

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, DIVISION
THE HONORABLE GARY DIAL, JUDGE

APPELLANT'S SUBSTITUTE REPLY BRIEF

Emmett D. Queener, MOBar #30603
Attorney for Appellant
3402 Buttonwood
Columbia, Missouri 65201-3724
Telephone (573) 882-9855
FAX (573) 875-2594

INDEX

	<u>Page</u>
TABLE OF AUTHORITIES	2
JURISDICTIONAL STATEMENT	4
STATEMENT OF FACTS.....	5
POINT RELIED ON	6
ARGUMENT.....	7
CONCLUSION	16

TABLE OF AUTHORITIES

Page

CASES:

State v. Bray, 774 S.W.2d 555 (Mo. App., W.D. 1989).....10, 11

State v. Burns, 978 S.W.2d 759 (Mo. banc 1998) 13

State v. Goddard, 34 S.W.3d 436 (Mo. App., W.D. 2000).....12, 13

State v. Huff, 879 S.W.2d 696 (Mo. App., E.D. 1994) 14

State v. Knapp, 843 S.W.2d 345 (Mo. banc 1992) 11

CONSTITUTIONAL PROVISIONS:

U.S. Const., Amend. XIV 7

Mo. Const., Art. I, Sec. 10 7

STATUTES:

Section 302.010, RSMo 2000 8, 9

Section 302.020, RSMo 2000 8, 9

Section 302.080, RSMo 20008, 9, 10

Section 302.150, RSMo 20009, 10, 11, 15

Section 302.304, RSMo 200011, 15

Section 302.321, RSMo 2000 7, 10, 11, 12, 13, 14, 15

Section 302.341, RSMo 200011, 15

	<u>Page</u>
Section 302.505, RSMo 2000	11, 15
Section 544.046, RSMo 2000	11, 15
Section 577.500, RSMo 2000	11, 15
Section 577.505, RSMo 2000	11, 15
Section 577.510, RSMo 2000	11, 15

JURISDICTIONAL STATEMENT

Mr. Rowe incorporates the jurisdictional statement set out on page 4 of his initial brief.

STATEMENT OF FACTS

Mr. Rowe incorporates the statement of facts set out in pages 5 and 6 of his initial brief.

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

State v. Knapp, 843 S.W.2d 345 (Mo. banc 1992);

State v. Goddard, 34 S.W.3d 436 (Mo. App., W.D. 2000);

State v. Burns, 978 S.W.2d 759 (Mo. banc 1998);

U.S. Const., Amend. XIV;

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

Sections 302.010, 302.020, 302.080, 302.150, 302.304, 302.321, 302.341,

302.505, 544.046, 577.500, 577.505 and 577.510, RSMo 2000.

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 question in this case is not how a nonresident is given the privilege to drive in Missouri, or how that privilege is taken away. The question is when does a nonresident have a privilege to drive in Missouri and when does he not have that privilege. Respondent recognizes that that no affirmative action gives or takes away the driving privilege of a nonresident. “Just as the State, through the Director of Revenue, was not required to take any affirmative action to permit Appellant to drive in this state when he held a valid Iowa license, neither was the Director required to take any affirmative action to cancel, suspend, or revoke Appellant’s Missouri driving privilege after Iowa canceled or revoked his Iowa driver’s license.” (Resp. Br. 15-16). The question is *when* does a nonresident have the privilege, not *how*.

Respondent accepts that “nonresidents holding valid driver’s licenses issued by their home state automatically have a privilege to drive in Missouri.” (Resp. Br.

17). This follows from Sections 302.010, .020, and .080, RSMo 2000. “Unless otherwise provided by law, it shall be unlawful for any person, except those expressly exempted by section 302.080, to operate any motor vehicle upon any highway of this state unless the person has a valid license.” Section 302.020.1(1). The term “license” used in the statutes means “a license issued by a state to a person which authorizes a person to operate a motor vehicle.” Section 302.010(8). One might conclude that the privilege of a nonresident to drive in Missouri is derived from the language of that statute, “issued by *a state*.” But, that is not the case.

The privilege of a nonresident to drive in Missouri is derived from the express exemption in Section 302.080. This section, entitled “Exemptions from license law,” provides, “the following persons are exempt from license hereunder: a nonresident who is at least sixteen years of age and who has in his immediate possession a valid license issued to him in his home state or country....” Section 302.080(2). A nonresident with a *valid license* issued by his home state is exempt from the requirement of having a Missouri driver’s license and has the privilege to drive in Missouri. *When* a nonresident has a valid out-of-state license he has the privilege to drive in Missouri.

Mr. Rowe’s disagreement with Respondent is what happens “automatically” when a nonresident no longer has a valid license from a foreign state. According to Respondent, “after Iowa canceled, suspended, or revoked Appellant’s Iowa driver’s license, his privilege to drive in Missouri, granted under the nonresident exemption, was automatically, by operation of law, suspended, revoked or canceled.” (Resp. Br.

15). Respondent equates this to a suspension, cancellation, or revocation “under the laws of this state.” (Resp. Br. 15). But, this argument changes the focus from the privilege of a nonresident to drive *when* he has a valid license to *how* that privilege is lost when he does not have a valid license.

It is irrelevant to Sections 302.010, .020, and .080, *how* Mr. Rowe lost his Iowa license. Indeed, Respondent recognizes that a nonresident has only a “*potential* Missouri driving privilege” (Resp. Br. 17) (emphasis added). It becomes an actual privilege *when* the nonresident with a valid out-of-state license drives in Missouri. On October 2, 1999, Mr. Rowe did not have a valid Iowa license. *When* a nonresident does not have a valid out-of-state license he does not have the privilege to drive in Missouri. The privilege is not cancelled, suspended, or revoked. There simply is no privilege. The “potential privilege” has not become an actual privilege.

Section 302.150, RSMo 2000, specifically applies to the revocation of a nonresident’s privilege to drive 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.” This law does not apply to Mr. Rowe’s situation. (App. Br. 13-14).

The defendant in *State v. Bray*, 774 S.W.2d 555, 556 (Mo. App., W.D. 1989) had a *valid* Kansas license and argued that he could not be convicted under Section 302.321 because he was exempt under Section 302.080. The Court disagreed

because Missouri had revoked his Missouri license, and Section 302.150 operated to revoke his privilege under Section 302.080, “in like manner and for like cause” that defendant’s Missouri license had been revoked. *Id.* The revocation of the defendant’s Missouri license under Missouri law operated as a “revocation” of the privilege to drive on a *valid* out-of-state license. Unlike the defendant in *Bray*, no Missouri law was used to cancel, suspend, or revoke Mr. Rowe’s privilege to drive in Missouri. On October 2, 1999, Mr. Rowe simply had no privilege to drive in Missouri because he did not have a valid out-of-state license.

Respondent relies on *Bray* (Resp. Br. 20-21), but Respondent’s analysis of *Bray* ignores that the Court applied Section 302.150 – not Section 302.321 – to decide the case (Resp. Br. 20). The analysis makes no mention of Section 302.150, at all. Respondent notes that “[i]n determining legislative intent, courts should give consideration to statutes involving similar or related subjects when those statutes shed light on the meaning of the statute being construed.” That is exactly what the Court did in *Bray* – “We interpret section 302.321 so as to harmonize with the other statutes on the subject, including section 302.150.” 774 S.W.2d at 556.

Nonetheless, Respondent later argues that Section 302.150 is irrelevant to the question before this Court because it is administrative rather than criminal. (Resp. Br. 14, 18-19).

Respondent claims that its interpretation is consistent with the legislative intent. Mr. Rowe must again disagree. When Section 320.321 imposes penalties

for driving with a license revoked “under the laws of this state,” it necessarily means that the cancellation, suspension, or revocation must have been accomplished by using Missouri law. A license is cancelled, suspended or revoked under Sections 302.150, .304, .341, .505, 544.046, 577.500, .505, .510, RSMo 2000. Mr. Rowe’s privilege to drive was not cancelled, suspended, or revoked under any of these Missouri laws.

Mr. Rowe agrees with Respondent that the primary rule of statutory construction is to ascertain the intent of the lawmakers from the language used, to give effect to that intent if possible, and to consider words used in their plain and ordinary meaning. *State v. Knapp*, 843 S.W.2d 345, 347 (Mo. banc 1992). But Mr. Rowe disagrees that this rule makes the evidence sufficient to support his conviction under Section 302.321.

Respondent begins its argument in this regard by suggesting that “[b]y its plain language, § 302.321 applies to any person, resident or nonresident, who has knowledge that his or her driver’s license *is canceled, suspended, or revoked in their home state* and who then operates a motor vehicle in Missouri.” (Resp. Br. 16). That is not the plain language of Section 302.321. The statute applies to “[a] person” who “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.*” The plain language of Section 302.321 applies to suspension, cancellation or revocation under the laws of Missouri, not under the laws of the nonresident’s “home state.”

Perhaps recognizing that the plain language of the statute does not support its position, Respondent cites *State v. Goddard*, 34 S.W.3d 436 (Mo. App., W.D. 2000), arguing, “[C]ourts look beyond the plain and ordinary meaning of the statute when its meaning is ambiguous or will lead to an illogical result which defeats the intent of the legislature.” (Resp. Br. 14). Respondent’s argument requests this Court to look beyond the plain language of the statute, “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*,” and interpret the statutory language to mean that “his or her driver’s license is canceled, suspended, or revoked *in their home state* and ... then operates a motor vehicle in Missouri.” As this Court is well aware, “Where the language of the statute is clear, courts must give effect to the language used by the legislature. Courts lack authority to read into a statute a legislative intent contrary to the intent made evident by the plain language.” *State v. Burns*, 978 S.W.2d 759, 761 (Mo. banc 1998).

While Respondent cited *Goddard* for the proposition that a court can look beyond the plain language of a statute to effectuate the legislature’s intent, Respondent’s argument in this appeal is much like its unsuccessful argument in *Goddard*. The defendant was alone in a house and discharged a weapon several times. 34 S.W.3d at 437. *Goddard* argued that his conviction under Section 570.030.1(3) for discharging a weapon into a dwelling house was not supported by sufficient evidence. *Id.* at 438. The State argued that the statute was not ambiguous

and that shooting into the interior of a house was the same as shooting into the house. *Id.* at 439. The State also argued that defendant’s position would lead to an illogical result, contrary to the intent of the legislature. *Id.* The Court recognized that the intent of the statute was to protect occupants of a house, but noted, “our focus today is not whether the house was a ‘dwelling house’ but whether Goddard shot into the house.” *Id.* Because there was no evidence that defendant fired any shots from outside of the house, the Court reversed the conviction: “There is no basis in the evidence to find that Goddard shot from outside to the inside of the dwelling as is required by [the statute].” *Id.* By the same token, there is no evidence in this appeal that Mr. Rowe’s driving privilege was revoked under the laws of this State as required by Section 302.321.

Respondent’s argument in this appeal relies extensively on its theory that the Legislature amended Section 302.321 in 1995 to broaden the reach of the statute from only Missouri-licensed drivers to nonresident drivers as well, and to treat them alike. (Resp. Br. 17-18, 19-21).¹ Residents and nonresidents are treated exactly alike by Section 302.321 if they drive in Missouri when their license or driving privilege has been cancelled, suspended or revoked *under the laws of this state*.

¹ Mr. Rowe believes, as he argued in his initial brief, that the purpose of the 1995 amendment was to specify the required mental state for the offense in response to *State v. Huff*, 879 S.W.2d 696 (Mo. App., E.D. 1994), not to expand the reach of the statute. (App. Br. 14-16).

Respondent's real complaint is how Missouri law treats a nonresident whose license has been cancelled, suspended or revoked under the laws *of his home state*.

Respondent finds, "[i]mplicit in Appellant's argument is that the Director of Revenue must take some type of affirmative action to cancel, suspend, or revoke a nonresident's driving privilege before that person can be prosecuted under § 302.321." (Resp. Br. 15). Actually, that is implicit in the plain language of Section 302.321. If Respondent is disappointed in the scope of the statute, it is lobbying the wrong branch of government to amend the law.

Section 302.321 penalizes the operation of a motor vehicle after the person's license or privilege to drive has been "canceled, suspended or revoked under the laws of this state." The license or privilege of a resident or nonresident to drive in Missouri is cancelled, suspended or revoked by Sections 302.150, .304, .341, .505, 544.046, 577.500, .505, .510, RSMo 2000. Mr. Rowe's privilege to drive in Missouri was not cancelled, suspended or revoked under any of those statutes. He simply had no privilege to drive in Missouri. The State chose not to charge him with that crime, and the evidence is insufficient to support the conviction under Section 302.321.

Mr. Rowe's conviction must be reversed, and he 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,

Emmett D. Queener, MOBar #30603
Attorney for Appellant
3402 Buttonwood
Columbia, Missouri 65201-3724
(573) 882-9855

Certificate of Compliance and Service

I, Emmett D. Queener, hereby certify to the following. The attached reply brief complies with the limitations contained in Rule 84.06 and Special Rule 1(b). The reply 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 reply brief contains 2,485 words, which does not exceed twenty-five percent of the 31,000 words allowed for an appellant's brief.

The floppy disk filed with this reply brief contains a complete copy of this reply brief. It has been scanned for viruses using a McAfee VirusScan program, which was updated in October, 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 reply brief and a floppy disk containing a copy of this reply brief were mailed, postage prepaid this 9th day of November, 2001, to John M. Morris, Assistant Attorney General, P.O. Box 899, Jefferson City, Missouri 65102-0899.

Emmett D. Queener