

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED**

**ON APPEAL TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY**

APPELLATE DIVISION

LAWRENCE A. KELLEY,

Appellant,

Appeal Case No.: CRC 08-00029 APANO

UCN No.: 522007MM013714XXXXNO

v.

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed: _____.

Appeal from the County Court
for Pinellas County
County Judge Henry J. Andringa

Lawrence A. Kelley
Appellant

Bernie McCabe, Esquire
State Attorney, Sixth Judicial Circuit of Florida
Attorney for Appellee

ORDER AND OPINION

PER CURIAM

Appellant was charged with violation of a permanent repeat violence injunction. The record establishes that a temporary injunction had been issued against Appellant, but he chose

not to attend the return hearing on the temporary injunction. The court made the injunction permanent. It is a violation of that permanent injunction that constitutes the basis for this charge.

The problem here is notice. The record makes it clear that the violation of the injunction occurred before Appellant was given notice of the injunction. Appellant moved for a judgment of acquittal on the grounds that there was no evidence of notice of the permanent injunction. Clearly, the decisions in Suggs v. State, 795 So.2d 1028 (Fla. 2d DCA 2001) and Livingston v. State, 847 So.2d 1131 (Fla. 4th DCA 2003) required that the motion be granted. The State suggested that the law had somehow changed since those decisions and the trial judge seemed to accept that contention. Unfortunately, the State did not provide any basis for this position to the trial judge or to this Court. The trial judge denied the motion. The foregoing authorities are still controlling.

ACCORDINGLY, this Court reverses the judgment and sentence in this cause and remands to the trial court with instructions that the Appellant be discharged.

ORDERED at St. Petersburg, Florida this 3d day of Sept 2000

Original opinion entered by Circuit Judges David A. Demers, Joseph A. Bulone, & Chris Helinger.

Copies: Bernie McCabe, Esquire

Lawrence A. Kelley