

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

JONATHAN WAYNE LIPOVSKY, )

Appellant, )

v. )

STATE OF FLORIDA, )

Appellee. )

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Case No. 2D02-1718

Opinion filed August 15, 2003.

Appeal from the Circuit Court for  
Manatee County; Marc B. Gilner, Judge.

James Marion Moorman, Public Defender,  
and Richard J. Sanders, Assistant Public  
Defender, Bartow, for Appellant.

Charles J. Crist, Jr., Attorney General,  
Tallahassee, and Robert J. Krauss,  
Sr. Assistant Attorney General, Tampa,  
for Appellee.

SILBERMAN, Judge.

Jonathan Wayne Lipovsky appeals his conviction and sentence for driving  
while license suspended and causing serious bodily injury pursuant to section  
322.34(6)(b), Florida Statutes (2000). Lipovsky argues that his motion for judgment of

acquittal should have been granted because the State failed to prove the elements of the crime and, therefore, his conviction must be reversed. We agree.

Section 322.34(6)(b) provides that:

Any person who operates a motor vehicle:

. . . .

(b) While his or her driver's license or driving privilege is canceled, suspended, or revoked pursuant to s. 316.655, s. 322.26(8), s. 322.27(2), or s. 322.28(2) or (4),

and who by careless or negligent operation of the motor vehicle causes the death of or serious bodily injury to another human being is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

In order for Lipovsky to be convicted under section 322.34(6)(b), his license must have been suspended for one of the reasons enumerated in the statute. See Brown v. State 760 So. 2d 1113, 1114-15 (Fla. 4th DCA 2000).

It was undisputed that at the time of the events giving rise to the charges, Lipovsky's license had been suspended. However, the State did not establish that the suspension was for one of the reasons enumerated under section 322.34(6)(b). Instead, it appears that Lipovsky's license was automatically suspended pursuant to section 318.15, Florida Statutes (2000), because he failed to pay traffic fines and to appear in response to traffic summonses. Because the suspension of a license under section 318.15 is not one of the qualifying suspensions under section 322.34(6)(b), and because the State did not otherwise establish that Lipovsky's license was suspended for one of the reasons identified in section 322.34(6)(b), his conviction and sentence must be reversed.

The State argues that Lipovsky did not adequately preserve this issue. We disagree and conclude that counsel's argument to the trial court was sufficient to cover the argument raised on appeal. See K.A.N. v. State, 582 So. 2d 57, 58-59 (Fla. 1st DCA 1991). We also observe that even if Lipovsky had not preserved the issue, he would be entitled to a reversal due to fundamental error because the State failed to make a prima facie showing of an essential element of the crime. See Dydek v. State, 400 So. 2d 1255, 1258 (Fla. 2d DCA 1981).

Accordingly, we reverse Lipovsky's conviction and sentence for driving while license suspended and causing serious bodily injury. Lipovsky does not challenge, and therefore we affirm, his conviction and sentence for leaving the scene of an accident with personal injury. We remand for entry of a corrected judgment and sentence consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

NORTHCUTT and DAVIS, JJ., Concur.