IN THE COURT OF APPEALS OF IOWA

No. 0-651 / 00-0265
Filed December 22, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

AMY JO HUMMEL,
Defendant-Appellant.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott, District Associate Judge.

The State appeals following the trial court's judgment of acquittal of Amy Hummel for driving under suspension. **REVERSED.**

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant Attorney General, and Mark Hunacek, Assistant Attorney General, for appellant.

Richard Bartolomei of Bartolomei & Lange, P.C., Des Moines, for appellee.

Considered by Zimmer, P.J., and Hecht and Vaitheswaran, JJ.

ZIMMER, J.

The State appeals following the trial court's judgment of acquittal of Amy Hummel for driving under suspension. The State contends the district court did not have jurisdiction in a criminal case to determine the validity of Hummel's license suspension. We agree with the State and reverse. However, because Hummel's reprosecution after her acquittal is barred, we do not remand.

On May 13, 1998, Amy Jo Hummel was caught speeding eighty-three miles per hour in a fifty-five-mile-per-hour zone. That criminal charge was resolved. In February of 1999, the Iowa Department of Transportation acted to suspend Hummel's driving privileges because of this serious violation. On November 17, 1999, Hummel was cited for driving while her license was suspended, in violation of Iowa Code section 321A.32 (1999).

Her criminal case came on for trial on January 6, 2000. At trial, Hummel denied that she received the notice of suspension and contended her license had not been lawfully suspended. An official notice of the suspension was attached to Hummel's driving record and admitted at trial. The return receipt on the notice is signed by Ronald Colwell, Hummel's father. He lives at the address to which the notice had been mailed. She is now thirty-one years old and has not lived at that address since she was eighteen. Nothing in the record showed that her father transmitted the notice to her. The district court concluded that because Hummel did not personally receive the notice, the suspension was ineffective and she was not guilty.

The State applied for discretionary review. The State contends the trial court erred by (1) considering the effectiveness of the suspension in a criminal

case; (2) concluding personal receipt of the notice of suspension was necessary for the suspension to be effective; and (3) finding the State had to prove the Hummel knew of the suspension in order to convict her of driving with a suspended license. Hummel did not file a responsive brief.

I. Scope of Review. The State challenges the authority of a district court to rule on a matter presumably beyond its jurisdiction. Questions of jurisdiction, authority, and venue of the district court are legal issues to be reviewed for correction of errors at law. *State v. Clark,* 608 N.W.2d 5, 7 (Iowa 2000).

II. Jurisdiction. In finding Hummel not guilty, the trial court stated "[b]ecause the evidence does not establish that the defendant received notice of the suspension before her arrest, the Court cannot find that the suspension was effective." The State contends the district court lacked jurisdiction in a criminal proceeding to find Hummel not guilty based on the invalidity of the notice of her suspension. We agree.

Criminal proceedings are separate and distinct from the administrative proceedings for the revocation or suspension of a driver's license. *See Wieslander v. Iowa Dept. of Transp.,* 596 N.W.2d 516, 525 (Iowa 1999). Determining the conditions under which license suspensions occur are a matter entrusted exclusively to the DOT. *See* Iowa Code § 321.210. The DOT's adjudication of license status must be appealed by first exhausting all agency remedies and then by filing a petition for judicial review in accordance with Iowa Code section 17A.19. *See id.; see also* Iowa Code §§ 17A.18 and 17A.19. In essence, Hummel used her criminal proceeding to collaterally attack the administrative agency's action of suspending her license. *Cf. Clark,* 608 N.W.2d

at 9 (holding a criminal defendant could not contest the DOT's determination he was an habitual offender in his criminal trial for the charge of driving while barred). Such attacks are not permitted. *Cf. id.* at 8; *Iowa Dep't of Transp. v. Iowa Dist. Ct. for Buchanan County,* 504 N.W.2d 897, 898 (Iowa 1993) (concluding district court lacked authority to order DOT in a criminal proceeding to remove information from a defendant's driving record).

The Iowa Supreme Court has recognized that a ruling in a criminal proceeding can affect a license revocation when statutorily authorized. *See Brownsberger v. Iowa Dep't of Transp.,* 460 N.W.2d 449, 451 (Iowa 1990). In this case, there is no statute permitting the court in the criminal case to adjudicate the validity of the notice of suspension. We conclude that the district court exceeded its authority.

III. Personal Receipt of Notice of Suspension. The DOT contends that the district court's ruling implicitly required the prosecution to prove Hummel had knowledge of her suspension before she could be found guilty. In other words, the district court required the State to prove Hummel received the notice of suspension in her hands. Even if the court were permitted to adjudicate the validity of Hummel's suspension in a criminal proceeding, it is not clear that its legal conclusions were correct. We find that knowledge of the suspension is not required to convict on the charge of driving under suspension.

Section 321A.32(1) sets out the elements the State must prove:

> A person whose license or registration or nonresident's operating privilege has been suspended, denied or revoked under this chapter or continues to remain suspended or revoked under this chapter, and who, during such suspension, denial or revocation, or during such continuing suspension or continuing revocation, drives any motor vehicle upon any highway . . . , shall

be guilty of a simple misdemeanor.

In *State v. Sonderleiter,* 251 Iowa 106, 99 N.W.2d 393 (1959), a defendant made a claim similar to that made by Hummel at trial, that proof of the individual's receipt of the notice was required to convict on this charge. The Iowa Supreme Court said the "simple answer to this claim is the legislature did not so provide." *Sonderleiter,* 251 Iowa at 108, 99 N.W.2d at 395; *cf. State v. Carmer,* 465 N.W.2d 303, 304 (Iowa App. 1990) (concluding knowledge of barred license status was not element of driving while barred charge). We find nothing that indicates the legislature intended to require knowledge of the suspension. *See id.* It is not the notice that revokes or suspends the license but the statutory provisions and administrative rules. *See* Iowa Code § 321.210(1)(f); *see also Sonderleiter,* 251 Iowa at 108-09, 99 N.W.2d at 395. Everyone is presumed to know the law. *Sonderleiter,* 251 Iowa at 108-09, 99 N.W.2d at 395. The State was not required to prove Hummel knew of the suspension.

Furthermore, the code does not require the DOT to personally serve notices of suspension in all cases. Iowa Code section 321.16 provides:

> When the department is authorized or required to give notice under this chapter . . . , unless a different method of giving notices is expressly prescribed, notice shall be given *either* by personal delivery to the person to be so notified *or* by personal service in the manner of original notice by R.C.P. 56.1, paragraph "a," *or* by certified mail addressed to the person at the address shown by the record of the department. Return acknowledgement is required to prove the latter service.

(emphasis added). Clearly, section 321.16 permits certified mail as a viable alternative of serving a notice of suspension. At trial, the State showed compliance with this provision--the notice was mailed to Hummel's address as

listed in DOT records. Hummel's case illustrates the impractical and burdensome nature of a personal service requirement. Hummel listed her parents' address on her original license, received when she was nineteen. She is now thirty-one but has apparently never changed the address on her license when she renewed it. The district court erred in concluding the State must prove knowledge of the suspension, in the form of personal receipt of the notice, in order to convict on this charge. Having found the district court erred in the aforementioned respects, we reverse. Under article I, section 12 of the Iowa Constitution, reprosecution of Hummel is barred. Therefore, we do not remand.

REVERSED.