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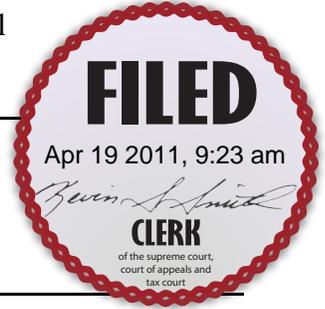
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**IN THE
COURT OF APPEALS OF INDIANA**



MICHAEL K. WETHINGTON,

Appellant- Defendant,

vs.

STATE OF INDIANA,

Appellee- Plaintiff,

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No. 32A01-1009-CR-481

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable Mark A. Smith, Judge
Cause No. 32D04-0906-FD-132

April 19, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Following a bench trial, Michael Wethington appeals his conviction for operating a motor vehicle while an habitual traffic violator (“HTV”). Wethington raises one issue, which we restate as whether sufficient evidence supports his conviction. Concluding that sufficient evidence exists, we affirm.

Facts and Procedural History

While on patrol on June 23, 2009, Deputy Derek Caldwell of the Hendricks County Sherriff’s Department observed Wethington make an erratic U-turn in front of Cascade High School. Deputy Caldwell proceeded to follow Wethington and eventually initiated a traffic stop outside Wethington’s home.

Deputy Caldwell ran a check of Wethington’s license through the Bureau of Motor Vehicles (“BMV”) record system using the computer in his police vehicle. The report Deputy Caldwell received from the BMV showed Wethington’s license was suspended due to his status as an HTV. Wethington disputed the report and Deputy Caldwell did not place Wethington under arrest at that time, but scheduled a meeting with the local prosecutor to sort out the dispute. Eventually, the State charged Wethington with operating a vehicle as an HTV, a Class D felony.

During Wethington’s bench trial, the State entered into evidence Wethington’s certified Official Driving Record from the BMV. Included in the record was an Habitual Traffic Violator Notice of Suspension mailed to a West County Road 571 South address in Clayton, Indiana. Wethington’s BMV record shows the Habitual Traffic Violator Notice of Suspension was mailed on October 7, 2008. The notice itself informs Wethington his driving privileges were suspended for a period of ten years beginning on

November 19, 2008. At trial, Wethington testified he lived at the address the Habitual Traffic Violator Notice of Suspension was mailed to continually since the “end of 2004, beginning of 2005.” Transcript at 33.

The trial court found Wethington guilty of operating a motor vehicle while an HTV and entered judgment of conviction. The trial court sentenced Wethington to 1,095 days in the Indiana Department of Correction, with 730 days suspended and 365 days to be served on home detention. The trial court also suspended Wethington’s license for life. Wethington now appeals his conviction.

Discussion and Decision

Wethington argues that his conviction for operating a motor vehicle while an HTV is not supported by sufficient evidence. Specifically, Wethington contends that the State did not prove he had knowledge his driving privileges had been suspended as required by Indiana Code section 9-30-10-16(a) and (b).

I. Standard of Review

When reviewing a sufficiency of the evidence claim, we neither reweigh the evidence nor judge the credibility of witnesses. Grim v. State, 797 N.E.2d 825, 830 (Ind. Ct. App. 2003). Rather, we consider only the evidence that is favorable to the judgment along with the reasonable inferences to be drawn therefrom to determine whether there was sufficient evidence of probative value to support a conviction. Id. We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. Id.

II. Knowledge Requirement

Under Indiana Code section 9-30-10-16(a), “[a] person who operates a motor vehicle . . . while the person’s driving privileges are validly suspended under this [HTV] chapter . . . and the person knows that the person’s driving privileges are suspended . . . commits a Class D felony.” “Service by the bureau of notice of the suspension . . . by first class mail to the person at the last address shown for the person in the [BMV]’s records . . . establishes a rebuttable presumption that the person knows that the person’s driving privileges are suspended or restricted.” Ind. Code § 9-30-10-16(b)(2).

Indiana Code section 9-30-10-16(b) sets a low bar to satisfy the notice and knowledge requirement. As shown above, it only requires the BMV to mail notice of the suspension to the defendant’s last known address. Doing so creates a rebuttable presumption the individual was notified and has knowledge of the suspension.¹ We have upheld this presumption finding “a rational connection between service to the defendant and his knowledge. Service of notice of a suspension to the address which the defendant himself has last provided to the BMV should be an effective way to inform the defendant of his suspension.” Donaldson v. State, 904 N.E.2d 294, 300 (Ind. Ct. App. 2009).

At trial, Wethington testified to his permanent address on West County Road 571 South in Clayton, Indiana. According to Wethington’s certified Official Driving Record, this is also the address the Habitual Traffic Violator Notice of Suspension was mailed to

¹ We recognize the difficulty a defendant faces in rebutting the presumption of knowledge under Indiana Code section 9-30-10-16(b)(2) when a notice of suspension is properly mailed by the BMV. To rebut the presumption, the defendant would likely have to show some type of third-party intervention that made delivery of the properly mailed notice impossible. For instance, a defendant could show the post office had stopped delivering mail to his or her residence for some reason, or perhaps a neighbor had been stealing the defendant’s mail for a number of months. However, when third-party intervention cannot be shown, the presumption of knowledge under Indiana Code section 9-30-10-16(b)(2) is more akin to an irrebuttable presumption as opposed to a rebuttable one, assuming the notice was properly mailed, because it is difficult to prove a negative.

on October 7, 2008. Wethington also stated he had began living at that address in 2004 or 2005, two to three years prior to the BMV sending the Habitual Traffic Violator Notice of Suspension. Wethington did not present evidence to rebut the presumption of his knowledge that his driving privileges were suspended. Based on the foregoing, the trial court had ample evidence to conclude the Habitual Traffic Violator Notice of Suspension was sent to Wethington's last known address, and therefore Wethington had knowledge of his suspension.

Wethington argues the State did not satisfy its burden of showing Wethington possessed knowledge of the HTV suspension because it presented no evidence of certification of mailing with regard to the Habitual Traffic Violator Notice of Suspension. However, a certification of mailing is not necessary to satisfy the knowledge requirement under Indiana Code section 9-30-10-16(b). Wethington's certified Official Driving Record was admitted into evidence at trial. Included in this record was an Habitual Traffic Violator Notice of Suspension, mailed to Wethington's last known address. An Official Driving Record sufficiently evidences proof of mailing of a suspension. Cruise v. State, 641 N.E.2d 1264, 1265 (Ind. 1994); see also Ind. Code § 9-14-3-7(c) ("An entry in the operating record of a defendant stating that notice of suspension or revocation was mailed by the [BMV] to the defendant constitutes prima facie evidence that the notice was mailed to the defendant's address as shown in the official driving record."). Therefore, it was proper for the trial court to find the Habitual Traffic Violator Notice of Suspension was mailed to Wethington's last known address and that Wethington possessed knowledge of the suspension.

Conclusion

Sufficient evidence supports Wethington's conviction for operating a motor vehicle as an HTV and his conviction is therefore affirmed.

Affirmed.

NAJAM, J., and DARDEN, J., concur.