State v. Quiroli (Fla. Palm Beach Cty. Ct. 2002)

Reported at 9 Fla. L. Weekly Supp. 780b.

STATE OF FLORIDA vs. MICHAEL QUIROLI, Defendant. County Court, 15th Judicial Circuit in and for Palm Beach County. Criminal Division E. Case No. 02001770TCA04. September 12, 2002. Cory J. Ciklin, Judge. Counsel: Samuel R. Guelli, Assistant State Attorney, West Palm Beach. James S. Benjamin, Fort Lauderdale. ORDER ON DEFENDANT'S MOTION TO DISMISS THIS MATTER came to be heard upon Defendant's motion and the Court having considered and received testimony; having heard argument of counsel; having reviewed the court file; and being otherwise fully advised in the premises, finds and decides as follows:

On January 19, 2002, at approximately 9:00 p.m, the Defendant was stopped by Officer Nicole Guerriero of the Delray Beach Police Department. The Defendant was cited for a violation of his restricted driving permit which was limited to business purposes only.

At the time of the stop, the Defendant was traveling to Burger King to purchase his dinner. In his motion to dismiss, the Defendant asserts that there are no material disputed facts in this case, and the undisputed facts do not establish a prima facie case of guilt. Specifically, the Defendant asserts that his decision to drive to Burger King fits within the scope of a business purposes only driving permit, as part of maintaining livelihood, which is authorized by Section 322.271(c)(1), Florida Statutes. The State contends that the provisions of Section 322.271(1)(c) should not be construed to permit the Defendant's act of driving to Burger King to purchase food. This Court is presented with an issue of statutory interpretation and construction.

In the present case the Defendant holds a driving permit restricted to driving for “business purposes only.” Pursuant to Section 322.271(c)(1), Florida Statutes a driving privilege restricted to “business purposes only” means a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on the job driving, driving for educational purposes, and driving for church and medical purposes. F.S. §322.271(c)(1) (2001). Driving for any other purpose other than as provided by the subject statute is not permitted by a person whose driving privilege has been restricted to business only purposes. See F.S. §322.271(c)(2) (2001). In addition, a temporary driving permit restricted to business purposes shall not be used for pleasure, recreational, or nonessential driving. See F.S. §322.282(2)(b).

In determining whether the act of purchasing food is authorized under the applicable statutes it becomes necessary for this Court to interpret the legislature's use of the word “livelihood” within the statute. In attempting to interpret and construe a statute, the statutory language is the first consideration of statutory construction. Capers v. State, 678 So.2d 330 (Fla. 1996). Words used by the legislature are to be construed in their plain and ordinary sense. State v. C.H., 421 So.2d 62, 64 (Fla. 4th DCA 1982). In an effort to ascertain the plain and ordinary meaning which a legislature intended to ascribe to a term, the court may refer to a dictionary. L.B. v. State, 700 So.2d 370, 372 (Fla. 1997). In addition, when interpreting statutes “courts will not ascribe to the Legislature an intent to create absurd or harsh consequences, and so an interpretation avoiding absurdity is always preferred.” C.H. 421 So.2d 62, 64 (Fla. 4th DCA 1982) citing City of St. Petersburg v. Siebold, 48

So.2d 291, 294 (Fla. 1950).

“Livelihood” is defined as a means of support or subsistence. Black's Law Dictionary 934 (6th ed. 1990). “Support” is defined as that which furnishes a livelihood; a source or means of living; subsistence, sustenance, maintaining a living. Black's Law Dictionary 1439 (6th ed. 1990). Support is considered to include anything requisite to housing, feeding, clothing, health, etc. See Id. (emphasis added). From these definitions, this Court determines that the legislature intended the provisions of Section 322.217(1)(c), Florida Statutes as limiting business purposes only driving to driving necessary to maintain livelihood, includes driving necessary to obtain food.1 Accordingly the Defendant's motion to dismiss is granted.

_____ 1This Court notes that other circuits have held that as a matter of law a business purposes only restriction permits a driver to drive to shop for the basic necessities of life, such as food. See Allart v. State, 9 Fla. L. Weekly 499c (20th Circuit, Pinellas County, 2002) (conviction for driving in violation of driver's restriction overturned where evidence only showed that the defendant drove from his house to McDonald's to get something to eat.).

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