

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

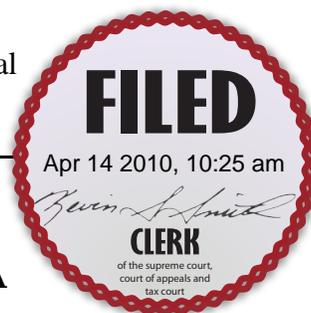
ATTORNEY FOR APPELLANT:

SUSAN D. RAYL
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KATHY BRADLEY
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL T. KOHUES,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)
)

No. 49A04-0909-CR-520

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark A. Jones, Judge Pro Tempore
Cause No. 49G05-0811-FC-270867

April 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Michael Kohues appeals his conviction for Class C felony operating a motor vehicle while privileges are forfeited for life. Specifically, he contends that the State failed to prove that he knew or should have known that his driving privileges were forfeited. Finding the evidence sufficient, we affirm.

Facts and Procedural History

On November 25, 2008, Indiana State Trooper Dennis Wade stopped Kohues' vehicle because the license plate did not match the vehicle he was driving. When Trooper Wade advised Kohues of the reason for the stop and asked for his license and registration, Kohues told Trooper Wade that he "had some issues with his driver's license" and produced an Indiana identification card instead. Tr. p. 5. When Trooper Wade asked Kohues what type of problems he had with his driver's license, Kohues responded that he "just did some time for his driver's license." *Id.* at 6. Trooper Wade then ran a check on Kohues' driver's license, which revealed that he was a habitual traffic violator for life. Trooper Wade returned to Kohues' car and asked him if he knew he was not supposed to be driving, and Kohues said "yes," but he "was only going for a short trip," that is, "only a couple of blocks from his house to [his] business." *Id.* Trooper Wade then placed Kohues under arrest.

The State charged Kohues with Class C felony operating a motor vehicle while privileges are forfeited for life. At the bench trial, the State introduced into evidence (1) Kohues' certified BMV driver record dated within twenty-four hours of his arrest, which provides at the top that his license status is "habitual traffic violator—life," State's Ex. 1;

(2) the Order of Judgment of Conviction from Kohues' 2001 Class D felony operating a motor vehicle while a habitual traffic violator conviction, in which the court suspended his license for life, State's Ex. 2, p. 6 (backside); and (3) the Certification of Indiana Abstract of Court Record from that same conviction showing that Kohues' license is suspended for life, State's Ex. 2, p. 7. Kohues was found guilty as charged. The trial court sentenced him to six years, with four years suspended. The court ordered the two-year executed portion of Kohues' sentence to be served on community corrections. Kohues now appeals.

Discussion and Decision

Kohues contends that the evidence is insufficient to support his conviction. When reviewing the sufficiency of the evidence, appellate courts must only consider the probative evidence and reasonable inferences supporting the judgment. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it "most favorably to the trial court's ruling." *Id.* Appellate courts affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* at 146-47 (quotation omitted). It is therefore not necessary that the evidence "overcome every reasonable hypothesis of innocence." *Id.* at 147 (quotation omitted). "[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the [judgment]." *Id.* (quotation omitted).

Kohues was convicted pursuant to Indiana Code section 9-30-10-17, which provides, “A person who operates a motor vehicle after the person’s driving privileges are forfeited for life under section 16 of this chapter, IC 9-4-13-14 (repealed April 1, 1984), or IC 9-12-3-1 (repealed July 1, 1991) commits a Class C felony.” To sustain a conviction under this statute, the State must prove that Kohues (1) operated a motor vehicle, (2) after his driving privileges were forfeited for life, and (3) he knew or should have known that his driving privileges were forfeited. *Arthur v. State*, 824 N.E.2d 383, 388 (Ind. Ct. App. 2005), *trans. denied*. Kohues argues that the State failed to prove the third element, that is, that he knew or should have known that his driving privileges were forfeited.

Kohues relies almost exclusively on the fact that his BMV driver record contains a section entitled “Reinstatement Requirements,” which provides:

Proof of Insurance Required (SR22 needed until 01/10/2009).
Proof of Insurance Required (SR50 needed).
Number of insurance fees 6, for a total of \$1575.00.
Number of reinstatement fees: 1, for a total of \$10.00.
Total fees: 7 for a total due of 1585.00.

State’s Ex. 1 (dated Nov. 26, 2008); *see also* State’s Ex. 3. Kohues argues that this section implies that his driving privileges were, in fact, not forfeited for life and could be reinstated upon fulfilling the above requirements. However, taking the probative evidence and the reasonable inferences supporting the judgment, we conclude that the evidence is sufficient to prove that Kohues knew or should have known that his driving privileges were forfeited.

Trooper Wade testified at trial that Kohues said he had some problems with his license and therefore showed an Indiana identification card upon being pulled over. Upon checking Kohues' information on his computer, Trooper Wade learned that Kohues was a habitual traffic violator for life. When Trooper Wade confronted Kohues with this information, Kohues responded that he knew he should not be driving. In addition, the State introduced into evidence Kohues' certified BMV driver record, which, despite containing the above reinstatement requirements, clearly provides at the top that his license status is "habitual traffic violator—life." State's Ex. 1, 3. Moreover, the State introduced into evidence the judgment of conviction and abstract¹ from Kohues' 2001 conviction for Class D felony operating a motor vehicle while a habitual traffic violator, wherein the trial court ordered Kohues' license be suspended for life. State's Ex. 2. This evidence is sufficient to infer that Kohues knew or should have known that his driving privileges were forfeited for life. *See Pierce v. State*, 737 N.E.2d 1211, 1214 (Ind. Ct. App. 2000) ("We accordingly find that in cases where a defendant is charged with a Class C felony under Indiana Code § 9-30-10-17, proof of a prior conviction of being an habitual traffic violator with a license suspended for life, together with proof that the defendant was driving the vehicle, is sufficient to sustain a conviction."), *trans. denied*. We therefore affirm his conviction.

¹ Kohues stresses that although the trial court wrote "Life" in the box for driving privileges suspended, the court neglected to check the box for "Ordered" or "Recommended." *See* State's Ex. 2, p. 7 (abstract). Kohues argues that it is entirely possible that the BMV could have decided *not* to suspend his driving privileges for life. We dismiss outright the argument that by not checking either box the trial court meant to leave to the BMV's discretion the suspension of Kohues' driving privileges for life. When this document is considered in conjunction with the judgment of conviction, it is clear that the trial court suspended Kohues' driving privileges for life.

Affirmed.

NAJAM, J., and BROWN, J., concur.