

[Cite as *State v. Johnson*, 2004-Ohio-667.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO :
Plaintiff-Appellee : C.A. Case No. 19810
vs. : T.C. Case No. 02-TRD-15499
HOWARD L. JOHNSON : (Criminal Appeal from Dayton
Municipal Court)
Defendant-Appellant :

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OPINION

Rendered on the 13th day of February, 2004.

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HOWARD L. JOHNSON, 1214 Lexington Avenue, Dayton, Ohio 45407
Defendant-Appellant

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BROGAN, J.

{¶1} Howard Johnson appeals from his conviction in the Dayton Municipal Court of operating a motor vehicle without a valid operator's license, failure to wear a seat belt, operating a motor vehicle without proof of financial responsibility, and operating a motor vehicle while under suspension of driving privileges.

{¶2} On the morning of August 7, 2002 Johnson was observed driving a car on Oxford Avenue in the City of Dayton by Dayton Officer Joseph Oldham who was in a marked cruiser. Oldham ran a computer check of the vehicle and learned that Howard Johnson Jr. listed as a driver of that vehicle was not a valid driver. After Johnson stopped his vehicle, Oldham observed that Johnson matched the description of the suspended driver. Oldham said his companion Officer Lock exited the cruiser and stopped Johnson for questioning. After verifying Johnson's identity and his suspended status, Johnson was cited for the violations previously mentioned.

{¶3} Johnson moved to suppress the evidence of his identity as the driver on the basis the police officers did not have articulable suspicion to stop him. The trial court overruled Johnson's motion and we think properly so. Clearly Officer Lock had grounds to stop Johnson based on the articulable suspicion that Johnson was operating the vehicle without a valid operator's permit. See, *State v. Stamper* (February 18, 1993) Montgomery App. No. 13469.

{¶4} It is, however, clear that Johnson cannot be convicted of operating a motor vehicle without a valid driver's license and driving while under a suspension of a license for the same act. The offenses are mutually exclusive. See, *State v. Williams* (1984), 17 Ohio App.3d 105; *Cincinnati vs. Tribble* (1983), 7 Ohio Misc. 2d 46. See our case of *State v. Lesley* (February 26, 1986), Montgomery App. No. 9402.

{¶5} Accordingly, Johnson's conviction for operating a motor vehicle without a driver's license is hereby reversed and ordered Vacated. In all other

respects his convictions are Affirmed.

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WOLFF, J., and YOUNG, J., concur.

Copies mailed to:

Andrew D. Sexton
Sean J. Vallone
Howard L. Johnson
Hon. James Cannon