

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

SUPREME COURT NO.: 20180275

State of North Dakota,)
Plaintff/Appellee,)
)
vs.)
)
Ronald Duane Brakke,)
Defendant/Appellant.)

APPEAL FROM THE CRIMINAL JUDGMENT DATED JULY 3, 2018
SOUTHEAST JUDICIAL DISTRICT
GRIGGS COUNTY CRIMINAL. NO. 20-2018-CR-00006
THE HONORABLE JAMES D. HOVEY PRESIDING

APPELLEE'S BRIEF

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STATEMENT OF THE ISSUES

[¶1] Do the facts establish that Ronald Brakke had received or should have received proper notice from the Driver's License Division of the State Highway Department of an opportunity for Hearing on the suspension of his North Dakota driver's license?

STATEMENT OF THE CASE

[¶2] On March 3, 2018, the Appellant, Ronald Brakke, was charged with driving under suspension in Griggs County.

[¶3] On March 8, 2018, the State filed a complaint that charged the Appellant with driving under suspension.

[¶4] A bench trial was held on June 26, 2018. Criminal Judgment finding Appellant guilty of driving under suspension was filed on July 3, 2018.

[¶5] Notice of Appeal and Order for Transcript were filed on July 12, 2018.

[¶6] The Notice of Filing the Notice of Appeal was filed on July 12, 2018.

[¶7] The Clerk's Certificate of Appeal was filed on August 10, 2018.

[¶8] Appellant filed his Supreme Court brief on October 17, 2018.

STATEMENT OF THE FACTS

[¶9] On March 3, 2018, Appellant Ronald Brakke (Brakke) was driving on North Dakota Highway 1 near mile marker 124 within Griggs County. Brakke's van slid into the ditch striking a highway sign and knocking the sign over. Brakke's vehicle was pulled from the ditch.

[¶10] Griggs County Deputy Amberly Michaelis was called to the scene of an accident on North Dakota Highway 1, at approximately mile marker 124 within Griggs County. Deputy Michaelis responded to the scene of the accident. Because of the icy and dangerous road conditions, Deputy Michaelis had Brakke

drive to Hannaford to interview Mr. Brakke and receive further information regarding the crash.

[¶11] During Deputy Michaelis' investigation, she requested Brakke's driver's license. Deputy Michaelis did a routine check of Brakke's driver's license status. On March 3, 2018, Deputy Michaelis learned that Brakke's driver's license was suspended. At that point, Brakke was cited for driving under suspension.

[¶12] During the June 26, 2018 trial, Deputy Amberly Michaelis testified on behalf of the State and Brakke testified on his behalf.

[¶13] During the trial, the state offered four exhibits. Exhibit 1 was the certified driving abstract of the defendant. Exhibits 2, 3, and 4 were suspension letters from the North Dakota Department of Transportation. Exhibits 2, 3, and 4 were all sent to Brakke at his rural address of RR 1 Box 17, Grace City, ND. Brakke submitted Exhibit 5 to the Court, which was a copy of Brakke's suspended driver's license.

[¶14] At trial, Brakke testified about several addresses that he had. First, Brakke testified that he had placed a mailbox in his front yard on Main Street in Grace City. Brakke's address there is Box 83 Main Street, Grace City, North Dakota. Brakke testified that he had assigned a box number to himself, and the United States Postal Service would not recognize this address. Mr. Brakke also testified that his address on his license is 117 Main Street, Grace City, ND. Mr. Brakke contradicted the address on his license by stating his address is 171 Main Street, Grace City, ND. Brakke also testified that the United States Postal Service

delivers his mail to RR 1 Box 17, Grace City ND, but he does not collect the mail himself; instead, he has someone collect the mail and deliver it to him.

[¶15] Brakke testified at trial that he had never seen the suspension letters after he testified that he has his mail delivered to RR1 Box 7.

ISSUE

[¶16] The facts establish that the North Dakota Department of Transportation did properly send notice of driver’s license suspension to Ronald Brakke, and the evidence showed that Brakke collected mail from the address that notice was sent to. Ronald Brakke did receive notice of driver’s license suspension from the North Dakota Department of Transportation, Driver’s License Division.

ARGUMENT

[¶17] Section 39-06-20 of the North Dakota Century Code outlines the obligations of the driver to inform the Driver’s License Division of the North Dakota Department of Transportation of any address change on his driver’s license or identification card. N.D.C.C. § 39-06-20. When changing an address, the operator is not required to get an updated license, but only give the notice of the address change to the state, making the address on the actual driver’s license irrelevant. *Id.* Further, “the department may change the address based on information received from any authorized address correction service of the United States postal service.” *Id.* Though Brakke testified to having the address of 117 Main Street, Grace City, North Dakota, this section of code makes the address

printed on the actual license irrelevant to the current case. The relevant address here is Rural Route 1, Box 7, Grace City, North Dakota.

[¶18] In a driving under suspension case, the prosecution must prove the driver had notice his license was suspended. City of Jamestown v. Neumiller, 2000 ND 11, 604 N.W.2d 441. See State v. Egan, 1999 ND 59 ¶8, 591 N.W.2d 150; State v. Tininenko, 371 N.W.2d 762, 764 (N.D. 1985). “Section 31-11-03(24), N.D.C.C., states “a letter duly directed and mailed was received in the regular course of the mail” is a disputable presumption that may be contradicted by other evidence.” Neumiller at ¶8. In the case at hand, the trial court did properly find that Mr. Brakke did receive notice of his suspension. The Court specifically found that “Mr. Brakke testified that any mail that he does receive is addressed to Rural Route 1, Box 7, Grace City, North Dakota. That is the address the suspension orders were sent to.” The Court further found “that the presumption has not been rebutted; that being the presumption of 31-11-03, Sub 24. I am relying—and just for the parties’ information—on City of Jamestown versus Neumiller...”

[¶19] Introduction of testimony contradictory to the presumption does not mean the presumption has been rebutted. State v. Wolff, 512 N.W.2d 670, 673 (N.D. 1994). Brakke testified that he received his mail at Rural Route 1, Box 7, in Grace City. Brakke also testified that he did not receive the notice. The Court is not required to believe the testimony of the defense’s witnesses. Tininenko 371 N.W.2d at 765. Here, the trial court heard testimony and reviewed the State’s

exhibits. The factfinder did not err when determining that the defendant did not rebut the presumption.

[¶20] Though Mr. Brakke argued that the trial court used evidence from outside the court, Judge Hovey made the following findings:

“The exhibits received into evidence, without objection, introduced the driver’s license division abstract of driving records for defendant, Ronald Duane Brakke. They indicate suspensions with order dates of –well, the ones that are relevant here are April 7, 2016 and June 20, 2017...Exhibits 2 and 3 are suspension orders issued to the defendant, Ronald Brakke. Exhibit 2 has a mailing date of May 31, 2017. Exhibit 2 has a suspension date of April 7, 2016. Exhibit 3 has a suspension date of June 20, 2017. According to the abstract, that June 20, 2017 was in(sic) indefinite suspension. Mr. Brakke testified that any mail that he does receive is addressed to Rural Route 1, Box 7, Grace City, North Dakota. That is the address that the suspension orders were sent to.”

Tr. P.4,L17 to P.47L.2.

In making the findings, the trial court used evidence that was offered and received without objection. The court used the defendant’s own testimony that he receives his mail at Rural Route 1, Box 7.

CONCLUSION

[¶21] Brakke has not demonstrated that the trial court’s findings were clearly erroneous and Brakke has also failed to demonstrate that the trial court abused its discretion in finding Brakke guilty of driving under suspension. The State respectfully requests that the trial court’s guilty verdict be affirmed.

Respectfully submitted this 21st day of November, 2018.

/s/ Jayme Tenneson
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CERTIFICATE OF SERVICE BY MAIL

[¶22] The undersigned hereby certifies that she is an employee in the Griggs County State’s Attorney’s Office and is a person of such age and discretion as to be competent to serve papers.

That on November 21, 2018, she served, by email, a copy of the following:

APPELLEE’S BRIEF

to: Benjamin C. Pulkrabek
Attorney at Law
pulkrabek@lawyer.com

The undersigned further certifies that on November 21, 2018, she served electronically on the Clerk, North Dakota Supreme Court, the APPELLEE’S BRIEF.

/s/ Paige Hanson _____
Paige Hanson
Paralegal
Griggs County State’s Attorney’s Office

CERTIFICATE OF SERVICE BY MAIL

[¶31] The undersigned hereby certifies that she is an employee in the Griggs County State's Attorney's Office and is a person of such age and discretion as to be competent to serve papers.

That on November 15, 2018, she served, by email, a copy of the following:

APPELLEE'S BRIEF

to: Benjamin C. Pulkrabek
Attorney at Law
pulkrabek@lawyer.com

The undersigned further certifies that on November 15, 2018, she served electronically on the Clerk, North Dakota Supreme Court, the APPELLEE'S BRIEF.

/s/ Paige Hanson
Paige Hanson
Paralegal
Griggs County State's Attorney's Office