Proving Knowledge of a License Revocation

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Driving while license revoked (DWLR), a Class 1 misdemeanor, is one of the most frequently charged criminal offenses in North Carolina. And, while certain elements of the offense are spelled out in G.S. 20-28 and are relatively straightforward—namely that the person (1) operated a motor vehicle, (2) on a highway, (3) while the person's license was suspended or revoked—the last element, that the person had knowledge of the revocation, is not set forth in G.S. 20-28, nor is it always easily explained or understood.

The state supreme court first held in State v. Atwood, 290 N.C. 266 (1976), that the legislature intended that a defendant have actual or constructive knowledge that his or her license had been suspended or revoked before the defendant could be convicted of violating G.S. 20-28(a). The *Atwood* court based this determination on the requirement in G.S. 20-16(d) that DMV notify a person that his or her license is suspended or revoked and provide an opportunity for a hearing on the matter. Atwood's license was suspended based upon her conviction within 12 months of two offenses of speeding over 55 miles per hour. Then, as now, G.S. 20-16 afforded DMV discretion regarding whether to revoke a person's license for this reason and required that DMV provide an opportunity for a hearing in the event it elected to do so.

While some license revocations are discretionary, like that in *Atwood*, many are not. G.S. 20-17(a) sets forth offenses for which conviction requires that DMV revoke a person's driver's license. Among these are impaired driving and manslaughter resulting from the operation of a motor vehicle. Upon receiving notice of conviction of such an offense (which the clerk must provide pursuant to G.S. 20-24(b)), DMV must revoke the defendant's license. Unlike G.S. 20-16, G.S. 20-17 does not require that DMV provide a defendant notice or an opportunity to be heard, though DMV nevertheless provides notice of mandatory revocations. Had the holding in *Atwood* been based solely on the notice and hearing requirements applicable to discretionary revocations, the knowledge requirement for conviction under G.S. 20-28(a) might be limited only to circumstances in which the revocation was ordered pursuant to G.S. 20-16. But the *Atwood* court went on to state that the "lack of actual notice and resulting knowledge removes the criminal character from the defendant's conduct," thereby indicating that its interpretation of G.S. 20-28(a) also was founded upon the traditional criminal law requirement that a defendant act with guilty knowledge. Justice Exum embraced this implied *mens rea* argument in his concurrence in *Atwood*. Subsequent cases make clear that knowledge is an element of DWLR regardless of the reason for the underlying revocation. See, e.g., State v. Curtis, 73 N.C. App. 248 (1985).

Atwood further held that while the mailing of a notice by DMV in accordance with G.S. 20-48 raises a *prima facie* presumption that a defendant received the notice and thereby acquired knowledge of the suspension or revocation, a defendant may rebut this presumption.

G.S. 20-48 permits DMV to provide notice by United States mail to the address contained in its records. Notice provided by mail is complete four days after the mailing. Before it was amended in 2006, G.S. 20-48 provided that proof of the giving of notice could be made by a certificate from a DMV employee or another adult naming the person to whom notice was given and specifying the time, place, and manner in which notice was provided. Such a certificate, when combined with a copy of the notice, establishes a *prima facie* case of knowledge. See State v. Cruz, 173 N.C. App. 689 (2005). G.S. 20-48 now provides that proof of notice may be made by a notation in DMV records and dispenses with the requirement that the actual notice be produced. Because, however, DMV has not altered its record-

keeping practices to implement this change, the State still must establish constructive notice under G.S. 20-48 by producing the actual notice and a certificate describing the time, place, and manner of notice.

Proof that DMV complied with the notice provisions of G.S. 20-48 creates a presumption that a defendant received notice of the revocation and therefore had the requisite knowledge. When there is some evidence to rebut this presumption, the issue of guilty knowledge must be determined by the jury (in superior court) under appropriate instructions from the trial court. *See* State v. Chester, 30 N.C. App. 224 (1976). If there is no evidence to rebut the presumption (in other words, no evidence that the defendant was *not* notified), the trial court is not required to instruct the jury regarding guilty knowledge. *Id.*

Presumably, the state also can prove actual knowledge based upon a defendant's admission that he or she knew his or her license was revoked or a defendant's act of surrendering his or her license to the court upon conviction of an offense that requires revocation pursuant to G.S. 20-24(a).