IN THE COURT OF APPEALS OF IOWA

No. 0-125 / 89-318

FILED
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CLERK SUPREME COURT

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STATE OF IOWA,

Appellee,

vs.

JOSEPH EUGENE METZLER,

Appellant.

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

Defendant appeals from his conviction for driving while his license was under suspension in violation of Iowa Code section 321A.32. He challenges the sufficiency of the evidence to establish the elements of that charge. He also challenges certain evidentiary rulings. **AFFIRMED.**

Richard A. Bartolomei, Des Moines, for the appellant.

Thomas J. Miller, Attorney General; Charles Krogmeier, Acting Deputy Attorney General; and Robert P. Ewald, Assistant Attorney General, for the appellee.

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

DONIELSON, P.J.

On September 26, 1988, defendant Joseph Metzler was involved in a traffic accident. The trial information filed on October 19, 1988, charged defendant with operating a motor vehicle while his license was under suspension in violation of section 321A.32.[1]

Trial commenced on January 26, 1989. At the conclusion of the State's case and at the close of the trial, defendant moved for a directed verdict. Defendant claimed the State presented insufficient evidence to establish the crime charged. The court denied defendant's motions.

In its decision filed February 14, 1989, the trial court found defendant guilty of operating a motor vehicle while his license was suspended. Defendant now appeals. In addition to several claims of erroneous evidentiary rulings, defendant asserts the evidence was insufficient to convict him of the crime charged. Our review of this action is at law. Iowa R. App. P. 4. We affirm defendant's conviction.

I. **Evidentiary Rulings.** Defendant claims the trial court erred in admitting into evidence the certified abstract of his operating record (State's Exhibit 1). Section 321A.3(3) of the Iowa Code prohibits the admission of such records in criminal proceedings "arising out of a motor vehicle accident."

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1. All statutory references are to the 1987 Iowa Code.

The abstract of defendant's operating record was offered in this case to establish that defendant's license was under suspension. The occurrence of a motor vehicle accident was not an element of the crime for which defendant was charged. The only significance of the motor vehicle accident was that it attracted police personnel who eventually charged defendant with driving while his license was under suspension. Unless the crime for which a defendant is charged involves an accident as an element of the crime (i.e., vehicular homicide, section 707.6A), we conclude a defendant's operating record is admissible in a criminal proceeding.

Defendant also challenged the admissibility of the operating record claiming it was not a true and accurate copy of the record held by the Department of Transportation (DOT). Certified copies of DOT records are admissible in court proceedings and are considered to be true and accurate copies unless shown otherwise by an objecting party. Iowa Code § 321.10.

At trial, Mr. Fetters, Executive Assistant in the Office of Driver Services of the Iowa DOT, testified he was the custodian of DOT records. He further testified he had compared exhibit one with the official files. Exhibit one was an abstract of defendant's driving record. Mr. Fetters admitted exhibit one was a computer printout upon which additional information had been typed. The additional typed information indicates defendant's license remained under revocation.

Defendant claims that because the additional typed information was not a part of the original computer printout, the document cannot be admitted as a certified copy pursuant to section 321.10. From our review of the record, however, we note that defendant never asked Mr. Fetters whether the additional typed information was added only to the copy presented at trial, or if it was also added to the computer printout contained in the DOT files. Defendant has not shown the copy was other than true and accurate. Therefore, the document was admissible under section 321.10.

Defendant also challenges the admission of exhibits one through three and claims they are not certified copies because they contain only stamped or preprinted signatures of DOT officials. Defendant claims that pursuant to section 321.10, certification requires actual, individual, "pen-to-paper" signatures.

We disagree and reject defendant's arguments. Section 321.10 requires only that copies be certified by the DOT director or his or her designees. While the certified copies of suspension notices must contain a signature of a party authorized to suspend a license, State v. Johnston, 253 Iowa 674, 678, 113 N.W.2d 309, 312 (1962), the statute does not require separate personal signatures, nor does it prohibit stamped or preprinted signatures for certification of documents. The term "authenticated" in the statute is

only a reference to a document's certification, and it does not require personal signatures.

Defendant objected to the admission of the State's exhibits contending the State failed to introduce sufficient evidence to establish Al Chrystal was a designee of the DOT director and thus could certify the exhibits as true and accurate copies of DOT records. Mr. Fetters testified Darrel Rensink was director of the DOT, and the State offered into evidence Mr. Rensink's affidavit to establish that Mr. Chrystal and Mr. Fetters were designees authorized to carry out the provisions of Chapters 321 and 321A. We find no error in the trial court's admission into evidence of exhibits one through four.[2]

II. **Trial Information.** Defendant correctly argues that 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 proven to have been committed in the way specifically charged. State v. Willet, 305 N.W.2d 454, 457 (Iowa 1981). In this case, the State's information alleged defendant operated a motor vehicle while his license was under suspension, though the facts suggest the State could have charged him with operating a vehicle while his nonresident's operating

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2. Defendant has raised a number of evidentiary concerns regarding the admissibility of the State's certified records. While we do not individually address each statutory and evidentiary authority cited by defendant, we have considered them and conclude they do not preclude the admission of exhibits one through four.

privilege was suspended. The terms "license" and "nonresident operating privilege" refer to two distinct privileges. See Iowa Code § 321A.1 (3), (6).

While interchanging the terms "revocation" and "suspension" may not prejudice a defendant, State v. Kotz, 337 N.W.2d 531, 532 (Iowa 1983), we concur with defendant that the terms "license" and "nonresident operating privileges" may not be casually substituted for one another in a trial information without misleading or prejudicing a defendant. The State was required in this case to prove defendant was operating a motor vehicle while his "license" was under suspension. Contrary to the trial court's statement during the trial, the State must prove defendant's license was under suspension as an element of the offense for which he was charged, Johnston, 253 Iowa at 678, 113 N.W.2d at 312, and it is not sufficient that the State's evidence merely indicates that defendant's license might have been suspended. State v. Hoffer, 197 N.W.2d 368, 370 (Iowa 1972). We note, however, that the State is not required to retry the elements of a defendant's prior driver's license revocation proceeding. See State v. Thompson, 357 N.W.2d 591, 594 (Iowa 1984) (interpreting section 321B.38); State v. Sonderleiter, 251 Iowa 106, 109, 99 N.W.2d 393, 395 (1959) (proof that defendant received notice of suspension and revocation was not an element of crime charged under section 321A.32).

As we proceed to review the record in this case, we will affirm the conviction only if sufficient evidence exists to support the crime charged in the information; the fact that defendant may have been convicted on other grounds is irrelevant to our decision.

III. Sufficiency of the Evidence. We will uphold a verdict where there is substantial evidence in the record tending to support the charge. State v. Wheeler, 403 N.W.2d 58, 60 (Iowa App. 1987). The standards governing a challenge to the sufficiency of the evidence are well established:

> When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the state, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. Direct and circumstantial evidence are equally probative so long as the evidence raises "a fair inference of guilt and [does] more than create speculation, suspicion, or conjecture." It is necessary to consider all the evidence in the record and not just the evidence supporting the verdict to determine whether there is substantial evidence to support the charge. Substantial evidence means evidence which would convince a rational factfinder that the defendant is guilty beyond a reasonable doubt.

Id. (citations omitted).

The documentary evidence in this case reveals defendant's license was revoked on October 23, 1987, and as of the time of the accident, it remained under revocation. Viewing the evidence in the light most favorable to the State, the trial court could have concluded beyond a reasonable doubt that on September 26, 1988, defendant was

operating a motor vehicle while his license was under suspension. Defendant's conviction is affirmed.

AFFIRMED.