

AB

IN THE CIRCUIT COURT IN AND FOR ESCAMBA COUNTY, FLORIDA

CLERK OF CIRCUIT COURT
ESCAMBA COUNTY, FL

MICHAEL BRIAN BENNETT,
Appellant, AUG 12 P 2:47

APPEALS DIVISION
FILED & RECORDED

County Court Case # 09-CT-000921, Div. 1
Circuit Court Case # 10-AP-000007, Div. A

v.

THE STATE OF FLORIDA,
Appellee.

_____ /

DECISION REVERSING FINDING OF GUILT UNDER COUNT 3


PER CURIAM.

Appellant brings this appeal challenging the sufficiency of the evidence to support conviction under Count 3 of the information alleging the unlawful operation of a motorcycle without holding a valid license for same as required by §322.03(4), *Fla. Stat.* (2009).

Under Chapter 322, *Florida Statutes*, (2009), a motorcycle is defined as “a motor vehicle powered by a motor with a displacement of more than 50 cubic centimeters***.”

The evidence presented by the State of Florida never established that the motor vehicle driven by appellant satisfied the statutory definition of motorcycle in that it was not shown inferentially or by direct evidence that the motor vehicle being operated and driven had a displacement of more than 50 cubic centimeters. Indeed the evidence presented was that its displacement was 50 cubic centimeters or less.

The State’s proof having failed as to this essential element required the trial court to enter judgment as a matter of law in defendant’s favor either through grant of motion of judgment of acquittal at the close of the State’s case-in-chief or later through entry of verdict of not guilty at the close of all evidence.

Case: 2010 AP 000007

00041109874
Dkt: OPINION Pg#:

Accordingly, the decision of the trial court for conviction of appellant as to the Count
3 is REVERSED and the judgment of conviction thereunder is hereby vacated and set aside.

DONE AND ORDERED at Pensacola, Escambia County, Florida, this 12th day
of August, 2010.

Wickham Keebler

CIRCUIT JUDGE

Conformed copies to:

- ✓ - Travis B. Atkinson, Assistant Public Defender, 190 Governmental Center, Pensacola, FL 32502
- ✓ - Jeremiah Monahan, Assistant State Attorney, 190 Governmental Center, Pensacola, FL 32502
- ✓ - Hon. Joyce Williams, County Court Judge, 190 Governmental Center, Pensacola, FL 32502

(glw)