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NO. 70642-0-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

MILES DAVIS MORRISON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY

The Honorable Charles R. Snyder, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The evidence was insufficient to convict Morrison of driving while license suspended or revoked in the first degree (DWLS 1).

Issue Pertaining to Assignment Of Error

Was the evidence insufficient to convict Morrison of committing DWLS 1 in 2012 where there was no evidence that the 2012 license-revoked status in Morrison's Department of Licensing (DOL) records was the product of a due process-compliant revocation?

B. STATEMENT OF THE CASE

On December 11, 2012, a Whatcom County Sheriff's deputy stopped Miles Davis Morrison for driving his motorized scooter on or near the Slater Road Bridge, which had been recently damaged and was closed for repairs. CP 4-5. Morrison, who was returning from running an errand at the nearby Scrap-It recycling center, decided to drive by the bridge and see how extensive the damage was. RP 150-51.

Deputy Walcker saw the scooter beyond the barricades and noticed that the driver was wearing a bicycle helmet instead of a DOT-approved motorcycle helmet. RP 7. As he approached, Deputy Walcker also noticed that the scooter had expired license tabs. RP 7. He initiated a traffic stop and made contact with Morrison. RP 7. Deputy Walcker reported that he checked with dispatch and discovered that Morrison's

driver's license was revoked as a habitual traffic offender. RP 9. Morrison responded that he knew his license was suspended in the third degree, but disputed the revocation. RP 22. Deputy Walcker placed Morrison under arrest, read him his Miranda rights, and performed a search incident to arrest. CP 4.

During the search, Deputy Walcker located a glass pipe in the pocket of a coat Morrison was wearing. RP 30. He recognized the pipe as one commonly used to smoke methamphetamines. RP 31. Walcker also located a wallet, a receipt from the recycling center, a bandanna, and house keys in Morrison's coat pockets. RP 33-35. However, because of the cold that day, Morrison was wearing at least three layers of coats, not all of which were his. RP 31, 136-138. Deputy Walcker could not recall exactly which pocket he found the items in. RP 54-55.

After being read his Miranda rights, Morrison admitted to Deputy Walcker that he used methamphetamines. At a CrR 3.5 hearing, the court determined that Morrison's statements were admissible. CP 31-34.

The State charged Morrison with unlawful possession of a controlled substance and driving while license suspended in the first degree (DWLS 1). CP 2-3. A jury convicted him of both charges. CP 25. The court sentenced him to standard range sentences on both counts. CP 37-42.

C. ARGUMENT

THE EVIDENCE WAS INSUFFICIENT EVIDENCE TO CONVICT MORRISON OF DRIVING WHILE LICENSE SUSPENDED IN THE FIRST DEGREE.

The due process clauses of the state and federal constitutions require the state to prove all elements of a charged offense beyond a reasonable doubt. U.S. Const. amend. 14; Const. art. 1, § 3; In re Winship, 397 U.S. 358, 361-64, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); State v. Smith, 155 Wn.2d 496, 502, 120 P.3d 559 (2005). A reviewing court should reverse a conviction for insufficient evidence where no rational trier of fact, viewing the evidence and inferences in the light most favorable to the state, could find all the elements proved beyond a reasonable doubt. Smith, 155 Wn.2d at 504-05; State v. Ehrhardt, 167 Wn. App. 933, 944-47, 276 P.3d 332 (2012).

Morrison was charged with DWLS 1 under RCW 46.20.342(1)(a), which provides:

(1) It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this or any other state. Any person who has a valid Washington driver's license is not guilty of a violation of this section.

(a) A person found to be an habitual offender under chapter 46.65 RCW, who violates this section while an order of revocation issued under chapter 46.65 RCW prohibiting such operation is in effect, is guilty of driving

while license suspended or revoked in the first degree, a gross misdemeanor. . . .

To convict someone of DWLS 1, the State must prove beyond a reasonable doubt not only that the person was driving while an order of revocation was in effect, but also that the order of revocation was based on a finding that the person was a habitual traffic offender. Smith, 155 Wn.2d at 499. Because a driver's license is a personal property interest that cannot be taken away without due process of law, a valid conviction also requires the State to prove that the revocation complied with due process. State v. Storhoff, 133 Wn.2d 523, 527, 946 P.2d 783 (1997). Due process in the context of a license revocation as a habitual traffic offender requires providing the alleged habitual offender notice and an opportunity to be heard. Id.; RCW 46.65.065(1). The State failed to meet this burden with regards to Morrison.

The State submitted a copy of the May 12, 1993, Order of Revocation that was sent to Morrison. Ex. 6. That notice informed Morrison, "your driving privilege is revoked for 5 years as an habitual traffic offender." The State presented no evidence that the revocation complied with due process. For example, the State did not attempt to show the notice was sent to a valid address or was received by Morrison. Indeed, given both Morrison and Deputy Walcker's testimony that

Morrison believed his license was only suspended, it indicates that whatever attempts at notice may have occurred, failed. RP 22; RP 134-35.

Additionally, by the terms of the notice submitted into evidence, Morrison's revocation should have ended in May 1998. The State presented no evidence that the Department ever notified Morrison that his revocation would continue past the five years set forth in the notice, or that he had the right to be heard with regard to the contemplated extension. Wanda Knapp, a records custodian with the Department of Licensing, testified that exhibit 6 was the only document she knew of that had ever been sent to Morrison concerning the 1993 revocation of his driver's license. RP 99. She assumed from her knowledge of Department procedure that additional letters would have been sent in 1994, but expressed no personal knowledge of whether those were actually sent to Morrison, what message they would have contained, or to which address they would have been mailed. RP 101. She also had no knowledge whether the Department attempted to communicate with Morrison in 1998, just before the original revocation should have expired, notifying him that he was or was not eligible for reinstatement. She acknowledged that any documents that might support her assumptions that the Department continued to communicate with Morrison about continuing his license revocation beyond May 1998 were not available. RP 102.

Knapp agreed that based on the terms of the letter, the revocation should have ended in 1998. RP 112. She testified that additional violations could extend the period of revocation, and that she believed that had happened in this case. RP 112-113. But she again admitted she had no documented basis for her opinion:

Q. You testified that, you know, you have no firsthand knowledge that any additional letters other than this letter have been sent.

A. Correct.

Q. And you're assuming that based on the end conclusion they suspended today that there must be some reason.

A. Yes.

Q. But you don't know what that reason is with any specifics, correct?

A. I can only say that the R.C.W.s change continuously in that department, and so the rules change on the lengths, and if there was any additional, this one may have ran out, but it got extended by others.

Q. But you don't know on what basis, at what time, what duration, what laws. You have no specifics to provide, correct?

A. Without the documents in front of me on those extended ones, I can't.

Q. And you have none of those documents to provide to the jury today, correct?

A. Yeah, I didn't provide any documents.

RP 112-13. Knapp also testified that Morrison's certified copy of driving record (CCDR) indicated that he was revoked, but did not indicate a reason for the revocation. RP 92.

The State also did not explain an obvious discrepancy on the CCDR—that while the summary status on page 1 indicated “revoked,” the inclusive driving record history on page 2 indicated that the revocation had been released in 2001. The next activity on Morrison’s CCDR is a suspension related to child support obligations in 2009, and according to the complete history, it appears Morrison’s license status as of 2011 was still “suspended.” Ex. 6. Knapp could only speculate about why Morrison’s DOL status showed his license revoked. Such speculation does not constitute sufficient evidence. State v. Colquitt, 133 Wn. App. 789, 796, 137 P.3d 892 (2006) (existence of a fact cannot rest upon guess, speculation, or conjecture in determining the sufficiency of evidence).

The failure to present any evidence to support finding a due process-compliant revocation of Morrison's license occurred any time after 1998, or that the current revocation status reflected in Morrison's DOL records is the result of a due process-compliant procedure, is fatal to Morrison's DWLS 1 conviction. Knapp could only assume that the Department communicated with Morrison after 1993. The witness’s best guess about what may or may not have happened is insufficient evidence to prove the State’s case. Colquitt, 133 Wn. App. at 796. Because the State failed to prove every essential element of DWLS 1, Morrison's judgment and sentence for that offense should be overturned and the

charge dismissed with prejudice. State v. Hickman, 135 Wn.2d 97, 99, 106, 954 P.2d 900 (1998).

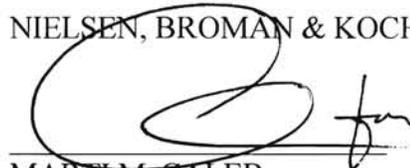
D. CONCLUSION

For the reasons stated above, Morrison requests that this Court reverse and dismiss his conviction for DWLS 1.

DATED this 20th day of February 2014.

Respectfully submitted,

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MILES MORRISON,)	
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Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 28TH DAY OF FEBRUARY 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL AND/OR VIA EMAIL.

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SIGNED IN SEATTLE WASHINGTON, THIS 28TH DAY OF FEBRUARY 2014.

x *Patrick Mayovsky*