IN THE SUPREME COURT OF THE STATE OF FLORIDA

CANDIE ANDERSON,

Petitioner,

v. Case No. SC11-3

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT

PETITIONER'S BRIEF ON MERITS

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0267082
444 SEABREEZE BLVD. # 210
DAYTONA BEACH, FLORIDA 32118
(386) 254-3758

COUNSEL FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS

Petitioner was on probation when an affidavit was filed alleging she had violated her probation by committing the offense of driving while license was suspended. (R50) A hearing was conducted on the violation before the Honorable Richard Howard, Circuit Court Judge. (T1-36) At the hearing, Petitioner's probation officer testified that when Petitioner arrived at the probation office for her regular visit, the officer learned that a warrant had been issued for her arrest because her license had been suspended for failing to pay monetary obligations that was a condition of her probation. (T7) The Petitioner told her probation officer that she had no knowledge that her license had been suspended. (T12) Both Petitioner and her mother with whom she resided testified that no notification from the Department of Motor Vehicles had been received at their address. (T25-26) Following presentation of the evidence, defense counsel moved to dismiss the violation of probation on the grounds that there was no showing that Petitioner had received actual notification that her license was suspended, which defense counsel argued was required since the suspension was for financial obligations. (T28-32) The trial court, relying on a prior opinion from the Fifth District Court of Appeal found that the offense had been proven because there was evidence that the Department of Motor Vehicle had mailed the notice to Petitioner at the address at

which she resided. (T32-34) Petitioner's probation was revoked and the trial court imposed a previously suspended five year sentence in prison. (T32-34, R66-67) Petitioner filed a timely notice of appeal to the Fifth District Court of Appeal. (R72) The Fifth District affirmed the revocation holding that the evidence was sufficient to support a finding that Petitioner knowingly drove while her license was suspended because the driving record indicated that notice of the suspension had been properly sent by mail to Petitioner's address. (See opinion attached as Appendix "A" hereto) In so doing, the court acknowledged conflict with ***Brown v. State***, 764 So. 2d 741 (Fla. 4th DCA 2000) and ***Haygood v. State***, 17 So. 3d 894 (Fla. 1st DCA 2009), which held that where a person is charged with driving on a suspended license, and the suspension was for financial responsibility or a failure to pay a traffic fine, the State must prove that the accused actually received notice of the suspension. Petitioner timely filed her Notice to Invoke the jurisdiction of this Court on December 29, 2010. By order dated March 15, 2011, this Court accepted jurisdiction to resolve the conflict.

SUMMARY OF THE ARGUMENT

When a person is charged with committing the offense of driving with a suspended license where such suspension was for violation of financial obligations, it is insufficient to prove only that notice of such suspension was given by the Department of Motor Vehicles. Rather, the state must present evidence that the person actually received the notice or otherwise had actual knowledge that his or her license was suspended.

ARGUMENT

THE DECISION OF THE FIFTH DISTRICT BELOW MUST BE QUASHED BECAUSE IT MATERIALLY MISINTERPRETS THE LAW WITH REGARD TO PROOF OF THE OFFENSE OF DRIVING WHILE LICENSE SUSPENDED.

Petitioner was on probation when she was charged with a violation stemming from her alleged commission of the offense of driving on a suspended license. Petitioner's license had been suspended for her failure to pay certain financial obligations connected to her probation. At the hearing on the alleged violation, Petitioner and her mother with whom she resided both testified that they never received any notice of suspension of Petitioner's license. The State introduced a copy of Petitioner's driving record which showed that her license had been suspended for financial reasons and that notice was sent to her last known address. Petitioner argued that because her suspension was for financial reasons, mere proof that notice of the suspension was sent was insufficient. Rather, the State was required to prove that Petitioner had actual knowledge that her license was suspended. The trial court relied on ***Fields v. State***, 731 So. 2d 753 (Fla. 5th DCA 1999) wherein the court held that since the statute involved required no knowledge element, proof that notice of revocation was sent to the person at the

last known address was sufficient to establish the offense. However, since ***Fields***, the statute has been amended and now provides:

> Section 322.34, Florida Statutes (Supp.1998), provides in relevant 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.

In the instant case, the court noted that ***Fields*** which had been specifically relied upon by the trial court, had in fact been superseded by a subsequent statutory amendment. Nevertheless, citing to Section 322.251, Florida Statutes (2010) the court still affirmed the trial court despite the fact that the only evidence presented by the state was that according to the driving record, notice of suspension had been sent to Petitioner. There was absolutely no evidence presented that Petitioner actually received notice. In ***Brown v. State***, 764 So. 2d 741 (Fla. 4th DCA 2000) the court held that where the suspension is for the failure to pay a traffic fine or for a financial responsibility violation, evidence that notice of the suspension was mailed to offender as required by Section 322.251 is not proof that he actually

received the notice and therefore cannot sustain the finding of actual knowledge on the part of the offender. Under Section 322.34, Florida Statutes (2010) it is a crime for any person with a suspended driver's license to operate a motor vehicle if the person knows of the suspension. The statute goes on to explain what the state must show to prove that a defendant has knowledge that his or her license is suspended:

> 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.** [emphasis added]

Based on this plain language, the ***Brown*** court concluded that because the defendant's license suspension was the result of failing to pay traffic fines, the presumption that the defendant had knowledge of the suspension did not apply. Therefore, without the statutory presumption, the state was required to introduce evidence that the defendant actually received the notice of suspension. Since the only evidence produced by the state was a copy of the defendant's driver's license and a copy of his driving record which listed the same addresses and reflected that the defendant's license was suspended for failing to pay a traffic fine and that the required statutory notice had been provided was insufficient as a matter of law to

prove that he actually knew that his license was suspended. In ***Haygood v. State***, 17 So. 3d 894 (Fla. 1st DCA 2009) the court, relying on ***Brown***, ***supra***, held that the evidence was insufficient to support a conviction for knowingly driving with a suspended license. The state introduced into evidence a copy of Haygood's driving record which reflected that his license was suspended on three separate occasions for failure to pay a traffic fine and for being delinquent in child support. The driving record also provided that the statutory notice had been given. There was no additional evidence showing that Haygood knew his license was suspended. Because Haygood's suspensions were due to financial obligations, the presumption of knowledge created by an entry in the Department of Motor Vehicle's records did not apply and thus the state was required to present evidence that Haygood actually received notice that his license was suspended.

In the instant case, Petitioner's license was suspended for failing to pay financial obligations in connection with her probation. There simply was no evidence other than the certified copy of her driving record which showed that notice had been sent to prove that Petitioner had actual knowledge of the suspension. The Fifth District's conclusion that this evidence was sufficient to present a fact issue for the trier of fact to determine ignores the statutory requirement that actual knowledge must be proven. Admittedly, this element may often be difficult to prove; however, the statute absolutely requires it. In essence,

the decision of the Fifth District while giving lip service to the statutory requirement, nevertheless holds that proof of the knowledge requirement is satisfied simply by relying on the statutory presumption. The court's citation to Section 322.251(2), Florida Statutes (2010) offers no authority for its holding. Rather, that provision only provides that where the driving record includes an entry that notice was given pursuant to the statute is admissible and shall constitute sufficient proof only that the notice **was given**. Omitted from that provision is any provision that such records will constitute sufficient proof that notice **was received**. The fact that the instant case involved a violation of probation which admittedly does not require proof beyond a reasonable doubt, does not, however, relieve the state of its burden of proving that the offender committed an offense which constitutes a violation of probation. Thus, the state is still required to provide some proof that the defendant had actual knowledge when it is attempting to prove the offense of driving on a suspended license where such suspension was for financial obligations. Again, it must be emphasized that the trial court based its decision solely on the holding of the Fifth District in ***Fields***, ***supra***, which permits a presumption that notice was received simply by proof that notice was given. As noted previously, ***Fields*** is no longer good law with regard to the knowledge requirement. Simply put, the decision of the Fifth District below cannot be harmonized with the holdings of ***Brown, supra***, and ***Haygood, supra***. Petitioner

urges this Court to adopt the well reasoned opinions by the Fourth District and the First District which interpret the statute at hand correctly. To the extent that the Fifth District has misapplied the law in this regard the decision must be quashed.

CONCLUSION

Based on the foregoing reasons and authorities cited herein, the Petitioner respectfully requests that this Honorable Court to quash the decision of the Fifth District Court of Appeal and approve the decisions of the Fourth District in ***Brown v. State, supra*** and the First District Court of Appeal in ***Haygood v. State, supra***.

Respectfully submitted,

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

_____

MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 0267082
444 SEABREEZE BLVD., STE. 210
Daytona Beach, Florida 32118
(386) 254-3758

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Pamela Jo Bondi, Attorney General, 444 Seabreeze Blvd., 5th Floor, Daytona Beach, FL 32118, and mailed to Candie Anderson, DOC #U35626, Lowell - Women's Annex, 11120 NW Gainesville Road, Ocala, FL 34482, on this 11th day of April, 2011.

_____
MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I hereby certify that the size and style of type used in this brief is 14 point Times New Roman font.

_____
MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER

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