In the Supreme Court of Florida

In Re:
Standard Jury Instructions in Criminal Cases
Case No. SC05-1651
_____/

Comments Concerning Report No. 2005-06 of the Committee on Standard Jury Instructions (Criminal) and Appendix

To the Chief Justice and Justices of the Supreme Court of Florida:

The undersigned first wishes to commend the Committee for volunteering its time and efforts in creating and revising standard jury instructions in criminal cases. Detailed and complete jury instructions that accurately depict the offenses committed, while still reflecting the current case law interpreting such, serve to not only instruct juries how to consider cases, but also instruct the litigants how to prepare and present them. The undersigned respectfully submits the following comments concerning Report No. 2005-06 of the Committee on Standard Jury Instructions (Criminal) and Appendix attached thereto:

As this Court is aware, there are several offenses concerning driving on a suspended/revoked license and the differences between such are often quite confusing. In particular, Florida Statutes Section 322.34 provides in pertinent part:

Driving while license suspended, revoked, canceled, or disqualified.

(1) Except as provided in subsection (2), any person whose driver's license or driving privilege has been canceled, suspended, or revoked, except a "habitual traffic offender" as defined in s. 322.264, who drives a vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked is guilty of a moving violation, punishable as provided in chapter 318.

(2) Any person whose driver's license or driving privilege has been canceled, suspended, or revoked as provided by law, except persons defined in s. 322.264, who, *knowing of such cancellation, suspension, or revocation,* drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked, upon:

(a) A first conviction is guilty of a misdemeanor of the second degree....

(b) A second conviction is guilty of a misdemeanor of the first degree....

(c) A third or subsequent conviction is guilty of a felony of the third degree....

The element of knowledge is satisfied if the person has been previously cited as provided in subsection (1); or the person admits to knowledge of the cancellation, suspension, or revocation; or the person received notice as provided in subsection (4). There shall be a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order as provided in subsection (4) appears in the department's records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation.

(3) 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.

(4) Any judgment or order rendered by a court or adjudicatory body or any uniform traffic citation that cancels, suspends, or revokes a person's driver's license must contain a provision

> notifying the person that his or her driver's license has been canceled, suspended, or revoked.

(emphasis added). In *Brown v. State*, 764 So.2d 741 (Fla. 4th DCA 2000), the Court held that the knowledge requirement could not be proven solely by proving that notice was sent. The State must at least also show that that such was received. *See Brown*, 764 So.2d at 744.

In contrast, subsection (5) of that same statute states:

> Any person whose driver's license has been revoked pursuant to s. 322.264 (habitual offender) and who drives any motor vehicle upon the highways of this state while such license is revoked is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Such offense contains no requirement of proof of the element of knowledge, only notice. *See Rodgers v. State*, 804 So.2d 480 (Fla. 4th DCA 2001), *review denied*, 828 So.2d 388 (Fla. 2002); *State v. Fields,* 809 So.2d 99 (Fla. 2d DCA 2002); *Brown v. State*, 764 So.2d 741 (Fla. 4th DCA 2000); *Arthur v. State*, 818 So.2d 589 (Fla. 5th DCA 2002).

Additionally, recently, in *Kallelis v. State*, 909 So.2d 544 (Fla. 4th DCA 2005), the Fourth District decided that for there to be sufficient proof of such habitualization when charging under subsection (5) above, the driving record from the Department of Highway Safety

and Motor Vehicles must show the requisite violations that caused such habitualization as set forth in Florida Statutes Section 322.264.

As applied to the Proposed Traffic Instructions, Amended Proposal #3, after setting forth the elements of the offense and the knowledge requirement, contains the notice presumptions from Florida Statutes Section 322.251. Although such sections might be applicable if the State is arguing notice was sent ***and received***, a note in the instructions citing ***Brown*** and indicating that proof of receipt of such notice is required before such can be used to infer knowledge might serve as a helpful reminder of such.

As applied to Proposed Traffic Instructions, Proposal 4, the submitted instructions fail to include the required element of notice, as well as the notice presumptions described above. Additionally, there is no language instructing the jury concerning the requisite violations for habitualization as discussed in ***Kallelis***.

The undersigned appreciates this opportunity to present to this Honorable Court the above comments on these proposed instructions.

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail delivery and email this 10th day of November, 2005, to: The Honorable Dedee S. Costello, Bay County Courthouse, P.O. Box 1089, Panama City, FL 32402-1089.

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