Frank John CALLAS, Appellant,

v.

STATE of Texas, Appellee.

No. 30094.

Court of Criminal Appeals of Texas.

Jan. 7, 1959.

Prosecution for driving motor vehicle on public road after operator's license had been suspended. The County Court at Law, Potter County, Mary Lou Robinson, J., entered judgment of conviction and defendant appealed. The Court of Criminal Appeals, Woodley, J., held that where testimony showed that only two persons were in or around truck at time defendant was apprehended and patrolman testified that the other person was not the driver of truck, and largely upon this testimony jury found defendant guilty, and after jury retired police officer filed complaint charging other person with driving motor vehicle with violation of restrictions imposed on his operator's license and such other person was convicted upon his plea of guilty, defendant's motion for new trial setting forth conviction of such other person should have been granted in order that defendant might have the benefit of evidence regarding conviction of other party in another trial.

Reversed and remanded.

Criminal Law ⇐938(1)

In prosecution for driving after operator's license had been suspended where testimony showed that there were only two persons including defendant in or around truck at time patrolman reached it and patrolman testified that other person was not driving panel truck, and after jury retired patrolman filed complaint charging other party with driving motor vehicle and he was convicted upon his plea of guilty, defendant's motion for new trial should have been granted in order that he might, in another trial, have the benefit of evidence regarding conviction of other party. Vernon's Ann.Civ.St. art. 6687b, § 1(n).

McCarthy, Rose & Haynes, Amarillo, for appellant.

Lon Moser, County Atty., E. S. Carter, Jr., Asst. County Atty., Amarillo, State's Atty., Austin, for the State.

WOODLEY, Judge.

The complaint and information allege that appellant drove a motor vehicle upon a public road "after the Texas Operator's License of the said Frank John Callas had * * * been suspended" and further alleged that appellant had received an extended period of suspension "of said Texas Operator's License * * *" and that said suspension had not expired.

We have searched the record carefully and find no evidence that the license which had been suspended was a Texas Operator's License, as alleged in the information.

If appellant was driving a motor vehicle, it was a panel truck used as a commercial vehicle in appellant's business, the appropriate license for its operation being a Commercial Operator's License, and not an Operator's License. See Art. 6687b, Sec. 1(n), Vernon's Ann.Civ.St.

This Court has held that there is no such license known to Texas law as a "driver's license". See Hassell v. State, 149 Tex. Cr.R. 333, 194 S.W.2d 400; Brooks v. State, 158 Tex.Cr.R. 546, 258 S.W.2d 317.

There were but two persons in or around the panel truck. One was Walter Schaff, who was seated in the driver's seat when the patrolmen reached it. Patrolman Kirkwood testified that Schaff was not driving the panel truck, and largely upon his testimony the jury found that appellant was the driver.

After the jury retired, Officer Kirkwood filed complaint charging Schaff with driv-

ing a motor vehicle in violation of restrictions imposed in his operator's license. Information was presented by the County Attorney and Schaff was convicted upon his plea of guilty.

Appellant's motion for new trial setting forth the conviction of Schaff after the close of the evidence on appellant's trial should have been granted in order that upon another trial appellant might have the benefit of the evidence regarding the conviction of Schaff.

Appellant's motion for rehearing is granted; our former opinion herein affirming the judgment is withdrawn, and the judgment is now reversed and the cause remanded.

Claude Dee CAMPBELL, Appellant,

v.

STATE of Texas, Appellee.

No. 30392.

Court of Criminal Appeals of Texas.

Feb. 4, 1959.

Defendant was convicted in the County Court, Gregg County, Earl Sharp, J., for driving while intoxicated, and he appealed. The Court of Criminal Appeals, Morrison, P. J., held that it was not error to admit, for purpose of impeaching witness who had testified that defendant had not been drinking on day in question, evidence that such witness had offered a woman $10 to testify that defendant was not intoxicated.

Affirmed.

1. Criminal Law ⇐686(1)

On appeal from conviction for driving while intoxicated, no error was presented by bill complaining that trial court had allowed State to reopen its case and prove venue.

2. Witnesses ⇐374(1)

In prosecution for driving while intoxicated, wherein a witness testified that defendant had not been drinking on day in question, it was not error to admit, for purpose of impeaching such witness, evidence that such witness had offered a woman $10 to testify that defendant was not intoxicated.

No attorney for appellant of record on appeal.

Leon B. Douglas, State's Atty., Austin, for the State.

MORRISON, Presiding Judge.

The offense is driving while intoxicated; the punishment, 3 days in jail and a fine of $100.

Highway Patrolman Rutherford testified that on the day in question he observed an automobile make a U-turn in a no passing area narrowly avoid a collision, and that he turned around and gave chase; that the appellant, who was the driver, smelled of intoxicants, spoke in a slurred manner, walked unsteadily, and expressed the opinion that he was intoxicated.

Appellant, testifying in his own behalf, stated that he had nothing intoxicating to drink on the day of his arrest. He also called one Armstrong, who was with him on the day in question and who also testified that the appellant had not been drinking.

The State, in rebuttal, called Ruth Earls, who testified that she served the appellant three beers at noon of the day on which he was arrested. She testified further that the witness Armstrong had offered her $10 to testify that the appellant was not intoxicated.