IN THE SUPREME COURT OF FLORIDA

ROBERT E. MADDOX,

Appellant/Petitioner,

v. **FSC Case No. SC03-2110**
DCA Case No. 2D02-4143

STATE OF FLORIDA,

Appellee/Respondent.

_____/

DISCRETIONARY REVIEW OF DECISION OF THE DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT

RESPONDENT'S ANSWER BRIEF ON THE MERITS

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

ROBERT J. KRAUSS
Chief-Assistant Attorney General
Bureau Chief, Tampa Criminal Appeals
Florida Bar No. 0238538

DONNA S. KOCH
Assistant Attorney General
Florida Bar No. 0865974
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607-7013
(813) 287-0600
Fax (813) 281-5500

COUNSEL FOR RESPONDENT

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PRELIMINARY STATEMENT

In this answer brief, the State discusses in Issue I the discretionary certified conflict issue. Petitioner buried this issue in his Point II, choosing to reargue the issues in his direct appeal in his Point I. The Second District Court of Appeal did not find these issues meritorious, affirming Petitioner's convictions and sentences without comment and writing only to address the question of the admissibility of the forged traffic citations at Petitioner's trial. At the conclusion of its opinion, the Second District disagreed with the majority in *Dixon v. State,* 812 So. 2d 595 (Fla. 1st DCA 2002), and certified conflict. It is upon that certification of conflict that the parties are presently before this Court.

In the answer brief, Petitioner, Robert E. Maddox, the defendant in the trial court and appellant on appeal, will be referred to as "Petitioner," "Maddox," or "defendant."

Respondent, the State of Florida, the prosecution at trial and appellee on appeal, will be referred to as the "State."

The symbol "R" will constitute a reference to the record on appeal and the symbol "T" will constitute a reference to the trial transcript.

STATEMENT OF THE CASE AND FACTS

On October 7, 2001, the police stopped Robert E. Maddox ("Petitioner") for an improper lane change. Upon being asked for his driver's license and proof of insurance, Petitioner advised the deputy that he did not have his license or proof or insurance with him. The deputy then asked Petitioner for his name and date of birth and Petitioner said his name was Nathaniel Lewis Maddox and his date of birth was November 1, 1980. Based on this information, the deputy issued two citations in the name of Nathaniel Lewis Maddox--one for improper lane change and the other for failure to produce proof of insurance. When Petitioner was hesitant to sign the citations, the deputy advised that failure to sign was a criminal offense. Petitioner then signed the citations. *Maddox v. State,* 862 So. 2d 783 (Fla. 2d DCA 2003).

During the traffic stop, a second deputy arrived on the scene. The owner of the car, who had been riding in the front passenger seat, gave permission for the deputies to search the car. During the search, the second deputy found an identification card that identified Petitioner as Robert Edwin Maddox. A license check for Robert Edwin Maddox showed that his driver's license was suspended. The deputy retained possession of the two traffic citations issued to Nathaniel

Lewis Maddox and issued a citation to Petitioner charging him with driving while license was suspended. *Maddox,* 862 So. 2d at 783. Petitioner initially refused to sign this citation but agreed to after the deputy issued him a subsequent citation for refusing to sign a citation. Later, while in custody, Petitioner volunteered that Nathaniel Lewis Maddox was his brother. Petitioner was subsequently charged with two counts of forgery and two counts of uttering a forged instrument (R. 37-38).

At Petitioner's motion to dismiss hearing, defense counsel conducted the direct examination of Deputy Hilson and Petitioner (R. 45-50, 61-67; 68-69, 75-76). Deputy Hilson testified there appeared to be an "N" at the beginning of the signature line of citation #3045 (R. 49). Hilson also testified that it could be construed as an "N" or an "M" at the beginning of the signature line on citation #3047 (R. 50). In denying the motion to dismiss, the trial court stated:

> Given all the circumstances of this, the fact that he provided the information, signed it not even as legibly as the one he signed his real name, I think it's a jury question, and I'm going to have -- I'm going to deny the motion to dismiss (R. 80).

Petitioner went to trial on the forgery and uttering counts, one count of giving false information to a police officer and

one count of driving while license suspended. Before trial, the State sought a ruling on the admissibility of the traffic citations (T. 3-22). The court ruled that the citations were admissible distinguishing *Dixon v. State,* 812 So. 2d 595 (Fla. 1st DCA 2002), finding the citations were not issued and thus not excluded by §316.650(9) (T. 21-22). Petitioner was found guilty as charged.

SUMMARY OF ARGUMENT

The Second District Court affirmed the trial court's ruling admitting the traffic citations into evidence against Petitioner. In reaching that conclusion, the Second District disagreed with the majority in the First District's opinion in *Dixon v. State,* 812 So. 2d 595 (Fla. 1st DCA 2002), and certified conflict with that opinion. The parties are before this Court on discretionary certified conflict.

First, these two cases are not particularly in conflict. Petitioner waived the issue of the admissibility of the traffic citations when he utilized the citations to his advantage during cross-examination of the arresting officer at trial. The cases are also factually distinguishable because the citations at issue in Petitioner's case were not issued but retained by the officer and placed into evidence at the police station. There

was no such showing in *Dixon.* This Court should thus dismiss jurisdiction.

Second, § 316.650, Fla. Stat., applies to uniform traffic citations and not the forged citations at issue in *Maddox* and *Dixon*. According to § 316.650(9), "such citations shall not be admissible evidence in any trial." The reference to "any trial" must be read in the context of Chapter 316. When viewed in context, particularly in light of the legislative intention which is expressly set forth at § 316.002, and the legislative history of § 316.650(9), the reference to "any trial" was intended to mean any trial on "any charge involving any violation of [former] chapter 317, [now Chapter 316] or upon a charge of a violation of any statute regulating the control of traffic."

Further, a forged uniform traffic citation is a defective citation not within the embrace of the reference to "such citations" in 316.650(9). Section 316.650(9) is intended to protect the person to whom the citation is issued during his prosecution for the traffic offense and the name of the person to whom the citation was issued is not the person being prosecuted in the criminal forgery case. Moreover, a literal interpretation of the phrase "any trial" would lead to demonstrably absurd manifestations and § 316.650(9) should not

applied as a procedural rule of evidence until such time as this Court adopts it as a rule of evidence.

Last, this Court is not required to revisit Petitioner's points from his direct appeal as the issue before this Court is discretionary certified conflict. Moreover, the Second District did not find them meritorious. Nevertheless, the trial court correctly denied Petitioner's motions to dismiss, motion for acquittal and motion for judgment notwithstanding the verdict.

ARGUMENT

ISSUE I

THE SECOND DISTRICT COURT OF APPEAL CORRECTLY HELD THAT § 316.650(9), FLA. STAT., DID NOT PRECLUDE ADMISSION OF PETITIONER'S TRAFFIC CITATIONS AT TRIAL.

In *Maddox v. State*, 862 So. 2d 783 (Fla. 2d DCA 2003), the Second District affirmed the trial court's ruling admitting the two traffic citations into evidence. In reaching that conclusion, the Second District certified conflict with the First District's decision in *Dixon v. State,* 812 So. 2d 595 (Fla. 1st DCA 2002). It is upon that certification that the parties are presently before this Court.

Jurisdiction

This Court has discretionary review over decisions of district courts of appeal that are certified to be in direct conflict with decisions of other district courts of appeal. *See* Fla. R. App. P. 9.030 (a)(2)(A)(vi). However, if the decisions are not in actual conflict, this Court may dismiss for lack of jurisdiction. *See e.g., Dept. of Revenue v. Johnston*, 442 So. 2d 950 (Fla. 1983)(Where cause was before Court because of apparent conflict between opinion of district court below and opinion of two other district courts, but cause was distinguishable on its facts from those cited in conflict, court would discharge

jurisdiction).

Notwithstanding the Second District's certification, the decisions in *Maddox* and *Dixon* are not particularly in conflict because Petitioner waived the issue of the admissibility of the traffic citations at trial and, the cases are distinguishable.

At the motion to dismiss hearing and again at trial, the officer testified that his observation of Petitioner's signature on one of the citations led him to conclude that Petitioner had signed the citation "N. Maddox." At the motion in limine hearing, Petitioner's counsel informed the trial court that if the officer testified at trial that the citations was signed "N. Maddox," she wanted the citations published to the jury to show that Petitioner merely signed his last name of "Maddox." When in fact the officer did testify at trial that the signature contained a first initial, Petitioner's trial counsel used the citations to his advantage to cross-examine the officer (T. 162). Accordingly, Petitioner waived the issue and should have been precluded from arguing the admissibility of the citations on appeal. *See Ellison v. State,* 349 So. 2d 731 (Fla. 3d DCA 1977)(A criminal defendant may, by his conduct, make otherwise constitutionally inadmissible evidence admissible for certain purposes).

Because the Second District discussed and found that this issue indeed may have been waived in *Maddox*, if this Court

accepts jurisdiction and rules on the merits, it could result in an erosion of the law of waiver and preservation in this State.

Second, the *Maddox* trial court specifically found that the two original citations were not "traffic citations" as contemplated by § 316.650(9), because they were no longer issued and had been voided. The deputy discovered Petitioner's true identity during the traffic stop and took back the citations he had issued in the name of Nathaniel Maddox for improper lane change and failure to produce proof of insurance and placed them in evidence back at the police station. He did not deposit the original and one copy of the citations with the clerk of the court having jurisdiction over the offenses as required by § 316.650 (3), Fla. Stat. (T. 131). This shows the citations were not issued as contemplated by the statute.

The Second District took a slightly different approach and concluded the two citations were admissible at trial because the officer had withdrawn the charges against Nathaniel Lewis Maddox upon learning Petitioner's true identity and thus the charges of improper lane change and failure to show proof of insurance were no longer pending against anyone and so the documents were not "citations" as contemplated by the statute, but rather documentary evidence of Petitioner's conduct. *See Maddox* 862 So. 2d at 784.

However, in *Dixon,* there was no showing the citations were retained by the officers as in *Maddox,* no showing that they were not deposited with the clerk, and thus no showing the citations were not in fact issued. *Dixon*, 812 So. 2d 595. These cases are factually distinguishable. Jurisdiction should be dismissed.

Merits

The Second District was correct in affirming the trial court's ruling admitting the forged traffic citations into evidence at trial.[1] Section 316.650, Fla. Stat., applies to uniform traffic citations. According to § 316.650(9), *"such citations* shall not be admissible evidence *in any trial*." (emphasis added).

When the reference to "any trial" is read in the context of Chapter 316, and in conjunction with the Legislature's announced intention expressly set forth at § 316.002, and the legislative history of § 316.650(9), the reference to "any trial" in § 316.650(9), Fla. Stat., was intended by the Legislature to mean any trial ". . . on any charge involving any violation of chapter 317 [now Chapter 316] or upon a charge of a violation of any statute regulating the control of traffic

[1] This issue is presently pending before this Court on certified question from the Second District Court of Appeal. *See State v. Veilleux,* SC03-2050.

. . ."[2]

[2] The predecessor for 316.650(9) was 317.112 (1969) which provided in subparagraphs 3 and 4 thereof:

"(3) All prosecutions on any charge involving any violation of chapter 317 or upon a charge of a violation of any statute regulating the control of traffic upon the highways of the state shall be by a uniform traffic substantially as herein after set forth:

[UNIFORM TRAFFIC TICKET AND COMPLAINT FORM]

(4) **Such citations** shall not be admissible as evidence in any trial." (emphasis added)

The *Dixon* decision

In *Dixon v. State,* 812 So. 2d 595 (Fla. 1st DCA 2002), the defendant gave the police officer who stopped him a false name and Dixon signed a traffic citation using the false name. *Id.* at 596. When his true identity was discovered, Dixon was charged with forgery as well as driving without a valid driver's license. Dixon filed a motion in *limine*, on the authority of section 316.650(9), Fla. Stat. (2000), to exclude the admission of the traffic citation. The trial court (the Honorable Kenneth Bell) denied his motion, finding that the legislature could not have intended the exclusion of a traffic citation when the execution of the citation is the basis of the offense at trial.

The First District Court reversed the trial court's ruling, "[b]ecause the language of section 316.650(9) unambiguously provides that traffic citations are not admissible in any trial." According to the *Dixon* court, § 316.650(9) contains "no exceptions to its clear and unambiguous prohibition against admitting a traffic citation as evidence in any trial." *Id.* at 596. Thus, the appellate court, in *Dixon*, applied the evidentiary exclusion expansively to **any** trial, civil or criminal or traffic, and, in particular, applied the exclusion to the actual document –- the uniform citation –- containing the forgery for which the defendant was being prosecuted. For the

following reasons, this Court should disapprove the First District's decision in *Dixon.*

Section 316.650(9) is "unambiguous" only when viewed in complete isolation from the context of Chapter 316 and the Legislature's stated intention and the legislative history and purpose of 316.650(9), Fla. Stat.

The *Dixon* court concluded that the traffic citation, signed by the defendant using a false name, must be excluded at his trial on the forgery charge "[b]ecause the language of section 316.650(9) unambiguously provides that traffic citations are not admissible in any trial." The State submits that Section 316.650(9) is "unambiguous," under *Dixon,* only if viewed in complete isolation from the context of Chapter 316 and overlooking the Legislature's stated intention and the legislative history and purpose of § 316.650(9), Fla. Stat.

It is axiomatic that statutory phrases, such as "any trial," are not to be read in isolation but, rather, they should be read within the context of the entire chapter so that all related provisions can be read together as a cohesive whole. *See Jones v ETS of New Orleans, Inc.,* 793 So. 2d 912, 914 - 915 (Fla. 2001); *State v. Bradford*, 787 So. 2d 811, 819 (Fla. 2001); *Young v. Progressive Southeastern Ins. Co*, 753 So. 2d 80, 84 (Fla. 2000). Just as a single word cannot be read in isolation, nor can a single provision in a statute; instead, the court should accord meaning and harmony to all of its parts. *See Hectman v. Nations Title Ins. of New York,* 840 So. 2d 993, 996

(Fla. 2003).

Chapter 316 of the Florida Statutes is known, and cited, as the "Florida Uniform Traffic Control Law." § 316.001, Fla. Stat. The legislative intent for Chapter 316 is set out explicitly as follows:

> 316.002 **Purpose**. – It is the legislative intent in the adoption of this chapter to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities. The Legislature recognizes that there are conditions which require municipalities to pass certain other traffic ordinances in regulation of municipal traffic that are not required to regulate the movement of traffic outside of such municipalities. Section 316.008 enumerates the area within which municipalities may control certain traffic movement or parking in their respective jurisdictions. This section shall be supplemental to the other laws or ordinances of this chapter and not in conflict therewith. It is unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter." (emphasis added)

In section 316.066(4)[3], the Legislature expressly and specifically included the language ". . . civil or criminal . . ." following the phrase ". . . any trial . . ." Thus, the answer to the question in this case depends on whether the

[3]"No such report or statement shall be used as evidence in any trial, civil or criminal." § 316.066(4) Fla. Stat. (2002).

phrase “any trial” as used in § 316.650(9), Fla. Stat. should be interpreted to mean any trial *(for traffic offenses under Chapter 316*) or should be

interpreted expansively, as in the *Dixon* case, to mean "any trial, *civil or criminal*."

The Legislature's use of different terms in different portions of the same statute or chapter is a strong indication that different meanings were intended by the Legislature. *See State v. Bradford*, 787 So. 2d 811, 819 (Fla. 2001). Here, the Legislature omitted the phrase " . . . civil or criminal" following section 316.650(9)'s reference to "any trial." This Court has explained that it would not imply the missing language [which in this case is "*civil or criminal*"] where it has been omitted by the Legislature. *See Bradford*, at 819.

Where the Legislature includes language in one section, *i.e.* " ... civil or criminal ...", as it did in § 316.066(4), and omits that same language in another section, *i.e.* no reference in § 316.650(9) to "civil or criminal," it is to be presumed that the omission of the language in § 316.650(9) was intentional, so that the phrase "any trial" in § 316.650(9) should not be interpreted to mean "any trial, in *civil or criminal*" cases but, instead, should be interpreted to mean "any trial" in traffic cases, consistent with its context in Chapter 316 and with the legislative history of § 316.650(9). In other words, if the Legislature had intended § 316.650(9) to mean any trial in "*civil or criminal*" cases, the Legislature would have

said so, as it did in § 316.066(4), Fla. Stat.

When the Legislature said, in § 316.066(4), that "No such report or statement shall be used as evidence in any trial, *civil or criminal* ...", the Legislature's purpose in adopting such language was (1) to encourage true and uninhibited reports of accidents, the ultimate goal being to make highways safer; and (2) to relieve persons from incriminating themselves –"... in any trial, civil or criminal..." – by their forced compliance with the dictates of § 316.066, Fla. Stat. requiring truthful reporting of the facts surrounding the accident. *See Vedner v. State*, 849 So. 2d 1207 (Fla. 5th DCA 2003). On the other hand, as described by Chief Judge Altenbernd in his dissenting opinion in *State v. Veilleux,* 859 So. 2d 1224 (Fla. 2d DCA 2003), the purpose of § 316.650(9),

> In the context of the initial enactment, section 316.650(9) was enacted to make certain that uniform traffic citations would not become admissible as business records and that traffic officers would still be required to attend traffic court. This assured that charged drivers could confront the State's primary witness against them in traffic court.

Veilleux, 859 So. 2d at 1230 (Altenbernd, J., dissenting).

Consideration must be accorded not only to the literal and usual meaning of a word or phrase, but also to the meaning and effect in context of the objective and purpose of statute's

enactment. *See NICA v. Div. of Administrative Hearings,* 686 So. 2d 1349, 1354 (Fla. 1997).

Chapter 316 was created by the Legislature in order to combine two previously existing traffic laws, Chapters 317 (State Traffic Laws), and Chapter 186 (Municipal Traffic Ordinances). The Legislature combined those Chapters into Chapter 316, to be known as the "Florida Uniform Traffic Control Law". *See* Chapter 71-135, Laws of Florida, 1971. The title for Chapter 71-135, Laws of Florida 1971 describes the act as "AN ACT relating to the regulation of traffic . . ." The title of the act defines the scope of the law, "regulation of traffic . . .", as intended by the Legislature. *See e.g., State v. Bradford*, 787 So. 2d 811, 819 (Fla. 2001); *State v. Webb,* 398 So. 2d 820, 825 (Fla. 1981); *Fajardo v. State*, 805 So. 2d 961, 963 (Fla. 2d DCA 2001).

Nowhere in its title or in the "Whereas" clauses following the title is there any indication whatsoever that any portion of Chapter 316 was intended by the Legislature to apply to prosecutions for forgery.[4] The provisions of Chapter 316 should

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[4]Other sections of Chapter 316 which should be read *in pari materia* include:

316.072 Provisions of Chapter relate to traffic laws.
316.635 Courts having jurisdiction over traffic violations.
316.640 Enforcement of traffic laws.

be construed to apply to "traffic regulation," unless the Legislature expressly and specifically states otherwise -- as it did in § 316.066(4), where the Legislature expressly and specifically expanded the phrase "any trial" to encompass "any trial, *civil or criminal*."

The overriding consideration in interpretation of a statute is that the statute shall be construed and applied so as to give effect to the evident intent of the legislature regardless of whether such construction varies from the statute's literal meaning. *See Deason v. Florida Dept. of Corrections,* 705 So. 2d 1374, 1375 (Fla. 1998); *Vildibill v. Johnson,* 492 So. 2d 1047, 1049 (Fla. 1986). If, from a view of the whole law, it is evident that legislative intent is different from the literal portion, then the statute should be construed in light of its purpose. *See Joshua v. City of Gainesville,* 768 So. 2d 432, 435-6 (Fla. 2000); *Tampa-Hillsborough County v. K.E. Morris Align*., 444 So. 2d 926 (Fla. 1983).

316.645 Arrests authorized for violations of Chapter.
316.650 "Traffic Citation"

Section 316.003 also includes the following definitions for Chapter 316:

316.003 (32) Police Officer – any official with authority to direct or regulate traffic or to make arrests for violation of traffic regulations.
316.003 (67) Court – the court having jurisdiction over traffic offenses.

In order to fairly construe the "any trial" language contained in § 316.650(9) Fla. Stat., the State submits that it is necessary to review the language in its context before the Legislature adopted the current version of § 316.650(9), Fla. Stat.[5] The predecessor to § 316.650(9) Fla. Stat., was § 317.112, Fla. Stat. (1969), which provided in subparagraphs 3 and 4 thereof:

> (3) All prosecution on any charge involving any violation of chapter 317 or upon a charge of a violation of any statute regulating the control of traffic upon the highways of the state shall be by a uniform traffic ticket substantially as herein after set forth:
>
> [UNIFORM TRAFFIC TICKET AND COMPLAINT]
>
> (4) Such citations shall not be admissible in evidence in any trial."[6] (emphasis added)

"Such citations ...", then, necessarily referred to the preceding subsection which related to "(3) All prosecution on any charge involving any violation of chapter 317 or upon a charge of a violation of any statute regulating the control of traffic upon the highways of the state shall be by a uniform traffic ticket ..." Thus, when viewed in context, the phrase "any trial" as referred to in the predecessor statute meant any

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[5]Chapter 71-321, Laws of Fla. (1971)

[6]Section 317.112, Fla. Stat. (1969)

trial "involving any violation of chapter 317 or upon a charge of a violation of any statute regulating the control of traffic. . . "[7]

The Legislature substantially reworded section 317.112, Fla. Stat. (1969) in 1971 when the Legislature enacted Chapter 71-321, Laws of Florida. This rewording resulted in an elimination of the language formerly found in § 317.112(3) Fla. Stat. (1969), referring to "(3) All prosecution on any charge involving any violation of chapter 317 or upon a charge of a violation of any statute regulating the control of traffic upon the highways of the state shall be by a uniform traffic ticket substantially as herein after set forth." (e.s.) As a result, the connection between "any trial" and any trial "involving any violation of chapter 317 or upon a charge of a violation of any statute regulating the control of traffic . . ." became obscured, but only when § 316.650(9) is viewed in isolation, rather than in the context of the legislative intent found at § 316.002 Fla. Stat., *i.e.* uniform traffic laws throughout the state, and the legislative history of § 316.650(9), Fla. Stat.

The State submits that a review of the overall statutory scheme of Chapter 316 and the legislative history of § 316.650(9) compels the conclusion that § 316.650(9) applies only

[7]Section 317.112(3) Fla. Stat. (1969)

to any trial for violations of the provisions contained within Chapter 316. A fundamental rule in statutory construction is that legislative intent is derived from construction of statute as whole, not just one isolated part. *See State v. Webb,* 398 So. 2d 820, 824 (Fla. 1981). "Legislative intent is the polestar by which a court must be guided in interpreting the provisions of a law. [I]n ascertaining the legislative intent, a court must consider the plain language of the statute, give effect to all statutory provisions, and construe related provisions in harmony with one another." *Hechtman v. Nations Title Ins. of New York,* 840 So. 2d 993, 996 (Fla. 2003).

In *Forsythe v. Longboat Key Beach Erosion Control District,* 604 So. 2d 452 (Fla. 1992), this Court, quoting approvingly from *Fleischman v. Department of Professional Regulation*, 441 So. 2d 1121, 1123 (Fla. 3d DCA 1983), reiterated that "[e]very statute must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts." *Forsythe,* 604 So. 2d at 455. Further, it "is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole," and "where possible courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another." *Id.*

If read only in isolation, § 316.650(9) just states "any trial." However, when read in the context of § 316.002, Fla. Stat. and in *pari materia* with the other previously referenced sections of Chapter 316, and with the legislative history and purpose of 316.650(9), it is evident that a strictly literal reading of the phrase "any trial" is in conflict with the legislative intent. "If from a view of the whole law, or from other laws *in pari materia* the evident intent is different from the literal import of the terms employed to express it in a particular part of the law, that intent should prevail for that in fact is the will of the legislature." *Joshua v City of Gainesville,* 768 So. 2d 432, 436 - 437 (Fla. 2000).

One rule of construction provides "[i]n statutory construction a literal interpretation need not be given the language used when to do so would lead to an unreasonable conclusion or defeat legislative intent or result in manifest incongruity . . . [o]nce the intent is determined the statute may then be read as a whole to properly construe its effect." *Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000), citations omitted. The words "any trial" in §316.650(9), then, are unambiguous only when viewed, as apparently viewed in *Dixon*, in isolation and out of context.

The majority in *Dixon* seemed to recognize that the literal,

expansive interpretation the court was giving to the language "any trial" could not have been the true intention of the Legislature, when the court itself quoted from the language of *St. Petersburg Bank & Trust Co. v. Hamm*, 414 So. 2d 1071, 1073 (Fla. 1982):

> Moreover, '[e]ven where a court is convinced that the legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity.'

Dixon, at 596.

However, although the *Dixon* court recognized the principle of statutory construction that "courts may interpret a statute to give effect to discernable legislative intent even though such intent may contradict the strict language of the statute," the problem, according to *Dixon,* was that "[h]ere we have been presented with no basis to discern a legislative intent contrary to the unambiguous language of section 315.650(9)." *Dixon*, at 596.

It is not apparent from the *Dixon* opinion if the court considered the expressed legislative intent as set forth at §316.002, Fla. Stat. Nor does the *Dixon* opinion address the effect of reading §316.650(9) in the context of the whole of Chapter 316 and its many subsections relating to traffic.

Although *Dixon* recognized that courts are allowed to avoid even the unambiguous meaning of words in a statute, when to do otherwise would lead to "an unreasonable or ridiculous conclusion," the court nevertheless concluded that the inability of the State to introduce the forged document, "does not lead to either an unreasonable or ridiculous result." *Id.* at 596. The State respectfully submits that it would appear absurd that a person could forge a signature onto a traffic citation and thwart the State's prosecution of the forgery offense by precluding the State from introducing the forged signature itself.

No literal interpretation should be given to a statute that leads to unreasonable or ridiculous result. *See State v. Atkinson*, 831 So. 2d 172, 174 (Fla. 2002); *State v. Iacovone,* 660 So. 2d 1371, 1373 (Fla. 1995); *Weber v. Dobbins,* 616 So. 2d 956, 958 (Fla. 1993); *Baldwin v State*, 857 So. 2d 249, 251 (Fla. 2d DCA 2003). Moreover, as Judge Polston noted in dissent, a forged citation is defective. Therefore, a defective citation was not included within the phrase "such citations" contained in § 316.650(9), and,

consequently, was admissible at the trial for forgery. *Dixon,* 812 So. 2d at 597 (Polston, J., dissenting).

The Dissenting Opinion in *Veilleux*

In *State v. Veilleux,* 859 So. 2d 1224 (Fla. 2d DCA 2003), Chief Judge Altenbernd set forth a cogent dissent, concluding that the petition for certiorari should be granted because: (1) The majority opinion in *Dixon*, and the majority's opinion in *Veilleux*, placed an unnecessarily expansive interpretation of section 316.650(9);[8] (2) In the context of the initial enactment, section 316.650(9) was enacted to make certain that uniform traffic citations would not become admissible as business records and that traffic officers would still be required to attend traffic court. This assured that charged drivers could confront the State's primary witness against them in traffic Court. Nothing about this statute suggest that it was created because the legislature intended to bar prosecutions for forgery in this context;[9] (3) When a sentence or a phrase is examined without thought to its surrounding context,

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[8] Chief Judge Altenbernd reasoned that the majority had expansively interpreted the phrase "such citation" to mean the entire physical document including all signatures and other denotations whereas the driver's signature is not necessarily clearly and unambiguously a portion of "such citation."

[9]This reasoning is consistent with § 316.650(9) being applicable to any trial [on any traffic offense], as opposed to "any trial, *civil or criminal*."

it may appear at first glance more clear than it actually is; (4) A literal interpretation should not lead to an absurd result;[10] (5) Section 316.650(9), Fla. Stat. (2002) should not be followed as a procedural rule of evidence until such time as the Supreme Court of Florida adopts this rule of evidence.

In elaborating on this final ground, Chief Judge Altenbernd painstakingly reasoned and explained,

> . . .Section 316.650(9), at least in this context, is purely a procedural rule of evidence. Only the supreme court can create a procedural rule of evidence. See Art. V, § 2(a), Fla. Const.; *see also In re Florida Evidence Code,* 372 So. 2d 1369 (Fla. 1979), clarified by *In re Evidence Code,* 372 So. 2d 1369 (Fla.1979). Section 316.650(9) does not define a crime or establish any substantive law. Particularly as interpreted in *Dixon,* it creates a procedural rule requiring the trial court to exclude relevant evidence, critical to a criminal prosecution, which would otherwise be inadmissible under chapter 90, Florida Statutes (2002), under these circumstances. Although it is sometimes difficult to determine whether a statute creates a rule of procedure as compared to a substantive right, this statute applied in a forgery prosecution is purely a procedural rule of evidence. *Cf. In re Florida Rules of Criminal Procedure,* 272 So. 2d 65 (Fla.1972) (characterizing difficult area of substance and procedure as twilight zone); *State v. Garcia,* 229 So. 2d 236 (Fla.1969) (noting difficulty determining whether rule relates to matter that is substantive or procedural); *see also Glendening v. State,*

[10]Citing *Parker v. State,* 406 So. 2d 1089 (Fla. 1981).

> 536 So. 2d 212, 214-15 (Fla. 1988) (explaining difficulty in discerning substantive rights that change ultimate facts necessary to establish guilt, versus procedural rules that simply govern how certain evidence is admitted in ex post facto analysis); *State v. Dionne,* 814 So. 2d 1087 (Fla. 5th DCA 2002) (same). I can find no record that the supreme court has ever adopted this statute as a rule of procedure. *See, e.g., In re Florida Evidence Code,* 675 So. 2d 584 (Fla.1996); *In re Florida Evidence Code,* 638 So. 2d 920 (Fla.1993); *In re Amendment of Florida Evidence Code,* 497 So. 2d 239 (Fla.1986). As a result, I do not believe that a trial court is bound to obey this statute as a procedural rule of evidence until such time as the supreme court adopts it. Because the supreme court retains the authority to regulate court procedure, neither this district court nor the First District has the authority to create a new procedural rule of evidence. *See* art. 5, §2(a), Fla. Const.

Veilleux, 859 So. 2d at 1230 (Altenbernd, J., dissenting)

In the event that this Court determines that it is also necessary to reach this final claim, the State respectfully urges this Court to adopt the well-reasoned dissenting opinion of Chief Judge Altenbernd in *Veilleux.*

The Maddox Decision

In *Maddox,* the Second District upheld the admission of a traffic citation as evidence of forgery and also certified conflict with *Dixon*. The Second District distinguished, as *dicta*, that portion of the majority opinion in *Veilleux* which

had adopted the reasoning in *Dixon.* *Maddox* also distinguished, as *dicta*, *State v. Martinez,* 28 Fla. L. Weekly D1916 (August 15, 2003) noting that both cases involved petitions for writs of certiorari. Therefore, the only issue was whether the trial courts had departed from the essential requirements of the law because they were obligated, at that time, to follow *Dixon*. According to *Maddox*, the discussion of the merits of § 316.650(9)in *Veilleux* and *Martinez* was merely *dicta*; and, in neither case, had these opinions elaborated on the reasoning in *Dixon.* Accordingly, *Maddox* concluded that neither *Veilleux* nor *Martinez* could be cited as authority on the scope of §316.650(9).[11]

In *Maddox*, the Second District Court concluded, *inter alia*, that the purpose of § 316.650(9) was ". . . to protect the person to whom the citation is issued . . ." And, since the defendant had misrepresented himself to be the person to whom the citation was issued, the person to whom the citation was issued was not on trial and, therefore, could not benefit from § 316.650(9). Finally, as the *Maddox* court explained, "the

[11] In *Martinez*, the court reasoned that, while the trial court did not depart from the essential requirements of the law in excluding the traffic citation under *Dixon*, the trial court went beyond the requirements of § 316.650(9) when it excluded all references to the citations.

documents were not 'citations' as contemplated by the statute, but rather documentary evidence of Maddox's criminal conduct. Thus, the statue does not apply."[12]

Based on the foregoing arguments and authorities, the State submits that the Second District's opinion in *Maddox* was correct and that this Court should affirm that decision and reverse the First District in *Dixon*. In conclusion,

1. When read in the context of Chapter 316, and in conjunction with the Legislature's intention expressly set forth and in view of the legislative history and purpose of 316.650(9), the reference to "any trial" should be restrictively interpreted to mean any trial for prosecutions on any charge involving any violation of Chapter 316 or upon a charge of a violation of any statute regulating the control of traffic;

2. A forged uniform traffic citation is a defective citation not within the embrace of the reference to "Such citations ..." in 316.650(9);

3. Section 316.650(9) is intended to protect the person to whom the citation is issued during his prosecution for the

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[12]See also, ***U.S. v. Sutherland,*** 656 F.2d 1181 (5th Cir. 1981) (traffic tickets used as evidence in RICO prosecution of ticket-fixing judge); ***State v. Eubanks***, 609 So. 2d 107 (Fla. 4th DCA 1992) (trial judge erroneously applied the best evidence rule to exclude the officer's testimony regarding the issuance of the traffic ticket as well as the submission into evidence of the actual ticket).

traffic offense; and the name of the person to whom the citation was issued is not the person being prosecuted in the criminal forgery case;

4. A literal interpretation of the phrase “... any trial ...” would lead to demonstrably absurd manifestations;

5. Section 316.650(9), Fla. Stat. should not applied as a procedural rule of evidence until such time as this Court adopts it as a rule of evidence.

ISSUE II

THE SECOND DISTRICT COURT OF APPEAL CORRECTLY AFFIRMED THE TRIAL COURT'S DENIAL OF PETITIONER'S MOTIONS TO DISMISS, MOTION FOR JUDGMENT OF ACQUITTAL AND MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

In this issue, Petitioner asks this Court to review, once again, the sufficiency of the evidence regarding his motions to dismiss, his motion for judgement of acquittal and motion for judgment notwithstanding the verdict. The Second District obviously found this issue lacked merit because it affirmed Petitioner's convictions and sentences without comment and only wrote to address the issue of the admissibility of the forged traffic citations at Petitioner's trial. *See Maddox v. State,* 862 So. 2d 783 (Fla. 2d DCA 2003).

Nonetheless, Petitioner spends the majority of the initial brief rearguing that the trial court erred in denying these motions. The issue before this Court, however, is discretionary conflict review between *Maddox v. State*, 862 So. 2d 783 (Fla. 2d DCA 2003) and *Dixon v. State,* 812 So. 2d 595 (Fla. 1st DCA 2002), on the admissibility of forged traffic citations at trial. This Court may decline to address any additional issues raised by Petitioner that are beyond the scope of the conflict issue. *See Asbell v. State,* 715 So. 2d 258 (Fla. 1998)(declining to address additional issues raised during

discretionary conflict review); *see also Knowles v. State*, 848 So. 2d 1055 (Fla. 2003).

The State agrees with the Second District's decision that Petitioner's Point I lacks merit. Petitioner raises several subissues but essentially argues the evidence was insufficient to sustain his forgery and uttering a forgery convictions. However, as the State argued below and both the trial and appellate courts agreed, the evidence was sufficient.

1. FORGERY AND UTTERING CHARGES

(a) Denial of sworn motion to dismiss

An appellate court reviews *de novo* a trial court's order regarding a motion to dismiss. *See State v. Pasko*, 815 So. 2d 680 (Fla. 2d DCA 2002), *rev. denied* 835 So. 2d 268 (Fla. 2002). In considering the motion, the State is entitled to the most favorable construction of the evidence, and all inferences should be resolved against the defendant. *Id.* at 681.

Petitioner argues the trial court committed reversible error in denying his sworn motion to dismiss. Petitioner initially postures that because the State did not file a traverse to his motion, the facts stated in Petitioner's motion were the only facts the trial court could consider and they did not establish a prima facie case of guilt as to the forgery and uttering

charges. Petitioner is incorrect because the facts set forth in the motion were sufficient to make out a prima facie case of forgery and uttering a forgery and the trial court was allowed under Rule 3.190(d), Fla. R. Crim P., to receive evidence on any issue of fact necessary to the decision on the motion. *See also State v. Paleveda,* 745 So. 2d 1026 (Fla. 2d DCA 1999); *State v. Figuereo*, 761 So. 2d 1252 (Fla. 3d DCA 2000).

Fla. R. Crim. P. 3.190, provides in pertinent part:

> **(c) Time for Moving to Dismiss**. Unless the court grants further time, the defendant shall move to dismiss the indictment or information either before or at arraignment. The court in its discretion may permit the defendant to plead and thereafter to file a motion to dismiss at a time to be set by the court. Except for objections based on fundamental grounds, every ground for a motion to dismiss that is not presented by a motion to dismiss within the time hereinabove provided shall be considered waived. However, the court may at any time entertain a motion to dismiss on any of the following grounds:
>
> (4) There are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant.
>
> The facts on which the motion is based should be alleged specifically and the motion sworn to.
>
> **(d) Traverse or Demurrer**. The state **may** traverse or demur to a motion to dismiss that alleges factual matters. Factual matters alleged in a motion to dismiss under subdivision (c)(4) of this rule shall be

considered admitted unless specifically denied by the state in the traverse. **The court may receive evidence on any issue of fact necessary to the decision on the motion.** A motion to dismiss under subdivision (c)(4) of this rule shall be denied if the state files a traverse that, with specificity, denies under oath the material fact or facts alleged in the motion to dismiss. The demurrer or traverse shall be filed a reasonable time before the

> hearing on the motion to dismiss. (emphasis added)

The information charged Petitioner under § 831.01, Fla. Stat., with two counts of forgery regarding the traffic citations made out in the name of Petitioner's brother, Nathaniel Lewis Maddox, and the amended information added two counts of uttering a forgery under § 831.02, Fla. Stat., regarding the same traffic citations (R. 25-27; 37-40).

Section 831.01, Fla. Stat., **Forgery**, provides:

> Whoever falsely makes, alters, forges or counterfeits a public record, or a certification, return or attestation of any clerk or register of a court, public register, notary public, town clerk or any public officer, in relation to a matter wherein such certificate, return or attestation may be received as a legal proof; or a charter, deed, will, testament, bond, or writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange or promissory note, or an order, acquittance, or discharge for money or other property, or an acceptance of a bill of exchange or promissory note for the payment of money, or any receipt for money, goods or other property, or any passage ticket, pass or other evidence of transportation issued by a common carrier, with intent to injury or defraud any person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 831.02, **Uttering Forged Instruments**, provides:

> Whoever utters and publishes as true a false, forged or altered record, deed, instrument or other writing mentioned in s.

> 831.01 knowing the same to be false, altered, forged or counterfeited, with intent to injury or defraud, any person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The facts set forth in Petitioner's motion to dismiss established a prima facie case of guilt against Petitioner. The material facts set forth in the motion were:

> On or about October 7, 2001, a vehicle in which the Defendant was located was stopped by PCSO Deputy Russell Hilson. The Defendant was subsequently ticketed for two offenses, but the tickets were written out to Nathaniel Lewis Maddox. The Defendant signed for both tickets upon being informed by Deputy Hilson that the Defendant would be arrested and/or jailed if the Defendant did not sign the tickets, so the Defendant signed his last name, Maddox, on the tickets, which is his correct last name. Based on this, two counts of Uttering a Forgery (traffic citation) were direct filed by the State Attorney's Office in an Amended Information on April 24, 2002).

(R. 86).

It is clear from the motion to dismiss that Petitioner admitted lying to the deputy that his name was Nathaniel Lewis Maddox and admitted signing "Maddox" to the citations made out to Nathaniel Lewis Maddox. These facts constituted a lie regarding the genuineness of the citations and thus made out a prima facie case for both forgery and uttering a forgery. *See State* v. *Escobedo*, 404 So. 2d 760 (Fla. 3d DCA 1981), *rev*

denied, 412 So. 2d 464 (Fla. 1982); *Rushing v. State,* 684 So. 2d 856 (Fla. 5th DCA 1996), *rev. denied,* 694 So. 2d 739 (Fla. 1997).

Under § 831.01, Fla. Stat., a conviction for forgery requires the making of a writing which falsely purports to be the writing of another, made with intent to injure or defraud any person and the instrument must have some legal efficacy. *See Rushing v. State,* 684 So. 2d 856 (Fla. 5th DCA 1996), *rev. denied,* 694 So. 2d 739 (Fla. 1997); *State v. Escobedo*, 404 So. 2d 760 (Fla. 3d DCA 1981), *rev. denied,* 412 So. 2d 464 (Fla. 1982). Petitioner admitted in his motion that he signed the two citations, legal documents, which were made out to his brother, Nathaniel Lewis Maddox, and the reasonable inference to be drawn from these facts is that Petitioner did it to defraud Deputy Hilson, or rather, the State of Florida.

Further, the trial court held a hearing on Petitioner's motion to dismiss and received evidence on the factual issues as provided for in Rule 3.190(d). Petitioner did not object to the taking of this evidence but instead conducted the direct examination of Deputy Hilson. The State conducted the cross-examination (R. 33-35; 41-85). Contrary to Petitioner's position, the trial court's ruling on his motion was not limited to the facts set forth in the motion to dismiss but could

include facts adduced at the evidentiary hearing so long as the evidence received was on any issue necessary to the decision on the motion. *See* Rule 3.190(d); *State v. Figuereo,* 761 So. 2d 1252 (Fla. 3d DCA 2000). Moreover, because Petitioner never objected to the taking of evidence and actually participated at the hearing which included his lengthy and

detailed argument, Petitioner should be precluded from arguing here that the trial court could not consider any additional evidence.

Nonetheless, the facts before the trial court both from Petitioner's motion to dismiss and fleshed out during the hearing on the motion to dismiss, established a prima face case of forgery and uttering a forgery as the trial court correctly concluded. Deputy Hilson testified Petitioner told him his name was Nathaniel Lewis Maddox (R. 53). Hilson also testified there appeared to be an "N" at the beginning of the signature line before "squiggle lines" that could be construed as "Maddox" in citation number 3045-AOD (R. 49, 61, 67). Hilson testified Petitioner signed this citation in his presence. Regarding citation 3047-AOD, Hilson testified he saw what also could be construed as an "N" or an "M" before the M-A and squiggles (R. 50). The trial court correctly denied Petitioner's motion to dismiss concluding the question of whether there was an "N" or other initial on the signature lines before "Maddox" was for the jury to decide (R. 67, 80). Thus, the evidence received was on the primary issue necessary to the decision on the motion. *See* Rule 3.190 (d).

On a motion to dismiss, the State is required only to show a prima facie case. *See State v. Pasko,* 815 So. 2d 680 (Fla. 2d

DCA 2002), *rev. denied,* 835 So. 2d 268 (Fla. 2002). The State is entitled to the most favorable construction of the evidence, and all inferences should be resolved against the defendant. *Id.* at 681. Petitioner admittedly gave a false name to the deputy, the deputy filled out two traffic citations with the false name and then Petitioner admittedly affirmed the falsity by signing the citations. Whether he signed using his own name, his own name with incorrect initials, or an X, is immaterial because he signed a lie. An element of the crime of forgery is the making of a writing which falsely purports to be the writing of another. *See State v. Escobedo,* 404 So. 2d 760 (Fla. 3d DCA 1981), *rev. denied*, 412 So. 2d 464 (Fla. 1982). Petitioner made a writing (the signature) which falsely purported to be the writing of his brother. Thus, the State made out a prima facie case of forgery and uttering a forgery.

In *State v. Escobedo,* 404 So. 2d 760 (Fla. 3d DCA 1981), *rev. denied,* 412 So. 2d 464 (Fla. 1982), the court noted there were three elements to the crime of forgery, the first being that there must be the making of a writing which falsely purports to be the writing of another. *Id.* at 764. The court said that "central to this element is that the writing in its entirety must falsely purport to be the genuine writing of a third person someone other than the accused whether that third

person is, in fact, a real person." *Id.* Further, "the writing must not merely contain a lie; the writing itself must be a lie, a lie relating to the genuineness of the entire instrument." *Id.*

Applying *Escobedo,* the writing here, Petitioner's signature, falsely purported to be the genuine writing of a third person, his brother Nathaniel. Moreover, the signature itself was a lie relating to the genuineness of the entire instrument. This was evident from Deputy Hilson's actions when he took back the citations and put them instead into evidence at the police station. The false signature destroyed the citations' genuineness. *Escobedo* supports the trial court's rulings here.

Petitioner's argument that the citations "may have contained a lie", the inaccurate name, but were not themselves a lie because the signature consisted solely of Petitioner's correct last name, takes too narrow of a view of the crime of forgery and simply plays a game of semantics. The writing itself was indeed a lie, one which related to the genuineness of the entire document because by signing "Maddox" or an initial and "Maddox" to either or both citations, Petitioner was attesting and affirming that he was Nathaniel Lewis Maddox, a lie under any view, and a lie relating to the genuineness of the entire document. *See Escobedo.* Thus, the trial court correctly denied

Petitioner's motion to dismiss the information relating to these counts and there was no reversible error here.

Petitioner fails to cite any case law to support his contention that a false signature on a traffic citation does not constitute a forgery. Instead, Petitioner argues the Fifth District got it wrong in ***Rushing v. State***, 684 So. 856 (Fla. 5th

DCA 1996), as did this Court when it denied review. *See Rushing v. State*, 694 So. 2d 739 (Fla. 1997).

In *Rushing,* the Fifth District concluded that under § 831.01, Fla. Stat., which defines forgery, that signing another's name to a traffic citation constitutes the offense of forgery. *Id.* at 857. In reaching that conclusion, the court reasoned,

> A defendant's signature on a traffic ticket seems to operate as an appearance bond, so signing another's name on a ticket would be forgery. See § 318.14, Fla. Stat. (1993)("Except as provided in s. 316.1001(2) [pertaining to toll roads], any person cited for an infraction under this section must sign and accept a citation indicating a promise to appear."); *Nikolic v. State,* 439 So. 2d 828 (Ala. Crim. App. 1983)(stating in *dicta* that a traffic ticket would support a conviction for forgery because the ticket serves as an appearance bond once the defendant has signed it). The ticket also operates to establish that a defendant has received notice of the hearing. Holding that signing a false name on a traffic ticket constitutes forgery also appears to be consistent with *Davis v. State,* 111 So. 2d 459 (Fla. 1st DCA 1959), where the First District held that signing a false name to an appearance bond issued by a bonding company constitutes the offense of forgery. [FN3] Moreover, prosecuting the offenses as the felony of forgery, even if the same conduct is treated as a misdemeanor by a separate statute, is permissible. *See State v. Cognwell*, 521 So. 2d 1081 (Fla. 1988).

See also See Washington v. State, 685 So. 2d 996 (Fla. 5th DCA

1997)(traffic citation is “public record” within meaning of statute prohibiting forgery of a public record); *Thornton v. State*, 636 N.W. 2d 140 (Ind.Ct.App. 1994)(defendant who signed name of another on fingerprint card made at time of arrest committed forgery, where signature was made with intent to defraud by concealing defendant’s true identity and criminal record); Charles E. Tocia, 4 Wharton’s Criminal Law, § 496 (1981)(one who signs another’s name commits forgery).

Despite Petitioner’s protests to the contrary, *Rushing* is controlling precedent and thus signing another’s name to a traffic citation constitutes the offense of forgery in this State. *Rushing* 684 So. 2d at 857.

(b) Denial of motions for judgment of acquittal and judgment notwithstanding the verdict

In moving for a judgment of acquittal, a defendant admits all facts and evidence adduced at trial, and all reasonable inferences that may be drawn from such evidence must be viewed in a light most favorable to the State. *Beasley v. State,* 774 So. 2d 649 (Fla. 2000) (quoting *Lynch v. State*, 293 So. 2d 44, 45 (Fla. 1974); *Wallace v. State*, 764 So. 2d 758 (Fla. 2d DCA 2000). As reiterated by the Florida Supreme Court in *Perry v. State*, 801 So. 2d 78, 84 (Fla. 2001), *citing Orme v. State,* 677 So. 2d 258, 261-62 (Fla. 1996), the trial court’s finding

denying a motion for judgment of acquittal will not be reversed on appeal if there is competent substantial evidence to support the jury's verdict. Ultimately, the question of whether sufficient evidence has been presented to support a particular criminal charge is a question of law subject to *de novo* standard of review. *See Pagan v. State,* 830 So. 2d 792 (Fla. 2002).

1. The signatures were forgeries

Petitioner argues the testimony of Deputy Hilson at trial did not render the evidence sufficient to send this case to the jury. As shown above, the reasons the trial court was correct in denying the motion to dismiss also demonstrate the trial court correctly denied Petitioner's motion for judgment of acquittal (and subsequently, his motion for judgment notwithstanding the verdict) and letting the jury decide whether the signatures constituted forgery and uttering.

Contrary to Petitioner's view, Deputy Hilson's testimony created a factual issue as to whether the citations' signature lines contained just "Maddox" or an initial and Maddox. Moreover, even though at trial Deputy Hilson backed-off his initial position that citation number 3047-AOD also contained some initial in addition to "Maddox," it is not determinative. As set forth above, Petitioner falsely represented he was his brother and attested to that falsehood by signing the citations

made out to his brother. This evidence was sufficient to send the case to the jury to determine whether there was the making of a writing which falsely purported to be the writing of another, whether the instrument on its face, were it genuine, was of some apparent legal efficacy, and whether the writing was made with the specific intent to injure or defraud any person. *See State v. Escobedo,* 404 So. 2d 760 (Fla. 3d DCA 1981), *rev. denied,* 412 So. 2d 464 (Fla. 1982).

As the State so succinctly said during closing argument:

> it is not so much the signature that is significant in this case as what is significant about the signature. And what is significant about the signature is that by signing these citations, and I don't care if he put an "X", if he drew a smiley face, if he wrote Maddox or wrote out Nathaniel Lewis Maddox, by putting some mark on that line, some signature, he is affirming that he is Nathaniel Lewis Maddox. He caused that document to be false by doing that, that's forgery. When he gave it back to Deputy Sheriff Hilson, that's uttering a forgery. He passed it off as true (T. 239-240).

Petitioner's erroneous view of the writing element of forgery is best illustrated with the following hypotheticals. Suppose Petitioner had taken Nathaniel's paycheck and endorsed the back with "Maddox" or "N. Maddox" and presented it for cashing. That forgery is no different from what happened here. Under Petitioner's theory of forgery, because he signed his own

name, the signature on the back of the check would not be a forgery, even though the signature resulted in him fraudulently obtaining his brother's money. Or, suppose Petitioner's name was Nicholas instead of Robert and he signed the citations made out to Nathaniel with "N. Maddox" or even "Maddox" or endorsed Nathaniel's paycheck check with "N. Maddox". Again, Petitioner could claim those were not forgeries because he was signing his own name, "N. Maddox," but clearly those signatures would constitute forgeries under the statute. Petitioner asks this Court to take a nonsensical view of the crime of forgery. Signing another's name to a traffic citation constitutes a forgery. *See Rushing v. State*, 684 So. 2d 856 (Fla. 5th DCA 1996), *rev. denied*, 694 So. 2d 739 (Fla. 1997). A defendant's signature on a traffic ticket seems to operate as an appearance bond, so signing another's name on a ticket would be forgery. *Id.* at 857. If Petitioner had not fessed up, Nathaniel, his brother, would have had to appear in court or pay the fines, or maybe even lose his driver's license.

2. The court correctly found the citations were not issued

In ruling on the admissibility of the citations and finding the citations were "not issued" citations, the trial court stated:

> I read *Escobedo* to say that the fact that a document is or is not a valid

> document is not determinative if it appears on its face to be a valid document with legal efficacy. Which certainly these citations did **at the time that the defendant signed them.**
>
> Using, according to the best case scenario, just his last name, I'm going to find that based on my reading of *Dixon,* that was an issued citation, it appears to me that's what it was. This case, according to the proffer made by Ms. Greer, (the State) they were not, in quotes, issued; and therefore, not excluded by the statutory section. So I'm going to admit them. And for both, for purposes and your, Ms. Reid, (defense counsel), if you need them. (T. 21)

Petitioner argues that an unissued citation cannot be the basis for a forgery and cites *State v. Escobedo*, 404 So. 2d 760 (Fla. 3d DCA 1981), *rev. denied,* 412 So. 2d 464 (Fla. 1982), as support for that legal conclusion. However, *Escobedo* does not hold that an unissued citation cannot be the basis for a forgery and *Escobedo* does not command a different ruling than the trial court made here. In fact, *Escobedo* supports the court's decision here.

In *Escobedo,* the court found that the forged and false birth certificate satisfied the requirement of being a public record and had on its face apparent legal efficacy, even though the name of a fictitious public office was affixed to it. The court found the certificates were not valueless documents on their

face but, if genuine, clearly had considerable legal significance. The court reversed the trial court's ruling dismissing the defendant's sworn motion to dismiss.

Here, the traffic citations had legal efficacy at the time Petitioner forged his signature to the bottom. *See Washington v. State,* 685 So. 2d 996 (Fla. 5th DCA 1997)(traffic citation is "public record" within meaning of statute prohibiting forgery of a public record). But after Deputy Hilson learned that Petitioner was not Nathaniel Lewis Maddox, he took back the citations, put them in his pocket, and took them to the police station as evidence. Still, at that point, even though they were no longer "issued," as the trial court found, they had on their face "apparent" legal efficacy. The citations were not valueless documents on their face but, if genuine, clearly had considerable legal significance, just like the birth certificates in *Escobedo*. Thus, *Escobedo* is satisfied and the trial court did not commit reversible error in ruling the citations were unissued and thus admissible. The trial court committed no reversible error in denying Petitioner's motions for judgment of acquittal and judgment notwithstanding the verdict.

As Petitioner points out in his brief, the Second District took a slightly different approach in concluding the citations

were admissible. The court concluded that based upon its reading of § 316.650(9), the purpose of the statute is to protect the person to whom the citation is issued and here the citation was issued to a person the deputy believed to be Nathaniel Maddox; the deputy charged Nathaniel Maddox with two civil infractions. When the deputy learned that Maddox was, in fact, not Nathaniel Maddox, but rather Robert Maddox, he withdrew the charges against Nathaniel Maddox and retained the documents as evidence of the criminal offenses of forgery. Maddox misrepresented himself to be Nathaniel and signed the ticket to carry out the misrepresentation. Maddox was not on trial for either of the civil infractions, nor was Nathaniel Maddox. The court found that in fact, after the withdrawal of the citation, the charges of improper lane change and failure to show proof of insurance were no longer pending against anyone and thus, the documents were not "citations" as contemplated by § 316.650(9), but rather documentary evidence of Maddox's criminal conduct. As such, the statute did not apply. *Id.* at 784.

Under either view, both courts were correct in ruling that the citations were admissible at trial. The evidence presented at trial was indeed sufficient to go to the jury and the trial court was correct in denying the motion for judgement of acquittal.

Even if this Court determines the tickets were not admissible, any error in their admission was harmless. *See State v. DiGuilio,* 491 So. 2d 1129 (Fla. 1986). Deputy Hilson testified that Petitioner said his name was Nathaniel Lewis Maddox and he witnessed Petitioner sign the citations made out to Nathaniel. Hilson also testified that one of the tickets looked like it had an "N" before Maddox on the signature line. Thus, the evidence contained on the face of the citations came in through Deputy Hilson's trial testimony.

Moreover, on cross-examination of Deputy Hover, defense counsel used the two citations to establish that Petitioner signed them "Maddox," and established through Deputy Hover, again using the citations, that the signatures did not include an initial or any other letters (T. 162). Petitioner should be precluded from complaining on appeal the citations were erroneously admitted when he utilized them to his advantage at trial. This smacks of invited error. Nonetheless, if there was any error here, it was harmless.

2. DRIVING WHILE LICENSE SUSPENDED CHARGE

Petitioner argues the State failed to present sufficient evidence that Petitioner knew his driver's license had been suspended. Petitioner argues the State's only evidence as to knowledge was the indication on Petitioner's driving record that a notice of suspension had been mailed to Petitioner at his home. However, Petitioner never claimed at trial that he did not receive notice that his driver's license had been suspended nor did he ever claim at trial that he did not know that his driver's license had been suspended. In fact, Petitioner does not even make that claim on appeal.

The evidence at trial showed that Petitioner did not present a driver's license to Deputy Hilson when he stopped Petitioner for the civil traffic infraction. Additionally, Deputy Hover testified he found Petitioner's Florida identification card in the car during his search, yet Petitioner did not present this card to Hilson. The car in fact belonged to someone else and Petitioner gave Hilson a false name instead of his own name. These facts, viewed in their totality, inferentially and circumstantially show Petitioner knew he did not have a valid driver's license. Petitioner was only stopped for an illegal lane change, a civil traffic infraction, so it makes no sense that Petitioner would lie to Deputy Hilson about his name, a

crime, unless he wanted to hide the fact that he was driving with a suspended driver's license.

Section 322.34(3), Fla. Stat., provides:

> In any proceeding for a violation of this section, a court may consider evidence, other than that specified in subsection (2), that the person knowingly violated this section.

The State presented sufficient other evidence that Petitioner knowingly violated this section and further, knowledge is generally a jury question.

Petitioner cites ***Brown v. State***, 764 So. 2d 741 (Fla. 4th DCA 2000), as support, but it is distinguishable. Brown argued the mailed notice of suspension was not proof he actually received the notice and could not sustain a finding of actual knowledge on his part. The evidence showed that the address where Brown was living when his driver's license was issued and where the notice of suspension was mailed was different from the address on the probable cause affidavit, thus the evidence before the court was not inconsistent with Brown's theory that he never received the notice and had no knowledge of the suspension.

Here, Petitioner does not even claim on appeal that he did not receive the notice of suspension or that he had no knowledge of the suspension. Moreover, there is no evidence that Petitioner had any change of address to support any theory that he did not receive the mailed notice, as was the case in ***Brown.***

The State presented competent, substantial evidence that Petitioner knew his driver's license was suspended and thus the trial court did not abuse its discretion in denying the motions for judgment of acquittal and judgment notwithstanding the

verdict, allowing the jury to decide the issue and letting its verdict stand.

CONCLUSION

Based on the foregoing facts, arguments, and citations of authority, the State respectfully requests that this Court affirm the Second District Court's decision which held that § 316.650(9), Fla. Stat., does not preclude admission of forged traffic citations at a forgery prosecution.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Brief on Jurisdiction has been furnished by U.S. mail to Anthony C. Musto, Esq., Special Assistant Public Defender, Office of the Public Defender, P.O. Box 9000 -- Drawer PD, Bartow, Florida 33831 this 26th day of March 2004.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,
CHARLES J. CRIST, JR.
ATTORNEY GENERAL

_____
ROBERT J. KRAUSS
Chief-Assistant Attorney General
Bureau Chief,Tampa Criminal Appeals
Florida Bar No. 0238538

_____
DONNA S. KOCH
Assistant Attorney General
Florida Bar No. 865975
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607-7013
(813) 287-0600
Fax (813) 281-5500

COUNSEL FOR RESPONDENT

IN THE SUPREME COURT OF FLORIDA

ROBERT E. MADDOX

Appellant/Petitioner,

v. FSC Case No. SC03-2110
DCA Case No. 2D02-4143

STATE OF FLORIDA,

Appellee/Respondent.

_____/

APPENDIX

Maddox v. State, 862 So. 2d 783 (Fla. 2d DCA 2003).