FILED
AUG 31 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellant,	)	Filed August 31, 1978
v.	)	
DENNIS LEE DAVIS,	)	600 2-61169
Appellee.	)	

Appeal from Emmet District Court - Charles H. Barlow, Judge.

State appeals from judgment for defendant in an action to bar defendant from operating a motor vehicle as an habitual traffic offender. Affirmed.

Richard C. Turner, Attorney General, Stephen P. Dundis, Assistant Attorney General, and William Ridout, Emmet County Attorney, for appellant.

Lynn Fillenwarth, of Fillenwarth & Fillenwarth, of Estherville, for appellee.

Submitted to Donielson, Acting C.J., Snell, Oxberger and Carter, JJ.

PER CURIAM

The State appeals from finding and judgment favorable to defendant in a proceeding to have defendant barred from operating a motor vehicle as an habitual traffic offender.

The issue presented is whether the abstract of the defendant's conviction record offered and received in evidence at the hearing in the court below conclusively establishes that defendant is an "habitual offender" as defined in § 321.555, The Code. We hold that it does not and that the trial court could correctly conclude on the record before it that the State failed to establish the requisite violations.

The petition asserted that defendant was an habitual offender under both subparagraphs 1 and 2 of § 321.555. To sustain this contention under subparagraph 2, it was necessary to establish defendant's conviction of at least six traffic offenses specified in the statute within a period of two years. The abstract of convictions certified by the director of transportation listed six offenses in total; however, at the hearing the defendant contended that two of these entries were incorrect and involved a Dennis Gene Davis, who was another person. The State offered no evidence other than the abstract itself to contradict this assertion of the defendant. On this state of the record we conclude that giving prima facie evidentiary weight to the abstract as provided in § 321.557, The Code, the trial court nonetheless could find that two of the entries were erroneous. Such a finding precludes a determination that defendant was an habitual offender under subparagraph 2 of the statute.

With respect to subparagraph 1 of the statute, it is necessary for the State to establish defendant's conviction of at least three designated offenses within a six-year period. The State contends that the abstract of convictions, even if the disputed items are deleted, establishes three such convictions within this time frame. The three offenses relied upon by the State to show "habitual offender" status under subparagraph 1 are: (1) driving a motor vehicle while under the influence of an alcoholic beverage; (2) driving a motor vehicle while operator's license is suspended or revoked; and (3) a violation of the traffic laws committed during a period of suspension or revocation.

We agree that the undenied portions of the abstract are sufficient to establish defendant's convictions of the first two of the specified offenses. But with respect to the third alleged offense which, as provided in § 321.555(1)(g) must be committed during a period of suspension or revocation, we conclude that the abstract is insufficient to conclusively establish which of the stated offenses, if any, were committed during a period of suspension or revocation. Circumstances relating to any period of suspension or revocation or the duration thereof are not made to appear in the record. The fact that defendant was convicted for two traffic offenses on the same date, one of which was driving a motor vehicle while operator's license is suspended or revoked, does not, in the absense of other evidence, conclusively establish that the other offense committed on that date was during a period of suspension or revocation. It is at best circumstantial evidence tending to support the State's assertion that such was the case.

There is no indication that this action has been prosecuted by other than ordinary proceedings. See §§ 611.3, 611.6, The Code. The State assigned error on the basis of the sufficiency of the evidence to support the judgment. It does not assert that our review is de novo. We consider the case on the error assigned and hold that the case was correctly decided by the trial court on the failure of the State's evidence. See, e.g., Roland A. Wilson v. Forty-O-Four Grand Corp., 246 N.W.2d 922, 925 (Iowa 1976).

AFFIRMED.