

Rel: July 12, 2019

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-17-1144

Bobby R. Mitchell

v.

State of Alabama

Appeal from Jefferson Circuit Court
(CC-17-4301; CC-17-4302; and CC-17-4304)

KELLUM, Judge.

Bobby R. Mitchell was convicted in the Jefferson District Court of driving under the influence of alcohol ("DUI"), see § 32-5A-191(a)(2), Ala. Code 1975; speeding, see § 32-5A-171, Ala. Code 1975, and Part II of this opinion; possessing

CR-17-1144

alcohol in an open container while driving on a public roadway, see § 32-5A-330, Ala. Code 1975; and driving without a seatbelt, see § 32-5B-4, Ala. Code 1975. He appealed to the circuit court for a trial de novo, and a jury found him guilty of DUI, speeding, and possessing an open container; the jury acquitted him of the offense of driving without a seatbelt. For the DUI conviction, the circuit court sentenced Mitchell to one year in the county jail but suspended the sentence and placed Mitchell on probation for two years; the circuit court also imposed a \$1,000 fine and court costs. For the speeding conviction, the circuit court imposed a \$250 fine and court costs. For the open-container conviction, the circuit court imposed a \$25 fine.

On appeal, Mitchell challenges the sufficiency of the evidence to sustain his convictions for DUI and speeding. He raised these issues in his motion for a judgment of acquittal made at the close of the State's case and in his motion for a new trial. He also challenges the legality of his sentence for his speeding conviction.

The sole witness at trial was Benton Carter, a state trooper with the Alabama Law Enforcement Agency. The State

CR-17-1144

also introduced into evidence the video from Trooper Carter's body camera. We have reviewed that video, and it largely supports Trooper Carter's testimony. Trooper Carter testified that at approximately 11:30 a.m. on July 6, 2017, he was traveling south on Interstate 59 in his marked patrol vehicle when he saw in his rearview mirror a silver automobile approaching him from behind at what appeared to be a high rate of speed. Trooper Carter testified that he and the silver vehicle were in a construction zone where the speed limit was 40 miles per hour. When he turned on the radar at the rear of his patrol vehicle, it indicated the silver vehicle was traveling at 80 miles per hour. Once the silver vehicle passed him, Trooper Carter executed a traffic stop. As the vehicle passed him and again when the vehicle exited the interstate to pull over, Trooper Carter noticed that the driver, who was later identified as Mitchell, was not wearing a seatbelt.

As was his standard practice, Trooper Carter approached the vehicle and asked Mitchell for his driver's license and proof of insurance. As he and Mitchell talked, Trooper Carter said, he noticed a "very strong" odor of alcohol on Mitchell's

CR-17-1144

breath and emanating from the vehicle. (R. 13.) In addition, Mitchell was talking a lot and speaking fast. Trooper Carter asked Mitchell if he had been drinking alcohol, but Mitchell stated that he had not.

Trooper Carter asked Mitchell to get out of his vehicle to perform field-sobriety tests, specifically, the one-leg-stand test and the walk-and-turn test. Mitchell informed Trooper Carter that he had physical problems with his legs, and Trooper Carter told Mitchell to just "do the best you can." (R. 14.) According to Trooper Carter, Mitchell had an "unsteady gate" as he got out of his vehicle to perform the tests, but Trooper Carter was unsure if that was because of Mitchell's physical problems or because of alcohol consumption. (R. 19.) Mitchell was able to perform the one-leg-stand test for only six seconds, and when he attempted to perform the test a second time, without Trooper Carter's asking him to, he lasted eight seconds. Mitchell adequately performed the walk-and-turn test. However, Trooper Carter said that, during the traffic stop, Mitchell appeared "boisterous," was "kind of all over the place," and was "just not even engaged in what was going on." (R. 17.) In

addition, Trooper Carter said, Mitchell's speech was slurred and he kept repeating himself.

After the tests were completed, Trooper Carter again asked Mitchell if he had been drinking alcohol, and Mitchell admitted that he had. Trooper Carter then administered a portable field-breathalyzer test, using an Alco-Sensor testing device, which indicated that Mitchell had a breath-alcohol level of 0.138.¹ In addition, Trooper Carter said that there was a styrofoam cup in Mitchell's vehicle that had a "very strong" odor of alcohol (R. 24) and a can of "a flavored kind of beer" under the driver's seat. (R. 22.) As seen on the video from Trooper Carter's body camera, printed on the can was a statement indicating that it contained eight percent alcohol. Trooper Carter testified that the liquid in the can was the same color as the liquid in the styrofoam cup. Trooper Carter then arrested Carter for driving under the influence. Mitchell subsequently refused to submit to the

¹In Boyd v. City of Montgomery, 472 So. 2d 694 (Ala. Crim. App. 1985), this Court held that the results of an Alco-Sensor breath test are inadmissible at trial. However, Mitchell did not object at trial to admission of the results of the Alco-Sensor test.

Draeger breath test. It was Trooper Carter's opinion that Mitchell was under the influence of alcohol.

""In determining the sufficiency of the evidence to sustain a conviction, a reviewing court must accept as true all evidence introduced by the State, accord the State all legitimate inferences therefrom, and consider all evidence in a light most favorable to the prosecution." Ballenger v. State, 720 So. 2d 1033, 1034 (Ala. Crim. App. 1998), quoting Faircloth v. State, 471 So. 2d 485, 488 (Ala. Crim. App. 1984), aff'd, 471 So. 2d 493 (Ala. 1985). "The test used in determining the sufficiency of evidence to sustain a conviction is whether, viewing the evidence in the light most favorable to the prosecution, a rational finder of fact could have found the defendant guilty beyond a reasonable doubt." Nunn v. State, 697 So. 2d 497, 498 (Ala. Crim. App. 1997), quoting O'Neal v. State, 602 So. 2d 462, 464 (Ala. Crim. App. 1992). "When there is legal evidence from which the jury could, by fair inference, find the defendant guilty, the trial court should submit [the case] to the jury, and, in such a case, this court will not disturb the trial court's decision." Farrior v. State, 728 So. 2d 691, 696 (Ala. Crim. App. 1998), quoting Ward v. State, 557 So. 2d 848, 850 (Ala. Crim. App. 1990). 'The role of appellate courts is not to say what the facts are. Our role ... is to judge whether the evidence is legally sufficient to allow submission of an issue for decision [by] the jury.' Ex parte Bankston, 358 So. 2d 1040, 1042 (Ala. 1978)."

Gavin v. State, 891 So. 2d 907, 974 (Ala. Crim. App. 2003).

I.

Mitchell first contends that the evidence was insufficient to sustain his conviction for DUI because, he says, Trooper Carter's observations of his behavior were not, alone, sufficient to establish that he was under the influence of alcohol to such a degree that he was unable to safely operate his vehicle. This argument is meritless.

"To establish a prima facie case of driving while under the influence of alcohol under § 32-5A-191(a)(2), [Ala. Code 1975,] the state must prove beyond a reasonable doubt that the appellant drove, or was in actual physical control of, a motor vehicle while he was under the influence of alcohol to such an extent that it affected his ability to operate his vehicle in a safe manner."

Goodwin v. State, 728 So. 2d 662, 667 (Ala. Crim. App. 1998).

The evidence indicated that Mitchell was operating a motor vehicle 40 miles per hour over the posted speed limit when he passed a marked state-trooper vehicle. Trooper Carter smelled a strong odor of alcohol emanating from Mitchell's breath and from the vehicle; Mitchell admitted that he had been drinking alcohol; and an open container of alcohol was found in Mitchell's vehicle. Trooper Carter stated that Mitchell appeared boisterous but unengaged during the traffic stop and that Mitchell was speaking fast, repeating himself,

and slurring his words. Although Mitchell's physical ailments may have contributed to his inability to perform the one-leg-stand test and Mitchell adequately performed the walk-and-turn test, a portable field-breathalyzer test indicated that Mitchell's breath-alcohol level was 0.138. Trooper Carter testified that, based on his experience and his observations of Mitchell, it was his opinion that Mitchell was "definitely" under the influence of alcohol. (R. 26.) In addition, the jury was able to watch the video from Trooper Carter's body camera and to assess Mitchell's appearance and demeanor. Viewed in the light most favorable to the State, this evidence was more than sufficient to establish a prima facie case of DUI and to warrant sending the case to the jury on that charge.

II.

Mitchell also contends that the evidence was insufficient to sustain his conviction for what he refers to as "speeding in a construction zone with workers present." (Mitchell's brief, p. 17.)

Both at trial and on appeal, the parties have taken the position that speeding in a construction zone is an offense

CR-17-1144

separate and distinct from the offense of speeding. Mitchell argues that the State failed to prove that workers were present in the construction zone at the time of the offense and that the zone was properly marked with signs before the entrance of the zone, both of which he claims are essential elements of the offense of speeding in a construction zone under § 32-5A-176.1, Ala. Code 1975. The State agrees with Mitchell that it failed to prove that workers were present at the time of the offense and it requests that we remand this cause for the trial court to set aside Mitchell's conviction for speeding in a construction zone and to enter a judgment of conviction for speeding pursuant to § 32-5A-171, Ala. Code 1975, as a lesser-included offense of speeding in a construction zone. For the reasons explained below, we conclude that § 32-5A-176.1 does not create a separate substantive offense of speeding in a construction zone but is a sentence-enhancement statute, that Mitchell was convicted of speeding under § 32-5A-171, and that the evidence was sufficient to sustain that conviction.

The Alabama Rules of the Road Act, § 32-5A-1 et seq., Ala. Code 1975, governs the operation of vehicles on highways

CR-17-1144

and other roadways in the state. See § 32-5A-2, Ala. Code 1975. Section 32-5A-3, Ala. Code 1975, provides that "[i]t is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required by this chapter." Article 8 of Chapter 5A, §§ 32-5A-170 through 32-5A-178, Ala. Code 1975, sets forth various speed restrictions for different roadways and vehicles. Section 32-5A-171 provides that "no person shall drive a vehicle at a speed in excess of the maximum limits."² Section 32-5A-176.1 provides:

"(a) The State Department of Transportation may set the speed limits in urban and rural construction zones along state and interstate highways and the county commission of a county may set the speed limits in urban and rural construction zones along county roads or highways. The construction zone speed limits shall be posted on the department's standard size speed limit signs at least one hundred feet in advance of the entrance to a construction zone. Law enforcement authorities shall enforce construction zone speed limits. Upon conviction of a construction zone speed violation, the operator of the motor vehicle shall be assessed a fine of double the amount prescribed by law outside a construction zone. The fine shall only be doubled for

²That section also establishes the maximum speed limits for certain roadways and certain vehicles but permits those limits to be altered.

construction zone violations if construction personnel are present and that fact is indicated by appropriate signs. The signs, placed at the entrance of the construction zone, shall warn of the doubled fines for speeding within a construction zone. The signs shall also state that the doubled fines are applicable only when construction personnel are present.

"(b) The State Department of Transportation may promulgate and implement administrative rules and procedures as it deems necessary to both carry out the provisions of subsection (a) on state and interstate highways and to ensure the safety of private and public construction and maintenance personnel working in designated construction zones on state and interstate highways. A county commission may promulgate and implement administrative rules and procedures as it deems necessary to carry out the provisions of subsection (a) on county roads and highways provided the rules and procedures are not in conflict with those set by the State Department of Transportation.

"(c) A person subject to a penalty pursuant to this section shall not be assessed additional court costs on conviction."

(Emphasis added.)

""The cardinal rule of statutory interpretation is to determine and give effect to the intent of the legislature as manifested in the language of the statute."" Ex parte Moore, 880 So. 2d 1131, 1140 (Ala. 2003) (quoting Ex parte Weaver, 871 So. 2d 820, 823 (Ala. 2003), quoting in turn Ex parte State Dep't of Revenue, 683 So. 2d 980, 983 (Ala. 1996)). "In

any case involving statutory construction, our inquiry begins with the language of the statute, and if the meaning of the statutory language is plain, our analysis ends there." Ex parte McCormick, 932 So. 2d 124, 132 (Ala. 2005). "Principles of statutory construction instruct this Court to interpret the plain language of a statute to mean exactly what it says and to engage in judicial construction only if the language in the statute is ambiguous." Ex parte Pratt, 815 So. 2d 532, 535 (Ala. 2001). "If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect." IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992). Moreover, "[w]ords used in a statute must be given their natural, plain, ordinary, and commonly understood meaning," IMED Corp., 602 So. 2d at 346, and "[b]ecause the meaning of statutory language depends on context, a statute is to be read as a whole ... [and s]ubsections of a statute are in pari materia." Ex parte Jackson, 614 So. 2d 405, 406 (Ala. 1993).

Examining the language in § 32-5A-176.1, we conclude that it is sufficiently clear and unambiguous to determine and give

CR-17-1144

effect to the intent of the legislature without the need for judicial construction. The statute authorizes the Alabama Department of Transportation ("DOT") and county commissions to set speed limits for construction zones on various roadways and to promulgate rules and procedures to that end. It provides instructions on how to identify such construction zones and authorizes law enforcement to enforce the speed limits in construction zones. Subsection (a) of § 32-5A-176.1 provides for "a fine of double the amount prescribed by law outside a construction zone ... if construction personnel are present and that fact is indicated by appropriate signs," and subsection (c) prohibits the imposition of additional court costs when a person is "subject to a penalty pursuant to this section."

Nothing in the plain language of § 32-5A-176.1 prohibits driving in excess of the maximum speed limit in a construction zone. Rather, subsection (a) provides for an increased punishment for the offense of speeding when the offense is committed in a construction zone that is marked by appropriate signs and construction workers are present, i.e., a fine double the amount for speeding outside a construction zone.

CR-17-1144

Indeed, the use of the word "penalty" in subsection (c) clearly indicates that § 32-5A-176.1 is a penalty statute, not a statute creating a substantive offense separate from the offense of speeding. It is apparent from the plain language of the statute that the purpose of § 32-5A-176.1 is to provide an enhanced sentence for a person convicted of speeding if the offense is committed in a construction zone that is marked by appropriate signs and workers are present at the time the offense is committed. In other words, § 32-5A-176.1 is a sentence-enhancement statute.

Because § 32-5A-176.1 does not create a substantive offense separate from the offense of speeding, we conclude that Mitchell was charged with and convicted of speeding under § 32-5A-171. To sustain that conviction, the State was required to prove only that Mitchell drove "a vehicle at a speed in excess of the maximum limits." § 32-5A-171, Ala. Code 1975. The State clearly did so. Trooper Carter testified that he was driving on Interstate 59 in an area where the maximum speed limit was 40 miles per hour when Mitchell approached him from behind at a high rate of speed. Trooper Carter activated his radar, which showed that Mitchell

CR-17-1144

was traveling at 80 miles per hour. This evidence was sufficient to establish that Mitchell committed the offense of speeding.

III.

Having determined that the evidence was sufficient to sustain Mitchell's conviction for speeding, we turn to the legality of the sentence imposed for that conviction -- a \$250 fine.

Mitchell argues that, even if the State proved that workers were present in the construction zone at the time of the offense and that the zone was identified by appropriate signs so as to warrant a fine double the amount for speeding outside a construction zone as provided for in § 32-5A-176.1(a), Ala. Code 1975, the maximum fine he could receive was \$80 pursuant to Rule 20(A), Ala. R. Jud. Admin. Rule 20(A) sets out a schedule of fines for traffic offenses and sets the fine for speeding in excess of 25 miles per hour over the speed limit at \$40. However, the schedule of fines in Rule 20(A) applies only "[i]f a defendant in a district-court case or municipal-court case elects to plead guilty before a magistrate." (Emphasis added.) Mitchell did not elect to

plead guilty before a magistrate. Therefore, Rule 20(A) is inapplicable.

Although Mitchell's specific challenge to the legality of his sentence is meritless, that sentence is nonetheless illegal for another reason. We agree with Mitchell that the State failed to prove that workers were present in the construction zone at the time of the offense or that the zone was identified by appropriate signs. Because the State failed to prove these facts beyond a reasonable doubt,³ the enhancement in § 32-5A-176.1 could not be applied to Mitchell's sentence for his speeding conviction. See Apprendi v. New Jersey, 530 U.S. 466 (2000).

We recognize that the State's failure to prove a sentence enhancement is generally waived if an objection thereto is not timely and properly raised in the trial court. See, e.g., Ex parte Batey, 958 So. 2d 339, 341 (Ala. 2006) ("[T]he failure

³Although the jury was instructed that, to find Mitchell guilty, it had to find that Mitchell drove in excess of the speed limit in a construction zone where workers were present, Mitchell and the State are correct that the State, in fact, presented no evidence indicating that workers were present at the time of the offense. In addition, the jury was not instructed that the construction zone had to be identified by appropriate signs.

CR-17-1144

to prove a prior conviction is not a jurisdictional matter."); Pearson v. State, 794 So. 2d 448, 449 (Ala. Crim. App. 2001) (holding that the defendant's claim that the State had failed to prove the sentence enhancements in §§ 13A-12-250 and 13A-12-270, Ala. Code 1975, was waived because the defendant did not object to application of the enhancements), overruled on other grounds by Lightfoot v. State, 152 So. 3d 445 (Ala. 2013); and Poole v. State, 846 So. 2d 370, 381 (Ala. Crim. App. 2001) ("[B]efore this Court will review an alleged Apprendi violation, the defendant must object in the trial court."), overruled on other grounds by Lightfoot v. State, 152 So. 3d 445 (Ala. 2013). We likewise recognize that a challenge to the State's alleged failure to prove a prima facie case does not properly preserve for appellate review a challenge to the State's alleged failure to prove the facts necessary for sentence enhancement. See Chaney v. State, 892 So. 2d 466 (Ala. Crim. App. 2004).

However, under the unique circumstances in this case, we believe the issue of the legality of Mitchell's sentence for his speeding conviction is properly before this Court. Mitchell specifically argued in his motion for a new trial,

CR-17-1144

and specifically argues in his brief on appeal, that the State failed to prove that workers were present in the construction zone at the time of the offense and that the entrance to the zone was identified by appropriate signs, and the State concedes that it failed to prove that workers were present at the time of the offense. In Chaney, supra, the defendant moved for a judgment of acquittal at the close of the State's case on the general ground that the State had failed to establish a prima facie case of unlawful distribution of a controlled substance, and this Court held that the defendant's motion was not sufficient to preserve for review his argument on appeal that the State had failed to prove the facts necessary to warrant application of the sentence enhancement in § 13A-12-270, Ala. Code 1975, i.e., that the transaction had occurred within a three-mile radius of a public housing project. Specifically, this Court explained:

"Although the sentence enhancement in § 13A-12-270 must be proven to a jury beyond a reasonable doubt before it can be applied, it is not an essential element of the crime of unlawful distribution of a controlled substance. Therefore, Chaney's motion for a judgment of acquittal on the ground that the State failed to prove a prima facie case, i.e., that the State failed to fulfill its duty of proving the elements of the crime, was not sufficient to preserve this issue for review."

CR-17-1144

892 So. 2d at 471.

Unlike in Chaney, Mitchell specifically challenged the State's proof of the facts necessary for application of § 32-5A-176.1 in his motion for a new trial, and he does so again on appeal. Although Mitchell's argument has been made in terms of the sufficiency of the State's evidence to sustain a conviction under § 32-5A-176.1, as opposed to the sufficiency of the State's evidence to warrant application of § 32-5A-176.1 as a sentence enhancement, it was nonetheless sufficient to put the circuit court on notice, and is sufficient to put this Court on notice, that Mitchell believes the State failed to prove the facts required to apply the enhancement in § 32-5A-176.1. See, e.g., Finch v. State, 715 So. 2d 906, 912 (Ala. Crim. App. 1997) ("An objection must be specific enough to put the trial court on notice of any alleged error and provide the court with an opportunity to correct any error if necessary."). Given that both the parties and the circuit court proceeded under the assumption that § 32-5A-176.1 created a substantive offense separate and distinct from the offense of speeding, that the parties continue to take that position on appeal, and that this opinion is the first time

CR-17-1144

this Court has had occasion to consider § 32-5A-176.1, we believe Mitchell's argument in his motion for a new trial and on appeal properly places before this Court the issue whether the sentence enhancement in § 32-5A-176.1 applies to him.

As noted previously in this opinion, § 32-5A-3, Ala. Code 1975, provides that "[i]t is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required by this chapter." In addition, § 32-5A-8, Ala. Code 1975, provides:

"(a) It is a misdemeanor for any person to violate any of the provisions of this chapter or of Title 32, unless such violation is by this chapter or other law of this state declared to be a felony.

"(b) Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided, shall for a first conviction thereof be punished by a fine of not more than \$100.00 or by imprisonment for not more than 10 days; for conviction of a second offense committed within one year after the date of the first offense, such person shall be punished by a fine of not more than \$200.00 or by imprisonment for not more than 30 days or by both such fine and imprisonment; for conviction of a third or subsequent offense committed within one year after the date of the first offense, such person shall be punished by a fine of not more than \$500.00 or by imprisonment for not more than three months or by both such fine and imprisonment."

(Emphasis added.)

Because § 32-5A-171 does not provide a specific punishment for the offense of speeding, § 32-5A-8 applies. The record contains no indication that Mitchell had any prior offenses and, as already explained, the State failed to prove that workers were present in the construction zone at the time of Mitchell's crime and that the entrance to the zone was identified by appropriate signs; thus, the sentence enhancement in § 32-5A-176.1 is not applicable to Mitchell.⁴ Under § 32-5A-8, the maximum sentence Mitchell could receive for his speeding conviction was "a fine of not more than \$100.00 or by imprisonment for not more than 10 days." Therefore, the \$250 fine imposed by the circuit court was illegal.

Based on the foregoing, we affirm Mitchell's convictions for DUI, speeding, and possessing alcohol in an open container, and his sentences for DUI and possessing alcohol in an open container. However, we remand this cause for the

⁴Because § 32-5A-171.6 is not applicable to Mitchell, his argument that, pursuant to § 32-5A-176.1(c), Ala. Code 1975, the circuit court could not impose court costs for his conviction, is moot.

CR-17-1144

circuit court to conduct a new sentencing hearing, at which Mitchell is entitled to be present and represented by counsel, and to resentence Mitchell for his speeding conviction. Due return shall be filed with this Court within 56 days of the date of this opinion and shall include a transcript of the sentencing hearing conducted on remand as well as the trial court's amended sentencing order.

AFFIRMED AS TO CONVICTIONS; REMANDED WITH DIRECTIONS AS TO SENTENCING.

Windom, P.J., and McCool, J., concur. Minor, J., concurs in part, dissents in part, and concurs in the result, with opinion, which Cole, J., joins.

CR-17-1144

MINOR, Judge, concurring in part, dissenting in part, and concurring in the result.

I concur in the main opinion to the extent it affirms Bobby R. Mitchell's convictions for DUI, see § 32-5A-191(a)(2), Ala. Code 1975, and possessing alcohol in an open container, see § 32-5A-330, Ala. Code 1975. I respectfully dissent from that part of the Court's judgment holding that Mitchell was convicted of speeding, § 32-5A-171, Ala. Code 1975, not speeding in a construction zone with workers present, and affirming that conviction; as explained below, I believe speeding in a construction zone is a separate offense under § 32-5A-176.1, Ala. Code 1975, and I would affirm Mitchell's conviction of that offense. I agree, however, with the Court's judgment insofar as it remands for a new sentencing hearing.

The main opinion concludes that § 32-5A-176.1 is merely "a penalty statute, not a statute creating a substantive offense separate from the offense of speeding" under § 32-5A-171. But I read § 32-5A-176.1 as (1) creating the substantive offense of speeding in a construction zone (2) providing an

CR-17-1144

additional penalty for that offense if workers are present and certain signs are posted.

Section 32-5A-176.1(a) provides two textual indications that the legislature created a separate substantive offense of speeding in a construction zone. First, that subsection provides: "Law enforcement authorities shall enforce construction zone speed limits." Second, that subsection provides: "Upon conviction of a construction zone speed violation, the operator of the motor vehicle shall be assessed a fine of double the amount prescribed by law outside a construction zone." (Emphasis added.) Thus, § 32-5A-176.1 creates a substantive offense of speeding in a construction zone, and it provides for law-enforcement authorities to prosecute that offense--including seeking a double fine⁵ under certain conditions.

If a defendant is convicted of a construction-zone-speeding violation, however, § 32-5A-176.1(a) makes clear that a double fine may be imposed only "if construction personnel are present and that fact is indicated by appropriate signs." Also, if a defendant is subjected to a double fine, subsection

⁵As noted in the main opinion, § 32-5A-8(b), Ala. Code 1975, provides fines for violations of Title 32, Chapter 5A.

CR-17-1144

(c) provides that "additional court costs on conviction" may not be imposed.

In Mitchell's case, the State presented sufficient evidence indicating that Mitchell committed a violation of the offense of speeding in a construction zone. But, as the State concedes, it did not prove the facts necessary to impose a double fine on Mitchell. Thus, I would affirm Mitchell's conviction for a construction-zone-speeding violation, but I would remand for a new sentencing proceeding for that conviction.