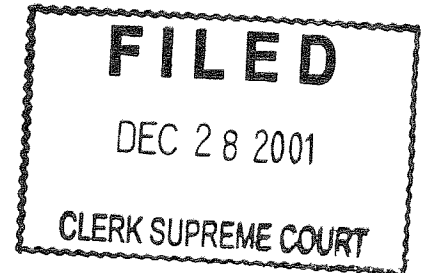


IN THE COURT OF APPEALS OF IOWA

No. 1-833 / 00-2041
Filed December 28, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT LAVELL BOLDON,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Joseph Moothart, District Associate Judge.

Robert Boldon appeals his conviction for driving while his license was suspended for serious violation. **REVERSED AND REMANDED.**

Linda Del Gallo, State Appellate Defender, Shellie L. Knipfer, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, and Sharon K. Hall, Assistant Attorney General, for appellee.

Considered by Sackett, C.J., and Mahan and Hecht, JJ.

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MAHAN, J.

Robert Boldon appeals his conviction for driving while license was suspended for serious violation in violation of Iowa Code section 321.210(1)(f) (1999). He claims his counsel was ineffective for stipulating that his record included such an offense. Since we agree that his driving record did not include this offense, we reverse and remand.

Boldon was charged by trial information with four driving offenses. This matter proceeded to jury trial where the sole issue was whether Boldon or his uncle was the driver of the vehicle. The State introduced Boldon's driving record and his attorney stipulated that he "was barred as a habitual offender, revoked, suspended, and suspended for the reasons alleged in the Trial Information." The jury concluded Boldon was indeed the driver of the vehicle and returned a verdict of guilty on all four driving offenses. He was sentenced on all four offenses. Boldon does not appeal the judgment of the district court as to three of the four charges. He does appeal the judgment entered on the fourth driving charge and alleges his trial counsel was ineffective for stipulating that he committed this offense when a review of his driving record does not reveal that he was suspended for this charge.

Upon careful review of the record, we agree with Boldon that his driving record does not reveal any suspension under section 321.210(1)(f). Therefore, we conclude that his trial counsel breached his duty to Boldon by stipulating to an element of the offense that did not exist. Boldon was prejudiced by said breach. *State v. Hopkins*, 576 N.W.2d 374, 378 (Iowa 1998). We therefore reverse his

conviction on the charge of driving while license was suspended for serious violation and remand to the district court for entry of an order of dismissal on this charge.

REVERSED AND REMANDED.