Vilches v. State (Fla. 11th Cir. Ct. 2005)

Reported at 12 Fla. L. Weekly Supp. 530a. Miami-Dade County appellate division.

JOHN HENRY VILCHES, Appellant, vs. THE STATE OF FLORIDA, Appellee. Circuit Court, 11th Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 04-336 AC. L.C. No. 6912 DDZ. March 29, 2005. An Appeal from the County Court for Miami-Dade County. Counsel: Bennett H. Brummer, Public Defender, and Thomas Regnier, Assistant Public Defender, for Appellant. Katherine Fernandez Rundle, State Attorney, and Richard A. Stern, Assistant State Attorney, for Appellee.

(Before JEFFREY ROSINEK, VICTORIA SIGLER, and DARYL E. TRAWICK, JJ.)

(TRAWICK, J.) Appellant, John Henry Vilches, appeals the lower court's denial of his motion for a judgment of acquittal on the charge of driving in violation of the terms of his restricted driver's license. The issue before this Court is whether the Appellant's driving of a motor vehicle to pay his overdue residential electric bill falls within the list of activities permitted by a “business purposes only” driver's license. We answer this question in the affirmative.

The Appellant's driver's license was restricted to “business purposes only.” The lower court interpreted this restricted license as permitting driving for employment purposes only. However, the applicable statutory provision permits “any driving necessary to maintain a livelihood.” See §322.271(1)(c)1, Fla. Stat. (2003). The Appellant maintains that this language should be given a broad interpretation. He relies upon State v. Quiroli, 9 Fla. L. Weekly Supp. 780b (Fla. 15th Cir. Ct. 2002) and Allart v. State, 9 Fla. L. Weekly Supp. 499c (Fla. 6th Cir. Ct. 2001). Both of these cases utilize the dictionary definition of the term “livelihood” as meaning “support and subsistence”. Each case thus interprets the term “livelihood” as used in §322.271(1)(c) to include such as activities requisite to the maintenance of housing, the obtaining of food and clothing, health care needs, or like subsistence concerns. Such an interpretation, Quiroli and Allart reason, would allow a person with a “business purposes only” license to drive for the basic necessities of life.

The Appellee argues that Quiroli is factually distinguishable and interprets the term “livelihood” as driving necessary to maintain means, i.e., income. The Appellee relies upon cases dealing with other subject matter that define the term “livelihood” in this fashion. However, the Appellee cites no authority for its interpretation of the statute at issue.

In looking to the legislative history of the statute, paragraph (c) was added to subsection (1) of § 322.271, Fla. Stat. in 1986. This subsection defined a “business purposes” license. See Ch. 86.296 §7, p. 2227, Laws of Fla. As explained in the final bill analysis “[a] ‘business purposes' license allows for employment driving plus driving necessary to maintain one's livelihood, including driving for shopping, church and medical care.” See H.R. Comm. on Criminal Justice, Final Bill & Economic Impact Statement, HB 8-B (June 18, 1986). In essence, it appears that the legislature intended for a “business purposes only” licensee to be able to drive to and from work, in addition to any necessary on the job driving, as well as driving for educational purposes, essential shopping,

church or medical purposes. See Britt v. State, 50 Fla. Supp. 2d 16,17 (Fla. 9th Cir. Ct.1991). Both Quiroli and Britt point out that the impermissible purposes of the statute are pleasure, recreational, social or non-essential driving.

Given the expansive intent of the legislature in its use of the term “business purposes” as expressed in the legislative history of §322.271(1)(c)1, as well as the persuasive reasoning of Quiroli, Britt and Allart, we believe that the Appellant's driving of a motor vehicle to pay an overdue residential electric bill is within the scope of “maintaining a livelihood”. The term “livelihood” would include such driving where an immediate threat exists, as in this case, to discontinue the Appellant's electricity. Therefore, we find that the lower court erred by denying the Appellant's motions for judgment of acquittal.

REVERSED AND REMANDED. (JEFFREY ROSINEK and VICTORIA SIGLER, JJ., concur.)

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