IN THE SUPREME COURT OF IOWA

No. 16-0894

Boone County Number OWCR110290

STATE OF IOWA,

Plaintiff-Appellee,

vs.

DESHAUN WILLIAMS

Defendant-Appellant

APPELLANT'S FINAL BRIEF

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ROUTING STATEMENT

As this matter involves application of case law previously determined by the Iowa Court of Appeals and the Iowa Supreme Court, this case would be appropriate for the Iowa Court of Appeals.

STATEMENT OF THE CASE

The Appellant Deshaun Williams was charged with the crimes of Operating While Intoxicated which was enhanced to a Third or Subsequent offense, further enhanced as an Habitual Offender, and a second crime of Driving While Barred. These charges arose out of an incident which began with a motorist calling local law enforcement to report a car which was weaving. Law enforcement was dispatched to the area and engaged the Appellant. The officer approached the Appellant and observed circumstances which he felt were consistent with Operating While Intoxicated. The officer requested the Appellant perform standardized field sobriety tests which the Appellant refused to do. The officer requested a search of the Appellant's driving record and was informed the Appellant's driving status was barred. The officer arrested the Appellant and charged the Appellant with Operating While Intoxicated and Driving While Barred. The case proceeded to trial by jury on March 29th, 2016 the Appellant was convicted of the charges and enhancements referenced above. The Trial Court sentenced the Defendant to an indeterminate term not to exceed fifteen (15) years

in prison, for Operating While Intoxicated as enhanced and an indeterminate sentence not to exceed two (2) years for the Driving While Barred with the sentences to run concurrent to each other. The Appellant timely filed a notice of appeal. The Defendant contends the conviction for Driving While Barred must be reversed as the record does not show the Department of Transportation mailed notice of barring his driving privileges to the Appellant as required. The Appellant also contends there was insufficient evidence in the record to support his conviction for operating while intoxicated and driving while barred.

STATEMENT OF THE FACTS

On December 12th, 2015, at about 2:43 a.m. the Boone County Sheriff's Office, responded to a call from a motorist alleging a vehicle which she was following was "all over the road." The motorist provided a description of the vehicle. The motorist went on to indicate the car had pulled over and the motorist stayed on the scene until law enforcement officers arrived. (Tr. p. 23 Ll 8 – p. 26 Ll. 19) Once law enforcement arrived, law enforcement officers engaged the Appellant and made observations which they claim are consistent with intoxication. (Tr. p. 38 Ll 24 – p. 39 Ll 2). A driver's license check came back the Appellant's driving status was barred. (Tr. p. 40 Ll 7). The Appellant was

requested to perform Standardized Field Sobriety Tests which he refused. (Tr. p. 41 Ll. 22). Law enforcement officers then placed the Appellant under arrest. (Tr. p. 42 Ll 8-9). Once at the Law Enforcement Center, the arresting deputy read the Appellant the Implied Consent Advisory and requested a sample for testing. The Appellant refused. (Tr. p. 70 Ll. 5) Following the State's Case in Chief, the Defendant made a motion for a directed verdict arguing there was insufficient evidence to convict the Appellant of Operating While Intoxicated and / or Driving While Barred. The Appellant further argued the he was entitled to a directed verdict of acquittal as the State had failed to offer any evidence the Department of Transportation had mailed the Notice of Barment to the Defendant. The State resisted and the Court overruled the motion for a directed verdict.

ARGUMENT

Did the Trial Court err in overruling the Appellant's Motion for a Directed Verdict as to the Operating While Intoxicated charge?

Error was preserved by making the motion for a directed verdict and arguing the same. (Tr. p. 92 Ll 8 – 11).

Standard of review on motion for judgment of acquittal requires us to examine the sufficiency of the evidence supporting the jury's guilty verdict. *State v. Bash,* 670 N.W.2d 135, 137 (Iowa 2003). " 'We review challenges to the sufficiency of the evidence supporting a guilty verdict for correction of errors at law' " and " '[w]e will uphold a verdict if substantial record evidence supports it.' *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006)

The Appellant contends the District Court erred in not granting his motion for a directed verdict of acquittal. The Court conceded in its verbal ruling, on the motion for a directed verdict of acquittal, that the element of operating was difficult to find and more difficult than it needed to be. (Tr. p. 91 Ll 14 – p. 92 Ll 15). While the standard in granting the motion at the conclusion of the case requires the Court to take every fact in the light most favorable to the State, the same standard does not apply to reviewing a conviction after a jury verdict. The sufficiency of the evidence goes more to the weight of the evidence and whether a reasonable jury could have found beyond a reasonable doubt the Appellant was guilty of Operating While Intoxicated. Here the State did not ask questions which would have narrowed the occupant of the vehicle to being only the Appellant and no one else. The undersigned has not found any support in the record, by the witnesses at trial, which limits the occupants of the vehicle to one person and that person being the Appellant.

Did the Trial Court err in overruling the Appellant's Motion for a Directed Verdict as to the Driving While Barred Charge?

Error was preserved by making the motion for a directed verdict and arguing the same. (Tr. p. 92 Ll 8 – 11).

Standard of review on motion for judgment of acquittal requires us to examine the sufficiency of the evidence supporting the jury's guilty verdict. *State v. Bash*, 670 N.W.2d 135, 137 (Iowa 2003). " 'We review challenges to the sufficiency of the evidence supporting a guilty verdict for correction of errors at law' " and " '[w]e will uphold a verdict if substantial record evidence supports it.' *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006).

The Appellant contends the definition of driving for purposes of Driving While Barred is the same as operating is for Operating While Intoxicated, as applied to the facts of this case. The argument as to the failure of the State to prove driving with regard to this count, is the same as found above for Operating While Intoxicated.

The Appellant contends there is another reason which the Court should have directed a verdict of acquittal as it pertains to this court. The State introduced no evidence the notice had been mailed to the Appellant. The Court specifically found

the State was not required to prove that notice was mailed to the Appellant, as an element of the offense. (Tr. p. 96 Ll 3 -10.)

The Appellant contends the Court erred in not granting the motion. It appears uncontroverted the State entered no evidence of mailing the notice to the Appellant. (Tr. p. 60 Ll 8 – p. 61 Ll 3).

In *State v. Green*, 722 N.W.2d 650, 652 (Iowa 2006), The Court remanded a case for dismissal as the State and DOT had failed to prove mailing of the required notice to the Defendant.

> This saving provision clearly contemplates that the notice had been "mailed by first class mail." In the present case, there was no proof that the notice was in fact mailed. We do not believe that the saving provision of Iowa Code section 321.16 may be read so broadly as to relieve the DOT of showing the mailing of a notice such as by affidavit or a certified mail receipt. *State v. Green*, 722 N.W.2d 650, 652 (Iowa 2006)

While this case referenced a driving under suspension charge, other cases have addressed the issue of Driving While Barred. Each case upholds the requirement of requiring the State to prove the DOT mailed the notice and has reversed and remanded conviction when failure to prove mailing has occurred. In an unpublished opinion (affirmed on other grounds) the Court held:

> The Iowa Supreme Court, however, has determined the State must show the IDOT gave notice to the person their driver's license was barred. *See State v. Green,* 722 N.W.2d 650, 652 (Iowa 2006). *Green* held there must be a "showing [of] the mailing of a notice such as by

> affidavit or a certified mail receipt."[2] *Id.* The supreme court specifically did not address the issue of whether there needed to be a showing the defendant received the notice, because in *Green* the State had failed to prove the notice had been mailed. *Id. State v. Anderson*, 821 N.W.2d 778 (Iowa Ct. App. 2012)

In another unpublished opinion, the Court reversed and remanded another conviction for driving while barred based on failure to prove the DOT had mailed the notice.

> A driver's knowledge of barment is not an element of an offense pursuant to sections 321.560 and 321.561. However, our supreme court has held that where the DOT is required to give notice, failure to prove the DOT mailed the notice precludes a driver's conviction for driving while suspended or barred. *State v. Green*, 722 N.W.2d 650, 652 (Iowa 2006). Proof that the DOT actually mailed a notice may be accomplished, for example, by an affidavit of mailing, a certified mail receipt, or testimony to support its claim of mailing. *Id. State v. Campbell*, No. 08-0106, 2008 WL 5412325, at *1 (Iowa Ct. App. Dec. 31, 2008)

In another unpublished opinion, the Court found the assertion by the DOT that it had sent a bulk mailing, without proving the Defendant's notice was in that bulk mailing was insufficient, as a matter of law, to prove the DOT had met its requirement to prove it had mailed notice, to the Defendant, as required Iowa Code Section 321.16.

> To satisfy *Green*, the DOT must furnish records that establish a connection between the notice at issue and the mailing certificate. Without verification that Johns's notice was in the bulk mailing, we cannot find sufficient evidence to support the offense of driving while barred. Thus, we reverse and remand for dismissal of the charge. *State v. Johns*, 871 N.W.2d 521 (Iowa Ct. App. 2015)

CONCLUSION

For the reasons stated above, the Appellant requests the Court to enter an order reversing and remanding his convictions for Operating While Intoxicated and Driving While Barred.

REQUEST FOR ORAL ARGUMENT

The Appellant respectfully requests to be heard in oral argument.

Respectfully Submitted,

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COSTS CERTIFICATE

As the brief was prepared electronically and filed electronically, the Appellant is aware of no costs which would properly be includible in a cost certificate.

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