IN THE SUPREME COURT OF FLORIDA

Case No. SC03-2110

ROBERT E. MADDOX,
Petitioner,

v.

THE STATE OF FLORIDA,
Respondent.

ON DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

PETITIONER'S INITIAL BRIEF ON THE MERITS

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INTRODUCTION

Petitioner Robert E. Maddox was the defendant in the trial court and the appellant on appeal. Respondent State of Florida was the prosecution at trial and the appellee on appeal. The parties will be referred to in this brief as "Mr. Maddox" and "the state." The symbol "R" will constitute a reference to the record on appeal.

STATEMENT OF THE CASE AND FACTS

I THE CHARGES

On November 15, 2001, an information was filed in the Circuit Court for the Tenth Judicial Circuit of Florida charging that on or about October 7, 2001, Mr. Maddox committed two counts of forgery and one each of giving false information to law enforcement and driving while license suspended or revoked (R 25-27).

II THE SWORN MOTION TO DISMISS

Mr. Maddox filed a sworn motion to dismiss the two forgery counts (Supplemental Record). On the morning of the hearing on that motion (R 44), April 25, 2002, an amended information was filed, which added two counts of uttering a forgery to the above noted counts (R 37-40). At the hearing, defense counsel orally amended the motion to also include the two uttering counts (R 44-45). The defense also subsequently filed a sworn motion directed to those counts (R 86-87).

With regard to the facts, the sworn motion to dismiss (Supplemental Record) asserted that:

> 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 the tickets, but only signed his last name, Maddox, on the tickets, which is his correct last name. Based on this, the Defendant was charged with two counts of Forgery.

The state did not file a traverse or a demurrer to this motion.

A hearing was held on the motion. At that hearing, the state presented the testimony of Deputy Russell Hilson, who had effectuated a traffic stop of a vehicle driven by Mr. Maddox (R 52). In response to the deputy's question, Mr. Maddox identified himself as Nathaniel Louis Maddox (R 53, 70), which is the name of Mr. Maddox' brother (R 60, 69). The deputy gave Mr. Maddox traffic citations (Citations No. 3045-AOD and 3047-AOD) for improper lane change and no proof of insurance (R 54). Each of the citations was issued to Nathaniel Louis Maddox (R 48, Supplemental Record). After the deputy explained to Mr. Maddox that it would be a criminal offense for him not to sign the citations, Mr. Maddox signed each of them (R 55).

At the hearing, Mr. Maddox testified that he merely signed his last name, Maddox, on the citations (R 69) and that he did not write any other name or letter (R 69). As to citation number 3045-AOD, the deputy testified, "[I]t appears to me that may be an N at the very beginning where, I don't know, what you think he's signed, but at the very beginning it looks like an N to me (R 49)." As to citation number 3047-AOD, the deputy was asked, "Do you see an M, N, L, anything up there other than what appears to be M-A and squiggles (R50)?" He replied, "It could be construed as an N or an M (R 50)."

While the deputy was engaging in the ticketing process, another deputy was searching the vehicle and he found an I.D. card with Mr. Maddox's picture and correct name on it (R 57). After running a computer check and determining Mr. Maddox' correct identity, Deputy Hilson issued a third citation (R 57), this time in Mr. Maddox' correct name (R 57), for driving while license suspended (Supplemental Record). The deputy testified that Mr. Maddox refused to sign a third citation and that he was arrested for failing to do so (R 57).

After the prosecutor took the position that any signature by Mr. Maddox, whether his actual name or otherwise, would constitute forgery (R 78), the court denied the sworn motion to dismiss (R 80) and indicated that it would also deny a motion directed to the uttering charges (R 80-81).

III THE MOTION IN LIMINE

Prior to trial, the state sought a ruling on the admissibility of the traffic citations (T 3-22). The prosecutor proffered the testimony of Deputy Hilson with regard to the issue, stating (T 4-5):

> [H]e would also testify that once he discovered the defendant's true identity, those citations were basically voided. They were not issued because they were in essence defective or forged. So I think that would be necessary testimony to come out in order for me to attempt to argue that they should be admissible because they are not citations under the plain meaning of the law. So they are defective citations and, therefore admissible.

Subsequently, the following occurred (T 6-7):

> MS. REID [defense counsel]: … Just to clarify first, Judge. Are we saying –- from what I understand Ms. Greer is saying then that the two citations in the name of Nathaniel then were not traffic citations per the definition. Therefore, they would not be public records if they're not traffic citations; is that correct? Since they are for all intents and purposes null and void, that they were not issued, in quotes, according to the definition of the term issued. Am I understanding that correct:
>
> THE COURT: I understand her to say that they were not issued and voided.
>
> MS. GREER [prosecutor]: Yes.
>
> THE COURT: Then new –-
>
> MS. GREER: And that, therefore, they aren't citations as, you know, defined and –- or intended by the legislature.

The court found the citations to be admissible, stating (T 21):

> 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, 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 yours, Ms. Reid, if you need them. …

Defense counsel then asked, "Judge, did you say you made a finding that they are not, quote, issued citations (T 21)?" The court replied, "They are not issued citations (T 21)."

IV OTHER PRETRIAL MOTIONS

Mr. Maddox filed a motion to dismiss the two forgery and the two uttering counts (R 90-91), and a motion for reconsideration of the state's motion in limine (R 92-93), which were considered by the court (T 84-102) following jury selection, but before any testimony was taken and before the jury was sworn (T 108). Among the grounds raised for dismissal was the fact that because the court had held that the citations were not issued, they could not form the basis for the forgery or uttering charges (R 90). Also asserted was the argument that because the state failed to traverse the sworn motion, the court could not consider facts in addition to those asserted in the motion (R 91). The court denied the motion to dismiss on all grounds (T 97-98) and denied the motion for reconsideration (T 102).

V TRIAL

At trial, Deputy Hilson testified that he stopped Mr. Maddox for an improper lane change (T 120), that he asked Mr. Maddox for his license, registration, and proof of insurance (T 120), that Mr. Maddox replied that he did not have his license on him (T 120), that he asked Mr. Maddox his name (T 121), that Mr. Maddox gave him the name "Nathaniel Lewis Maddox" and the date of birth of 11-1-1980 (T 121), that he filled out two citations, one for the improper lane change and one for no proof of insurance (T 122), that Mr. Maddox was hesitant about signing the citations (T 122), that he told Mr. Maddox that failure to sign or accept a summons was a criminal offense (T 122), that he explained to Mr. Maddox various options regarding the disposition of the citations (R 123), and that Mr. Maddox did sign the citations (T 126).

The deputy testified that after he had filled out the two citations, another deputy located an ID card in Mr. Maddox's vehicle (T 125). He went on to state that he kept the citations in his possession after Mr. Maddox signed them (T 126), placing them inside his shirt (T 126). He further indicated that he arrested Mr. Maddox for refusing to sign a third citation, that he then transported Mr. Maddox to the jail, and that he then logged the citations into evidence (T 126).

The state then sought to introduce the citations into evidence (T 127). The defense objected (T 127) on the ground that the officer's testimony identifying the citations as the ones he had "issued (T 126)" was not consistent with the court's

prior ruling that they were admissible because they had not been issued. Upon further examination, the deputy indicated that he, rather than Mr. Maddox, kept the citations (T 128), that "instead of giving (T 128)" the citations to Mr. Maddox, the deputy placed them into evidence (T 129), that the deputy issued two new citations in Mr. Maddox' correct name (T 130-131), and that Mr. Maddox did not keep a copy of the citations issued under the name Nathaniel Lewis Maddox (T 131). The defense repeated its objection to the admissibility of the citations (T 132). The prosecutor responded, "It is clear from the testimony that he retracted those citations and he is just using the term issued (T 132). The court overruled the objection (T 132) and the citations were admitted and published to the jury (T 133).

On cross-examination, the following occurred (T 135-137):

Q. Look at citation number 3045-AOD, check digit 9. He signed that Maddox, did he not?

A. Can I see the other one as well.

Q. I'm just asking you about this one. Is that Maddox?

A. Well, the first portion, I looked at it and when I looked at it, it looked like it could be an "N".

Q. But there isn't, is there, it is Maddox?

A. That is up to you to determine if that's Maddox.

Q. It is up to the jury to determine, would you agree?

A. Yes, ma'am.

Q. Okay.

A. I would say it is an "N".

Q. Okay. This citation number, 3047-AOD, check digit X, that signature, is that also Maddox?

A. Yeah, I'm sure it could be construed as Maddox, yes, ma'am.

Q. And where on this did you see an "N"? This 3045 ticket, where do you see an "N"?

A. Right here appears that it could be an "N".

Q. I mean, where everybody sees a "M" you see an "N"?

A. I'm explaining to you what I believed it to be.

Q. Okay. It was on the basis of you seeing an N on 3045 that you charged or arrested Mr. Maddox or charged him at least with forgery, correct?

A. No, ma'am.

Q. Okay.

A. Once Mr. Maddox explained to me who he was and I observed his signature on the citation that was

issued under Robert Maddux and observed the way it was written out the way it was, that's what –- that's why I determined that those were forgery.

Q. It was based on the signature of these?

A. Yes, ma'am.

Q. Not on the other stuff contained in here, just the signature, right?

A. Correct.

Subsequently, the deputy testified that the citation Mr. Maddox refused to sign, forming the basis for his arrest, was the one bearing the number 3046 and that it had been voided for reasons the deputy did not recall (T 142).

On redirect, the deputy testified as follows (T 154-155):

Q. And on cross you testified that, basically, this is Mr. Maddox's signature at the bottom of these two citations?

A. Yes, ma'am.

Q. Are these evidence as to what caused you to charge him with forgery?

A. Yes, ma'am.

Q. What makes those two signatures significant?

A. Those two signatures are different from the ones that are issued to Robert Maddox.

Q. How are they different?

A. Because the –- I'm sorry. The signature on Nathaniel Lewis Maddox's citation is a last name, or a possible initial and last name, whereas on the other –-

MS. REID: Objection, Judge, as to any testimony about anything about the other citation what they contain because they are not at issue.

THE COURT: Sustained.

Q. (By Ms. Greer) Okay. He put his signature on those two citations, the first two citations?

A. Yes, ma'am.

Q. You found out his real name, then you charged him with forgery?

A. Correct.

Q. Why did you charge him with forgery?

A. Because of the signature at the bottom of the two citations issued to Nathaniel Lewis Maddox. The first one that I explained to Ms. Reid appears to me that it is a possible "N". I believe it to be an "N".

The state's next witness, Deputy Corey Hover, testified that he was searching Mr. Maddox' car while Deputy Hilson was dealing with the traffic citations, that he found a Florida ID card with

the name Robert Maddox on it and with Mr. Maddox' picture on it, and that he informed Deputy Hilson of his find (T 158). Deputy Hover also testified that the signatures on the two citations consisted solely of the name "Maddox (T 161-162)."

The state also introduced a certified copy of a driving record for an individual named Robert Edward Maddox (T 197-198). This record reflected that on October 7, 2001, the license with which it was concerned was in a suspended status (T 198), and that notice of the suspension was mailed (T 202) on February 13, 2001 (T 199), the date of suspension and of a notation of a fine to be paid (T 179, Supplemental Record).

After the state rested (T 203), a defense motion for judgment of acquittal was denied (T 207-218).

The jury found Mr. Maddox guilty as charged on all counts (T 268). A defense motion for judgment notwithstanding the verdict was denied (T 274). The court withheld adjudication on all counts, and imposed 30 month probationary terms with regard to the forgery and uttering counts, a 12 month probationary term with regard to the giving false information count, and a six month probationary term with regard to the driving while license suspended count (R 118), with all terms running concurrently (R 122).

VI APPEAL

Mr. Maddox appealed to the Second District Court of Appeal. That court affirmed the convictions and sentences, ***Maddox v. State***, 862 So. 2d 783 (Fla. 2d DCA 2003), but certified that its decision was in conflict with the decision in ***Dixon v. State***, 812 So. 2d 595 (Fla. 1st DCA 2002). The present proceeding follows.

SUMMARY OF ARGUMENT

The trial court erred in denying Mr. Maddox' sworn to dismiss, motion for judgment of acquittal, and motion for judgment notwithstanding the verdict.

For each of several reasons, the evidence was insufficient to prove forgery. In the first place, signing a false name on a citation does not constitute forgery. This court has never so concluded. The concept that such a signature is forgery arises from a district court decision that concluded that the signature operates as an appearance bond and the fact that a bond can be the subject of a forgery. Because no security is posted or pledged, however, this conclusion cannot be accepted. Rather, the citation constitutes the very opposite of a bond, a determination that no bond will be required and that the individual signing the citation will be released on his or her own recognizance.

Second, because Mr. Maddox signed the traffic citations with his correct last name and nothing more, there was no showing that the writing here purported to be the writing of another, a

showing that is necessary in order to sustain a forgery conviction.

Another reason to find that the convictions for forgery must be reversed arises from the trial court's finding that the traffic citations here were not issued and the district court's conclusion that they were withdrawn. If they were not issued, they were of no binding force or legal efficacy and it is clear that such documents cannot be the basis of forgery. Moreover, under such circumstances, or if the citations were withdrawn and were therefore, as the district court found, no longer citations, they could not have been bonds and they therefore would not fall within the forgery statute.

Acceptance of any of the foregoing reasons would mandate not just reversal of the forgery convictions, but also the convictions for uttering because the crime of uttering cannot occur unless there is a forgery.

The evidence as to driving while license suspended was insufficient as well. In order to prove the offense, the state was required to show that Mr. Maddox had notice that his license was suspended. It did not do so. Rather, it proved merely that notice had been mailed, not that it was received. The rebuttable presumption established by statute is inapplicable here because the suspension was for failure to pay a traffic fine and the statute specifically excludes such suspensions from the presumption.

Error also occurred when the trial court admitted the citations into evidence. Section 316.650(9), Florida Statutes, specifically provides that such citations are inadmissible and the decision in *Dixon* finds the provision applicable to prosecutions for forgery of traffic citations. That decision is based on the well settled principles that when a statute is plain and unambiguous, there is no occasion for judicial interpretation and that such a statute should be given its plain and obvious meaning. The fact that a court might disagree with the approach taken by the legislature does not allow it to alter the meaning of the statute, to concern itself with the wisdom or policy of the act, or to usurp the prerogatives of the legislature through judicial legislation. The statute at issue here provides quite plainly that citations shall not be admissible at any trial and the courts are therefore obligated to give effect to that directive.

STANDARD OF REVIEW

Point I deals with the sufficiency of the evidence. Since "[t]rial and appellate courts are equally capable of making the legal judgment whether the evidence is legally sufficient," *State v. Smyly*, 646 So. 2d 238, 241 (Fla. 4th DCA 1994), such issues are subject to de novo review. Point II deals with the

admissibility of evidence, a matter reviewed under the abuse of discretion standard. *Sexton v. State*, 697 So. 2d 833 (Fla. 1997).

ARGUMENT

I

THE TRIAL COURT ERRED IN DENYING MR. MADDOX' SWORN MOTION TO DISMISS, MOTION FOR JUDGMENT OF ACQUITTAL AND MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT WHEN:

(A) MR. MADDOX GAVE HIS BROTHER'S NAME TO THE DEPUTY WHO STOPPED HIM FOR AN IMPROPER LANE CHANGE, WAS ASKED TO SIGN TWO TRAFFIC CITATIONS ISSUED IN THE NAME OF HIS BROTHER, AND SIGNED THE CITATIONS WITH ONLY HIS LAST NAME "MADDOX;" AND

(B) THE STATE FAILED TO MEET ITS BURDEN OF PROVING THAT MR. MADDOX HAD KNOWLEDGE THAT HIS LICENSE WAS SUSPENDED, PRESENTING NOTHING MORE THAN EVIDENCE THAT NOTICE OF THE SUSPENSION HAD BEEN MAILED.[1]

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[1] Mr. Maddox recognizes that jurisdiction in this case arises from the district court's certification of conflict and actual conflict with regard to the issue of whether the trial court erred in admitting the traffic citations. That issue is discussed in Point II, *infra*. Despite this fact, the present issue, which challenges the sufficiency of the evidence to support Mr. Maddox' convictions, is an appropriate issue for this court's consideration. It is well settled that once this court has a case properly before it for review, it may "consider any error in the record." *Lawrence v. Florida East Coast Ry. Co.*, 346 So. 2d 1012, 1014, n. 2 (Fla. 1977). *See also Leisure Resorts, Inc. v. Frank J. Rooney, Inc.*, 654 So. 2d 911, 912 (Fla. 1995) ("Having accepted jurisdiction, we may review the district court's decision for any error."). *Cf. Angrand v. Key*, 657 So. 2d 1146, 1148, n. 3 (Fla. 1995), Wells, J., with two justices concurring and one justice concurring in part and dissenting in part (indicating that this court has discretion to consider issues ancillary to those certified to it).

Moreover, it is particularly appropriate in this case to review not just the issue relating to the admissibility of the citations, but also the question of whether the evidence was sufficient. This is because, for each of two reasons, the two issues are inextricably intertwined. First, Mr. Maddox argues in the sufficiency point that a false signature on a traffic citation does not constitute a forgery. Should this court agree with his position in this respect, the conflict will no longer be of any significance because forgery prosecutions under such circumstances will no longer occur. Second, it should be realized that the district court decision under review concluded that the citations here were admissible because they were withdrawn and therefore did not constitute citations at all, but just documentary evidence.

1 FORGERY AND UTTERING CHARGES

(a) DENIAL OF SWORN MOTION TO DISMISS

A sworn motion to dismiss should be granted when "[t]here are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant." Florida Rule of Criminal Procedure 3.190(c)(4).

In the present case, the state did not file a traverse to Mr. Maddox' motion. While such a failure "is not, in itself, fatal to a criminal charge," it is clear that under such circumstances, the trial court must "consider the facts alleged in the motion to dismiss to determine whether a prima facie case has been established." *State v. Paleveda*, 745 So. 2d 1026, 1027 (Fla. 2d DCA 1999). It is inappropriate for the court to take into account additional facts presented by the state at a hearing because "[i]f the facts in the motion that the State does not specifically deny support the defendant's position but additional facts exist that would create a material issue preventing the

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862 So. 2d at 784. In Point II, *infra*, Mr. Maddox takes the position that acceptance of the district court's conclusion would undermine his forgery convictions because the conclusion inherently would turn the citations here into documents that cannot be the basis for forgery. Thus, accepting the district court's rationale as to the issue upon which the conflict is based would demonstrate that Mr. Maddox would be entitled to relief on the sufficiency issue. Given these two factors, it is apparent that determination of each issue depends to a great extent on the manner in which the other issue is determined. Both therefore need to be resolved to fully clarify the law and provide guidance for the future.

granting of the motion, the State should set forth those additional facts in the traverse just as a non-movant would have to do in a counter-affidavit in order to defeat a motion for summary judgment." *State v. Kalogeropolous*, 758 So. 2d 110, 112 (Fla. 2000).

Thus, the trial court's ruling on Mr. Maddox' motion must be reviewed solely in light of the facts set forth in the motion. Those facts consist of Mr. Maddox receiving two traffic citations in the name "Nathaniel Lewis Maddox" and signing his correct last name, "Maddox," on them (Supplemental Record).

Mr. Maddox submits that these facts do not establish a prima facie case of guilt as to the forgery and uttering charges. This is true for each of two reasons.

(i) A FALSE SIGNATURE ON A CITATION IS NOT A FORGERY

Regardless of what name a person may sign on a citation, a false signature on such a document does not constitute a forgery. This court has never concluded that it does. The concept that such a signature is a forgery arises from the decision in ***Rushing v. State***, 684 So. 2d 856 (Fla. 5th DCA 1996), rev. den., 694 So. 2d 739 (Fla. 1997), which found that a citation falls within Florida's bribery statute, Section 831.01, Florida Statutes, because that provision extends to bonds and because of the court's assumption that "[a] defendant's signature on a traffic ticket seems to operate as an appearance bond." 684 So. 2d at

857. This assumption cannot withstand scrutiny. Inherent in a bond is the posting or pledging of some security to insure a person's appearance. As this court noted in *State v. Family Bank of Hallandale*, 623 So. 2d 474, 477 (Fla. 1993), "A bond is basically an acknowledgement of indebtedness and a promise to pay …." Signing a citation does not involve any indebtedness. Rather, it merely constitutes a promise to appear. In essence, it is the opposite of a bond, a determination that no bond will be required and that the individual signing will be released on his or her own recognizance. The difference between a bond and a recognizance was discussed in *State ex rel. Yost v. Scouszzio*, 126 W.Va. 135, 137-138, 27 S.E.2d 451, 452-453 (1943) (citations omitted):

> The recognizance originated at common law, and is, in form and substance different from a bond.
>
> "A recognizance is an obligation of record which a man enters into before some court of record or magistrate duly authorized, with condition to do some particular act; as to appear at the assises, to keep the peace, to pay a debt, or the like. It is in most respects like another bond: the difference being chiefly this: that the bond is the creation of a fresh debt or obligation de novo, recognizance is an acknowledgment of a former debt upon record; the form whereof is 'that A. B. doth acknowledge to owe to our lord the king, to the plaintiff, to C. D. or the like, the sum of ten pounds' with condition to be void on performance of the thing stipulated: * * *." II Blackstone, 341.

The signing of a citation constitutes an acknowledgment of the duty that arises from the fact that a person charged with a traffic offense must either pay the appropriate fine or appear in court at the appropriate time and place. It does not create any

new, or additional, obligation. A bond, on the other hand, does. It obligates the individual to pay a particular amount or to forfeit some security if he or she fails to meet the duty of paying the citation or appearing.

By the adoption of Florida Rule of Criminal Procedure 3.131, this court implicitly indicated its agreement that release on recognizance is different from a bond. That rule sets forth as two separate possible conditions of pretrial release the "personal recognizance of the defendant," Rule 3.131(1)(A), and the "execution of an unsecured appearance bond in an amount specified by the judge." Rule 3.131(1)(B).

Moreover, a bond is a contract, subject to the general law of contracts. *Crabtree v. Aetna Cas. And Sur. Co.,* 438 So. 2d 102, 105 (Fla. 1st DCA 1983). Thus, it requires consideration. *Donahue v. Davis*, 68 So. 2d 163, 170 (Fla. 1953); *Hogan v. Supreme Camp of American Woodsmen*, 146 Fla. 413, 416, 1 So. 2d 256, 258 (1941). A person signing a citation is not providing any consideration, while a person executing a bond is doing exactly that. The lack of consideration means that no contract exists and, because a bond is a contract, no bond exists.[2]

Also demonstrating the fact that a signature on a citation does not constitute a bond is the fact that if such a signature were meant to be a bond, it would mean that bond would exist in every case. Yet, Florida Rule of Traffic Court 6.510 provides that "[w]hen it is determined that a defendant did not commit an alleged traffic infraction and a bond has been posted, the money or bond shall be refunded." Clearly, this court, by referring to situations *when bond has been posted* in adopting this rule, did not contemplate that bond would be posted in all cases.

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[2] A contract analysis also raises additional questions. A valid contract requires a meeting of the minds, *Nichols v. Hartford Ins. Co.*, 834 So. 2d 217, 219 (Fla. 1st DCA 2002); *Goff v. Indian Lake Estates, Inc.*, 178 So. 2d 910, 912 (Fla. 2d DCA 1965); *Enid Corp. v. Mills*, 101 So. 2d 906, 909 (Fla. 3d DCA 1958), and may not be the product of duress. *Associated Housing Corp. v. Keller Bldg. Products*, 335 So. 2d 362 (Fla. 1st DCA 1976). Because a person receiving a citation *must* sign it or commit a criminal offense, Section 318.14(3), Florida Statutes, each of these concepts could demonstrate that a signature on a citation does not create a contract, and therefore cannot constitute a bond. Such a conclusion would seem to be particularly true under the facts presented here because Mr. Maddox was reluctant to sign the citations and did so only when the deputy indicated that he would face criminal charges if he did not do so (R 55, 122).

Considering the above factors, it cannot be said that a citation is a bond. Signing it with a false name therefore is not forgery.[3]

(ii) THE FACTS HERE DO NOT CONSTITUTE FORGERY

An element of the crime of forgery is the making of a writing that falsely purports to be the writing of another. *Rushing*, 684 So. 2d at 857; *State v. Escobedo*, 404 So. 2d 760, 764 (Fla. 2d DCA 1981). "In this connection, the writing must not merely contain a lie; the writing itself must be a lie, a lie relating to the genuineness of the entire document." *Id.* (citations omitted).

The citations here may have *contained a lie*, the inaccurate name, but they were not themselves a lie because the signature consisted solely of Mr. Maddox' correct last name. Only if Mr. Maddox had signed the name listed on the citations would the writings themselves been lies.

To conclude that signing one's actual name under the circumstances here constitutes forgery would be to say that Mr. Maddox would have committed forgery no matter how he signed the citations.[4] Such a conclusion would mean that once a person gives a false name to an officer, he or she would have to commit a crime, either forgery or refusal to sign the citations. No reasonable interpretation of the forgery statute could encompass such a trap. Rather, it must be concluded that signing one's own name to a traffic citation issued under another name does not constitute forgery.

(iii)REMEDY

Acceptance of Mr. Maddox' position with regard to either of the two immediately preceding subsections of this point would demonstrate that there was not a prima facie case of guilt on the forgery charges here. The trial court thus erred in denying Mr.

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[3] It is possible that such a false signature could constitute a violation of Section 837.06, Florida Statutes, which makes it unlawful to make "a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty." No such charge was brought in the present case, however, so the applicability of the provision to the present facts is not at issue.

[4] This was indeed the position taken by the prosecutor in the trial court (R 78).

Maddox' sworn motion to dismiss and the convictions on the two forgery and the two uttering counts[5] must be reversed.[6]

(b) DENIAL OF MOTION FOR JUDGMENT OF ACQUITTAL AND MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT

(i) THE SIGNATURES DID NOT CONSTITUTE FORGERIES

The evidence at trial essentially tracked the factual allegations contained in the sworn motion and the citations were introduced into evidence. Thus, the legal analysis set forth in section A of this point regarding the reasons why it was error to deny Mr. Maddox' sworn motion to dismiss also demonstrates that the trial court erred in denying Mr. Maddox' motion of judgment of acquittal. It is therefore hereby adopted and reasserted in support of the present section of this point.

The testimony of the deputy at the trial did not render the evidence sufficient. The deputy's trial testimony was less extensive than that which he gave at the hearing, because he only claimed to see an "N" on citation number 3045-AOD (T 136), making no such assertion as to citation number 3047-AOD and instead simply agreeing that the signature on that citation could be interpreted as "Maddox (T 136)." Thus, as to the alleged forgery arising from citation number 3045-AOD, the analysis set forth in n. 6, *supra*, with regard to the fact that the deputy's pretrial testimony, even if deemed a proper factor to consider, would not change the fact that the sworn motion to dismiss should have been granted, applies here and demonstrates that the motion for

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[5] Because uttering cannot be committed without a forgery, *State v. Charles*, 341 So. 2d 539, 540 (Fla. 2d DCA 1977); *Forbes v. State*, 210 So. 2d 246, 247 (Fla. 3d DCA 1968), the conclusion that the evidence of forgery was insufficient compels a similar conclusion with regard to the uttering charges.

[6] in this argument that review of this issue should be limited to the facts set forth in his sworn motion, he additionally submits that should this court deem the testimony presented by the state at the hearing on the motion a proper matter to take into account, the same conclusion would be compelled. The mere fact that the deputy testified that there appeared to him to be an "N" on citation number 3045-AOD (R 49) and that in his opinion the first letter of the signature on citation number 3047-AOD could be construed as an "N" or an "M" (R 50) changes nothing. His interpretation of the signature is irrelevant and in no way contradicts the assertion in the motion that the signature consists only of Mr. Maddox' last name. Moreover, the court had before it the actual citations (Supplemental Record), which demonstrate the accuracy of the facts as set forth in the motion.

judgment of acquittal should have been granted. It is therefore hereby adopted and reasserted. As to the alleged forgery arising from citation number 3047-AOD, there was no testimony to challenge the fact that the signature read only "Maddox,"[7] so no analysis beyond the basic discussion already incorporated is necessary.

Therefore, the trial court erred in denying Mr. Maddox' motion for judgment of acquittal and his motion for judgment notwithstanding the verdict and the convictions for forgery and uttering[8] must be reversed.[9]

(ii) THE NON-ISSUANCE OR WITHDRAWAL OF THE CITATIONS

There also exists a second reason why Mr. Maddox' motion for judgment of acquittal should have been granted. The trial court, in finding the citations at issue here to be admissible, ruled as a matter of law that the citations were not issued (T 21). The district court took a similar, but slightly different, approach in concluding that the citations were withdrawn and that once they were, they "were not 'citations' as contemplated by the statute, but rather were documentary evidence of Maddox's criminal conduct." 862 So. 2d at 784. Either conclusion mandates a finding that the evidence here was insufficient.

As to the trial court's finding, an unissued citation cannot be the basis for a forgery. As noted in *Escobedo*, 404 So. 2d at 764:

> Second, "the instrument forged must be upon its face, were it genuine, of some apparent legal efficacy …." *King v. State*, 43 Fla. 211, 31 So. 254 (1901)(syllabus by court, no. 2). On the other hand, "[a] mere brutum fulmen, on its face utterly valueless and of no binding force or efficacy for any purpose of harm, liability or injury to any one, cannot be the subject of forgery." *Id*. at 219, 31 So. at 254.

See also Rushing, 684 So. 2d at 857 (citing *Escobedo* for the principle that "the instrument must have some legal efficacy).

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[7] Hover testified that the signature on the citation, as well as the one on citation number 3045-AOD, read "Maddox (T 161-162).

[8] *See* n. 5, *supra*.

[9] Should this court determine that the deputy's testimony as to his opinion renders the evidence sufficient, Mr. Maddox would submit that because the deputy's trial testimony expressed only the opinion that an "N" existed on citation 3045-AOD, the forgery and uttering convictions arising from citation 3047-AOD would still have to be reversed.

An unissued citation has no binding force. It therefore cannot be the basis for a forgery.

Further, with regard to both the determinations of the trial court and that of the district court, it must be remembered that case law has concluded that a traffic citation comes within the scope of Florida's bribery statute, Section 831.01, Florida Statutes, because "[a] defendant's signature on a traffic ticket seems to operate as an appearance bond." *Rushing*, 684 So. 2d at 857. If the citations were never issued or if, as the district court found, the documents were not citations, they could not have been bonds and, therefore, they could not have been the subjects of forgery.

Thus, under either the rationale of the trial court or that of the district court, forgery did not occur. Accordingly, the trial court erred in denying Mr. Maddox' motion for judgment of acquittal and motion for judgment notwithstanding the verdict on the forgery and uttering[10] counts and the convictions for those offenses must be reversed.

[10] *See* n. 5, *supra*.

2 DRIVING WHILE LICENSE SUSPENDED CHARGE

Mr. Maddox was charged with driving with his license suspended, pursuant to Section 322.34, Florida Statutes (R 37). That provision requires the state to prove that a person whose license has been suspended drove a vehicle while "knowing of such … suspension."

The state's only evidence as to knowledge was the indication on the driving record that notice of the suspension had been mailed. Although a rebuttable presumption that the knowledge requirement is satisfied is established by Section 322.34(2), Florida Statutes, when such record contains such an indication, the presumption does not apply when the suspension is for "failure to pay a traffic fine or for a financial responsibility violation." *Id.*

Because the suspension here was for failure to pay a traffic fine (R 179; Supplemental Record), the statutory presumption is inapplicable. As noted in ***Brown v. State***, 764 So. 2d 741, 744 (Fla. 4th DCA 2000), "In the absence of the presumption, the plain language requires the State to prove that the defendant ***received*** notice of the suspension." When the state offers no evidence other than the indication on the record, therefore, it fails to meet its burden of proving knowledge and a conviction cannot stand. *Id.*

These principles make it clear that the trial court erred in denying Mr. Maddox' motion for judgment of acquittal and motion for judgment notwithstanding the verdict with regard to the driving while license suspended count and that the conviction on that count must be reversed.

II

THE TRIAL COURT ERRED IN ADMITTING THE CITATIONS INTO EVIDENCE BECAUSE THE CLEAR AND UNAMBIGUOUS WORDING OF SECTION 316.650(9), FLORIDA STATUTES, SPECIFICALLY PROHIBITED THEIR ADMISSION.

Section 316.650(9), Florida Statutes, provides that traffic citations "shall not be admissible evidence in any trial." In *Dixon*, the First District Court of Appeal specifically found that this provision precluded the acceptance into evidence of a traffic citation that was the subject of an alleged forgery. Noting that the statute contains "no exceptions" to its "clear and unambiguous" prohibition against introducing citations, 812 So. 2d at 596, the court went to express the reasoning underlying its conclusion, *id*.:

> It is a well-established principle of statutory interpretation that an unambiguous statute is not subject to judicial construction, no matter how wise it may seem to alter the plain language of the statute. *State v. Jett*, 626 So.2d 691, 693 (Fla.1993). "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.'" *St. Petersburg Bank & Trust Co. v. Hamm*, 414 So.2d 1071, 1073 (Fla.1982) (quoting *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So. 693 (1918)). Further, although courts may

> interpret a statute to give effect to discernable legislative intent even though such intent may contradict the strict language of the statute, *see Vildibill v. Johnson*, 492 So.2d 1047, 1049 (Fla.1986), here we have been presented with no basis to discern a legislative intent contrary to the unambiguous language of section 315.650(9) [sic].
>
> Courts should go behind the unambiguous meaning of the words in a statute only when "an unreasonable or ridiculous conclusion" would result from failure to do so. *Holly v. Auld*, 450 So.2d 217, 219 (Fla.1984). While following the unambiguous mandate of section 315.650(9) [sic] will make convictions for forgery of a traffic citation more difficult, the application of the plain and ordinary meaning of the words of the statute do not lead to either an unreasonable or ridiculous result. *See Corfan Banco Asuncion Paraguay v. Ocean Bank*, 715 So.2d 967, 970 (Fla. 3d DCA 1998). As the Florida Supreme Court stated in *Jett*:
>
> > We trust that if the legislature did not intend the result mandated by the statute's plain language, the legislature itself will amend the statute at the next opportunity.
>
> 626 So.2d at 693.

The rationale of *Dixon* applies with even greater strength today. Although almost two years have passed since April 4, 2002, the date *Dixon* was decided, the legislature has taken no steps to amend the statute in the manner discussed in the opinion. In fact, not only has the legislature not amended the provision, but, in 2003, it readopted it unchanged as part of its most recent adoption act, Ch. 03-25, Laws of Florida, codified as Section 11.2421, Florida Statutes (2003).

Moreover, the approach taken in *Dixon* is consistent not only with the principles set forth in the cases cited in the opinion,

but also with principles repeatedly expressed by this court in numerous cases.

This court has noted that legislative intent must be determined primarily from the language of a statute, *State v. VanBebber,* 848 So. 2d 1046, 1049 (Fla. 2003); *Rollins v. Pizzarelli,* 761 So. 2d 294, 297 (Fla. 2000); *Golf Channel v. Jenkins*, 752 So. 561, 564 (Fla. 2000); *Hayes v. State*, 750 So. 2d 1, 3 (Fla. 1999), and that courts should assume that the legislature knew the plain and ordinary meaning of words when it chose to include them in a statute. *Hankey v. Yarian*, 755 So. 2d 93, 96 (Fla. 2000). Thus, when a statute is plain and unambiguous, there is no occasion for judicial interpretation, *Golf Channel*, 752 So. 2d at 564; *McLaughlin v. State*, 721 So. 2d 1170, 1172 (Fla. 1998); *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 454 (Fla. 1992); *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984); *A. R. Douglass, Inc. v. McRainey*, 102 Fla. 1141, 1144, 137 So. 157, 159 (1931), or for resorting to the rules of statutory interpretation and construction. *VanBebber*, 848 So. 2d at 1049; *Holly*, 450 So. 2d at 219. Under such circumstances, the statute must be given its plain and obvious meaning, *McLaughlin*, 721 So. 2d at 1172; *Holly*, 450 So. 2d at 219; *A. R. Douglass*, 102 Fla. at 1144, 137 So. at 159, and the courts are without power to either restrict or expand that meaning. *Graham v. State*, 472 So. 2d 464, 465 (Fla.

1985). The role of the court is "to bring sense out of the words used, and not to bring a sense into them." *State ex rel. Bie v. Swope*, 159 Fla. 18, 24, 30 So. 2d 748, 751 (1949), quoting Black on Interpretation of Laws, 37.

On at least two occasions, the Second District Court of Appeal has followed *Dixon*, upholding the exclusion by trial courts of citations in prosecutions for forgery of the citations. In *State v. Veilleux*, 859 So. 2d 1224 (Fla. 2d DCA 2003),[11] the court quoted some of the portion of *Dixon* set forth above and went on to state, 859 So. 2d at 1227 (footnote omitted):

> Like the First District in *Dixon*, we have no basis in this case to discern a legislative intent to make an exception to section 316.650(9)'s unambiguous language. The First District concluded it is the legislature's exclusive province to amend section 316.650(9) if it did not intend the result the statute's plain language mandates. We agree. As Chief Justice Berger stated in *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 193, 98 S.Ct. 2279, 57 L.Ed.2d 117 (1978) (quoting *Hill v. TVA*, 549 F.2d 1064, 1069 (6th Cir. 1977):
>
> > Our individual appraisal of the wisdom or unwisdom of a particular course consciously selected by the Congress is to be put aside in the process of interpreting a statute. Once the meaning of an enactment is discerned and its constitutionality determined, the judicial process comes to an end. We do not sit as a committee of review, nor are we vested with the power of veto…. [I]n our constitutional system the commitment to the separation of powers is too fundamental for us to pre-empt congressional action by judicially decreeing what accords with "common sense and the public weal." Our Constitution vests such responsibilities in the political branches.

[11] *Veilleux* is presently under review by this court. Case No. SC03-2050.

> "If the statute is clear and unambiguous, 'that is the end of the matter, for the court … must give effect to the unambiguously expressed intent of Congress.'" *Bd. of Governors v. Dimension Fin. Corp.*, 474 U.S. 361, 368, 106 S.Ct. 681, 88 L.Ed.2d 691 (1986) (quoting *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)).
>
> We acknowledge that, as the *Dixon* court observed, applying the plain and ordinary meaning of the words of section 316.650(9) to these facts "will make convictions for forgery of a traffic citations more difficult …." 812 So.2d at 596. As the trial court here noted, however, the State can bring in evidence from the officer who issued the citation and witnessed the false signature, as well as other evidence of the defendant's identity and intent.

Likewise, in *State v. Martinez*, 28 Fla. L. Weekly D1916, D1917 (Fla. 2d DCA Aug. 15, 2003), the court said (citations omitted):

> Section 316.650, Florida Statutes (2002), is entitled "Traffic citations." Section 316.650(9) specifically provides that "[s]uch citations shall not be admissible evidence in any trial." In *Dixon*, the First District correctly noted that "[t]he statute contains no exceptions to this clear and unambiguous prohibition." *Dixon*, 812 So. 2d at 596. Thus, "in view of the absolute mandatory terms of section 316.650(9)," the court concluded that the trial court erred when it denied the defendant's motion in limine. *Id*.
>
> Considering the posture of this case on appeal, our review is limited to determining whether the trial court departed from the essential requirements of the law when it granted Martinez's motion in limine. The record is clear that the trial court followed the holding in *Dixon* when it excluded the admission of the traffic citation. There are no other cases directly on point, and this case is factually indistinguishable from *Dixon*. Thus, it cannot be said that the trial court's exclusion of the traffic citation was a departure from the essential requirements of the law.

Despite having followed *Dixon* in both *Veilleux* and *Martinez*, the Second District in the present case declined to take a similar approach.[12] Instead, the appellate court rejected Mr. Maddox's contention that the trial court erred in allowing the state to introduce the citation into evidence, finding as follows, 862 So. 2d at 784:

> Although section 316.650(9) does provide that traffic citations "shall not be admissible evidence in any trial," that statutory proscription does not apply to the facts of this case. Based on our reading of the statute, we conclude that the purpose of the statute is to protect the person to whom the citation is issued. 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. In fact, after the withdrawal of the citations, the charges of improper lane change and failure to show proof of insurance were no longer pending against anyone. Thus, the documents were not "citations" as contemplated by the statute, but rather were documentary evidence of Maddox's criminal conduct. Thus, the statute does not apply.

The Second District's approach flies in face of the principles discussed in *Dixon*. The legislature quite plainly indicated in the statute that citations shall not be admissible

[12] The district court distinguished *Veilleux* and *Martinez* on the basis that those cases were before the court on petitions for writs of certiorari, not, as here and in *Dixon*, on direct appeal. 862 So. 2d at 785, n. 1.

in *any* trial. It could have excluded such citations in any trial other than trials for forgery of the citation. But it did not. It could have excluded them from any trial except in cases in which they have been withdrawn. But it did not. It stated very clearly, with no ambiguity, that citations are not admissible in *any* trial. And it has made no changes to its language in the two years since *Dixon* made it apparent how the courts would apply the language to prosecutions for forgery of traffic tickets.

Additionally, the district court's conclusion is a bad one as a matter of policy. It allows the state to turn an otherwise inadmissible document into an admissible one by simply deciding to withdraw it. Such an approach would allow the state to bolster its case in factual situations in which it wants a citation admitted, such as the situation presented here, but to decline to withdraw a citation when such an approach would frustrate an effort by a defendant who might want a citation admitted for some purpose.

Moreover, to whatever extent that the district court's conclusion here was limited "to the facts of this case," 862 So. 2d at 784, it cannot withstand logical scrutiny. The fact that a person is not the person named on a citation is inherent in the crime of forgery of that citation. Thus, the facts here provide no basis for departure from *Dixon.*

Further, the district court's approach, if accepted, undermines the offense itself. As discussed in Point I, *supra*, if, as that court found, the documents were not citations, they could not form the basis for a forgery prosecution. Acceptance of the district court's rationale, therefore, would require that Mr. Maddox' convictions be reversed for insufficient evidence.[13]

It is apparent that the district court disagreed with the approach taken by the legislature. This court might also disagree. Such disagreement, however, does not allow the courts to alter the meaning of the statute.

"No principle is more firmly embedded in our constitutional system of separation of powers and checks and balances" than the courts "duty to give effect to legislative enactments despite any personal opinions as to their wisdom or efficacy." *Moore v. State*, 343 So. 2d 601, 603-604 (Fla. 1977). "Where a statute does not violate the federal or state Constitution, the legislative will is supreme, and its policy is not subject to judicial review. The courts have no veto power, and do not assume to regulate state policy …." *Sebring Airport Authority v.*

[13] Such a reversal would also demonstrate that both the decision of the district court in the present case and the decision in *Dixon* are predicated on the faulty assumption that the signing of a false name on a citation constitutes forgery. The correction of that misimpression would inherently eliminate the need to resolve the conflict between the cases because the issue they present will never arise under the proper interpretation of the forgery statute.

McIntyre, 783 So. 2d 238, 244-245 (Fla. 2001). Thus, a statutory interpretation "cannot be based on this Court's own view of the best policy." *Rollins*, 761 So. 2d at 299.

Courts "are not at liberty to decide what is wise, appropriate, or necessary in terms of legislation." *Stern v. Miller*, 348 So. 2d 303, 307 (Fla. 1977). Rather, "[t]he matter of wisdom or good policy of a legislative act is a matter for the legislature to determine," *Lee v. Bank of Georgia*, 159 Fla. 481, 488, 32 So. 2d 7, 10, 13 A.L.R.2d 1306, 1311 (1947); *see also State v. Reese,* 222 So. 2d 732, 736 (Fla. 1969) ("[T]he courts are not concerned with the wisdom or motives of the Legislature in enacting a law…."); *Rodriguez v. Jones*, 64 So. 2d 278, 280 (Fla. 1953) (quoting the above portion of *Lee*), and "this Court will not, and may not, substitute its judgment for that of the Legislature." *Hamilton v. State*, 366 So. 2d 8, 10 (Fla. 1979).

"The fact that the legislature may not have chosen the best possible means to eradicate the evils perceived is of no consequence to the courts provided that the means selected are not wholly unrelated to achievement of the legislative process." *Fraternal Order of Police v. Dept. of State*, 392 So. 2d 1296, 1302 (Fla. 1980). "A more rigorous inquiry would amount to a determination of the wisdom of the legislature, … and would usurp the legislative prerogative to establish policy." *Id.* (citation omitted). Such a usurpation would amount to judicial legislation

and would be clearly inappropriate. *See Aldrich v. Aldrich*, 163 So. 2d 276, 280 (Fla. 1964) ("judicial legislation" is something that the courts "are not authorized to do"; *Hancock v. Bd. of Public Instruction*, 158 So. 2d 519, 522 (Fla. 1963) ("Courts … should never assume the prerogative of judicially legislating.). Because of the foregoing principles, "[t]he courts have no authority to add to or take from what the Legislature had done," *Ervin v. Capital Weekly Post*, 97 So. 2d 464, 469 (Fla. 1957); s*ee also Metropolitan Dade County v. Bridges*, 402 So. 2d 411, 414 (Fla. 1980) (citation omitted) ([T]he court, in construing a statute, may not invade the province of the legislature and add words which change the plain meaning of the statute."), and "[t]he proper remedy for a harsh law will not be found through construction or interpretation; it rests only in amendment or repeal." *Baker v. State*, 636 So. 2d 1342, 1343 (Fla. 1994).

Thus, although there may well be difficulties in prosecuting a forgery case under the plain and unambiguous wording of the statute here, the courts cannot second-guess the legislature and presume that such difficulties should outweigh the benefits encompassed by the clear meaning of that language.[14] Rather, the

[14] Mr. Maddox notes that there do exist reasons why the plain and unambiguous wording of the statute at issue here could be viewed as a very appropriate interpretation. Excluding citations keeps the trier of fact in a forgery prosecution from being informed of the nature of the traffic charge against the defendant. It also precludes the trier of fact from becoming aware of any comments the officer might have placed on the ticket, comments which frequently relate to an individual's attitude and which therefore can be

weighing process is strictly the province of the legislature, not the courts. In engaging in that process, the legislature determined that citations should not be admissible in any trial.[15] Obviously, that determination applied to Mr. Maddox' trial and the citations were inadmissible. The trial court therefore erred in allowing the citations to be admitted into evidence, necessitating the reversal of the forgery and uttering convictions.

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inappropriately prejudicial. Moreover, it furthers the defendant's right to confrontation and to cross-examine witnesses because it precludes the possibility that the state might attempt to proceed at trial on the traffic violation by introducing the ticket as a business record, Section 90.803(6), Florida Statutes, rather than calling the officer as a witness.

[15] Mr. Maddox notes that the legislative intent can also be analyzed in a somewhat different manner. It should be remembered that the prohibition against introducing citations into evidence was first enacted by Ch. 71-321, Laws of Florida, a quarter century before *Rushing* became the first court to conclude that the signing of a false name on a citation constituted forgery. It is quite likely that the legislature never intended for such a signing to fall within the scope of the forgery statute and therefore never even engaged in a process of weighing the appropriate factors. The conclusion that the legislature never considered the matter because it never meant for conduct of the sort dealt with in *Rushing* to constitute forgery would of course mean that Mr. Maddox would be entitled to relief pursuant to the argument set forth in Point I, *supra*. Alternatively, it would at least demonstrate that the statute should not be applied to situations not envisioned by the legislature in a manner that would expand it beyond its plain meaning because doing so would "be judicial legislating of the kind frequently condemned—-that is, interpreting an existing statute or constitutional provision to encompass a situation obviously not within the purview of the legislative branch of the government or the people at the time of its enactment or adoption …." *Radio Tel. Communications, Inc. v. Southeastern Tel. Co.*, 170 So. 2d 577, 581 (Fla. 1964).

CONCLUSION

Based upon the foregoing, Mr. Maddox respectfully submits that the decision of the district court in this cause should be reversed and the matter remanded with directions that Mr. Maddox be discharged with regard to all offenses, or, alternatively, with regard to such offenses as to which this court finds the evidence to have been insufficient and for a new trial on any remaining offense or offenses, or, alternatively, for a new trial on all offenses.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded to Donna S. Koch, Assistant Attorney General, Concourse Center #4, 3507 E. Frontage Rd., Ste. 200, Tampa, FL 33607 this 2nd day of March, 2003.

_____
ANTHONY C. MUSTO

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

_____
ANTHONY C. MUSTO