

CASE BRIEF

304 S.C. 47, 403 S.E.2d 117 - Supreme Court of South Carolina.

Parties: The STATE, Respondent, v. Roger Wayne COLE, Appellant.

Facts: The facts of the case are as follows: Appellant was driving under a suspended driving license. Appellant claims that there were emergency circumstances. His pregnant wife was having pains and needed help, but he didn't have a telephone. Appellant went to the neighbor's house but nobody answered so he was driving to the nearest telephone, about a mile and a half away. On the way back, appellant was stopped by the police and he was arrested for a suspended license.

Legal issue: The question before the court is whether they recognize a necessity defense to driving under a suspended license.

Procedural history: Appellant was convicted of driving under a suspended license by the trial court. This Court has only recognized the defense of necessity in the prison escape context but has never recognize the doctrine of necessity as a defense to driving under a suspended license. The appellate court held that trial judge's refusal to charge the jury on the defense of necessity was error. So the court reversed the ruling of the first instance and remanded for a new trial.

Reasoning of the court: The court reasoned that a person should not be criminally accountable if he acts illegally to avoid a greater harm.