Samuels v. State (Fla. 15th Cir. Ct. 2014)

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SHAWN SAMUELS, Appellant, v. STATE OF FLORIDA, Appellee. Circuit Court, 15th Judicial Circuit (Appellate) in and for Palm Beach County, Criminal Division. Case No. 502012AP900094XXXXMB, Division AC. August 6, 2014. Appeal from the County Court in and for Palm Beach County, Judge Marni Bryson. Counsel: Jonathan Dodson, Office of the Public Defender, West Palm Beach, for Petitioner. Ari Goldberg, Office of the State Attorney, West Palm Beach, for Respondent. (PER CURIAM.) Appellant Shawn Samuels appeals his conviction and sentence after he was convicted of Violation of a Driver's License Restriction pursuant to section 322.16(1)(c), Florida Statutes.

Samuels argues that the trial court erred by denying his motion for judgment of acquittal where the State provided insufficient evidence of which agency suspended Samuel's driver's license. We agree. We reverse and remand with directions to discharge the Defendant. On July 1, 2012, the Appellant/Defendant was driving to the movies at 10:20 p.m., when he was stopped by an officer for driving on a restricted driver's license. Samuels had a “business purpose only” restriction on his license as well as an open warrant in Broward County. The Defendant was charged with Violation of Driver's License Restriction under Florida Statute Section 322.16(1)(c), which carries criminal penalties.

During the trial, the State introduced the Defendant's driving record into evidence but failed to adduce evidence regarding which agency suspended the Defendant's license. The Defendant moved for a judgment of acquittal because the State failed to prove the elements of the crime of driving in violation of a driver's license restriction. Defense counsel argued that the elements of the crime were incorrect because the 2010 amendment to Florida Statute Section 322.16 created an ambiguity such that each subsection must be differentiated in order to impose criminal sanctions as opposed to traffic infractions. The trial court denied the Defendant's motion for judgment of acquittal and found that the State proved the elements of the crime of Violation of Driver's License Restriction.

Prior to 2010, violations of Florida Statute Section 322.16(1)(a), (1)(b), and (1)(c) were all second degree misdemeanors. In 2010, Florida Statute Section 322.16 was amended. Now, violations of subsection (c) are second degree misdemeanors, and violations of subsection (b) are non-criminal moving violations. § 322.16(5)-(6). Thus, the statute was amended to decriminalize violations of the driver's license restriction if the restriction was ordered by the Department of Motor Vehicles. However, violations that were ordered by the court, Parole Commission, or Department of Corrections still carried a criminal penalty. The Defendant argues that Florida Statute Section 322.16 is ambiguous because the language in subsections (1)(b) and (1)(c) are similar and overlap, requiring the Court to determine what restrictions give rise to the crime in subsection 1(c), as opposed to the restrictions which give rise to the moving offense in subsection (1)(b).

The pertinent sections of Florida Statute §322.16(1) read as follows: (b) The department may further impose other suitable restrictions on use of the license with respect to time and purpose of

use, including, but not limited to, a restriction providing for intrastate operation only, or may impose any other condition or restriction that the department considers necessary for driver improvement, safety, or control of drivers in this state. (c) The department may further, at any time, impose other restrictions on the use of the license with respect to time and purpose of use or may impose any other condition or restriction upon recommendation of any court, of the Parole Commission, or of the Department of Corrections with respect to any individual who is under the jurisdiction, supervision, or control of the entity that made the recommendation. § 322.16, Fla.

Stat. (2010). Upon review, the two subsections include substantially similar language, as both subsections allow the department to impose restrictions on a license for a driver with respect to "time and purpose of use." The only language that substantially distinguishes (1)(b) from (1)(c) is the portion that states, "upon recommendation of any court, the Parole Commission, or the Department of Corrections." Therefore, to prove that a defendant has violated subsection (1)(c), instead of (1)(b), the State must prove that the Department suspended the Defendant's license upon recommendation of a court, Parole Commission, or the Department of Corrections.

This creates a new element the State must prove in order to convict a defendant of the crime of Violation of a Driver's License Restriction. In this case, the State failed to adduce evidence that the Defendant's license was suspended upon recommendation of a court, Parole Commission, or the Department of Corrections. The driving record entered into evidence did not indicate that a court, Parole Commission, or the Department of Corrections recommended the suspension and instead merely, stated that the Department of Motor Vehicles recommended the suspension. This lack of evidence is fatal to the criminal conviction below. Since the State failed to prove which agency suspended the Defendant's driver's license, the State failed to prove all the elements of the criminal offence of committing a Violation of a Driver's License Restriction.

Therefore, the trial court incorrectly denied the motion for judgment of acquittal and this Court is compelled to reverse Appellant's criminal conviction. This lack of sufficient evidence bars retrial. Double jeopardy bars subsequent prosecution if the basis for the reversal is predicated upon insufficient evidence. Diaz de la Portilla v. State, 2014 WL 3397952 (Fla. 1st DCA 2014); See also United States v. Scott, 437 U.S. 82, 90-91 (1978) ("The successful appeal of a judgment of conviction, on any ground other than the insufficiency of the evidence to support the verdict . . . poses no bar to further prosecution on the same charge.").

For further guidance, this Court notes that a jury instruction requiring the State to prove which agency imposed the driver's license restriction should be added in order to comport with the amendment to the statute. Accordingly, the Defendant's conviction is REVERSED and REMANDED with directions to discharge the Defendant. (RAPP, KASTRENAKES and MILLER, JJ., concur.)

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