

THE COURT WILL NOW PREPARE TO  
TAKE UP THE SECOND CASE ON THE  
DOCKET.

>> THE COURT WILL NOW PROCEED TO  
HEARING ARGUMENT IN THE CASE OF  
ROBINSON V. STATE.  
COUNSEL?

>> THANK YOU, YOUR HONOR.  
GOOD MORNING.

MAY IT PLEASE THE COURT, MATTHEW  
SALVIA REPRESENTING THE  
PETITIONER.

I WOULD LIKE TO RESERVE FIVE  
MINUTES FOR REBUTTAL.

THIS COURT SHOULD REVERSE THE  
DECISIONS BY THE SECOND DISTRICT  
COURT OF APPEAL WHEN IT REQUIRED  
NOTICE IS AN ELEMENT OF DRIVING  
WHILE LICENSED REVOKED AS A  
HABITUAL TRAFFIC OFFENDER.  
PRIOR TO THE HOLDINGS BELOW,  
NOTICE WAS REQUIRED OF THIS  
CHARGE STARTING IN 2001 WITH  
ROGERS AND 2002 WITH FIELDS.  
THOSE CASES DID DETERMINE THAT  
NOTICE IS AN ELEMENT TO THE  
OFFENSE.

THE LEGISLATURE SHOULD HAVE BEEN  
AWARE, IT'S PRESUMED TO BE AWARE  
OF THE JUDICIAL CONSTRUCTION  
THAT CHOSE NOT TO MAKE ANY  
CHANGES STARTING FROM 2001  
BEYOND TO SECTION FIVE, IT'S  
PRESUMED THAT THEY WERE AWARE OF  
THAT, AND THAT THAT WAS THEIR  
INTENT, TO AGREE WITH THAT  
CONSTRUCTION.

BY REMOVING NOTICE, THE SECOND  
DISTRICT COURT OF APPEAL HAS  
ERRED IN MAKING THIS CRIME,  
ESSENTIALLY, A STRICT LIABILITY.  
IT VIOLATES DUE PROCESS.

THERE DON'T-- THE CONSTRUCTION  
THAT THE SECOND DCA HAS MADE IS  
THEY DON'T HAVE TO REQUIRE ANY  
KIND OF NOTICE, ANY KIND OF  
KNOWLEDGE--

>> COUNSEL, ISN'T IT PRESUMED--  
COUNSEL, ISN'T IT PRESUMED IN  
THIS CASE BY THE TIME SOMEONE  
CONSIDERED HTO, THAT THEY WOULD  
HAVE RECEIVED NUMEROUS NOTICES  
THAT THEIR LICENSE IS SUSPENDED?

AND, THEREFORE, THEY HAVE  
KNOWLEDGE THAT THEY ARE DRIVING  
ON A SUSPENDED LICENSE?

>> WELL, YOU KNOW, THERE-- SO A  
PERSON MIGHT BE AWARE OF PRIOR  
SUSPENSIONS, BUT THOSE ARE ALSO  
PRIOR OFFENSES.

WE'RE TALKING ABOUT A NEW  
CLASSIFICATION, A NEW OFFENSE, A  
NEW REVOCATION.

>> RIGHT.

SO WOULDN'T THE DUE PROCESS  
ISSUE BE MORE OF A DID THIS  
PERSON KNOW THEY WERE SUBJECT TO  
A THIRD-DEGREE FELONY NOW VERSUS  
A MISDEMEANOR RATHER THAN DID  
THIS PERSON KNOW THEY WERE  
COMMITTING A CRIME.

>> I SEE YOUR HONOR'S POINT  
THERE, BUT I THINK THE CONCERN  
WOULD BE THAT THE PERSON MAY NOT  
BE AWARE, YOU KNOW, THEY COULD  
OBVIOUSLY-- THERE COULD BE AN  
INCORRECT DESIGNATION.  
THE CONVICTION COULD BE  
OVERTURNED, THE PLEA COULD BE  
SET ASIDE.

BUT THEY COULD HAVE DONE, TAKEN  
STEPS TO TRY TO CLARIFY OR  
CORRECT THEIR LICENSE AND STILL  
BE UNAWARE OF THE HTO  
REVOCATION.

SO, YOU KNOW, THAT'S THE WHOLE  
POINT OF NOTICE, IS TO GIVE THEM  
NOTICE THAT, LOOK--

>> COUNSEL, COUNSEL, TO BE CLEAR  
HERE, IN THIS CASE THERE'S  
NOTHING LIKE THAT.

I MEAN, MR. ROBINSON JUST HAD A  
LONG HISTORY OF SCOFF LAW  
BEHAVIOR IN DRIVING WHEN HE,  
WHEN IT'S VERY CLEAR FROM THE  
RECORD, AM I RIGHT, THAT HE KNEW  
HE SHOULDN'T BE DRIVING.

ISN'T THAT JUST KIND OF  
UNDENIABLE FROM THE RECORD  
THAT'S BEFORE US HERE?

>> YOUR HONOR, THERE WERE  
SEVERAL PRIOR OFFENSES.  
YOU KNOW, THERE WAS A REDACTED  
DRIVING RECORD--

[INAUDIBLE]

BUT, ESSENTIALLY, YES, THERE  
WERE SIGNIFICANT PRIOR OFFENSES.

HOWEVER, THE LEGISLATURE--

>> THERE'S NO ALLEGATION HERE THAT THERE'S SOME MISTAKE WAS MADE BY THE DEPARTMENT, THAT THEY GOT, THAT THEY REVOKED THE LICENSE OF THE WRONG PERSON. THIS IS THE GUY WHO WAS DRIVING AND WHO HAD HAD ALL THESE PRIOR OFFENSES THAT LED TO THE HTO DESIGNATION.

SO ALL OF THAT, ALL OF THOSE KIND OF HYPOTHETICAL THINGS THAT ARE BROUGHT UP AS WHAT MIGHT HAPPEN OR-- OR THAT'S, OR NONE OF THAT'S PRESENT HERE, ISN'T THAT CORRECT?

>> YOUR HONOR, I WOULD SAY THAT THE STATUTE REQUIRES NOTICES. I WOULD, I THINK THAT'S THE LEGISLATIVE INTENT HERE. AND SO, YEAH, THERE MIGHT BE CIRCUMSTANCES WHERE SOMEONE HAS A RECORD WHERE THE STATE WOULD MAKE A GREAT ARGUMENT THAT THIS PERSON WOULD HAVE KNOWN, BUT I WOULD ARGUE THAT THEY STILL HAVE TO PRESENT THAT EVIDENCE OF NOTICE, AND IF HE WANTED TO TRY TO REBUT THAT--

>> COUNSEL, WHEN YOU SAY THE STATUTE REQUIRES NOTICE, CLEARLY SUBSECTION FIVE DOES NOT REQUIRE NOTICE.

AND YOU CAN CONTRAST THAT WITH SECTIONS ONE AND TWO WHICH IS DRIVING WHILE LICENSE SUSPENDED WITH KNOWLEDGE AND WITHOUT KNOWLEDGE.

THE LEGISLATURE IN THE PREVIOUS SUBSECTION MADE IT VERY CLEAR THAT NOTICE WAS REQUIRED FOR DRIVING WHILE LICENSED WITH KNOWLEDGE AND THEY HAD A SEPARATE CRIME IN WHICH NO NOTICE HAD BEEN RECEIVED. HOW DO YOU ACKNOWLEDGE THE FACT THAT BY THE TIME THEY MADE IT TO SUBSECTION FIVE THEY HAVE NO SUCH LANGUAGE OR NO SUCH REQUIREMENT?

>> SO, YOUR HONOR, THE POINT IS WHEN YOU GET TO SUBSECTION FIVE, WHAT WE'RE TALKING ABOUT IS PENALTY.

THEY MAKE IT A THIRD-DEGREE FELONY.

THE IDEA BEHIND AN HTO IS TO REVOKE SOMEONE'S LICENSE FOR FIVE YEARS AND IF YOU DRIVE ON IT--

[INAUDIBLE]

SECTION ONE, OF COURSE, IS A CIVIL INFRACTION, AND SECTION TWO STARTS OCCUPANT AS A MISDEMEANOR AND IT ONLY BECOMES A FELONY ONCE CERTAIN PREREQUISITES ARE MET.

SO ALSO NOTHING IN SECTION FIVE SAYS NO NOTICE, NO KNOWLEDGE. SECTION THREE AND FOUR WHICH DISCUSS RESPECTIVELY KNOWLEDGE AND NOTICE AS IN ANY PROVISION. SO I THINK WHAT WE HAVE HERE IS THEY HAVEN'T EXPLICITLY STATED THAT THEY DON'T WANT NOTICE OR KNOWLEDGE OF SECTION FIVE.

WHAT THEY'VE SAID IS IF YOU VIOLATES, IF YOU DRIVE WHILE YOUR LICENSE IS REVOKED AS A HABITUAL OFFENDER, THEN YOU'RE GOING TO FACE--

[INAUDIBLE]

IN FACT, NOTICE IS REQUIRED UNDER 322.251 IN ALL THESE INSTANCES.

AND WHAT WOULD BE THE BENEFIT OF NOTICE IF THEY'RE NOT SENDING IT TO SOMEONE TO PUT THEM ON NOTICE OF IT?

THAT'S THE POINT OF IT.

SO IT'S HARD TO RECONCILE THAT NOTICE IS MANDATORY, THAT THEY HAVE TO SEND IT OUT, BUT THAT THEY DON'T-- THEY'RE NOT REQUIRED TO PROVE IT.

SO AS I INDICATED, THE SEPARATE SECTION FOR FIVE IS REALLY MEANT AS A PUNISHMENT.

THAT'S WHAT THE LEGISLATIVE INTENT HERE IS.

IT'S NOT REALLY MEANT AS A PATH TO AN EASY CONVICTION FOR THE STATE.

AS STATED EARLIER, SECTION ONE STARTS OUT AS A MISDEMEANOR. SO THERE'S REALLY NO DUE PROCESS OR CONCERN HERE.

I'M SORRY, SECTION ONE STARTS

OCCUPANT AS A TRAFFIC  
INFRACTION, SO THERE'S REALLY NO  
CONCERN THAT THAT PERSON DID NOT  
KNOW, DID NOT RECEIVE NOTICE,  
THAT THEY'RE REALLY GOING TO BE,  
YOU KNOW, UNFAIRLY PROSECUTED  
BECAUSE THEY'RE TALKING ABOUT A  
FINE.

BUT WHEN YOU GET TO SECTION  
FIVE, WE'RE TALKING ABOUT A  
FELONY.

SO THE LEGISLATIVE INTENT BEHIND  
FIVE IS REALLY MORE A  
PUNISHMENT, AND THAT'S WHY IT'S  
SEPARATED OUT.

IT'S NOT TO MAKE THE PATH FOR  
PROSECUTION SO SIMPLE.

SO NOT-- JUST BECAUSE NOTICE  
AND KNOWLEDGE AREN'T  
SPECIFICALLY MENTIONED, THEY'RE  
ALSO NOT SPECIFICALLY EXCLUDED  
FROM SUBSECTION FIVE.

THEY COULD EASILY PUT A CHAPTER  
IN THERE THAT SAYS  
NOTWITHSTANDING ANY KNOWLEDGE OR  
NOTICE IN SECTION TWO, NOT  
WITHSTANDING ANYTHING IN SECTION  
THREE OR FOUR THAT REQUIRES  
NOTICE OR KNOWLEDGE.

THEY COULD HAVE PUT THAT HEDGE  
LANGUAGE IN THERE.

SPECIFICALLY AFTER ROGERS FIRST  
ESTABLISHED THAT NOTICE IS AN  
ELEMENT.

THE LEGISLATURE TOOK NO ACTION  
TO CHANGE SECTION FIVE REGARDING  
THAT.

SO THEY COULD HAVE EASILY  
CHANGED THAT.

AND I THINK THAT GOES TO SHOW  
THE LEGISLATIVE INTENT BEHIND  
IT.

>> COUNSEL, LET ME ASK YOU THIS.  
ISN'T THERE STILL IN OUR LAW A  
GENERAL PRINCIPLE-- SUBJECT TO  
SOME EXCEPTIONS-- THAT PEOPLE  
ARE CHARGED WITH NOTICE OF WHAT  
THE LAW IS?

>> LIKE ESSENTIALLY THAT LACK OF  
NOTICE OF THE LAW IS NO DEFENSE,  
IS THAT WHAT YOUR HONOR IS  
REFERRING TO?

>> RIGHT.

THAT, YOU KNOW, WE'RE CHARGEABLE

WITH THE KNOWLEDGE OF CERTAIN THINGS ARE PROHIBITED IN STATUTE, CERTAIN THINGS ARE REQUIRED, CERTAIN THINGS HAPPEN AS A RESULT OF THE STATUTES, HOW THE LAW OPERATES.

>> CORRECT.

AND THE ARGUMENT ISN'T THAT THE PERSON ACCUSED HAS KNOWLEDGE OF WHAT, THAT IT'S A THIRD-DEGREE FELONY OR THAT, YOU KNOW, THEY CAN BE PUNISHED FOR THIS, IT'S THAT THEY'VE GOTTEN NOTICE THE REVOCATION OCCURRED.

>> BUT THE LAW PROVIDES THAT IF YOU, IF YOU CHECK CERTAIN BOXES, THEN YOU SHALL BE DESIGNATED A HABITUAL TRAFFIC OFFENDER. ISN'T THAT CORRECT?

>> YOUR HONOR, IT IS MANDATORY, BUT SO IS THE NOTICE OF THE REV--

>> I UNDERSTAND THAT.

I UNDERSTAND THAT.

BUT SO-- I UNDERSTAND THAT THERE'S A NOTICE PROVISION IN THERE.

SO ISN'T YOUR, ISN'T YOUR CLIENT ON NOTICE BY VIRTUE OF THE LAW? THAT HE CHECKED THOSE BOXES AND, THEREFORE, HE'S A HABITUAL TRAFFIC OFFENDER.

>> WELL, I THINK THEN THE PROBLEM WE HAVE WITH THAT IS IF YOU TAKE THAT TO THAT EXTREME IS THAT KNOWLEDGE OR NOTICE WOULDN'T BE PRESENT IN SECTION TWO.

YOU WOULDN'T NEED THAT EITHER. BECAUSE IF HE'S AWARE OF THE LAW THAT HE'S NOT SUPPOSED TO HAVE A SUSPENDED LICENSE, IT KIND OF DEFEATS THE WHOLE PURPOSE OF THE NOTICE REQUIREMENT.

>> I DON'T SEE HOW THAT FOLLOWS BECAUSE SOMEONE MIGHT BE CHARGEABLE WITH KNOWLEDGE OF WHAT THE LAW PROVIDES, BUT THE LEGISLATURE MIGHT DECIDE WE'RE GOING TO TAKE MEASURES TO PUT THEM ON NOT JUST THAT CONSTRUCTIVE NOTICE, BUT ACTUAL NOTICE.

NOW, I REALIZE THERE ARE

CIRCUMSTANCES IN THE LAW IN  
CONTEXT WHERE THE PRINCIPLE I'VE  
ARTICULATED HAS FOUND NOT TO  
WORK.

SEXUAL REGISTRATION, AND THERE  
ARE SOME OTHER CONTEXTS.

BUT THAT STILL, THAT  
OVERARCHING-- I'M JUST TRYING  
TO UNDERSTAND WHY IN A CASE LIKE  
THIS AND IN CIRCUMSTANCES LIKE  
THIS WHERE THIS STATUS AS A  
RESULT OF A SERIES OF VIOLATIONS  
OF THE LAW, WHY-- AND SOMEONE  
HAS OBVIOUSLY BEEN ENSNARED WITH  
THE LAW ON AN ONGOING BASIS, WHY  
IT WOULD BE UNREASONABLE TO  
THINK THAT THEY WOULD BE  
CHARGEABLE WITH KNOWLEDGE OF  
THAT LAW.

>> WELL, YOUR HONOR, ALL I CAN  
SAY IS I DON'T UNDERSTAND WHY  
THEN THE LAW WOULD REQUIRE THIS  
NOTICE IF EVERYONE'S PRESUMED TO  
BE ON NOTICE.

NOTICE MUST BE SENT.

AND, YOU KNOW, YOU WOULDN'T HAVE  
NOTICE AND KNOWLEDGE WITHIN THE  
STATUTE FOR DRIVING WITH A  
SUSPENDED UNDER 322.34, YOU  
KNOW, IF EVERYONE WAS PRESUMED  
OR DEEMED TO KNOW ALL THIS  
INFORMATION.

>> OKAY, I GOT IT.

I GOT IT.

>> THANK YOU, YOUR HONOR.  
SO AS I WAS INDICATING, NOTICE  
IS REQUIRED JUST TO TAKE EFFECT  
FOR THIS REVOCATION TO EVEN TAKE  
EFFECT.

AND--

>> [INAUDIBLE]

CAN WE TAKE A SHOT AT READING  
THE STATUTE IN CONNECTION WITH  
322.264, WHICH IS THE DEFINITION  
OF A THAT BITCH WALL TRAFFIC  
OFFENDER.

ANY PERSON WHOSE RECORD AS  
MAINTAINED BY THE DEPARTMENT  
SHOWS THAT SUCH PERSON HAS AI  
CUMULATED A SPECIFIC NUMBER OF  
CONVICTIONS.

IT DOESN'T TALK THERE AT ALL  
ABOUT THE STATE OF MIND OF THE  
HABITUAL TRAFFIC OFFENDER OR

WHAT THE OFFENDER KNOWS ABOUT HIS OR HER STATUS.

WOULDN'T YOU AGREE THAT THE DEFINITION OF A HABITUAL TRAFFIC OFFENDER IS ITSELF PREDICATED ON NO KNOWLEDGE ON THE PART OF THE HABITUAL TRAFFIC OFFENDER, BUT RATHER ON WHAT THE RECORDS OF THE DEPARTMENT SHOW?

>> THE LAST PART OF THE QUESTION, CAN YOU REPEAT THE LAST PART?

>> WHAT I'M ASKING IS IF I'M A HABITUAL TRAFFIC OFFENDER, THE STATUTE THAT DEFINES ME AS SUCH DOESN'T SAY ANYTHING ABOUT WHETHER OR NOT I KNOW IT.

IT SAYS THAT I AM A HABITUAL TRAFFIC OFFENDER BECAUSE OF THE RECORDS OF THE DEPARTMENT.

WOULDN'T YOU AGREE?

>> YEAH.

I MEAN, IT DOESN'T SAY IT IN 322.364, BUT THAT IS ALSO A DEFINITIONAL SECTION OF THE STATUTE.

YOU KNOW, 322.27--

>> I GUESS WHAT I'M SAYING THOUGH IS DOESN'T, DOESN'T-- DOESN'T .34 REFER US BACK TO .264 IN A WAY THAT REQUIRES US TO READ THOSE TWO STATUTES TOGETHER IN THAT'S MY QUESTION.

>> YES, THEY DO.

BUT I THINK THAT'S TOO NARROW, JUST TO FOCUS ON THOSE TWO SECTIONS, BECAUSE THE AUTHORITY TO REVOKE IS UNDER 322.27, AND THAT, OF COURSE, GIVES THE DMV THE RIGHT TO REVOKE SOMEONE'S LICENSE.

EVEN THOUGH I AGREE THAT 322.364 DOES APPLY AND SHOULD BE CONSIDERED, IT'S MUCH TOO NARROW.

>> SO, COUNSEL, IS IT YOUR, IS IT YOUR POSITION THAT THE DESIGNATION AS A HABITUAL TRAFFIC OFFENDER DOESN'T ATTACH TO THE PERSON UNTIL AND UNLESS NOTICE IS SENT?

>> I BELIEVE THAT'S IN THE STATUTE, YOUR HONOR, THAT UNTIL NOTICE IS ACTUALLY PROVIDED,

THEY DON'T BECOME A HABITUAL  
TRAFFIC OFFENDER.  
SO THAT IS PART OF ACTUALLY THE  
REVOCAION PROCESS.  
IT DOESN'T START-- THE  
REVOCAION DOESN'T START, I  
DON'T BELIEVE IT'S ATTACHED TO  
THE PERSON'S DRIVING RECORD, AND  
THAT'S MORE OF THE REASON WHY IF  
THEY INTENDED ALL OF THIS TO BE  
IN THERE, THEY DIDN'T MAKE AN  
EXCEPTION IN THAT STATUTE TO  
SAY, WELL, IF THEY'RE HABITUAL,  
THEY DON'T REALLY NEED NOTICE.  
THEY DO.  
THEY STILL NEED NOTICE THAT IT'S  
A FELONY.  
AND MENS REA IS KIND OF THE  
RULE, NOT THE EXCEPTION.  
AND BY NOT ALLOWING THE  
DEFENDANT TO EVER RAISE NOTICE  
UNDER THIS STATUTE, YOU KNOW,  
THEY NEVER ARE ABLE TO PRESENT  
ANY KIND OF A DEFENSE.  
THEY DIDN'T RECEIVE NOTICE THEY  
WERE UNKNOWINGLY DRIVING ON THIS  
HABITUAL REVOCAION, AND IT SORT  
OF GOES AGAINST THAT STANDARD  
PRESUMPTION THAT YOU SHOULD  
REALLY-- UNLESS THERE'S SOME  
EXPLICIT THING SAYING NO, NO  
NOTICE OR KNOWLEDGE WHICH THE  
LEGISLATURE HAS NOT DONE.  
I UNDERSTAND THAT THE WORDS ARE  
NOT THERE IN SECTION FIVE, BUT  
WHEN YOU READ THE STATUTE AS A  
WHOLE AND THE ADJOINING STATUTES  
WITHIN THE CHAPTER, IT'S CLEAR  
THAT THE INTENT WAS TO INCLUDE  
THAT.  
AND I THINK THAT IT WOULD BE  
SORT OF AN UNREASONABLE VIEW OF  
THE LEGISLATIVE INTENT TO JUST  
ASSUME THAT THEY DID NOT WANT  
THAT.  
IT LOOKS LIKE I'M DONE, AND I'LL  
SAVE THE REST OF MY TIME FOR  
REBUTTAL.  
>> THANK YOU.  
COUNSEL?  
>> GOOD MORNING, YOUR HONORS.  
MAY IT PLEASE THE COURT, MY NAME  
IS JONATHAN TANNEN WITH THE  
ATTORNEY GENERAL'S OFFICE

REPRESENTING THE STATE OF  
FLORIDA.

YOUR HONORS, THIS CASE PRESENTS  
A STRAIGHTFORWARD QUESTION OF  
STATUTORY INTERPRETATION.

SECTION 322.34, SUBSECTION FIVE  
STATEMENTS AS FOLLOWS: ANY  
PERSON WHOSE DRIVER'S LICENSE  
HAS BEEN REVOKED PURSUANT TO  
322.3264 AND WHO DRIVES ANY  
VEHICLE WHILE SUCH LICENSE IS  
REVOKED IS GUILTY OF A FELONY OF  
THE THIRD DEGREE.

UNDER THE PLAIN LANGUAGE OF THE  
STATUTE, THERE ARE ONLY TWO  
ELEMENTS.

THE FIRST IS THAT THEIR LICENSE  
HAS BEEN REVOKED AND THE SECOND  
IS THEY DRIVE ON A HIGHWAY OF  
THIS STATE WHILE THE REVOCATION  
IS IN EFFECT.

THE SECOND DISTRICT CORRECTLY  
LOOKED AT STATUTE AND DETERMINED  
THAT THOSE ARE THE ONLY TWO  
ELEMENTS OF THE OFFENSE THAT  
HAVE BEEN ENCODED INTO LAW BY  
THE LEGISLATURE, AND THOSE ARE  
ALSO THE ONLY TWO ELEMENTS THAT  
APPEAR IN THE STANDARD JURY  
INSTRUCTION OF THE EVENTS.

THE ORIGIN OF THE NOTICE  
REQUIREMENT COMES FROM THE  
FOURTH DISTRICT'S 2001 DECISION  
IN ROGERS WHERE THE FOURTH  
DISTRICT WAS DISCUSSING A  
DIFFERENT ISSUE OF WHETHER IN  
ORDER TO CONVICT A DEFENDANT FOR  
THE HTO OFFENSE, THE STATE IS  
REQUIRED TO PROVE EACH OF THE  
UNDERLYING CONVICTIONS THAT  
FORMED THE BASIS FOR THE HTO  
DESIGNATION.

AND IN THE COURSE OF DISCUSSING  
THAT ISSUE, THE FOURTH DISTRICT  
SAID THAT NOTICE IS ONE OF THE  
ELEMENTS OF TO FENCE JUST IN THE  
CONTEXT OF DESCRIBING THE  
STATUTE OR DESCRIBING THE CRIME.

BUT IN ITS BASIS FOR THAT WAS A  
DIFFERENT STATUTE, 322.251,  
WHICH DOES STATE THAT THE DHSMV  
HAS TO GIVE NOTICE OF ORDERS OF  
CANCELLATION, SUSPENSION OR  
REVOCATION.

AND IT SAYS THAT ENTRY SHALL BE ADMISSIBLE IN THE COURTS OF THIS STATE AND SHALL CONSTITUTE SUFFICIENT PROOF THAT SUCH NOTICE HAS BEEN GIVEN, BUT IT DOESN'T SAY ANYTHING ABOUT WHETHER PROOF OF THAT NOTICE IS AN ELEMENT OF ANY SPECIFIC OFFENSE IN CHAPTER 322.

AND WHEN WE READ THAT STATUTE, 322.34, IN ITS TOTALITY, WE CAN SEE THAT THE LEGISLATURE CREATED ONE OFFENSE WHERE KNOWLEDGE IS EXPLICITLY REQUIRED AS AN ELEMENT, THAT'S THE SUBSECTION TWO OFFENSE, DRIVING WITH A SUSPENDED OR REVOKED LICENSE WITH KNOWLEDGE.

AND IT PROVIDED THAT ONE OF THE WAYS KNOWLEDGE CAN BE PROVEN IS BY SHOWING THAT THE DEFENDANT RECEIVED NOTICE OF THE CANCELLATION, SUSPENSION OR REVOCATION.

BUT THEN WHEN WE GET TO SUBSECTION FIVE, THE LEGISLATURE DIDN'T INCLUDE THAT TYPE OF LANGUAGE.

IT SAID THAT AN OFFENDER IS GUILTY OF THE OFFENSE WHEN THEIR LICENSE HAS BEEN REVOKED AS AN HTO AND THEY DRIVE WHILE THE REVOCATION IS IN EFFECT.

>> COUNSEL, COULD I ASK YOU THE SAME QUESTION I ASKED OPPOSING COUNSEL?

DO YOU THINK THE HTO DESIGNATION ATTACHES AUTOMATICALLY BY, YOU KNOW, EXTENT OF THE DEFINITION THAT JUSTICE CURIEL MENTIONED, OR DO YOU THINK IT DOES NOT ATTACH TO THE PERSON UNTIL NOTICE IS PROPERLY PROVIDED?

>> UNDER THE STATUTE I THINK A PERSON DEFINED AS AN HTO JUST BY VIRTUE OF HAVING THE UNDERLYING CONVICTIONS THAT QUALIFY THEM AS AN HTO.

THE FIVE-YEAR REVOCATION, I THINK, IF WE LOOK AT 322.251, DOES TAKE EFFECT 20 DAYS AFTER THE NOTICE HAS BEEN, THE FACT THAT NOTICE HAS BEEN GIVEN HAS BEEN NOTED ON THE DRIVING

RECORD.

>> DO YOU THINK THE STATE COULD CHARGE SOMEONE WITH HTO, DRIVING WITH AN HTO IN THE TIME PERIOD BETWEEN WHEN THE DEPARTMENT DETERMINED THAT THEY WERE HTO BUT NOT WITHIN THAT 20-DAY BEFORE THE SUSPENSION TOOK EFFECT?

>> I THINK IT WOULD DEPEND ON WHETHER THEY'RE POSSIBLY NOT, YOUR HONOR.

I THINK IT WOULD DEPEND ON WHETHER THEIR DRIVING RECORD SHOWS THAT THEY'RE AN HTO. BUT THAT GOES TO THE QUESTION OF WHETHER THEY ARE AN HTO, WHETHER THEY QUALIFY AS AN HTO, AND THAT'S A WHAT SEPARATE QUESTION FROM WHETHER NOTICE IS REQUIRED AS AN ELEMENT OF THE OFFENSE UNDER THE STATUTE.

YOU KNOW, I THINK IN TALKING ABOUT LEGISLATIVE INTENT, WE CAN SEE REASONS WHY THE LEGISLATURE WOULD HAVE CONCLUDED THAT IT ISN'T NECESSARY TO PROVE NOTICE. NOW, THE LEGISLATURE CAN DETERMINE THAT THE PERSON SHOULD BE PROVIDED NOTICE OF THEIR HTO STATUTE, BUT THE POINT OF THE HTO OFFENSE IS THAT THE PERSON HAS BEEN SERIALLY CONVICTED OF TRAFFIC OFFENSES AND THEN CONTINUES TO DRIVE.

SO THE LEGISLATURE COULD DETERMINE THAT UNDER THESE CIRCUMSTANCES IT DOESN'T REALLY MATTER WHETHER THEY'RE SPECIFICALLY AWARE OF THEIR HTO STATUS OR NOT.

THE FACT IS THAT THE, THEY HAVE HAD MULTIPLE CONVICTIONS FOR TRAFFIC OFFENSES, EITHER THREE CONVICTIONS FOR THE SPECIFIC OFFENSES DISCUSSED IN SUBSECTION ONE OF THE HTO DEFINITION AND 15 VIOLATIONS IN THE SECOND SUBSECTION.

BUT THE LEGISLATURE COULD DETERMINE THAT BASED ON THIS PERSON'S INVOLVEMENT WITH THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, THEIR

INVOLVEMENT WITH THE JUSTICE SYSTEM.

THIS PERSON KNEW THAT THEY HAVE SERIOUS ISSUES WITH THEIR DRIVING RECORD.

AT THIS POINT IT DOESN'T MATTER WHETHER THEY'VE NECESSARILY BEEN GIVEN, WHETHER THEY'VE BEEN GIVEN NOTICE OR WHETHER THE STATE HAS TO PROVE NOTICE OR WHETHER THEY'RE NECESSARILY AWARE THEY'RE AROUND HTO. THE PROBLEM IS THAT THEY CONTINUE TO DRIVE AFTER BEING SERIALY CONVICTED OF TRAFFIC THE OFFENSES.

>> DOES IT MATTER--

>> [INAUDIBLE]

SORRY.

>> GO AHEAD.

GO AHEAD.

>> IS IT POSSIBLE TO RECEIVE HTO STATUS BASED SOLELY ON, WITHOUT DRIVING WITHOUT KNOWLEDGE?

>> YES.

IF THE PERSON HAS RECEIVED ONE OF THE QUALIFYING OFFENSES WHERE ONLY THREE CONVICTIONS IS REQUIRED IS WHERE THE PERSON HAS RECEIVED PRIOR CONVICTIONS FOR DRIVING WITH A SUSPENDED OR REVOKED LICENSE.

>> EVEN WITHOUT KNOWLEDGE.

>> I AM NOT SURE ABOUT THAT, YOUR HONOR.

I, I BELIEVE, I BELIEVE IT'S NOT NECESSARY.

I THINK THE STATUTE JUST SAYS DRIVING, THREE PRIOR CONVICTIONS FOR DRIVING WITH SUSPENDED OR REVOKED LICENSE IF I'M REMEMBERING CORRECTLY.

>> SO UNDER THE STATE'S INTERPRETATION, ARGUABLY, SOMEONE COULD DRIVE WITH LICENSE SUSPENDED WITHOUT ANY KNOWLEDGE, GET THEIR LICENSE BACK, HAVE IT SUSPENDED AGAIN FOR VARIOUS FINANCIAL ISSUES AND THEN STILL PERHAPS GET HTO STATUS AND NOT REALIZE THAT THEY WERE DRIVING ON A CRIMINAL VIOLATION?

>> WELL, I THINK IT'S IMPORTANT TO POINT OUT THAT IN SUBSECTION

TWO EVENTS, ONE OF THE WAYS OF PROVING KNOWLEDGE IS WHEN A PERSON HAS PREVIOUSLY BEEN CONVICTED OF DRIVING WITH A SUSPENDED OR REVOKED LICENSE UNDER SUBSECTION ONE.

THE SUBSECTION ONE OFFENSE IS A MOVING VIOLATION, ESSENTIALLY THE FIRST TIME.

ASSUMING THE STATE DOESN'T PROVE ANY NOTICE.

BUT THE FACT OF THAT FIRST CONVICTION FOR ALL SUBSEQUENT CONVICTIONS SERVES IN ITSELF AS PROOF THAT THE PERSON HAD KNOWLEDGE.

>> FROM ALL THIS ARGUMENT, SHOULD I CONCLUDE THAT THE STATE CONCEDES THAT THIS IS NOT A STRICT LIABILITY OFFENSE?

>> WELL, I THINK IF BY STRICT LIABILITY OFFENSE-- I WOULD DEFINE STRICT LIABILITY OFFENSE AS ONE THAT DOESN'T INCLUDE A NOTICE OR KNOWLEDGE OF IT.

IN THAT REGARD--

>> WELL, THAT'S, CANDIDLY, THAT'S OBVIOUSLY TOO BROAD, RIGHT?

I MEAN, UNDER HEATH V. UNITED STATES, YOU KNOW, THE SUPREME COURT HAS TOLD US THAT, YOU KNOW, WHEN WE'RE READING A STATUTE, THERE ARE THE TRADITIONAL MENS REA CONSIDERATIONS THAT THE CHIEF WAS TALKING ABOUT NOT LONG AGO AND THAT OFTEN A STATUTE WILL MAKE NO MENTION OF WHAT THE MENS REA IS, AND YET WE, THE U.S. SUPREME COURT, MANY-- ALL COURTS IN OUR SYSTEM KNOW THAT THERE'S A MENS REA REQUIREMENT THAT SORT OF SLEEPS IN THE FIELD, IF YOU WILL, EVEN IF IT ISN'T WRITTEN IN THE STATUTES. SO IT CAN'T BE THAT UNLESS IT SAYS WHAT IT IS, THEN, YOU KNOW, WE MUST ASSUME IT'S A STRICT LIABILITY OFFENSE.

MY QUESTION TO YOU IS ARE YOU CONCEDING THAT THIS IS NOT A STRICT LIABILITY OFFENSE?

>> I AM STILL NOT SURE I

UNDERSTAND YOUR QUESTION, YOUR HONOR.

CAN YOU, CAN YOU DEFINE WHAT--

>> MANY, MANY TYPES OF CRIMES REQUIRE NO MENS REA BECAUSE-- OR CIVIL VIOLATIONS REQUIRE NO PROOF OF KNOWLEDGE, RIGHT?

AND THOSE WE CALL STRICT LIABILITY OFFENSES.

MY QUESTION TO THE STATE IS, IS IN THAT KIND OF OFFENSE?

OR IS IT BECAUSE THE PENALTIES ARE SO SEVERE, FOR EXAMPLE, THIS CANNOT WITH A STRICT LIABILITY OFFENSE, WE MUST ESTABLISH SOME SORT OF KNOWLEDGE ON THE PART OF THE OFFENDER, SOME SORT OF CRIMINAL MINDSET OR MENS REA IN ORDER TO CONVICT THE DEFENDANT.

>> NO, YOUR HONOR, I WOULD SAY THIS IS STRICT LIABILITY IN THE SENSE WE DON'T NEED TO PROVE ANY KNOWLEDGE OF THE PERSON'S STATUS.

NOW, I THINK THE LEGISLATURE COULD REASONABLY DETERMINE THAT BY THE TIME A PERSON IS AN HTO, THEY WOULD NECESSARILY HAVE KNOWLEDGE AT THE VERY LEAST OF THEIR, THEIR, THE STATUS OF THEIR DRIVING RECORD.

AND, OF COURSE, DRIVING IS A PRIVILEGE.

IT'S NOT A RIGHT UNDER STATE LAW.

A PERSON HAS AN OBLIGATION TO MAKE SURE THAT THEY ARE LICENSED TO DRIVE A MOTOR VEHICLE.

BUT THE QUESTION FOR OUR PURPOSES IS DID THE LEGISLATURE MAKE THAT AN ELEMENT OF THIS OFFENSE.

AND UNDER THE PLAIN LANGUAGE OF THE STATUTE, IT CLEARLY DIDN'T.

AND EVEN IF THE-- NOW, IN SOME CASES THE COURT CAN VIEW THE LACK OF A MENS REA ELEMENT AS AN AMBIGUITY PARTICULARLY IF WE HAVE, LET'S SAY, A COMMON LAW OFFENSE WHERE KNOWLEDGE, SOME SORT OF MENTAL ILLNESS IS AN INHERENT ELEMENT OF THE OFFENSE.

BUT, FIRST OF ALL, THIS IS A TRAFFIC OFFENSE WHICH IS,

ESSENTIALLY, SUBJECT TO  
LEGISLATIVE DISCRETION.

SECONDLY, EVEN IF WE VIEW THE  
LACK OF NOTICE OR KNOWLEDGE AS  
AN AMBIGUITY, THAT AMBIGUITY IS  
ELIMINATED WHEN WE READ THE  
STATUTE AS A WHOLE, AND AS WE  
CAN SEE -- AND MADE KNOWLEDGE AN  
ELEMENT OF THAT CRIME.

AND THEN PROVIDED THAT ONE OF  
THE WAYS TO PROVE KNOWLEDGE IS  
BY SHOWING THAT THE PERSON  
RECEIVED NOTICE OF THE  
REVOCAATION.

WHEN WE GET TO SUBSECTION FIVE,  
THE LEGISLATURE WAS SILENT WHICH  
INDICATES THAT IF THE  
LEGISLATURE HAD WANTED TO MAKE  
PRIOR KNOWLEDGE OR NOTICE AN  
ELEMENT OF THE OFFENSE, IT COULD  
HAVE DONE THAT EASILY.

AND, OF COURSE, WHEN YOU LOOK AT  
SUBSECTION TWO, IT'S NOT JUST  
THAT THE LEGISLATURE MADE  
KNOWLEDGE IN ELEMENT, IT SET OUT  
A VERY SPECIFIC METHOD AND SET  
OUT VERY SPECIFIC WAYS FOR THE  
STATE TO PROVE THAT THE PERSON  
HAD KNOWLEDGE.

WHEN WE GET TO SUBSECTION FIVE,  
EVEN IF WE WERE TO ASSUME THAT  
KNOWLEDGE AS AN ELEMENT OF  
OFFENSE, THAT BEGS THE QUESTION  
OF, WELL, HOW DOES THE STATE  
PROVE THAT?

DO WE INCORPORATE ALL OF THE  
PROVISIONS INCLUDED IN  
SUBSECTION TWO?

IS IT THAT NOTICE WAS SENT?

IS IT THAT THE PERSON RECEIVED  
NOTICE?

AND THIS WAS-- AS THE SECOND  
DISTRICT POINTED OUT, THIS  
WASN'T A HYPOTHETICAL CONCERN.  
THIS WAS, THIS ACTUALLY WAS A  
VERY LONG DISCUSSION IN THE  
TRIAL COURT ON THAT BASIS WHERE  
THE DEFENSE WAS REQUESTING A  
POTENTIAL JURY INSTRUCTION THE  
REQUIRING THE STATEMENT-- A  
SPECIAL JURY INSTRUCTION  
REQUIRING THE COURT TO PROVIDE  
NOTICE, AND THE PARTIES IN THE  
TRIAL STARTED LOOKING AT THE

SUBSEQUENT TWO JURY INSTRUCTIONS AND WERE TRYING TO FIGURE OUT, OKAY, IF WE'RE MAKING THAT AN ELEMENT, IS IT NOTICE OR IS IT KNOWLEDGE AND IF IT'S KNOWLEDGE, HOW DO WE PROVE THAT? IS THERE A PRESUMPTION LIKE THERE IS UNDER SUBSECTION TWO? AND ULTIMATELY, THE TRIAL COURT CORRECTLY RULED, LOOK, THE STATUTE IS VERY CLEAR. IT DOESN'T INCLUDE NOTICE OR KNOWLEDGE AS AN ELEMENT. THE STANDARD JURY INSTRUCTION DOESN'T INCLUDE NOTICE OR KNOWLEDGE AS AN ELEMENT. AND THE COURT IS OBLIGATED TO APPLY THE STATUTE AS WRITTEN. AND IN ORDER TO HOLD THAT NOTICE OR KNOWLEDGE AS AN ELEMENT OF THE OFFENSE, THE COURT WOULD HAVE TO MAKE A LEGISLATIVE JUDGE, IS IT NOTICE OR IS IT KNOWLEDGE. DOES NOTICE HAVE TO BE SENT OR RECEIVED, AND HOW DOES THE STATE PROVE THAT. AND THERE'S REALLY NO BASIS TO DO THAT IN THIS STATUTE, PARTICULARLY WHERE THE LEGISLATURE DID IT IN A DIFFERENT SUBSECTION AND DIDN'T DO SO HERE. AND FROM THAT WE PRESUME THAT THE LEGISLATURE MADE A REASONABLE LEGISLATIVE JUDGMENT THAT NOTICE AND KNOWLEDGE WERE NOT LIMITS OF THE OFFENSE. THE PETITIONER ALSO DISCUSSED THE LEGISLATURE'S FAILURE TO AMEND THE STATUTE IN LIGHT OF ROGERS AND FIELDS. AS DISCUSSED IN THE STATE'S ANSWER BRIEF, UNDER THIS RECORD WE REALLY, I DON'T THINK, CAN INTERPRET ANYTHING, ANY INTENT FROM THE LEGISLATURE'S FAILURE TO AMEND THE STATUTE. IN 2007, JUST A COUPLE OF YEARS AFTER ROGERS AND FIELDS, THIS COURT ADOPTED THE STANDARD JURY INSTRUCTION ON THE OFFENSE WHICH LISTS ONLY TWO ELEMENTS. NOW, THE STANDARD JURY

INSTRUCTIONS, OBVIOUSLY, AREN'T BINDING PRECEDENT, BUT THEY ARE PERSUASIVE.

AND I THINK ANY LEGISLATOR LOOKING AT THAT WOULD SAY, OKAY, WELL, ACCORDING TO THE FLORIDA SUPREME COURT THERE ARE ONLY TWO ELEMENTS OF THE OFFENSE.

SO THERE'S NO BASIS FOR, THERE'S NO NEED FOR US TO TAKE ANY ACTION.

IF THE COURT HAS NO FURTHER QUESTIONS, I WILL RELY ON STATE'S ANSWER BRIEF FOR ANY FURTHER ARGUMENTS.

THE STATE REQUESTS THAT THE DECISION OF THE SECOND DISTRICT BE APPROVED.

>> THANK YOU, COUNSEL.

REBUTTAL.

COUNSEL, YOU ARE-- HAVE MUTED YOURSELF.

>> THANK YOU, YOUR HONOR.

I THINK I'M UNMUTED NOW.

SO IN RESPONSE, IT CAN'T BE PRESUMED THAT KNOWLEDGE OR NOTICE ARE PRESENT, THAT THE OFFENDER OR THE PERSON THAT'S CHARGED WOULD KNOW OF THESE THINGS.

THIS WOULD BE A STRICT LIABILITY CRIME IF YOU ARE JUST TO PRESUME OR ASSUME THAT THE PERSON-- THAT IT'S NOT AN ELEMENT.

I WOULD AGREE THAT RESPONDENT'S CORRECT THAT THE TRIAL COURT, THE PARTIES WERE DISCUSSING THIS ISSUE AS TO HOW TO ADDRESS THIS.

I WOULD POINT OUT IT WAS STARTED IN VOIR DIRE THAT JURORS ARE ASKING HOW CAN, CAN I CONVICT A GUY THAT DOESN'T KNOW IF HIS LICENSE IS NOT SUSPENDED.

SO, OBVIOUSLY, THIS IS AN ISSUE THAT CAME ABOUT BELOW AND, YOU KNOW, IT SEEMS LIKE EVEN THE JURORS WERE KIND OF WONDERING HOW ELSE CAN YOU DECIDE IT.

I WOULD DISAGREE WITH HIS ARGUMENT THAT-- I'M SORRY, RESPONDENT'S ARGUMENT THAT YOU WOULD HAVE TO MAKE A LEGISLATIVE JUDGMENT.

IT'S WITHIN THE STATUTE.

IT'S WITHIN 322.34.  
SO THERE, YOU KNOW, IT'S  
EXPLAINED HOW NOTICE AND  
KNOWLEDGE CAN BE PROVEN.  
SO IT WOULDN'T BE YOU'RE HAVING  
TO INVENT SOME CONSTRUCTION ON  
HOW TO PROVE THOSE THINGS.  
IT'S WITHIN THE STATUTE ALREADY.  
AS ANTICIPATED, JURY  
INSTRUCTIONS ARE NOT BINDING,  
THEY DO CHANGE.  
THE LEGISLATURE WAS ON NOTICE  
BASED ON, FROM ROGERS IN 2001  
AND FIELDS AFTER THAT, AND THE  
LEGISLATURE CHOSE NOT TO MAKE  
ANY CHANGES.  
SO I WOULD SAY THAT HAS A BETTER  
IMPACT ON THE LEGISLATIVE  
INTENT.  
>> DO WE KNOW THAT THEY RECEIVED  
THAT NOTICE?  
TALKING ABOUT--  
>> THAT'S A JOKE, COUNSEL.  
>> THANK YOU, YOUR HONOR.  
YEAH, I MEAN, IT'S PRESUMED.  
BUT, YES.  
SO THE PLAIN MEANING HERE WOULD  
BE UNREASONABLE AND CLEARLY  
CONTRARY TO THE LEGISLATIVE  
INTENT.  
IT COULD BE TO RESULT, WE'VE GOT  
A THIRD-DEGREE FELONY WHERE THE  
PERSON HAS NO KNOWLEDGE OR  
NOTICE.  
THE STATE SHOULD BE REQUIRED TO  
PROVE THAT.  
IT'S PREFERABLE.  
IN FACT, IT'S, THERE ARE ONLY  
LIMITED CIRCUMSTANCES WHERE YOU  
WANT TO REMOVE A MENS REA.  
IT NEEDS TO BE EXPRESS OR  
IMPLIED.  
THERE'S GOT TO BE SOME  
INDICATION WHY THEY WANT TO  
REMOVE MENS REA, AND THERE'S NO  
INDICATION WHY THE LEGISLATURE  
WOULD WANT TO HAVE A PERSON  
UNKNOWINGLY CONVICTED OF A  
THIRD-DEGREE FELONY.  
IT'D BE INCONSISTENT WITH THE  
FACT THERE'S BEEN NO CHANGE TO  
SECTION FIVE IN LIGHT OF ROGERS  
AND THAT MANDATORY NOTICE IS  
REQUIRED FOR THE OFFENSE.

IT COULD LEAD TO I AM ANOMALOUS RESULTS.

YOU HAVE TO PROVE NOTICE FOR A SECOND-DEGREE MISDEMEANOR, YOU HAVE TO PROVE KNOWLEDGE FOR A SECOND-DEGREE MISDEMEANOR BUT NOTHING FOR A THIRD-DEGREE FELONY.

SO NOTICE AND KNOWLEDGE OR AT LEAST NOTICE IS INHERENT TO THIS OFFENSE.

IT COMPORTS WITH THE LEGISLATURE'S INTENT AND DUE PROCESS.

THE PURPOSE OF NOTICE, AS I MAY HAVE ANTICIPATED ALREADY, IS TO NOTIFY SOMEONE OF SOMETHING.

IT'S NOT JUST TO SAY WE'VE PUT SOMETHING IN THE MAIL, IT'S NOT A MINISTERIAL ACT.

IT'S TO NOTIFY SOMEONE THAT THAT LICENSE WAS REVOKED.

>> THE SECOND DISTRICT COURT OF APPEAL SAID THAT MR. ROBINSON HAD BEEN CONVICTED OF DRIVING WITH A SUSPENDED OR REVOKED LICENSE ON 21 PRIOR OCCASIONS, 8 OF WHICH WERE FELONIES.

AND FOUR TIMES THE DEPARTMENT OF MOTOR VEHICLES HAD DESIGNATED HIM AS A HABITUAL TRAFFIC OFFENDER AND REVOKED HIS LICENSE ACCORDINGLY.

AT NO TIME DID HE EVER I ATTEMPT TO REINSTATE HIS DRIVER'S LICENSE.

ARE THOSE FACTS CORRECT?

>> YOUR HONOR, I DON'T HAVE ANYTHING SPECIFIC TO SAY THAT THEY'RE INCORRECT.

I MEAN, YEAH, I DON'T KNOW IF HE MADE ANY ATTEMPTS BUT, YES, CLEARLY THOSE CONVICTIONS ARE THERE.

THERE WAS NOTHING IN THE RECORD TO INDICATE THAT THEY WERE REINSTATED.

SO TO ANSWER YOUR QUESTION, I DON'T HAVE ANYTHING THAT SAYS IT WAS REINSTATED.

>> WHAT SEEMS ABSURD TO ME, YOU'RE MAKING AN ABSURD TYPE ARGUMENT, WHAT SEEMS ABSURD TO ME WAS AN ARGUMENT THAT HE HAD

NO NOTICE AND HAD NO KNOWLEDGE.

>> THE ISSUE IS REALLY COMES  
DOWN TO HE'S GOT OF TO HAVE  
NOTICE THAT HE'S AN HTO, THAT HE  
ACTUALLY HAS TO RECEIVE SOME  
NOTICE.

WE'RE TALKING ABOUT A  
THIRD-DEGREE FELONY, A PERSON  
SHOULD BE MADE AWARE, LOOK, YOUR  
LICENSE HAS BEEN REVOKED AS A  
HABITUAL TRAFFIC OFFENDER: AND  
IT MAY HAVE BEEN A LOT EASIER  
AND VARY FROM CASE TO CASE WHAT  
THE STATE CAN USE TO PRESENT IF  
NOTICE OF KNOWLEDGE.

AND SO THAT MAY FACTOR IN BASED  
ON THE RECORD IN INDIVIDUAL  
CASES, BUT IT IS AN ELEMENT.  
NOTICE IS AN ELEMENT.

I WOULD JUST POINT OUT REAL  
QUICK, I'M GOING TO HAVE TO RELY  
ON MY BRIEF FOR THE SECOND  
ISSUE, BUT ESSENTIALLY IF THIS  
COURT DOESN'T REVERSE ON ISSUE  
ONE, THAT MR. ROBINSON WOULD BE  
ENTITLED TO A NEW TRIAL.

THEY BROUGHT IN, BASICALLY,  
EVIDENCE TO SHOW PRIOR  
CONVICTIONS, PRIOR KNOWLEDGE,  
CONSCIOUSNESS OF GUILT, AND WHAT  
HE WAS NOT ALLOWED TO ARGUE  
NOTICE OR KNOWLEDGE.

SO THE STATE WAS ABLE TO ARGUE  
THOSE THINGS, AND HE WAS NOT  
ABLE TO ARGUE ANYTHING IN  
RESPONSE.

IN THIS CASE THE STATE FAILED TO  
PROVE NOTICE AND ELEMENT, THE  
EVIDENCE WASN'T SUFFICIENT, THIS  
COURT SHOULD REVERSE THE  
DECISION AND DISCHARGE  
MR. ROBINSON'S CONVICTION OR IN  
THE ALTERNATIVE REVERSE FOR A  
NEW TRIAL.

THANK YOU.

>> WELL, THANK YOU.

WE THANK YOU BOTH FOR YOUR  
ARGUMENTS IN THIS CASE TOLD.  
THE COURT WILL NOW TAKE A RECESS  
OF ABOUT TEN MINUTES BEFORE WE  
PROCEED TO THE NEXT CASE.