Mudge v. State (Fla. 18th Cir. Ct. 2013)

Reported at 20 Fla. L. Weekly Supp. 652a. Brevard County appellate division.

ANTHONY STEPHEN MUDGE, Appellant, v. STATE OF FLORIDA, Appellee. Circuit Court, 18th Judicial Circuit (Appellate) in and for Brevard County. Case No. 05-2012-AP-19432. February 7, 2013. Decision On appeal from Brevard County Court. Judge Michelle Baker. Counsel: Michael Sanders-Randall, Assistant Public Defender, for Appellant. Naomi Nichols, Assistant State Attorney, for Appellee. (PER CURIAM.) Following a bench trial, Appellant Anthony Mudge was convicted of violating the conditions of his driver's license restrictions. He appeals. The arresting officer testified at trial that he observed a pick-up truck driving somewhat randomly around a residential neighborhood during the daytime.

A tag check revealed that the owner had a restricted “employment only” license. The officer stopped the truck. The driver, Appellant, told the officer that he was driving around looking for scrap material to sell and that this was his only job. The State presented no further evidence. Appellant testified at trial that he had been out of work for some time and so had been collecting scrap. He said he earned about $16,000 the previous year doing this work and he described himself as “self-employed”. An “employment purposes” license restriction is defined at § 322 271(c)2, Florida Statutes (2011). 2. “A driving privilege restricted to employment purposes only” means a driving privilege that is limited to driving to and from work and any necessary on-the-job driving required by an employer or occupation.

To obtain a conviction for violation of this statue or any statute, the State bears the entire burden of proof. The standard for a criminal conviction is not which side is more believable, but whether, taking all the evidence into consideration, the State has proven every essential element of the crime beyond a reasonable doubt. Gore v. State, 719 So. 2d 1197, 1200 (Fla. 1998) Appellant was never obligated to prove that he was driving within his restriction. A reading of the trial transcript reveals that the burden of proof was improperly shifted to Appellant. After considering the testimony of the officer and of Appellant, the court discussed whether Appellant had shown he was legitimately engaged in employment.

It noted that there was no proof he filed taxes on his earnings and that he failed to provide any verified proof of income. It even admitted, “it's a little sketchy,” but I'm going to find that Mr. Mudge did violate the driver's license restriction”. A criminal conviction may not be based on evidence that is “a little sketchy ”. Because the State failed to carry its burden of proof, the judgment of the trial court is REVERSED. (MOXLEY, DAVIDSON and HARRIS, JJ., concur.)

Text of the court's opinion, reproduced for reference. Headnotes and publisher material omitted. Posted by The Brancato Law Firm, P.A., Tampa. Not legal advice.