The punishment was assessed at a fine of $75 and six months in jail.

At the outset, we are confronted with the contention that the misdemeanor offense of drunken driving may not be utilized and relied upon as the unlawful act constituting negligent homicide of the second degree.

By Art. 802c, Vernon's P.C., it is a felony for an intoxicated driver of an automobile to kill another person by accident or mistake. Being a felony, such crime could not be prosecuted as the misdemeanor offense of negligent homicide of the second degree. McCarthy v. State, Tex.Cr.App., 218 S.W.2d 190; Flowers v. State, 150 Tex. Cr.R. 467, 202 S.W.2d 462, 203 S.W.2d 539.

The judgment is reversed and the prosecution ordered dismissed.

Claude D. CAMPBELL, Appellant,

v.

The STATE of Texas, Appellee.

No. 27245.

Court of Criminal Appeals of Texas.

Jan. 12, 1955.

Defendant was convicted of unlawfully operating a motor vehicle upon a public highway while his operator's license was suspended. The County Court, Panola County, Clifford S. Roe, J., rendered judgment, and an appeal was taken. The Court of Criminal Appeals, Belcher, C., held that proof that defendant had driven an automobile while his driver's license was suspended did not sustain allegations of charge that he had driven while his operator's license was suspended.

Judgment reversed and cause remanded.

1. Automobiles ⇐353

Upon a charge of operating a motor vehicle upon a public highway while operator's license is suspended, the state has burden of showing that defendant had been issued an operator's license to drive a motor vehicle upon a public highway, that such license has been suspended, and that, while such license was suspended, defendant drove a motor vehicle upon a public highway.

2. Automobiles ⇐352

Proof that defendant had driven an automobile while his driver's license was suspended did not sustain allegations of charge that he had driven while his operator's license was suspended.

3. Automobiles ⇐136

There is in Texas no such license as a "driver's license."

No attorney on appeal for appellant.

Wesley Dice, State's Atty., Austin, for the State.

BELCHER, Commissioner.

Appellant was convicted, in the County Court of Panola County, for unlawfully operating a motor vehicle upon a public highway while his operator's license was suspended, and his punishment was assessed at a fine of $25.

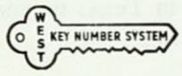
[1] Under such a charge, the state was under the burden of showing that there had been issued an operator's license to appellant to drive a motor vehicle upon a public highway; that such license had been suspended; and that, while such license was suspended, appellant drove a motor vehicle upon a public highway.

To meet this requirement, the state here relies upon testimony that appellant drove his pick-up truck upon a public highway in Panola County, on the date alleged, and that he drove said motor vehicle while his driver's license was suspended.

[2, 3] This proof is insufficient to sustain the allegations of the offense charged in the information because a driver's license is not an operator's license. We have held that there is no such license as a driver's license known to our law. Hassell v. State, 149 Tex.Cr.R. 333, 194 S.W.2d 400; Holloway v. State, 155 Tex.Cr.R. 484, 237 S.W. 2d 303; and Brooks v. State, Tex.Cr.App., 258 S.W.2d 317.

Proof of the driving of an automobile while the driver's license was suspended does not sustain the allegations of the information. The evidence being insufficient to support the conviction, the judgment is reversed and the cause remanded.

Opinion approved by the Court.



Ernest CARTER, Appellant,

v.

The STATE of Texas, Appellee.

No. 27437.

Court of Criminal Appeals of Texas.

Jan. 19, 1955.

Appeal from Criminal District Court No. 1, Dallas County; Harold B. Wright, Judge.

No attorney on appeal for appellant.

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

PER CURIAM.

The offense is felony theft; the punishment, 2 years.

Accompanying the record is an affidavit in proper form executed by the appellant requesting the dismissal of the appeal.

The request is granted, and the appeal is dismissed.

Denzil Vern BENJAMIN, Appellant,

v.

The STATE of Texas, Appellee.

No. 27199.

Court of Criminal Appeals of Texas.

Dec. 8, 1954.

Rehearing Denied Jan. 12, 1955.

Defendant was convicted of indecent fondling of a minor. The Criminal District Court, Harris County, Langston G. King, J., entered judgment of conviction and defendant appealed. The Court of Criminal Appeals, Graves, P. J., held that written statement of defendant, in which he confessed to acts charged, was sufficient corroboration of testimony of accomplice to warrant conviction. On petition for rehearing, the same court, per Davidson, C., adhered to its original determinations.

Affirmed.

1. Criminal Law ⇐511(7)

In prosecution for indecent fondling of a minor, written statement of defendant, in which he confessed to acts charged, was sufficient corroboration of testimony of accomplice to warrant conviction.

2. Criminal Law ⇐535(1)

Confession of accused person can be utilized in establishment of corpus delicti of offense.

3. Criminal Law ⇐195(2)

In prosecution for indecent fondling of a minor, fact that defendant had been convicted for like offense on another boy at same time and at same place, did not give rise to plea of double jeopardy, as each act was separate and distinct offense.

4. Criminal Law ⇐519(3)

Where defendant in criminal prosecution for indecent fondling of minor had signed written confession admitting acts charged and had himself corrected confession, placing his own initials above corrections and it did not appear that there had