

## SUPREME COURT OF FLORIDA

### **In re Standard Jury Instructions in Criminal Cases (No. -6 2005)**

958 So. 2d 361 (Fla. 2007) · No. No. 2005-6 · Decided May 3, 2007

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#### OPINION

#### PER CURIAM.

PER CURIAM. The Supreme Court Committee on Standard Jury Instructions in Criminal Cases (Committee) has submitted new instructions and proposed changes to the standard jury instructions in criminal cases. The Committee asks the Court to authorize for publication and use the amended standard instructions.

We have jurisdiction. See art. V, § 2(a), Fla. Const. The Committee proposes amendments to standard jury instructions 28.9, No Valid Driver's License, and 28.11, Driving While License Suspended, Revoked or Canceled With Knowledge.

The Committee also proposes two new standard jury instructions, 28.9(a), No Valid Commercial Driver's License, and 28.11(a), Driving While License Revoked as a Habitual Traffic Offender. On September 15, 2005, the Committee filed its proposals, which are in response to (1) comments received by the Committee from members of The Florida Bar; and (2) changes in the statutes that require new or amended instructions.

The Court published the proposals for comments in the October 15, 2005, edition of The Florida Bar News. Comments were due by November 15, 2005. Two comments were timely filed with the Court. Prior to the comments being filed with the Court, on November 2, 2005, the Committee filed an amended instruction 28.11, Driving While License Suspended, Revoked, or Canceled With Knowledge, due to errors found.

After the amendments were published, the Committee requested leave to file an amended instruction 28.11 and ultimately requested leave to file an amended report, which was granted. We specifically note that the revised instructions, which include a moped within the definition for "motor vehicle," make the instructions consistent with *State v. Meister*, 849 So.2d 1127 (Fla.

4th DCA 2003). See also *Verrechio v. State*, 896 So.2d 958 (Fla. 5th DCA 2005); *Williams v. State*, 858 So.2d 375 (Fla. 3d DCA 2003); *Wood v. State*, 717 So.2d 617 (Fla. 1st DCA 1998); *Jones v. State*, 721 So.2d 320 (Fla. 2d DCA 1998); *Soto v. State*, 711 So.2d 1275 (Fla. 4th DCA 1998).

Having considered the Committee's amended report, we hereby authorize the publication and use of the instructions as set forth in the appendix to this opinion. In so doing, we express no opinion

on the correctness of the instructions and remind all interested parties that this authorization forecloses neither requesting additional or alternative instructions, nor contesting the legal correctness of the instructions.

We further caution all interested parties that any notes and comments associated with the instructions reflect only the opinion of the Committee and are not necessarily indicative of the views of this Court as to <sup>\*362</sup>their correctness or applicability. New language is indicated by underlining, and deleted language is struck-through.

The instructions as set forth in the appendix shall be effective when this opinion becomes final. It is so ordered. LEWIS, C.J., and WELLS, ANSTEAD, PARIENTE, QUINCE, CANTERO, and BELL, JJ., concur. APPENDIX 28.9 NO VALID OPERATORS OR CHAUFFEUR'S DRIVER'S LICENSE § 322.03, Fla. Stat. To prove the crime of No Valid Operator's — or Chauffeur's Driver's License, the State must prove the following two elements beyond a reasonable doubt: 1.

(Defendant) drove a motor vehicle upon a highway in this state. 2. At the time, The defendant [he] [she] did not have a valid operator's or chauffeur's driver's license issued recognized by the Department of Highway Safety and Motor Vehicles of the State of Florida. Definitions. § 322.01(15), Fla. Stat. "Drive" means to operate or be in actual physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. ■ §§-3-16.003(2),- &-316,003(21) § 322.01(26), Fla. Stat. L "Motor vehicle" means any vehicle which is self-propelled, including a "moped," (and every-vehiele which is-propelled by electric power obtained — fi?em—overhead—trolley wires, but not-operated upon rails), but not including any bicycle or "moped" vehicle moved solely by human power, motorized wheelchair or motorized bicycle. & "Valid operator's or — chauffeur's driver's license" is means a operator's or chauffeur's driver's license received from recognized by the department Department of Highway Safety and Motor Vehicles which has not expired, been suspended, revoked or canceled. § 322.01(40)(38), Fla. Stat. ¾ "Street or Highway" means the entire width between the boundary lines of every way or place publicly — maintained--when if any part thereof is open to the use of the public for purposes of vehicular travel-traffic.

Optional Definitions. L "Expired" means the license was not renewed on or before the expiration date. § 322.01(42)(a)(39), Fla. Stat. 2, "Suspended" means the privilege to drive a motor vehicle has been temporarily withdrawn. § 322.01 (12)(b)(35), Fla. Stat. 3\* "Revoked" means the privilege to drive a motor vehicle has been terminated. § 322.01(42)(c)(5), Fla. Stat. L "Canceled" means that a license which- was issued through error or fraud has been declared void and terminated. "Actual physical control" of a motor vehicle means the defendant must be physically in or on the vehicle and have the capability to operate the vehicle, re- <sup>\*363</sup>gardless of whether [he] [she] is actually operating the vehicle at the time.

Lesser Included Offenses No lesser included offenses have been identified for this offense. Comment This instruction was adopted in 1981, and amended in 2007. 28.9(a) NO VALID COMMERCIAL DRIVER'S LICENSE § 322.03, Fla. Stat. To prove the crime of No Valid Commercial Driver's License, the State must prove the following two elements beyond a reasonable doubt: L (Defendant) drove a commercial motor vehicle upon a highway in this state.

2. At the time, the defendant did not have a valid commercial driver's license issued by the Department of Highway Safety and Motor Vehicles of the State of Florida. Definitions. § 322.01(15), Fla. Stat "Drive" means to operate or be in actual physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. § 822.01(26), Fla. Stat. "Motor vehicle" means any vehicle which is self-propelled, including a "moped," but not any vehicle moved solely by human power, motorized wheelchairs or motorized bicycles. § 322.01(8), Fla. Stat. "Commercial motor vehicle" means any motor vehicle used on the streets or highways, which: a.Has a gross vehicle weight rating of 26,001 pounds or more; b. Is designed to transport more than 15 persons, including the driver, or; c. Is transporting hazardous materials and is required to be placarded in accordance with Title 49 C.F.R. part 172, subpart F. § 822.01(7), Fla. Stat. "Valid commercial driver's license" means a Class A, Class B, or Class C driver's license issued by the Department of Highway Safety and Motor Vehicles of the State of Florida which has not expired, been suspended, revoked or canceled. § 822.01(38), Fla. Stat. "Street or Highway" means the entire width between the boundary lines of every way or place if any part thereof is open to the use of the public for purposes of vehicular traffic.

Optional Definitions. "Expired" means the license was not renewed on or before the expiration date. § 322.01(39), Fla. Stat. "Suspended" means the privilege to drive a motor vehicle has been temporarily withdrawn. § 322.01(35), Fla. Stat. "Revoked" means the privilege to drive a motor vehicle has been terminated. § 322.01(5), Fla. Stat. "Canceled" means that a license has been declared void and terminated. "Actual physical control" of a vehicle means the defendant must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether [he] [she] is actually operating the vehicle at the time. \*364Lesser Included Offenses No Valid Commercial Drivers License — § 322.03 CATEGORY CATEGORY FLA. INS-ONE\_TWO\_STAT.

NO. No Valid Driver's License 322.03 28.9 Comment This instruction was adopted in 2007. 28.11 DRIVING WHILE LICENSE SUSPENDED, REVOKED OR CANCELED-LICENSE, WITH KNOWLEDGE § 322.34(2), Fla. Stat. To prove the crime of Driving wWhile this] — [her-] Operator's or Chauffeur-s [License] [or-Driving Privilege] is [Canceled]. — [Suspended], [Revoked], [Suspended], [Revoked], [Canceled], the State must prove the following three elements beyond a reasonable doubt: 1.

(Defendant) drove a motor vehicle upon a highway in this state. 2. At the time, [his] [her] [license] or [driving privilege] was [canceled], [suspended], [revoked], [suspended] [revoked] [canceled]. 3. Notice of [cancellation], [suspension], [revocation]-was given to the-defendant. At the time (defendant) drove a motor vehicle upon a highway in this state, (defendant) knew that [his] [her] [license] [driving privilege] was [suspended], [revoked], [canceled].

Whether (defendant) knew of the [suspension] [revocation] [cancellation] is a question to be determined by you from the evidence. Give as applicable. See § 322.251(1), (2), and § 322.251(3), (If), Fla. Stat. Proof that there exists an entry in the records of the Department of Highway Safety and Motor Vehicles showing that notice of the [suspension] [revocation] [cancellation] was given by personal delivery is proof that such notice was given.

Proof that there exists an entry in the records of the Department of Highway Safety and Motor Vehicles showing that notice of the [suspension] [revocation] [cancellation] was deposited in United States mail, first class, postage prepaid, addressed to the licensee at [his] [her] last known mailing address furnished to the department, is proof that such notice was sent.

If you find that (defendant) had been previously cited for driving while license [suspended] [revoked] [canceled] and [his] [her] license had not been reinstated, you may conclude that (defendant) knew of the [suspension] [revocation] [cancellation]. If you find that (defendant) admitted to knowing of the [suspension] [revocation] [cancellation], you may conclude that (defendant) knew of the [suspension] [revocation] [cancellation].

If you find that (defendant) had received a traffic citation that contained a provision notifying (defendant) that [his] [her] license had been suspended, revoked, or canceled, you may conclude that (defendant) knew of the [suspension] [revocation] [cancellation]. Do not (give if the suspension was for failure to pay a traffic fine or for a financial responsibility violation.

See § 322.31(2) and § 322.251(1), (2), Fla. Stat. If you find that (defendant) had received a [judgment] [order] rendered by [a court] [an adjudicatory body] which contained a provision notifying (defendant) that [his] [her] license had been [suspended] [revoked] [canceled], you may conclude that (defendant) knew of the [suspension] [revocation] [cancellation].

If you find that the records of the Department of Highway Safety and Motor Vehicles include a [judgment] [order] rendered by [a court] [an adjudicatory body] which contains a provision notifying (defendant) that [his] [her] license had been [suspended], [revoked] [canceled], you are permitted to assume that (defendant) knew [his] [her] license was [suspended] [revoked] [canceled].

This presumption, however, is rebuttable, and you may accept or reject the presumption depending upon the circumstances of the crime and the facts presented at trial. Definitions. § 322.01(15), Fla. Stat. “Drive” means to operate or be in actual physical control of a motor vehicle

in any place open to the general public for purposes of vehicular traffic. § 322.01(2)(26), Fla. Stat. 1/8 “Motor vehicle” means any vehicle which is self-propelled, including a “moped,” (and every-vehicle-which is propelled by electric power obtained from overhead trolley wires-but not operated upon rails) excluding any bicycle but including any “moped” but not any vehicle moved solely by human power, motorized wheelchair or motorized bicycle. § 322.01(1Q)(38), Fla. Stat. 3/4 “Street or Highway” means the entire width between the boundary lines of every way or place publicly maintained when if any part thereof is open to the use of the public for purposes of vehicular travel traffic. § 322.251, Fla. Stat. 3/8 “Notice” means personal delivery or deposit in the United States mail in an envelope-marked certified mail, first class, postage prepaid, addressed to the defendant at [his] [her] last known address furnished to the Department of Highway Safety and Motor Vehicles.

Mailing by the department shall constitute notification. Optional Definitions.\_ § 322.01(12)(a) (39), Fla. Stat. 1/8 “Suspended” means the privilege to drive a motor vehicle has been temporarily withdrawn. § 322.01(12)-(b)(35), Fla. Stat. 2NRevoked” means the privilege to drive a motor vehicle has been terminated. § 322S1 (12)44322.01 (5), Fla. Stat. & “Canceled” means that a license which was issued-through-error or fraud has been declared void and terminated. “Actual physical control” of a vehicle means the defendant must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether [he] [she] is actually operating the vehicle at the time. § 322.251(1), Fla. Stat. Failure by the defendant to receive the mailed order shall not affect or stay the effective date or term of the [cancellation], [suspension], [revocation] of the defendant’s driving privilege.

Lesser Included Offenses No lesser included offenses have been identified for this offense, SUSPENDED, REVOKED OR CANCELED LICENSE — § 322.34 CATEGORY ONE CATEGORY TWO FLA. STAT. INS. NO. No Valid Driver’s License 322.03 28.9 \*366Comment This instruction was adopted in 1981, and amended in 2007 to reflect Laws of Florida 97-300, Section 40, effective October 1,1997.

28.11(a) DRIVING WHILE LICENSE REVOKED AS A HABITUAL TRAFFIC OFFENDER § 822.8M5), Fla. Stat. To prove the crime of Driving While License Revoked as a Habitual Traffic Offender, the State must prove the following two elements beyond a reasonable doubt: L (Defendant) drove a motor vehicle upon a highway in this state. 2. At the time, (defendant’s) license was revoked as a habitual traffic offender.

Definitions. § 322.01(15), Fla. Stat. “Drive” means to operate or be in actual physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. § 822.01(26), Fla. Stat. “Motor vehicle” means any vehicle which is self-propelled, including a “moped,” but not any vehicle moved solely by human power, motorized wheelchair or motorized bicycle. § 322.01(38), Fla. Stat. “Street or Highway” means the entire width between the

boundary lines of every way or place if any part thereof is open to the use of the public for purposes of vehicular traffic. “Habitual traffic offender” is any person whose record, as maintained by the Department of Highway Safety and Motor Vehicles, shows that [he] [she] has been designated a Habitual Traffic Offender, resulting in [his] [her] privilege to drive a motor vehicle having been revoked. § 322.01(35), Fla. Stat. “Revoked” means the privilege to drive a motor vehicle has been terminated.

Optional Definition. “Actual physical control” of a vehicle means the defendant must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether [he] [she] is actually operating the vehicle at the time. Lesser Included Offenses Driving While License Revoked as a Habitual Traffic Offender — § 322.34(5) CATEGORY CATEGORY FLA. INS-ONE\_TWO\_STAT.

NO. No Valid Driver’s License 322.08 28.9 Comment This instruction was adopted in 2007.