

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM HORRY COUNTY
Magistrate Court – Central Jury Court

Honorable Aaron C. Butler, Summary Court Judge

Case No. 2008-CP-2606758

Reversed

The State, Respondent.
v.
Christopher Troy Harrell, Appellant.

This matter was before this Court on appeal from convictions and sentences of the magistrate court, after a jury trial, for Driving Under Suspension, Second Offense (D117920).

Relevant Facts

The evidence presented at trial reveals that on January 24, 2008 the appellant was pulled over and charged with Driving Under Suspension and Driving without Insurance.

At the jury trial, the state admitted appellant's certified driving record and a certified copy of a document titled "Official Notice," relating to a suspension of appellant's driving privilege pursuant to S.C. Code Ann. § 56-1-460 into evidence. Both documents, printed on South Carolina Department of Motor Vehicles (DMV) letterhead, contained the appellant's name and address of 615 Needlerush Court, Myrtle Beach, SC 29579. Both were certified to be true and correct copies of the original document on file with the DMV.

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At the close of the evidence, appellant moved for a directed verdict of acquittal as to each charge based on insufficiency of the evidence. The appellant specifically asserts, as to the charge of driving under suspension, a failure of proof that the appellant was provided the required notice pursuant to S.C. Code Ann. § 56-1-465 and S.C. Code Ann. § 56-1-810.

Standard of Review

In an appeal from a conviction and sentence of the municipal court "there shall be no trial de novo... but instead reviews for preserved errors raised to it by appropriate exception." S.C. Code Ann. § 14-28-105; State v. Henderson, 347 S.C. 445 (Ct. App. 2001).

"In considering a motion for a directed verdict, the judge is concerned with the existence or non-existence of evidence, not its weight. The case should be submitted to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." State v. Williams, 303 S.C. 274, 276, 400 S.E.2d 131, 132 (1991). When the state fails to introduce any evidence to show an element of the crime, the judge must grant the directed verdict. "In reviewing the denial of a motion for a directed verdict, the evidence must be viewed in the light most favorable to the State, and if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find that the case was properly submitted to the jury." State v. Kelsey, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998).

Law and Analysis

S. C. Code Ann. § 56-1-460 provides "it shall be unlawful for any person to drive a motor vehicle on any public highway in this State when his privilege to drive is suspended." By definition, the suspension of a person's driving privilege in this state requires formal action

of the Department of Motor Vehicles. S.C. Code Ann. § 56-1-10(14). Further, S.C. Code Ann. § 56-1-350 provides that "in all cases of cancellation, suspension, or revocation of driver's licenses, the Department of Motor Vehicles shall notify the licensee . . . that his license has been canceled, suspended or revoked. . ." S.C. Code Ann. § 56-1-465 states that "the licensee shall be notified of suspension under § 56-1-460 the same as is required when the license is suspended due to loss of points as provided in § 56-1-810." Section 56-1-810 requires that "the department shall notify such licensee in writing, return receipt requested, that his license has been suspended . . ." Under South Carolina law three essential elements must be established before a person may be found guilty of driving under suspension. The state must prove that, (1) the defendant's privilege to drive was suspended by the department of Motor Vehicles, (2) that the department sent notice of the suspension to the defendant at his address as shown in the driver's license records, and (3) the defendant drove a motor vehicle on a public highway of this State during the period of his suspension.

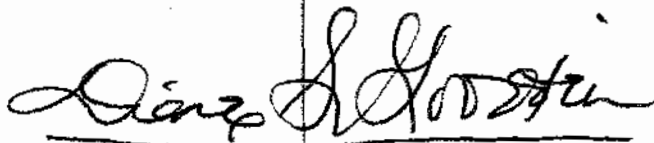
The record contains evidence that the appellant's privilege to operate a motor vehicle in this State was indefinitely suspended by a formal action of the DMV prior to January 24, 2008, and that he drove a motor vehicle on a public highway of this State on January 24, 2008 while the suspension period was still in effect. No evidence is in the record of this case to prove that the DMV notified the defendant of his suspension status "in writing, return receipt requested . . ." as required by S.C. Code Ann. § 56-1-810.

Based upon the prosecution's failure to present evidence establishing a material element of the offense, the municipal court erred in not granting the appellant's motion for a directed verdict of acquittal, based upon the insufficiency of the evidence.

The conviction and the sentence of the municipal court for driving under suspension,
second offense, are REVERSED.

The municipal court is directed to enter a verdict of not guilty as to the charge of driving
under suspension, second offense, on D117920.

12-8-2008

A handwritten signature in cursive script, reading "Diane S. Goodstein", written over a horizontal line.

The Honorable Diane S. Goodstein
Presiding Judge