NOT DESIGNATED FOR PUBLICATION

No. 119,812

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CITY OF HIAWATHA,
Appellee,

v.

THOMAS DOYLE,
Appellant.

MEMORANDUM OPINION

Appeal from Brown District Court; JAMES A. PATTON, judge. Opinion filed February 22, 2019. Affirmed.

Meghan K. Voracek, of O'Keefe Law Office, of Seneca, for appellant.

Martin W. Mishler, of Mishler Law Office, P.A., of Sabetha, for appellee.

Before POWELL, P.J., LEBEN, J., and KEVIN BERENS, District Judge, assigned.

PER CURIAM: This appeal arises from Thomas Doyle's conviction in the City of Hiawatha Municipal Court for driving on a suspended or revoked driver's license. Doyle challenges his conviction on the grounds that it violates his constitutional right to travel. Because we find that the State's driver's licensing scheme does not impermissibly infringe on Doyle's constitutional right to travel, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On April 9, 2016, Hiawatha Police Officer Kraig Pyle was conducting a stationary patrol in his parked patrol vehicle when he saw Doyle turn his truck onto the street in front of him. Pyle began a driver's license check on Doyle and proceeded to follow the truck into an alley. Pyle testified he recognized Doyle's truck and Doyle as the driver from previous encounters. He followed the truck because he had arrested Doyle in the past for driving on a suspended license and knew of one other officer who had done the same. By the time Pyle parked his vehicle, Doyle had exited the truck and yelled at Pyle from a neighboring yard. Pyle testified that Doyle admitted to driving the truck and Pyle wrote Doyle a ticket.

The municipal court convicted Doyle of driving while suspended and sentenced him on March 21, 2017. On April 21, 2017, Doyle filed a notice of appeal in Brown County District Court.

At the January 2018 trial before the district court, the City admitted Doyle's certified driving record into evidence which showed Doyle was a habitual offender. In fact, Doyle's most recent conviction for driving while suspended or revoked was his fourth. The district court found Doyle guilty of driving on a suspended or revoked license. At his sentencing in July 2018, Doyle argued pro se that he could not be convicted because he did not need a driver's license to operate an automobile. Nevertheless, the district court sentenced Doyle to 90 days in jail and a $1,500 fine but stayed imposition of the sentence pending Doyle's appeal.

Doyle timely appeals.

DID THE DISTRICT COURT ERR IN FINDING DOYLE GUILTY OF DRIVING ON A SUSPENDED LICENSE?

On appeal, Doyle argues the district court erred in finding him guilty of driving on a suspended driver's license because he has the right to operate an automobile—a vehicle used for personal purposes. According to Doyle, the operation of an automobile differs from a motor vehicle—which is used for commercial purposes—and he was not required to have a driver's license to operate his automobile. In response, the City points us to a previous decision of this court, *State v. Hershberger*, 27 Kan. App. 2d 485, 5 P.3d 1004, *rev. denied* 269 Kan. 937 (2000), which rejected such an argument.

A constitutional claim that rests on undisputed issues of fact and involves interpretation of a municipal ordinance is a question of law subject to our unlimited review. See *Steffes v. City of Lawrence*, 284 Kan. 380, 385, 160 P.3d 843 (2007) (interpretation of statutes and ordinances); *Huffman v. City of Maize*, 54 Kan. App. 2d 693, 697-98, 404 P.3d 345 (2017) (reviewing constitutionality of municipal ordinance).

In *Hershberger*, the defendant asserted an identical argument to the one Doyle makes now, namely that "the State had no authority to charge him with driving on a suspended license because he was using his car for personal and not commercial purposes." 27 Kan. App. 2d at 492. The panel distilled the defendant's argument as one asserting that because he had a constitutional right to travel, he could drive on public streets and highways without complying with state laws.

While recognizing that citizens have a federal right to interstate travel, the *Hershberger* panel rejected the defendant's claim that he was not required to have a driver's license on several grounds. First, it concluded the Kansas uniform act regulating traffic and establishing rules of the road under K.S.A. 8-1501 et seq. was not designed to deter interstate or intrastate travel nor penalize a person for exercising his or her right to

travel. Rather, the panel reasoned that "States may adopt '[a]ny appropriate means . . . to insure competence and care on the part of its licensees and to protect others using the highway' without violating due process. [Citations omitted.]" 27 Kan. App. 2d at 493. Second, relying on the Kansas Supreme Court's decision in *Popp v. Motor Vehicle Department*, 211 Kan. 763, 766, 508 P.2d 911 (1973), the panel rejected the defendant's assertion that a person has a constitutional right to drive, holding that driving is a privilege, not a right. Third, the panel held that state licensing laws do not violate a person's right to travel because—as recognized by other appellate courts across the country—there are other methods of travel available to persons. See 27 Kan. App. 2d at 493. We agree with the *Hershberger* panel's reasoning.

Doyle cites and attaches to his brief two online articles to support his claim that the licensing laws do not require persons to have a license when operating an automobile for personal use versus a motor vehicle for commercial use. According to the City of Hiawatha, Section 1 of Ordinance 2024 of the Hiawatha, Kansas Municipal Code does not define an automobile but defines a motor vehicle as "[e]very vehicle, other than a motorized bicycle or a motorized wheelchair, which is self-propelled." It is undisputed that Pyle observed Doyle driving and Doyle admitted to Pyle he was driving the truck before Pyle issued a ticket. In addition, Doyle's appellate counsel concedes she cannot find legal support for Doyle's argument.

Doyle's two online articles contain excerpts of federal and out-of-state caselaw largely describing a person's right to travel. The second attachment also claims that a distinction exists between the definitions of automobile and motor vehicle and cites to three cases. But a review of the two cases most similar to this appeal reveals Doyle's authority does not support his claim. While both cases state that an automobile and motor vehicle have different definitions, the courts did not review whether the definitions resulted in a state licensing requirement being inapplicable to a defendant. See *American Mut. Liability Ins. Co. v. Chaput*, 95 N.H. 200, 202-04, 60 A.2d 118 (1948) (finding

automobile generally connotes "'pleasure vehicle' used for the transportation of persons" and motor vehicle applied "to any form of self-propelled vehicle suitable for use on a street or roadway" but concluding tractor fits within meaning of automobile in insurance liability statute); *City of Dayton v. DeBrosse*, 62 Ohio App. 232, 236-40, 23 N.E.2d 647 (1939) (finding trolley bus not motor vehicle). Thus, we are unpersuaded by Doyle's arguments. The City's ordinance does not violate Doyle's constitutional right to travel, and we affirm his conviction and sentence.

Affirmed.