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IN THE *SUPREME* COURT OF FLORIDA

TERRY LITE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 79,636

BRIEF OF PETITIONER ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the Defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, In and For Broward County, Florida, and the Appellee in the District Court of Appeal, Fourth District. Respondent was the Prosecution and Appellant in the lawer courts. The parties will be referred to as they appear before this Court.

The symbol "R" will denote Record on Appeal.

STATEMENT OF THE CASE AND FACTS

Petitioner, Terry Lite was charged by Information with possession of cocaine (R 14). Petitioner pled guilty to possession of cocaine (R17). As a consequence of pleading guilty to possession of cocaine, Petitioner's driver's license was to be suspended for two years pursuant to Section 322.055(1), Florida Statutes (Supp. 1990). At the sentencing hearing the trial court found Section 322.055(1) unconstitutional (R 8-9).

On January 22, 1992, the Fourth District Court of Appeal reversed the ruling of the trial court and expressly found that Section 322.055(1) was constitutional . State v. Lite, 592 So.2d 1202 (Fla. 4th DCA 1992).

Petitioner filed a notice to invoke this Court's discretionary jurisdiction. On July 23, 1992, this Court accepted jurisdiction of this case and ordered Briefs on the Merits. This Brief follows.

SUMMARY OF THE ARGUMENT

The district court's opinion expressly declares Section 322.055(1), Florida Statutes (Supp. 1990) valid. This statute provides that individuals convicted of certain drug offenses will have their driver's license suspended for two (2) years. This mandatory suspension is unconstitutional.

Due process of law requires that a rational or reasanable relationship exist between a statute and a permissible legislative objective and that it not be discriminatory, arbitrary, or unreasonable. There is no reasonable relationship between an individual's interest in a driver's license and the enumerated drug offenses listed in Section 322.055(1). There is no requirement in the statute that a motor vehicle be used in the commission of the offense. The statute violates due process because it is an unreasonable and arbitrary exercise of the state's police power. Further, Section 322.055(1) is arbitrary and unreasonable in its application to certain offenses but not others.

From an equal protection standpoint, F.S. 322.055(1) treats individuals similarly situated or with similar convictions differently by imposing a suspension of one's driver's license for some offenses but not for others. The distinctions made within the statute are irrational and arbitrary. Consequently, F.S. 322.055(1) is unconstitutional under the equal protection clause.

ARGUMENT

THE FOURTH DISTRICT COURT OF APPEAL WAS INCORRECT WHEN IT HELD SECTION 322.055(1), FLORIDA STATUTES (SUPP. 1990) CONSTITUTIONAL.

A. DUE PROCESS

Due process of law requires that state regulations have a rational relationship to a legitimate state interest and that it not be discriminatory, arbitrary or unreasonable. Potts v. State, 526 So.2d 104 (Fla. 4th DCA 1987), aff'd 526 So.2d 263 (Fla. 1988), cert. denied, 109 S.Ct. 178 (1988). This constitutional guarantee applies with equal vigor to privileges as well as rights. ABC Liquors v. City of Ocala, 366 So.2d 146 (Fla. 1st DCA 1979). Due process protections apply to legislative regulations involving the privilege to drive. Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586 (1971).

F.S. 322.055(1) (Supp 1990) provides in pertinent part:

> upon the conviction of a person 18 years of age or older for possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance, the court shall direct the department to revoke the driver's license or driving privilege of the person. The period of such revocation shall be 2 years or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Health and Rehabilitative Services. However, the court may, in its sound discretion, direct the department to issue a license for driving privileges restricted to business or employment purposes only, as defined by § 322.271, if the person is otherwise qualified for such license.

F.S. 322.055(1), however, is not rationally or reasonably related

to a permissible legislative objective. Although the legislature has broad powers to regulate areas to promote people's health, safety, and welfare, a statute's purpose must be reasonably related to that avowed purpose. Department of Insurance v. Dade City Consumer Advocates, 492 So.2d 1052 (Fla. 1986). This power is not unbridled. All criminal laws must be a valid exercise of the police power and the police power is not absolute. Whitaker v. Parsons, 80 Fla. 352, 86 So. 247 (Fla. 1920). Police regulations must be reasonable, not arbitrary or oppressive and the means to achieve the purposes of the police power must actually achieve the purpose. Griffin v. Sharpe, 65 So.2d 751 (Fla. 1953).

F.S. 322.055(1) violates due process because it is an unreasonable and arbitrary exercise of the state's police power. The constitutional infirmity with F.S. 322.055(1) is that there is no requirement that a motor vehicle be used in the commission of the offense for a trial court to refer a driver's record of conviction to the Department of Highway Safety and Motor Vehicles for mandatory revocation of a driver's license. The Illinois Supreme Court was faced with a similar issue in People v. Linder, 535 N.E.2d 829 (Ill. 1989).

In Linder, the defendant was convicted of criminal sexual assault and aggravated criminal sexual abuse. It was undisputed in Linder that a motor vehicle was not used in the commission of the offenses. The Illinois statute, Illinois Rev. Stat. 1987, Ch. 95 1/2, par. 6-205(b)(2) called for mandatory revocation of a driver's license for conviction of the following offenses: criminal sexual

assault, aggravated criminal sexual abuse, juvenile pimping, soliciting for a juvenile prostitute, and the manufacture, sale or delivery of controlled substances or instrument, used for illegal drug use or abuse. The Linder Court held that since there was no vehicle used during the commission of the offenses there was no reasonable relationship between the offenses and the public interest in safe driving. "Keeping off the roads drivers who have committed offenses not involving vehicles is not a reasonable means of ensuring that the roads are free of drivers who operate vehicles unsafely or illegally." Linder, supra at 833. The Linder Court also took note that the inclusion of some offenses within the statute which did not involve the use of a vehicle and not others was arbitrary,

F.S. 322.055(1) is entirely inconsistent with Section 322.26(3), Florida Statutes (1989) which provides:

> 322.26. Mandatory revocation of license by department.
>
> The department shall forthwith revoke the license or driving privilege of any person upon receiving a record of such person's conviction of any of the following offenses:
>
> (3) Any felony in the commission of which a motor vehicle is used.

In Schottel v. State, 590 So.2d 486 (Fla. 2d DCA 1991), the district court held that, in the absence of a showing that a motor vehicle was used in the commission of the felony offenses, it was error to suspend the defendant's driver's license pursuant to the provisions of F.S. 322.26(3). The same logic applies in the instant case.

The lack of rationality contained within F.S. 322.055(1) is

analogous to the situation where a trial court imposes a condition of probation unrelated to the defendant's conviction. In Rodriquez v. State, 378 So.2d 7 (Fla. 2d DCA 1979), the district court held that conditions of probation prohibiting marriage and pregnancy added nothing to decrease the possibility of further child abuse or other criminality and were therefore invalid. The Court in Rodriquez, supra, at 9 noted that (1) these conditions had no relationship to the crime of which the offender was convicted, (2) related to conduct which is not in itself criminal and (3) required or forbid conduct which was not reasonably related to future criminality. See also, Stonebraker v. State, 594 So.2d 351 (Fla. 2d DCA 1992) (condition of probation relating to alcohol use or visiting premises upon which alcohol or intoxicants are sold stricken on ground that such conditions were unrelated to the crime of grand theft).

In the instant case, driving or having a driver's license has no direct relationship to the enumerated criminal offenses. Furthermore, the conduct of driving is not criminal nor will the conduct necessarily lead to future criminality.

Moreover, the arbitrariness of the list of offenses within F.S. 322.055(1) prevents this statute from being constitutional. Under Section 322.055(1), one could possess one gram of cocaine in his home which would mandate a driver license suspension. Under the statute, one could deliver 10 grams of cocaine from his motor vehicle and the statute wauld not mandate a driver's license suspension. Additionally, two drug dealers standing side by side

on a street corner could conduct drug transactions; one for consideration (sale) and the other without Consideration (delivery). Sale under the statute mandates a driver license suspension yet delivery does not. The statute would suspend the driver's license of one convicted of selling narcotics while standing on a street corner and not suspend the driver license of the individual who pulls up in a vehicle and purchases cocaine from the street dealer in the same transaction.

Since F.S. 322.055(1) is arbitrary and unreasonable in its relationship to the criminal offenses enumerated in the statute, it is in violation of due process of law under Article I, Section 9 of the Florida Constitution and the Fourteenth Amendment of the United States Constitution.

B. EQUAL PROTECTION

When analyzing the legality of a statute under the Equal Protection Clause the test to be applied is the "rational basis" test. In applying this test "a legislative classification will be upheld where the distinction between or within classes drawn rests on some real and practical basis in relation to the purpose of the legislation." Glusenkamp v. State, 391 So.2d 192 (Fla. 1980). In State v. Lee, 356 So.2d 276 (Fla. 1978) this Court stated:

> The classic criterion for assessing the validity of a statutory classification is whether the classification rests upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike.

It is clear that the Florida Legislature, in the instant case,

fashioned a statute which violates equal protection because there is no real or practical basis for the classification of criminal offenses and punishment in the statute. Unlike Glusenkamp v. State, 391 So.2d 192, 200 (Fla. 1981), where the distinction drawn between vehicles designed, maintained or used for the carriage of property on the one hand and passenger vehicles on the other is reasonably related to the Department of Agriculture's inspection function, the distinction drawn in F.S. 322.055(1) is arbitrary and irrational.

Although a court cannot substitute its logic for that of the legislature in enacting particular statutes, it must protect individuals from the implementation of irrational or arbitrary classifications and laws. The legislature in F.S. 322.055(1) lists possession, sale of, trafficking in, conspiracy to possess, sell or traffic in a controlled substance while excluding purchase of and delivery of a controlled substance. There is no rational reason for treating individuals within the same class, that is those charged with drug offenses, differently.

In Lasky v. State, 296 So.2d 9, 20 (Fla. 1974), this Court declared unconstitutional a statute that delineated circumstances under which individuals injured in car accidents will get compensation because it violated the equal protection clause. The Lasky case is analogous to the instant case because F.S. 322.055(1) creates an incomplete list of individuals that will or will not have their licenses suspended depending on the convictions. The exclusion of purchasers and deliverers from this list creates a

situation where individuals similarly situated are treated differently and there is no rational or reasonable difference between them to legitimate this distinction. Not only must there be a rational basis between the classification and a legitimate state interest but the classification must not be arbitrary or unreasonable.

In the instant case, there is no rational basis to include possession of cocaine and exclude purchase of cocaine. Similarly, there is no rational basis to include sale of cocaine and exclude delivery of cocaine. This statute, which distinguishes between similar offenses and punishes them differently based upon no rational or reasonable distinction, violates the equal protection clause.

Accordingly, the Fourth District's opinion declaring F.S. 322.055(1) constitutional must be reversed.

CONCLUSION

Based on the foregoing arguments and authorities cited therein, Petitioner respectfully requests this Court to quash the opinion of the Fourth District Court of Appeal and reverse this cause by declaring Section 322.055(1) (Supp. 1990) unconstitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to JAMES CARNEY, Assistant Attorney General, 111 Georgia Avenue, Elisha Newton Dimick Building, West Palm Beach, Florida 33401 this 8 day of September, 1992

Of Counsel