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Criminal law -- Traffic infractions -- Driving without a license -- Motorized bicycle -- Dismissal -- Appeals -- Error to grant motion to dismiss traffic citation charging defendant with driving a motor vehicle without a license based on conclusion that bicycle defendant was operating was a "minibike" and did not require a driver's license to operate -- State has right to appeal dismissal of a traffic citation -- Because defendant's bicycle was powered by a gasoline engine and not an electric motor, it did not meet definition of "motorized bicycle" under section 316.003 and, as such, defendant was required to have a driver's license

STATE OF FLORIDA, Appellant, v. TROY ETHAN ERWAY, Appellee. 2nd District. Case No. 2D21-1265. October 28, 2022. Appeal from the County Court for Highlands County; Anthony L. Ritenour, Judge. Counsel: Ashley Moody, Attorney General, Tallahassee, and James A. Hellickson, Assistant Attorney General, Tampa, for Appellant. Howard L. Dimmig, II, Public Defender, and William L. Sharwell, Assistant Public Defender, Bartow, for Appellee.

(NORTHCUTT, Judge.) The county court granted Troy Ethan Erway's motion to dismiss a traffic citation charging him with driving a motor vehicle without a license. We reverse and remand for further proceedings.

Erway was given a Florida Uniform Traffic Citation for driving without a driver license contrary to section 322.03(1), Florida Statutes (2019). Violation of that statute is a misdemeanor. § 322.39. Erway's citation described his vehicle as a black "Huffy," with a "style" of "MK." The ensuing arrest report identified the vehicle as a "motorized bicycle" powered by a gasoline engine.

Erway moved to dismiss the charge, arguing that his motorized bicycle was not a "motor vehicle" as defined by Florida law. Rather, he maintained that his Huffy was a "moped," which was not classified as a motor vehicle under Florida's traffic laws.[1]

The county court held a hearing and, employing a slightly different analysis than the one Erway had offered, granted the motion to dismiss. The court found that the citation's reference to "MK" meant that the officer had identified Erway's vehicle as a "minibike." Positing that a minibike does not require a driver license to operate, the court determined that the State did not have a legal basis to support its charge.

As a preliminary matter, we reject Erway's assertion that the State has no right to appeal the dismissal of a criminal traffic citation. Section 924.07(1)(a), Florida Statutes (2019), provides that the State may appeal from "[a]n order dismissing an indictment or information or any count thereof." But the supreme court has held that the State's right to appeal dismissal of formal charges is not limited to those two types of documents. In *Whidden v. State*, 32 So. 2d 577 (Fla. 1947), the court interpreted a materially identical version of the statute.[2] It held that the State could also appeal the dismissal of "an affidavit purporting to charge a criminal offense." *Id.* at 578-79. The court reasoned that the legislature's intent in section 924.07(1)(a) was "to extend to the state the right of appeal in all cases where the trial court shall quash the formal charge made in such court." *Id.* at 578.

Because the statutory language has not been substantively altered since *Whidden*, the supreme court's interpretation of the statute and the legislative intent underlying it remains binding. *See Hill v. State*, 302 So. 2d 785, 787 (Fla. 4th DCA 1974) (on a different matter of statutory interpretation, holding that "whether we agree with the decision of the Supreme Court decided over thirty years ago . . . we must follow it").

As in *Whidden*, the charging document in this case is a formal charge despite being neither an indictment nor an information. *See Ivory v. State*, 588 So. 2d 1007, 1009 (Fla. 5th DCA 1991) (holding that, "[w]hen issued and served, a uniform traffic citation is the equivalent of an executed information" for the purpose of initiating a prosecution). Accordingly, the State has rightfully appealed the dismissal of its charge against Erway.

With our jurisdiction confirmed, we take up the substantive issue on appeal. Section 322.03(1), under which Erway was charged, does not define the term "motor vehicle." But section 322.01(27), which contains

definitions applicable to chapter 322, states that a motor vehicle is "any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power, motorized wheelchairs, and motorized bicycles as defined in s. 316.003."

Erway's gasoline-powered Huffy was self-propelled, and it was not a motorized wheelchair. Therefore, under section 322.03(1) Erway could permissibly drive his Huffy without a license only if it met the definition of "motorized bicycle" under section 316.003, Florida Statutes (2019). *See State v. Burris*, 875 So. 2d 408, 410 (Fla. 2004) (holding that a "statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent").

Section 316.003, in turn, references motorized bicycles only within the definition of "BICYCLE."

> (4) BICYCLE. -- Every vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or a scooter or similar device. A person under the age of 16 may not operate or ride upon a motorized bicycle.

Because the term "motorized bicycle" in this definition refers only to a "bicycle propelled by a combination of human power and an electric helper motor," it does not include a bicycle powered by a gasoline engine, such as Erway's Huffy. Consequently, the lower court erred when it ruled that section 322.03(1) did not require Erway to have a driver license when operating his gasoline-powered bicycle on a public roadway.

When moving to dismiss the citation, Erway maintained that his Huffy was not a motor vehicle for these purposes because it was not defined as such under a wholly different statute, section 320.01(1)(a), Florida Statutes (2019). That provision contains many more exceptions to the definition of "motor vehicle," including "motorized scooters" and "mopeds."[3] By its terms, however, section 320.01 sets forth definitions that apply "[a]s used in the Florida Statutes, *except as otherwise provided*." (Emphasis added.) As discussed above, section 322.01(27) otherwise provides a definition specific to chapter 322, and that definition controls here. *See also Welch v. State*, 337 So. 3d 517, 518 (Fla. 2d DCA 2022) (holding that specific statutes covering a subject area control over more general statutes).

Finally, we hold that the Florida Uniform Traffic Citation in this case sufficiently detailed the crime for which Erway was accused. Erway was "adequately made aware of the infraction for which he . . . will be tried," which is driving a motor vehicle without a license in violation of section 322.03(1). *See Gardner v. State*, 468 So. 2d 265, 266 (Fla. 2d DCA 1985) (holding that a Florida Uniform Traffic Citation that identified the crime charged and the applicable statute was sufficient).

For these reasons, we reverse the dismissal of the charges against Erway, and we remand for further proceedings consistent with this opinion. (SLEET, J., Concurs. ATKINSON, J. Dissents with opinion.)

(ATKINSON, Judge, Dissenting.) I respectfully dissent. This court lacks jurisdiction to review the State's appeal of the trial court's order dismissing Erway's traffic citation.

"The State's right to appeal in a criminal case must be 'expressly conferred by statute.' " *Exposito v. State*, 891 So. 2d 525, 527 (Fla. 2004) (quoting *Ramos v. State*, 505 So. 2d 418, 421 (Fla. 1987)). An earlier version of section 924.07 provided in relevant part that "[a]n appeal may be taken by the state from: (1) An order quashing an indictment or information or any count thereof." § 924.07, Fla. Stat. (1941); *see also Whidden v. State*, 32 So. 2d 577, 578 (Fla. 1947). In *Whidden*, the Florida Supreme Court equated an affidavit with the indictment and information enumerated in that statute, concluding that "it was the evident legislative intent [of the 1941 version

of sections 924.07 and .08] . . . to extend to the state the right of appeal in all cases where the trial court shall quash the formal charge made in such court so having trial jurisdiction." *Whidden*, 32 So. 2d at 578-79 ("We construe the word 'information,' as used in the statute, to mean the formal complaint required to be made in a court of competent jurisdiction on which the accused may be tried in that court."). However, in *State v. Jones*, 488 So. 2d 527 (Fla. 1986), the Florida Supreme Court subsequently concluded that the State could not appeal from the discharge of an affidavit of violation of probation because it was not the "equivalent to dismissing an information or indictment." *Id.* at 528. Relying on "the general principle that statutes which afford the government the right to appeal in criminal cases should be construed narrowly," the supreme court "reject[ed] [the State's] argument that a discharge of an affidavit of a violation of probation should be construed as equivalent to dismissing an information or indictment, thereby bringing such an appeal within the ambit of section 924.07 . . . ." *Id*.

Section 924.07(1)(a) was thereafter amended to expressly provide that the State had the right to appeal an order dismissing an affidavit charging the commission of a crime or a violation of probation, community control, or supervised release. Ch. 90-239, § 1, Laws of Fla.[4] A traffic citation, however, is not an affidavit. *See* § 316.650(1)(a); *cf.* § 92.50(1), Fla. Stat. (2020); *Fernald v. Judd*, 329 So. 3d 219, 220 n.1 (Fla. 2d DCA 2021) (quoting *Jackson v. State*, 881 So. 2d 666, 667 (Fla. 5th DCA 2004)). After *Jones*, the legislature could have amended the statute to more generally include any means by which the State charges a defendant with a crime; instead, it specifically added affidavits. Section 924.07(1) lists every order that the State is authorized to appeal in a criminal case. *See* § 924.07(1). The statute lists several methods by which the state can bring criminal charges against an accused. If any one of those methods is meant to stand as the archetype for every conceivable charging method, then there would be no purpose in listing them all by name.

In other words, why would both informations and indictments be listed if the term information is to be understood as including an indictment -- or vice versa or also to include an affidavit bringing a charge of a violation of probation? The reasonable answer to that question -- formalized in the canon of construction known as *expressio unius est exclusio alterius* -- is that they would not. " 'Under the principle of statutory construction, *expressio unius est exclusio alterius*,' also known as the negative-implication canon, 'the mention of one thing implies the exclusion of another.' " *Gabriji, LLC v. Hollywood E., LLC*, 304 So. 3d 346, 351 (Fla. 4th DCA 2020) (quoting *Brown v. State*, 263 So. 3d 48, 51 (Fla. 4th DCA 2018)). An order dismissing a traffic citation charging a criminal offense is absent from a statutory list of charging instruments the dismissal of which is appealable by the state -- a granular collection that includes orders dismissing indictments; informations; any count of an information or indictment; or affidavits charging a criminal offense or violation of probation, community control, or supervised release. *See* § 924.07(1)(a). Having mentioned the others and not it, the exclusion of a traffic citation should be inferred. *See Gabriji*, 304 So. 3d at 351. Because, based on the language of section 924.07, the State does not have the right to appeal the trial court's order dismissing Erway's traffic citation, it is unnecessary to reach the merits of the State's argument because its appeal should be dismissed.

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[1]Erway noted that the size of the gasoline engine on his vehicle was within the range permitted for mopeds.

[2]The *Whidden* court construed the 1941 version of section 924.07(1), which authorized the State to appeal "[a]n order quashing an indictment or information or any count thereof."

[3]Even so, that statute makes no exception for a "minibike," the term the county court employed in its ruling. We have found no licensure exception for minibikes in any statute.

[4]The language of section 924.07(1)(a) has remained the same in all material respects since the 1990 amendment. *See* § 924.07(1)(a); ch. 90-239, § 1.

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