

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Appellant,

vs.

SAMERICA NICOLE REEDER,

Appellee.

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CASE NO. CJAP 09-23

County Court Case No. 48-2009-CT-681-O

Appeal from the County Court  
of Orange County, Florida

Honorable Faye Allen,  
County Court Judge

Esther M. Whitehead, Assistant State Attorney  
for Appellant

Chelsea Simmons, Assistant Public Defender  
for Appellee

Before Powell, Roche, and Johnson, J. J.

**FINAL ORDER REVERSING LOWER COURT**

In this case, the County Judge granted appellant's *ore tenus* motion to dismiss the information because she concluded that the information charged a felony over which the County Court did not have jurisdiction. This was error.

The information alleged in pertinent part that appellant did:

. . . on the 4<sup>th</sup> day of December, 2008, in violation of Florida Statutes 322.34(5) and 322.34(10)(a), drive a motor vehicle . . . while . . . her drivers's license was revoked as a habitual traffic offender while said driver's license . . . was revoked due to failing to pay for child support or other financial obligations or failing to comply with a

civil penalty or failing to maintain vehicular financial responsibility or failing to comply with attendance or other requirements for minors.

*Section 322.34(5), Florida Statutes*, provides that a person who drives while their license is revoked pursuant to section 322.264, Florida Statutes, is guilty of a felony. The information does not say that appellant's license was revoked pursuant to *section 322.264, Florida Statutes*. It does not allege any of the reasons why a license can be revoked under that section.

Later, *section 322.34, Florida Statutes*, was amended to add *sub-section (10)* which took effect July 1, 2008, some four months before the offense was alleged to have been committed and was thus applicable to appellant's case. *Sub-section (10)(a)* provides that if a person does not have a prior forcible felony conviction and their license was revoked for one of the reasons specified in *sub-section (10)(b)*, then upon a first conviction for driving while license revoked, the person commits a misdemeanor of the second degree.

The information does not allege that appellant had a prior forcible felony conviction or that appellant had a prior conviction for driving while license revoked. What it does allege is that appellant violated "Florida Statutes 322.34(5) and 322.34 (10)(a)," and then goes on to allege all the five reasons for revocation listed in *(10)(a)1- 5*. Consequently, the allegations of the information bring it squarely within the provisions of *(10)(b)1.*, which designates the offense as a second degree misdemeanor. We therefore conclude that the information properly charges the misdemeanor offense of Driving While License Revoked over which the County Court had jurisdiction.

**REVERSED** and **REMANDED** for further proceedings.

DONE and ORDERED at Orlando, Florida this 24th day of August, 2010.

/S/  
Rom W. Powell, Senior Judge

/S/ \_\_\_\_\_  
Renee A. Roche, Circuit Court Judge

/S/  
Anthony H. Johnson, Circuit Court Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a copy hereof has been furnished to Esther M. Whitehead, Assistant State Attorney, attorney for appellant, 415 N. Orange Avenue, Orlando Florida 32801, and to Chelsea Simmons, Assistant Public Defender, attorney for appellee, 435 N. Orange Ave., Suite 400, Orlando Florida 32801, by mail, this 24th day of August, 2010.

/S/ \_\_\_\_\_  
Judicial Assistant