

What is a Felony DUI in Arizona, Number 11, State v. Escobido.

The purpose of this series of podcasts is to discuss the facts, legal issues and sentences imposed in Arizona felony DUI cases so people can have an understanding of how individuals can be found guilty of Felony DUI and what sentences can be imposed.

The cases discussed in this series are primarily based on memorandum decisions issued by the Arizona Court of Appeals. Memorandum decisions are only binding on that individual case and are not legal precedent for other cases. However, their discussion of the facts, legal issues presented and sentences imposed are a good guide for what it takes to be found guilty of a felony DUI in Arizona, and what the sentences imposed could be. Keep in mind almost all of these cases arose from the defendant's appeal after a Felony DUI trial. Sentences for Felony DUIs which are resolved by plea agreement are often less than those imposed after a jury trial.

STATE v. VALERIE MARQUEZ ESCOBIDO, No. 1 CA-CR 14-0659 (10/8/15)

The defendant was charged with aggravated DUI based on a suspended license at the time she was under the Influence.

#### FACTS

A police officer observe the defendant exit her motor vehicle and then stumble. The defendant had visible blood on her. The officer made contact with her and from the court's decision it is not clear if she was arrested at this point, however she was transported to a hospital. At the hospital other officers asked the defendant if she knew her license was suspended to which she replied "yes" and how she knew it was suspended to which she said, "a letter from the MVD."

The defendant's alcohol level was tested at .291%.

#### TRIAL

The defendant then went to trial on the charge and used a defense that she had not received adequate notice of the suspension from the MVD. The State

presented a witness from the MVD who said two notices of suspension were mailed to the defendant to two different addresses.

The defendant testified that she had given the MVD a notice of change of address prior to the mailing of a first notice to the first address and therefore the first notice was mailed to the wrong address.

The defendant said she had moved from a second address, which she had given to the MVD, several days prior to the mailing of the second notice. She testified she had put her mail from the second address on hold prior to going on vacation and when she got back she said the held mail did not contain the suspension notice which the MVD said it had mailed to that address.

The defendant testified she had not told the police officers at the hospital that she had known her license was suspended.

#### LEGAL ISSUE AT TRIAL

In an Aggravated DUI trial where it is alleged the defendant had a DUI while their license was suspended the State must show that the defendant knew or should have known of the suspension. This is most commonly done by showing that the MVD mailed a suspension notice to the address a defendant had given to the MVD. There is a presumption in law of the regularity of mailing which says that if a letter is properly addressed and stamped and put into a mail box it may be presumed that the letter went to the address intended. By law all the State must show the notice was properly addressed and mailed and a jury can therefore find the defendant received the notice. This presumption of the regularity of mailing is rebuttal and so a defendant can negate the presumption by showing they did not receive the notice in the mail.

At the conclusion of the evidence it was the defendant's position that she had rebutted the presumption of regularity of mailing.

The State asked the judge to give a jury instruction which stated, in relevant part, that the presumption could be rejected and the State had the obligation to prove each element of the charge:

You are free to accept or reject this presumption as triers of fact. You must determine whether the facts and circumstances shown by the evidence in this

case warrant any presumption that the law permits you to make. Ultimately, even with the presumption, the State has the burden of proving each and every element of the offense beyond a reasonable doubt before you can find the defendant guilty.

The defendant objected to that instruction by asserting that she had rebutted the presumption by showing that the MVD sent the first notice to the incorrect address, and by testifying that she had moved out of the second address by the time of the mailing of the second notice. Instead the defendant asked for the following instruction:

This presumption is rebuttable by the Defendant. You can find that the Defendant has put forth evidence that she did not receive the notice. If you do find that the Defendant has put forth evidence that she did not receive the notice then you must find that the State has presented more evidence than just mere neglect to establish that the Defendant knew or had reason to know that her license was suspended. This additional evidence must be proved beyond a reasonable doubt.

The judge gave the State's proposed instruction to the jury and did not give the defendant's propose instruction.

#### VERDICT AND SENTENCE

The jury found the defendant guilty and thereafter the judge sentenced her to 4 months in prison and two years of probation.

#### APPEAL

On appeal the defendant asserted the trial court had erred by not giving her proposed jury instruction. The court of appeals denied her appeal.

In doing so the court of appeals applied this standard: A conviction will not be reversed for erroneous instructions unless the instructions, taken as a whole, would mislead the jurors. In considering whether the instruction was misleading the court may consider closing arguments.

The court of appeals said the State's jury instruction adequately set for the law and was not misleading. The court said the State's jury instruction stated that a

presumption of notice is permitted if the MVD mailed the notice to the address on record, told the jurors to consider the evidence and to decide whether the evidence supported accepting the presumption or rejecting it. Further the court of appeals noted that the State's instruction correctly instructed that the State ultimately bore the burden of proving each element beyond a reasonable doubt. Moreover the court said the defendant was able to argue to the jurors at closing that she had presented evidence that rebutted the presumption.

The court therefore said the trial court had not committed reversal error by refusing to give the defendant's proposed instruction.