IN THE COURT OF APPEALS OF IOWA

No. 2-621 / 10-1945
Filed August 8, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANDREW ALLEN ANDERSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Bremer County, Peter B. Newell, District Associate Judge.

Defendant appeals his conviction for driving while barred. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Meghan L. Gavin, Assistant Attorney General, Kasey E. Wadding, County Attorney, and Jill Dashner, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., Doyle, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

HUITINK, S.J.

I. Background Facts & Proceedings.

Andrew Anderson was charged with driving while barred, in violation of Iowa Code sections 321.560 and 321.561 (2009), an aggravated misdemeanor. The State alleged that on July 3, 2010, Anderson was driving in Bremer County while his license was barred for being a habitual offender. Anderson waived his right to a jury trial, and the case was tried to the court.

The trial was held on October 27, 2010. Matthew Tiedt, a police officer, testified Anderson was driving a vehicle on July 3, 2010. Officer Tiedt was informed by a dispatcher that Anderson was barred from driving. Upon arriving at the police station, Officer Tiedt obtained a hard copy of Anderson's driving record and determined he was barred from driving. The driving record from the National Crime Information Center (NCIC) used by Officer Tiedt gave an address for Anderson of 409 N. Cherry Street, Apt. 3, Shell Rock, Iowa.

Carmella Heuer from the Office of Driver's Services of the Iowa Department of Transportation (IDOT) testified that notice Anderson's driving privileges were barred from August 13, 2009, through August 12, 2011, was sent to him in a bulk mailing on July 9, 2009. The address on the notice was 409 N. Cherry Street, Apt. 3, Shell Rock, Iowa. Heuer testified this was the last known address the IDOT had for Anderson at the time the notice was sent. She testified the IDOT only changed a person's address in its records if the person formally requested the change. She stated the IDOT did not change a person's address based on information received from a clerk of court.

Anderson testified he never received notice his license was barred. He testified that when he was most recently convicted of driving while suspended on June 23, 2009, he provided the clerk of court with his current address, which was 310 Vinton Avenue, Apt. 4, Eldora, Iowa.[1] He stated the Grundy County Clerk of Court made a copy of his new address for him and he sent it to the IDOT. Anderson, however, did not have any proof this new address was sent to the IDOT.

The district court found Anderson guilty of driving while barred. The court found, "the State has established that notice was mailed to the last address known to the Department of Transportation. The Defendant has not provided any evidence that he officially changed his address with the Department of Transportation." Anderson asked to be immediately sentenced at the end of the trial. The court sentenced him to seven days in jail. Anderson now appeals his conviction for driving while barred.

II. Sufficiency of the Evidence.

There are only two elements to the offense of driving while barred: (1) that a person was operating a motor vehicle and (2) the person's driver's license was barred. *See* Iowa Code § 321.561; *State v. Wise*, 697 N.W.2d 489, 492 (Iowa Ct. App. 2005). There is no requirement that the State prove a defendant had knowledge the license was barred. *State v. Carmer*, 465 N.W.2d 303, 304 (Iowa Ct. App. 1990).

[1] This conviction for driving while suspended, in addition to previous convictions, gave rise to the barment of Anderson's license for being a habitual offender. *See* Iowa Code § 321.555.

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.*

The general notice requirements for the IDOT are found in section 321.16(1), which provides notices may be sent "by first class mail addressed to the person at the address shown in the records of the department." The statute further provides:

> The department shall adopt rules regarding the giving of notice by first class mail, the updating of addresses in department records, and the development of affidavits verifying the mailing of notices under this chapter and chapter 321J. A person's refusal to accept or a claim of failure to receive a notice of revocation, suspension, or bar mailed by first class mail to the person's last known address shall not be a defense to a charge of driving while suspended, revoked, denied, or barred.

Iowa Code § 321.16(1).

Anderson claims the State was required to show the IDOT sent the notice his license was barred to his last known address. He claims he informed the IDOT of his change of address to 310 Vinton Avenue, Apt. 4, Eldora, Iowa, in June 2009. Anderson asserts that because the IDOT did not send notice to his

[2] *Green* involved the mailing of a notice of suspension, which was required by section 321.210(1). *Green*, 722 N.W.2d at 652. The present case involves the mailing of notice of barment, as required by section 321.556(1). In both cases, notice is required to be given as provided for in section 321.16. Iowa Code § 321.556(1); *Green*, 722 N.W.2d at 652.

last known address, the notice was inadequate, and therefore his conviction for driving while barred should be overturned.

We first note the statute does not specifically require notice be sent to a person's last known address. The statue provides that notice may be sent "by first class mail addressed to the person at the address shown in the records of the department." Iowa Code § 321.16(1). Even if the IDOT was required to send notice to a person's last known address, we find no error in the district court's conclusion that Anderson had "not provided any evidence that he officially changed his address with the Department of Transportation." The only evidence that Anderson sent this notice was his own testimony. The district court may well have found his testimony on this subject was not credible. *See State v. Weaver*, 608 N.W.2d 797, 804 (Iowa 2000) ("Determinations of credibility are in most instances left for the trier of fact, who is in a better position to evaluate it.").

There is substantial evidence in the record to show the IDOT sent notice to Anderson at the address shown in the IDOT records, which was 409 N. Cherry Street, Apt. 3, Shell Rock, Iowa. *See State v. Tovar*, 580 N.W.2d 768, 770 (Iowa 1998) (noting that on an appeal from a bench trial, the court's factual findings are binding if they are supported by substantial evidence). The State presented sufficient evidence to show this notice was sent to Anderson in a bulk mailing. *See Green*, 722 N.W.2d at 652.

III. Signed Address Request.

On appeal, Anderson contends the district court found he had not effectively changed his address because he had not signed the piece of paper he sent the IDOT. He asserts there was no legal requirement that a change of

address request sent to the IDOT be signed, and by making this a requirement for an address change, the court made a legal error.

In its ruling, the district court noted that Heuer testified a person could change an address with the IDOT by personally appearing and requesting such a change or by sending a signed, written statement. The court also noted the change of address Anderson gave to the Grundy County Clerk of Court was not signed. The court, however, did not find that Anderson sent a change of address to the IDOT and the document he sent was ineffective because it was not signed. The court found, "[t]he Defendant has not provided any evidence that he officially changed his address with the Department of Transportation." We conclude that by finding there was no evidence Anderson had changed his address with the IDOT, the court was finding there was insufficient evidence to show Anderson had actually sent a change of address to the IDOT. We therefore conclude Anderson has not shown the court engaged in a legal error.

IV. Ineffective Assistance.

In the alternative, Anderson contends that if he did not preserve error on any issues, this was due to ineffective assistance of counsel. We have addressed all of the issues on the merits and do not address Anderson's claims of ineffective assistance of counsel.

We affirm Anderson's conviction for driving while barred.

AFFIRMED.