each element of the offense charged. *State v. Johnson*, 741 S.W.2d 70, 73 (Mo. App., S.D. 1987).

Under Section 302.321.1, “[a] person commits the crime of driving while revoked if he operates a motor vehicle on a highway when his license or driving privilege has been canceled, suspended or revoked *under the laws of this state....*” (emphasis added). Mr. Rowe's driver's license, and driving privilege, was revoked under the laws of the State of Iowa, not *under the laws of this state*, the State of Missouri. Therefore, he was not guilty of violating Section 302.321.

Driving a motor vehicle is a privilege, not a right. *Penner v. King*, 695 S.W.2d 887, 891 (Mo. banc 1985); *Richie v. Director of Revenue*, 987 S.W.2d 331, 336 (Mo. banc 1999). Missouri limits that privilege to persons holding a valid driver's license. Section 302.020.1(1), makes it "unlawful for any person ... to [o]perate any vehicle upon any highway in this state unless the person has a valid license." Of course, in the spirit of comity, Missouri extends that privilege to non-residents with valid licenses from other states by defining a "license" as "a license issued by a state to a person which authorizes a person to operate a motor vehicle." Section 302.010(8). Thus, a non-resident with a valid out-of-state license is granted the privilege of driving on Missouri roads.

On October 2, 1999, Mr. Rowe, an Iowa resident, did not have a valid Iowa driver's license. The prosecutor recognized that Mr. Rowe was "barred" from having an Iowa driver's license: "He cannot have a driver's license from the State of Iowa." (Tr. 158). Without a valid license from Iowa, Mr. Rowe had no privilege to drive on Missouri roads. On October 2, 1999, Mr. Rowe committed the offense of driving without a valid license in violation of Section 302.020.

Section 302.321 does not apply to Mr. Rowe's conduct because his privilege to drive in Missouri had not been revoked under the laws of the State of Missouri. Mr. Rowe had no privilege to drive in Missouri, and there was nothing *the laws of this state* could revoke.

This conclusion follows from other sections in Chapter 302 relating to issuance of a Missouri driver's license when the person is subject to a license

suspension or revocation. Section 302.600 includes Missouri in an interstate Driver License Compact. Article V(1) of the compact requires Missouri to inspect the out-of-state record of an applicant for a Missouri license, and prohibits the issuance of a Missouri license to an applicant who is under suspension or revocation in another state in the compact. *See Lackey v. Lohman*, 914 S.W.2d 51 (Mo. App., W.D. 1996) (because the applicant's license was suspended in Illinois, the Director of Revenue was required to deny the application). A person suspended or revoked in another state has no privilege to drive in Missouri, and cannot secure such privilege. There is no privilege to drive in Missouri that can be granted, and no privilege that can be revoked or suspended. Without a valid out-of-state license, a driver acquires no privilege in the first instance to operate a motor vehicle on Missouri roads.

By the same token, the State could not convict Mr. Rowe of driving in Missouri on a revoked Iowa license. Because his license had been previously revoked in Iowa, there was no license, and no driving privilege, in Missouri to be revoked or suspended by the laws of this state.

Kansas and Arizona courts have considered convictions for driving in those states on revoked or suspended out-of-state licenses. It is important to note that in those states, the statute prohibiting driving on a revoked or suspended license is significantly different than Section 302.321. In *State v. Kozlowski*, 692 P.2d 137, 138 (Ariz. Ct. App., 1984), the Court held that the defendant could be prosecuted for driving in Arizona on a revoked Michigan license. The statute prohibiting that

conduct provides: “A person whose operator’s or chauffeur’s license is suspended, canceled, revoked or refused and who commits an offense in violation of § 28-692 during the period of such suspension, cancellation, revocation or refusal ... is guilty of a class 5 felony....” A.R.S. § 28-692.02.A. Similarly, the Kansas Supreme Court found that driving in Kansas on a suspended Louisiana license came within the statute prohibiting driving with a revoked license in *State v. Marshall*, 845 P.2d 659 (Kan. 1993). The Kansas statute provides: “Any person who drives a motor vehicle on any highway of this state at a time when such person’s privilege so to do is canceled, suspended or revoked shall be guilty of a [Class B or Class A nonperson misdemeanor].” K.S.A. 8-262.

Neither the Arizona nor the Kansas statute contains the same restrictive language as Missouri’s Section 302.321. These foreign statutes prohibit driving on a suspended, revoked or canceled license, without reservation on how the license became suspended, revoked or canceled. Missouri, on the other hand, has included more restrictive language in Section 302.321, limiting the reach of our statute to licenses or driving privileges “canceled, suspended or revoked *under the laws of this state.*” This restrictive language is missing from the Arizona and Kansas statutes, thus expanding the reach of those statutes beyond that of the Missouri statute.

Missouri established a procedure in Section 302.150 to suspend or revoke the driving privilege of out-of-state residents for traffic offenses committed in Missouri: “The privilege of driving a motor vehicle on the highways of this state

given to a nonresident hereunder shall be subject to suspension, revocation or disqualification by the director of revenue in like manner and for like cause as a license issued hereunder may be suspended, revoked or cancelled.” Obviously, the State failed to prove that Mr. Rowe’s privilege to drive in Missouri had ever been suspended, revoked or cancelled by the Director of Revenue in the same manner and for the same reasons a Missouri driver’s license may be revoked, suspended or cancelled. Mr. Rowe was not driving while his driving privilege was revoked *under the laws of this state*.

State v. Bray, 774 S.W.2d 555 (Mo. App., W.D. 1989), illustrates the application of this statute. The defendant’s Missouri license had been revoked, but he was driving on a valid Kansas license when stopped. *Id.* at 556. He therefore claimed that he had an exemption under Section 302.080 from the Missouri license requirement and was not driving in violation of Section 302.321. *Id.* The Western District Court of Appeals disagreed. Missouri could not revoke the defendant’s Kansas license, but Section 302.150 operated to revoke the privilege to drive in Missouri when the defendant’s Missouri license was revoked. *Id.* at 556. The defendant’s “Kansas driver’s license had been revoked, as well as his driving privilege, insofar as the Kansas license conferred upon him an exemption (section 302.080) from the requirement that he have a Missouri driver’s license in order to drive upon Missouri’s highways.” *Id.* The Court applied Section 302.150 to revoke the privilege of the nonresident defendant with a foreign license, “in like manner and for like cause” that his Missouri license had been revoked. *Id.*

Unlike the situation in *Bray*, Missouri took no action to revoke Mr. Rowe's driving privilege. He simply had no such privilege on October 2, 1999, because he did not have a valid Iowa driver's license.

Respondent argued below that the 1995 amendment to Section 302.321 indicates the legislature's intent to apply that law to out-of-state residents with licenses revoked by the foreign jurisdiction. Mr. Rowe does not believe the amendment reflects such intent. The 1986 version of Section 302.321 provided:

A person whose license and driving privilege as a resident or nonresident has been canceled, suspended or revoked under the provisions of sections 302.010 to 302.340, sections 302.500 to 302.540, section 544.460, RSMo, or under the provisions of chapter 577, RSMo, and who drives any motor vehicle upon the highways of this state while such license and privilege is canceled, suspended, or revoked and before an official reinstatement notice or termination notice is issued by the director is guilty of a class A misdemeanor.

Respondent has argued that deletion of the language regarding notice from the director of revenue indicates the intention to reach non-residents because the director has no authority to reinstate a foreign license or terminate the suspension of a foreign license.

Mr. Rowe believes that there is a more practical explanation for the revisions made to Section 302.321. Both the 1986 and 1995 versions penalize driving while a license or driving privilege is canceled, suspended or revoked

upon certain conditions. The language in the 1986 version of those conditions: “under the provisions of sections 302.010 to 302.340, sections 302.500 to 302.540, section 544.460, RSMo, or under the provisions of chapter 577, RSMo,” was merely expressed more simply in the 1995 version as: “under the laws of this state.” More importantly, the language of the 1986 version: “and who drives any motor vehicle upon the highways of this state while such license and privilege is canceled, suspended, or revoked and before an official reinstatement notice or termination notice is issued by the director,” was revised in the 1995 version to establish a particular culpable mental state for the offense: “acts with criminal negligence with respect to knowledge of the fact that his driving privilege had been canceled, suspended or revoked,” and not to specifically alter the reach of the statute.

The former version of Section 302.321 was at issue in *State v. Huff*, 879 S.W.2d 696 (Mo. App., E.D. 1994). One of the questions there was not whether the director had sent notice of termination or reinstatement to the defendant, but rather, what culpable mental state was required for a conviction of driving while revoked. *Id.* at 698. The Court turned to Section 562.021 to answer this question. The Court noted that the applicable version of 562.021 was the 1986 version in effect at the time of the incident, rather than the version amended in 1993. *Id.* Under paragraph 2 of the 1986 version, the required mental state was knowing or reckless disregard, but not criminal negligence, because Section 302.321 did not prescribe a culpable mental state. *Id.*

The Court also noted in *Huff* that the revision of Section 562.021 in 1993 removing the second paragraph, “leaves open the issue of whether a culpable mental state will be required in the future...for a conviction under Section 302.321.” *Id.* A year later, the legislature amended Section 302.321 to prescribe a culpable mental state: “acts with criminal negligence with respect to knowledge of the fact that his driving privilege had been canceled, suspended or revoked.” The legislature intended the revision of Section 302.321 to prescribe a mental state in response to the holding in *Huff*, not to redefine the reach of the statute beyond the former version.

On October 2, 1999, Mr. Rowe did not have a valid driver’s license, his license having been revoked by the State of Iowa. Mr. Rowe had no privilege to drive in the State of Missouri. He lost this privilege when his Iowa license was suspended or revoked under the laws of Iowa, not because his privilege to drive in Missouri was cancelled, suspended, or revoked under the laws of Missouri.

Because the evidence was insufficient to support Mr. Rowe’s conviction, the conviction must be reversed and Mr. Rowe must be discharged.

CONCLUSION

Because the evidence was insufficient to support Mr. Rowe's conviction, the conviction must be reversed and Mr. Rowe must be discharged.

Respectfully submitted,

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Certificate of Compliance and Service

I, Emmett D. Queener, hereby certify to the following. The attached brief complies with the limitations contained in Rule 84.06 and Special Rule 1(b). The brief was completed using Microsoft Word, Office 2000, in Times New Roman size 13 point font. Excluding the cover page, the signature block, this certificate of compliance and service, and appendix, the brief contains 3,238 words, which does not exceed the 31,000 words allowed for an appellant's brief.

The floppy disk filed with this brief contains a complete copy of this brief. It has been scanned for viruses using a McAfee VirusScan program, which was updated in September, 2001. According to that program, the disks provided to this Court and to the Attorney General are virus-free.

Two true and correct copies of the attached brief and a floppy disk containing a copy of this brief were mailed, postage prepaid this 9th day of October, 2001, to John M. Morris, Assistant Attorney General, P.O. Box 899, Jefferson City, Missouri 65102-0899.

Emmett D. Queener