

SPECIAL LEGAL BULLETIN UPDATE

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This Special Legal Bulletin updates a previously issued bulletin (Volume MMVIII, Issue 7) which outlined changes to section 322.34 (10), Florida Statutes, and discussed whether certain offenses for driving while license is cancelled, suspended or revoked (DWLSR) are misdemeanors or felonies.

The Fifth District Court of Appeal recently decided Wyrick v. State, No. 5D10-367 (Fla. 5th DCA 2010) and interpreted sections 322.34(5) and 322.34(10), Florida Statutes.

FACTS: Brittney Wyrick was initially accused of three offenses, one of which was a third-degree felony for driving without a license after her license had been revoked pursuant to section 322.264, Florida Statutes (2009), as a habitual traffic offender (“HTO”). Ms. Wyrick filed a motion to dismiss the felony and asked the court to compel the State to amend the charge to a first degree misdemeanor. Ms. Wyrick’s driving record reflected that she had been convicted of DUI in 2004, and with two DWLSR offenses in 2006; however, the 2006 charges were financial responsibility suspensions for driving without insurance.

Ms. Wyrick argued that although she drove her vehicle while being labeled a habitual offender under 322.34(10), her current offense should have been charged as a first degree misdemeanor because two of the offenses of which she had previously been convicted fell within the listed exceptions. Since she had no prior forcible felonies, she moved the circuit court to transfer her case to county court.

The State argued that for Ms. Wyrick’s argument to prevail, all three prior convictions would have to fall within the listed exceptions under section 322.34(10)(a). The defense countered that because (10)(a)6 uses the plural word “suspensions,” it did not require that “all” three prior suspensions fall within (10)(a)1.-5. Thus, as “some” of Ms. Wyrick’s prior convictions were based on financial defaults, (10)(a)6 should apply.

The trial court, considering the issue to be one of first impression, disagreed with Ms. Myrick and reasoned that her status as an HTO derived only partly from her financial defaults. The judge ruled that without the DUI, the subsequent two DWLSR convictions would not have resulted in her HTO status. The trial court concluded that the Legislature intended for Chapter 322 to be construed to discourage repeat offenders from driving in Florida, and that for section 322.34(10)(a)6 to be of benefit to Ms. Wyrick, all three prior DWLSR convictions would have to fall within the exceptions listed in (10)(a)1.-5. For the court to reduce the charge to a misdemeanor would, in effect, ignore

Ms. Wyrick's status as an HTO, and undermine the intent of the legislature in devising the punishment schedule.

The Fifth District Court of Appeal concluded the trial judge "got it right," explaining that "[o]ne of our primary responsibilities in construing a statute is to effectuate the intention of the Legislature in creating the statute. Moreover, it is our obligation when doing so to consider the statutory framework as a whole, including such matters as the evil addressed by the statute in question and the interrelationship between the statutes that make up the framework, as well as the language used by the Legislature and other considerations."

The Court further held that "[b]y adopting section 322.34(10), Florida Statutes, the Legislature made an exception to the general scheme of Chapter 322 by granting certain leniency to persons who became an HTO **only** because of those reasons listed in (10)(a)1.-5." (Emphasis original).

In summary, if **any** of the convictions which make a driver a HTO is for a non-exempt violation, then the driver should be charged with a felony DWLSR. The vehicle driven should also be seized for forfeiture under s.932.701.

If you have any questions concerning this Special Legal Bulletin, please contact the Office of General Counsel at (850) 617-3101.



Wyrick v State.rtf

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