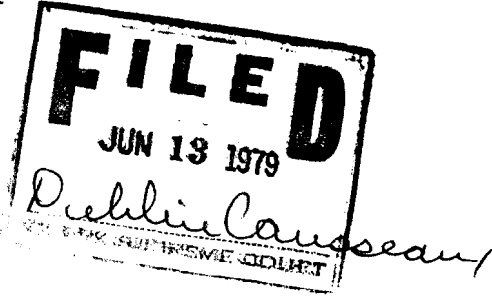


57,073

IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA,
Petitioner,



vs. Case No. _____

MICHAEL R. POTTS,
Respondent.

PETITION FOR WRIT OF CERTIORARI

BASIS FOR INVOKING JURISDICTION

Comes now Petitioner, State of Florida, and pursuant to Article V, Section 3(b)(3), Florida Constitution, and Fla. R. App. P. 9.100 and 9.030(1)(2)(B), files this petition seeking review by this Court's certiorari jurisdiction in that the lower court entered an interlocutory order passing upon a matter which, upon final judgment, would be directly reviewable by the Supreme Court; viz: declared Florida Statutes, Section 322.26(h) and 322.262 unconstitutional.

FACTS UPON WHICH PETITIONER RELIES

Respondent, Michael R. Potts, was charged by traffic citation 790-457 with careless driving in violation of Section 316.1925, Florida Statutes; by traffic citation 790-458 with driving while intoxicated in violation of Section 316.193(1), Florida Statutes and by traffic citation 790-459 with unlawful alcohol blood level [Appendix, pages 1-3]. Potts filed a Motion to Suppress Breathalyzer for Failure to Properly Incorporate Material by Reference [Appendix, pages 4-7]. On May 18, 1979, the trial judge granted the Motion to Suppress because of improper delegation of authority and ruled that the other Motion to Dismiss [for failure to properly incorporate material] was moot [Appendix, pages 11-25].

NATURE OF RELIEF SOUGHT

Petitioner, State of Florida, requests this Court provide certiorari review as provided in the aforementioned constitution and rules of procedure provisions and for an order quashing the lower court's ruling which held Florida Statutes, Sections 322.261 and 322.262 unconstitutional.

ISSUE

WHETHER FLORIDA STATUTES, SECTIONS
322.261 AND 322.262 ARE UNCONSTITU-
TIONAL.

ARGUMENT

The lower court erred in concluding the statute to constitute an improper delegation of authority. Petitioner attaches hereto as Exhibit I, the brief filed in Kelly v. Florida, Case No. 56,509, pending before this Court. For the sake of brevity, Petitioner incorporates, by reference, the argument contained therein and makes the same a part hereof. [See pages 6 through 20 of Kelly brief].

WHEREFORE, Petitioner prays that this honorable court grant certiorari, quash the order of the lower court and hold Florida Statutes, Sections 322.261 and 322.262 constitutional.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL



CHARLES CORCES, JR.
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by U.S. Mail, to Joel P. Yanchuck, Esquire, Post Office Box 4192, St. Petersburg, Florida 33731 on this the 11th day of June, 1979.



Of Counsel for Petitioner