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 REPLY BRIEF ON THE MERITS

JAMES MARION MOORMAN
Public Defender

ANTHONY C. MUSTO
Special Assistant Public Defender
Florida Bar No. 207535
Office of the Public Defender
P. O. Box 9000 – Drawer PD
Bartow, FL 33831
863-534-4200

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(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.

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INTRODUCTION

Petitioner Robert E. Maddox adopts the Introduction and Statement of the Case and Facts set forth in his initial brief.

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.

The state has not addressed Mr. Maddox' contention that a traffic citation cannot be the subject of a forgery, other than to quote the decision in *Rushing v. State*, 684 So. 2d 856 (Fla. 5th DCA 1996), rev. den., 694 So. 2d 856 (Fla. 1997), and to refer to that decision on page 36 of its brief as "controlling precedent."[1]

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[1] The state distorts Mr. Maddox' position by indicating that Mr. Maddox "argues that the Fifth District got it wrong in *Rushing* …, as did this Court when it denied review." Respondent's Answer Brief, pp. 35-36. Mr. Maddox does contend that the *Rushing* was incorrectly decided, but he in no way challenged this court's denial of review. Indeed, because *Rushing* was the first case to deal with the issue, the decision could not have

Mr. Maddox is unaware of how a district court decision could possibly be deemed to constitute "controlling precedent" in this court, which is certainly not bound by such a decision. Moreover, because this court has never considered the issue of whether a traffic citation can be the subject of a forgery, it seems clear that its first step in analyzing this case will need to be deciding whether it agrees with *Rushing* or not. If it does not, the issue created by the conflict between the present case and *Dixon v. State*, 812 So. 2d 595 (Fla. 1st DCA 2002), will no longer exist. Obviously, if there is not crime of forgery of a traffic citation, there can be no issue as to whether a citation can be admitted in such a prosecution.[2]

The state's complete failure to even address Mr. Maddox' argument that *Rushing* was incorrectly decided speaks volumes. Mr. Maddox' position in that regard, as set forth on pages 16-19 of his initial brief, thus stands unrebutted.

The state recognizes that no traverse was filed in response to Mr. Maddox' sworn motion to dismiss. It argues, however,

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been in conflict with any other decisions and jurisdiction on the basis of conflict would not have existed.

[2] The state asserts that Mr. Maddox "buried" the issue of the admissibility of the citation in Point II. The reason the issues were placed in the order in which they set forth derives, however, not from a desire to "bury" an issue, but because the determination of whether there can be a prosecution for forgery of a traffic citation is a prerequisite to consideration of the admissibility issue, as set forth above, and because of the other factors set forth in n. 1 at pp. 14-15 of Mr. Maddox' initial brief.

that the trial court, in considering the motion, was not limited to the facts set forth in Mr. Maddox' motion, but could properly consider testimony presented at the hearing on the motion. In support, the state points to Florida Rule of Criminal Procedure 3.190(d), which provides that a court "may receive evidence on any issue of fact necessary to the decision on the motion." That provision has no applicability here, however. When no traverse is filed to a sworn motion to dismiss, the court must base its ruling "the facts alleged in the motion to dismiss." *State v. Palaveda*, 745 So. 2d 1026, 1027 (Fla. 2d DCA 1999). Thus, the evidence presented at the hearing was not "necessary to the decision on the motion." Indeed, it was irrelevant to that decision. The section of the rule relied upon by the state applies to motions to dismiss in general. Clearly, the provision in question is intended to apply to non-sworn motions, not sworn motions filed under Florida Rule of Criminal Procedure 3.190(c)(4), which, by their very nature, do not contemplate the presentation of evidence.

On pages 38-39 of its brief, the state offers certain hypothetical situations, contending that they demonstrate that the state's position should be accepted. For instance, the state discusses what might happen if Mr. Maddox had signed a check made out to his brother with just the name "Maddox," or, if Mr. Maddox's first name had also started with an "N," if he

had endorsed such a check with "N. Maddox." The state contends on page 39 of its brief that it would be "nonsensical" for such actions not to constitute forgery. The state's argument is based on the assumption that if the actions are not forgeries, they would not constitute crimes. Such an assumption would be totally unfounded. Such actions would constitute the crime of theft. By the same token, the state's overall argument seems to assume that the actions in the present case cannot constitute an offense if they are not deemed forgeries. The state ignores the point made in n. 3 on pages 19-20 of Mr. Maddox' brief that a false signature on a traffic citation may violate 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." It is thus important to recognize that, contrary to the state's suggestion that improper conduct will go unpunished if its position is not accepted, the present case is primarily concerned with the simple question of what should charge should be brought. Agreeing with Mr. Maddox' position in no way leaves the door open to the dire implications posited by the state.

With regard to the driving while license suspended charge, the state asserts on pages 42-43 of its brief, the indication on Mr. Maddox's driving record that a notice of suspension had been mailed to his home was sufficient to prove such notice because

Mr. Maddox never claimed at trial that he did not receive that mailing.

The state's effort to distinguish *Brown v. State*, 764 So. 2d 741 (Fla. 4th DCA 2000), on a factual basis is doomed to failure. The state's introduction of the driving record and the indication it contained was for the purpose of trying to bring into play the statutory presumption of knowledge of the suspension established by Section 322.34(2), Florida Statutes, when the record contains such an indication. *Brown* makes it clear, however, that the presumption does not apply at all when the suspension, as here, is for failure to pay a traffic fine or for a financial responsibility violation. The factual matters referred to by the state do not in any way change this fact. Once it is clear that the statutory presumption is not applicable, "the plain language [of the statute] requires the State to prove that the defendant **received** notice of the suspension." *Brown*, 764 So. 2d at 744. Here, the state offered no evidence other than the indication on the record, so it clearly failed to meet its burden.

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.

The state recognizes that Section 316.650(9), Florida Statutes, provides that traffic citations "shall not be admissible evidence in any trial." It points, however, to Section 316.066(4), Florida Statues, which provides that crash reports and statements made to officers for the purpose of creating crash reports shall not be used as evidence "in any trial, civil or criminal." The state contends that the fact that the legislature used the words "criminal or civil" in Section 316.066(4), means that the legislature did not intend for Section 316.650(9) to apply to civil and criminal proceedings, but only to trials for traffic offenses.

Mr. Maddox submits that the state has incorrectly assumed that the limiting language of Section 316.066(4) somehow makes the broad language of Section 316.650(9) even more limiting. A much more logical reading of the two provisions would be that Section 316.066(4) applies, as it says, only to civil and criminal trials, but that Section 316.650(9) applies to "any trial," thus including trials before administrative tribunals and trials in other matters not strictly classified as civil or criminal. The term "any trial," as used in Section 316.650(9)

thus encompasses the trials contemplated by Section 316.066(4), but also includes a broader range of proceedings.

The state further argues on page 14 of its brief that "[n]owhere in the title or in the 'Whereas' clauses following the title is there any indication whatsoever that any portion of Chapter 316 was intended to apply to prosecutions for forgery (footnote omitted)." Far from supporting the ultimate conclusion urged by the state, however, this assertion strongly supports the position taken in n. 15 on pages 36-37 of Mr. Maddox' initial brief that the legislature never intended for the forgery statute to apply to traffic citations.[3]

The state further points to Section 317.112(3), Florida Statues (1969), which was repealed in 1971, and which provided that prosecution on traffic offenses was to be by uniform traffic ticket. The state also points out that the law while this provision was in effect provided, as it did today, that such citations shall not be admissible evidence at any trial. The state then asserts that these facts somehow restrict the language of the present Section 316.650(9) to trials for traffic offenses.

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[3] It also underlines the rationale discussed in Point I, *supra*, and in Mr. Maddox' initial brief as to why the two issues he raises are inextricably intertwined and therefore should both be considered by this court.

The state's conclusion, however, can in no way be derived from the prior statutory language. The two prior provisions had nothing to do with each other. One indicated that the proper vehicle for instituting a prosecution for violation of a traffic offense was by citation. The other said that such citations were not admissible in "any trial." There was nothing in the statutory scheme to even suggest that the words "any trial" were in any way limited to trials for traffic offenses, just as nothing suggests that the language in the present statute is so limited. The two prior provisions were not linked, nor was the term "any trial" in any way defined by the provision regarding the proper method to institute a proceeding. Indeed, had the repealed provision remained in effect, it would not have changed the appropriate analysis of the present issue at all. It is hard to imagine how its repeal can be said to have done so.

The state also suggests that this court should discharge jurisdiction, contending on page six of its brief that the present case and *Dixon* "are not particularly in conflict." This case is properly before this court, however, pursuant to the district court's certification of conflict. *Maddox v. State,* 862 So. 2d 783, 784-785 (Fla. 2d DCA 2003). Moreover, the reason why the state suggests a lack of conflict is its contention that the issue here was waived at the trial level. The district court did reach and discuss the merits, declining

to find a waiver, however, so the conflict exists regardless of any issue that might exist with regard to waiver.[4] In any event, the state's contention is without merit. It is based solely on what might have happened if the trial court had ruled in a different manner. It would be sheer speculation to assume that defense counsel would have taken certain actions, or that the trial court would have allowed such actions, had its ruling been different on the admissibility of the citations. Mr. Maddox' position as to that ruling was very clear and the right to challenge that ruling therefore was in no way waived.

CONCLUSION

Based upon the foregoing, Mr. Maddox respectfully submits that relief as requested in his initial brief should be granted.

Respectfully submitted,

JAMES MARION MOORMAN
Public Defender

ANTHONY C. MUSTO
Special Assistant Public Defender
Florida Bar No. 207535
Office of the Public Defender
P. O. Box 9000 – Drawer PD
Bartow, FL 33831
863-534-4200

[4] It should also be noted that the state's position in this respect is inconsistent with its contention that Point I should not be considered because it does not directly relate to the issue on which the certification was based. The state should therefore be estopped from making its present claim. Moreover, the state did not present its position regarding waiver in the district court. Thus, Mr. Maddox submits that the state has waived the right to make its present challenge.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded to Charles Crist, Attorney General, Concourse Center #4, 3507 E. Frontage Rd., Ste. 200, Tampa, FL 33607 this 2nd day of June, 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).

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ANTHONY C. MUSTO