

IN THE COURT OF APPEALS OF IOWA

No. 8-919 / 08-0106
Filed December 31, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JONATHON DALE CAMPBELL,
Defendant-Appellant.

Appeal from the Iowa District Court for Mills County, Susan Christensen,
Judge.

A defendant appeals following his conviction for driving while barred.

REVERSED AND REMANDED.

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

Thomas J. Miller, Attorney General, Mary Tabor and Kyle Hanson,
Assistant Attorneys General, Marci Prier, County Attorney, and Eric Hansen,
Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

VOGEL, P.J.

Jonathon Campbell appeals following his conviction for driving while barred in violation of Iowa Code sections 321.560 and 321.561 (2007). He challenges the sufficiency of the evidence as to whether the Iowa Department of Transportation (DOT) mailed him notice that he was barred from driving.¹ We review sufficiency of the evidence challenges for correction of errors at law. Iowa R. App. P. 6.4.

Pursuant to Iowa Code section 321.561, it is unlawful for a habitual offender to operate a motor vehicle unless they have been granted a temporary restricted license. 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.*

In the present case, the State did not introduce any written proof of mailing. Thus, we must examine the testimony to determine if there was evidence the notice was actually mailed. A DOT worker, Eileen Alff, testified to the DOT's procedures for mailing notices. She stated that notices are mailed

¹ In the alternative, Campbell argues his counsel breached an essential duty by failing to specify the DOT's lack of proof of mailing. While we agree that the motion was more generally geared to the competency and relevancy of the DOT's witness, Campbell's counsel did include in his motion, "[a]nd she does not mail notices." This followed an objection made during trial in which counsel raised whether notice was "sent and received—well, sent." As such, we address the issue as being marginally preserved, rather than as an ineffective-assistance-of-counsel claim.

from the central office in Ankeny, Iowa. If the notice is returned as undeliverable, it is noted in that person's file. As to whether Campbell's notice was mailed, she stated that there was a copy in his file and thus, she had no reason to believe it had not been mailed. See *Green*, 722 N.W.2d at 652 ("We cannot presume, based solely on the DOT's furnishing of a copy of a notice found in its files that the notice was actually mailed."). However, she did not have any knowledge of whether Campbell's notice was in fact mailed.

The State asserts that the copy of the notice along with Alff's testimony is sufficient proof. We disagree. Alff explained the DOT's procedures for mailing notices, but there was no evidence that those procedures were followed in this case. There was no testimony or documentation to show a notice was actually mailed to Campbell. We conclude that the State failed to prove it mailed a notice of barment to Campbell. Thus, we reverse and remand for dismissal of the charge.

REVERSED AND REMANDED.