

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Plaintiff-Appellant,

vs.

CHARLES MICHAEL McDONOUGH,

Defendant-Appellee.

)

)

)

)

)

Filed March 31, 1987

CLERK SUPREME COURT

388

6-520
86-1092

Appeal from the Iowa District Court for Mahaska County (No. 5326-9-501)

- Max H. Ruschmeyer, District Associate Judge.

The State appeals from the trial court's dismissal of its trial information for lack of jurisdiction. **REVERSED.**

Thomas J. Miller, Attorney General; Robert P. Ewald, Assistant Attorney General; and Charles A. Stream, Mahaska County Attorney, for plaintiff-appellant.

Heard by Oxberger, C.J., Donielson & Snell, JJ.

OXBERGER, C.J.**389**

The sole question before us in this appeal is whether the trial court erred in dismissing the State's trial information for lack of jurisdiction. We conclude that the dismissal was improvident, and reverse.

The facts are undisputed. In January of 1985, the defendant's driver's license was suspended when he failed to deposit security following a motor vehicle accident as required under Iowa Code section 321A.5(1)(1985). On April 29, 1986, the defendant was arrested and charged for driving while his license was suspended, in violation of Iowa Code section 321A.32. Pursuant to that section, any person who drives while his license is suspended under chapter 321A is guilty of a serious misdemeanor. Iowa Code § 321A.32(1985).

In June of 1986, the Mahaska County Attorney filed a trial information in the Mahaska County District Court alleging that the defendant had committed a serious misdemeanor. When the case was subsequently heard for arraignment, however, the defendant tendered a guilty plea to a simple misdemeanor; the State resisted the tendered plea. The trial court then entered the following order dismissing the case for want of jurisdiction:

The Court finds that the defendant's original driving privilege suspension was precipitated for not having liability insurance at the time that he had a motor vehicle accident.

The court makes a specific finding that said suspension is a violation of Section 321.218 and is a simple misdemeanor and, therefore, the County Attorney cannot file a Trial Information on a simple misdemeanor in District Court.

See Iowa Code §§ 602.6306, 602.6405(1985) (the latter section provides that a magistrate has jurisdiction of simple misdemeanors).

We think that the trial court erred as a matter of law. Section 321.218 provides in relevant part as follows:

A person whose operator's or chauffeur's license or driving privilege has been denied canceled, suspended or revoked as provided in this chapter, and who drives a motor vehicle upon the highways of this state while the license or privilege is denied, canceled, suspended, or revoked commits a simple misdemeanor.

(Emphasis added.) We have found no evidence supporting the trial court's finding that the defendant's license was suspended because he violated this section; rather, all of the evidence, including the trial court's explicit statement that the defendant's license was suspended because he had no liability insurance, indicates that the suspension was pursuant to chapter 321A. It is a well-settled principle of law that we are not bound by a trial court's findings of fact if they are not supported by substantial evidence. Iowa R. App. P. 14(f)(1); see also H & S Ltd. v. Andreola, 363 N.W.2d 592, 595 (Iowa Ct. App. 1984).

Nor do we think that the statutes in question present any ambiguity. It is clear on the face of section 321A.32 that a driver whose license is suspended under chapter 321A is guilty of a serious misdemeanor if he operates an automobile during the suspension of his license. The record clearly discloses that McDonough's license was suspended pursuant to section 321A.5(1) because he failed to deposit security as required by that section. Clearly, his subsequent arrest for driving while his license was suspended was pursuant to section 321A.32. As such, we hold that the trial court erred as a matter of law in determining that McDonough was being charged for a simple rather than a serious misdemeanor. Accordingly, we reverse the dismissal and reinstate the case.

REVERSED.