FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-345 / 90-1415

STATE OF IOWA,

Appellee,

vs.

501

RAYMOND JOHN BRUCE,

Appellant.

Appeal from the Iowa District Court for Polk County, Thomas A. Renda, District Associate Judge.

Bruce appeals his conviction, following a bench trial, for operating a motor vehicle while his license was under suspension for a prior OWI offense. **REVERSED.**

Richard A. Bartolomei, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, David A. Ferree, Special Assistant Attorney General, and Mark Hunacek, Assistant Attorney General, for appellee.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

HAYDEN, J.

Raymond Bruce was charged with operating a motor vehicle while under OWI revocation in violation of Iowa Code section 321J.21. The trial information did not refer to a driver's "license" but instead accused Bruce of driving "while privileges were revoked or denied. . . ." (emphasis added). The evidence reveals, however, the prior suspension referred to an Iowa driver's license rather than a nonresident operating privilege. Following a bench trial, Bruce was convicted of the crime charged.

On appeal, Bruce's first assignment of error concerns the use of the word "privileges" rather than "license" in the information. He argues the State should have used the word "license" if it meant to refer to an Iowa driver's license. Instead, the State used the word "privileges" which can only refer to "nonresident operating privileges." Bruce asserts the State must prove the crime under the alternative charged in the information. Because the State failed to prove he had nonresident operating privileges or any such privileges were revoked, Bruce argues the evidence was insufficient to prove his guilt of the crime as charged. Bruce also raises several claims of erroneous evidentiary rulings. Our review of this action is for correction of errors at law. Iowa R. App. 4.

When a crime may be committed in different ways and the State specifies one particular way in which the offense was allegedly committed, the offense must be proved to have

been committed in the manner specifically charged. State v. Willet, 305 N.W.2d 454, 457 (Iowa 1981). Where there is a variance between the crime charged and the proof at trial, we will require a new trial if a substantial right of the defendant is prejudiced. Iowa R. Crim. P. 4(7). A variance between the information and the proof is prejudicial if the defendant is not fairly notified of the charges against him so that he may prepare to defend. Willet, 305 N.W.2d at 457.

In the present case, the State's information alleged defendant operated a motor vehicle while his "privileges were revoked or denied" in violation of Iowa Code section 321J.21. Iowa Code section 321J.21 provides in part:

> A person whose motor vehicle license or nonresident operating privilege has been denied 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 or revoked commits a serious misdemeanor.

Section 321J.21 specifically differentiates between a person whose motor vehicle license has been revoked and a person whose nonresident operating privilege has been revoked. The terms "license" and "nonresident operating privilege" refer to two distinct privileges. See Iowa Code § 321A.1(3), (6).

Although the facts suggest the State could have charged Bruce with operating a vehicle while his "license" was revoked, the charging language did not mention the term "license." We conclude the charging language used in this

case refers to nonresident operating privileges. The terms "license" and "nonresident operating privilege" may not be casually substituted for one another in a trial information without misleading or prejudicing a defendant. Therefore, we reverse. We do not address defendant's other issues presented for review.

REVERSED.