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**IN THE** SUPREME **COURT OF FLORIDA**

**CASE NO. 79,636**

**TERRY LITE,**

**Petitioner,**

**v.**

**STATE OF FLORIDA,**

**Respondent.**

# Respondent's Brief on the Merits

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## PRELIMINARY STATEMENT

Petitioner was the defendant and appellee below. Respondent was the plaintiff and appellant, respectively. References to the record will be preceded by "R."

## STATEMENT OF THE CASE AND FACTS

Respondent generally agrees with petitioner's statement of the case and facts, with the following additions.

Petitioner admitted that there was a factual basis for the plea (R 17).

## SUMMARY OF THE ARGUMENT

The Fourth District correctly found Section 322.055(1), Fla. Stat. (Supp. 1990), constitutional. Section 322.055 is designed to combat substance abuse and crime. The means employed, revoking the driver's license's of those convicted, is rationally related to that goal because such punishment will deter the incidence of illegal drug possession, sales and trafficking, curtail the transportation of illegal drugs, and reduce the mobility of those involved in drugs. The fact that no direct relationship is required between the vehicle and the offense does not render the statute unconstitutional since a rational relationship exists between revoking the license and the goal of combating crime and substance abuse.

Equal protection is not violated where a permissible classification includes one, but not others who might have been included, so long as those within the legally formed class are accorded equal treatment.

## ARGUMENT

THE FOURTH DISTRICT CORRECTLY DECLARED SECTION 322.055(1) CONSTITUTIONAL.

Section 322.055(1), Fla. Stat. (Supp. 1990), provides:

> Notwithstanding the provisions of s. 322.28, 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 s.322.271, if the person is otherwise qualified for such a license.

Courts must uphold the constitutionality of statutes if possible. In State v. Kinner, 398 So.2d 1360, 1363 (Fla. 1981), this Court held:

> [W]e are aware of the strong presumption in favor of the constitutionality of statutes. It is well established that all doubt will be resolved in favor of the constitutionality of a statute, . . . and that an act will not be declared unconstitutional unless it is determined to be invalid beyond a reasonable doubt.

See also State v. Burch, 545 So.2d 279, 280 (Fla. 4th DCA 1989), approved, 558 So.2d 1 (Fla. 1990).

### SUBSTANTIVE DUE PROCESS

The Legislature has broad discretion in determining necessary measures for the protection of the public health, safety, and

welfare, and the courts may not substitute their judgment as to the wisdom or policy of a Legislative act. State v. Yu, 400 So.2d 762, 765 (Fla. 1981), appeal dismissed, Wall v. Florida, 454 U.S. 1134, 102 S.Ct. 988, 71 L.Ed.2d 286 (1982). A legislative enactment may be declared to be a deprivation of life liberty or property rights without due process, only when the statute is arbitrary and unreasonable or oppressive as it adversely affect such life, liberty, and property rights. If the legislation has a reasonable relation to proper legislative purposes, and is not discriminatory, arbitrary, or oppressive, the requirements of due process are satisfied. Lasky v. State Farm Ins. Co., 296 So.2d 9 (Fla. 1974) and 10 Fla.Jur.2d, Constitutional Law, Section 10 (West 1979).

A court may overturn a legislative enactment on due process grounds only when it is clear that it is not in any way designed to promote the people's health safety or welfare, or it is clear that the statute has no reasonable relationship to its avowed purpose. Department of Insurance v. Dade County Consumer Advocate's Office, 492 So.2d 1032 (Fla. 1986). In making this determination, "the wisdom of the Legislature in choosing the means to be used, . . . [o]r whether the means chosen will in fact accomplish the intended goals" are irrelevant. Lasky, 296 So.2d at 16.

A review of the statute in question reveals that it is designed to deter individuals from becoming involved with drugs for fear of not receiving or losing the privilege to drive. Additionally, the statute is a reasonable effort to curtail the transportation of illegal drugs throughout the State. It attempts

to prevent those most likely to abuse drugs to take to roads of Florida. Similarly, it reduces the mobility of those involved with drugs, even if the vehicle is not ultimately used in the transportation of those drugs.

**Here,** the legislative objective is to combat substance abuse and crime. See generally, Ch. 87-243 Laws of Fla. It cannot be said that the mandatory driver's license revocation provision has no reasonable relation to that goal.

In State v. Smith, 58 N.J. 202, 276 A.2d 369 (1971), the Supreme Court of New Jersey dealt with the constitutionality of a statute requiring the suspension of the driver's license of any **person** who uses or is under the influence of any narcotic drug'.

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[1] N.J.S.A. 2a:170-8, states in pertinent part:

> Any person who uses or who is under the influence of any narcotic drug, as defined in article 1 of chapter 18 of Title 24 of the Revised Statutes (Food and Drugs), the uniform drug law, for a purpose of other than the treatment of sickness or injury as prescribed or administered by a person duly authorized by law to treat sick and injured human beings, is a disorderly person.
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> * * *
>
> In addition to the general penalty prescribed for the disorderly conduct pursuant to section 2A:169-4 of this Title, every person adjudged a disorderly person for a violation of this section shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of one year from the date of his conviction and until such privilege shall be restored to him by the Director of Motor Vehicles upon application to and after a hearing a determination by, the director that such person is no longer a user of drugs within the meaning of this section.

Smith had been convicted of unlawful use of marijuana. The Court rejected Smith's claim that the automatic suspension of her driver's license for a single incident of marijuana use, unconnected to her operation of a motor vehicle, denied her due process of law. The Court held that whether the loss of the license was considered part of punishment for the use of marijuana or as an associated exercise of the police power to free the highways of drivers who may present a hazard to the public, the legislation revealed a reasonable effort to control the narcotics problem and was constitutional. Smith, 276 A.2d at 373. Cf. State v. Day, 84 Or.App. 291, 733 P.2d 937, 938, rev. denied, 303 Or. 535, 738 P.2d 977 (1987) (State denying driving privileges to persons 13 to 17 years old guilty of possession of alcohol or a controlled substance, is rationally related to legitimate state interest in deterring drug and alcohol use among young people and promoting highway safety); Appeal of Deems, 39 Pa. Commw. 138, 395 A.2d 616 (1978) (revocation of license following conviction for sale of motor vehicle with defaced serial number was not an unreasonable exercise of the state's police power).

Similarly, Section 322.055 represents a reasonable legislative effort to control the increasing drug problem and the tremendous amount of crime it generates. The statute is not violative of due process of law.

The trial court's reasoning that there can be no lawful revocation without some direct relationship between the possession of the controlled substance and the use of the motor vehicle is

erroneous. A number of statutes in Florida provide for revocation or suspension of one's driver's license upon the commission or omission of an act not directly related to one's use of a motor vehicle. See, e.g., Sections 324.051 and 324.121 Fla. Stat. (1989) (failure of owner to have liability of insurance even if owner not involved in accident), upheld as constitutional in Larson v. Warren, 132 So.2d 177 (Fla. 1961); Section 322.26(5) Fla. Stat. (1989) (committing perjury related to the ownership of a motor vehicle); Sections 318.15 and 322.245, Fla. Stat. (1989) (failure to comply with traffic court's directives and civil penalties); Section 322.0601, Fla. Stat. (1989) (failure to attend high school); Section 322.274(1), Fla. Stat. (1989) (committing theft of parts or components of motor vehicle).

The fact that section 322.055 mandates revocation of a person's driver's license upon conviction of a drug offense that may not be directly related to the use of a motor vehicle is not the determinative issue in a due process analysis. The critical inquiry is whether the statute bears a reasonable relation to a permissible legislative objective.

Finally, petitioner should not be permitted to claim that the statute is unconstitutional because there is no nexus between his possession of a controlled substance and the use of a motor vehicle. Petitioner admitted that there was a factual basis for a plea (R 17). It was petitioner's burden to show that the statute was unconstitutional. There was no showing that his offense was unrelated to the use of a motor vehicle. Cf. United States v.

Broce, 488 U.S. 563, 109 S.Ct. 757, 102 L.Ed.2d 927 (1988) (after guilty plea, respondents are not entitled to a hearing to determine if there ineffective assistance a factual basis for their double jeopardy claim).

## EQUAL PROTECTION

Although a driver's license may be a valuable privilege, the right to drive is not fundamental. San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 30-34, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973); Wells v. Malloy, 402 F.Supp. 856, 858 (D.C. Vt. 1975), affirmed, 538 F.2d 317 (2d Cir. 1976).[2] Furthermore, the statute is not directed toward a group composed of "some immutable personal characteristic that can be suspected of reflecting 'invidious' social or political premises, i.e., 'prejudice or stereotyped prejudgments.'" State v. Day, 733 P.2d at 938. Since there is no fundamental right to drive and the statute is not directed toward a suspect class, the statute is analyzed using the "rational basis" standard. The Florida High School Activities Association, Inc. v. Thomas, 434 So.2d 306, 308 (Fla. 1983) and Malloy, 402 F.Supp. at 858.

Under a rational basis standard, this Court need only inquire whether it is conceivable that the statutory classification complained of bears some rational relationship to a legitimate

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[2] Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971), holds that the right to drive cannot be revoked without procedural due process. It does not hold that there is a fundamental right to drive.

state purpose. Gluesenkamp v. State, 391 So.2d 192 (Fla. 1980), cert. denied, 454 U.S. 818, 102 S.Ct. 98, 70 L.Ed.2d 88 (1981). As this Court stated in Florida High School Activities Assoc., Inc.,:

> The burden is upon the party challenging the statute or regulation to show that there is no conceivable factual predicate which would rationally support the classification under attack. Where the challenging party fails to meet this difficult burden, the statute or regulation must fail.

434 So.2d at 308. See also State v. Leicht, 402 So.2d 1153, 1154 (Fla. 1981), cert. denied, 455 U.S. 989, 102 S.Ct. 1611, 71 L.Ed.2d 848 (1982) (Legislature has wide discretion in creating statutory classification and there is a presumption in favor of validity).

Although the equal protection clause imposes a requirement of some rationality in the nature of classes of persons similarly situated, the constitutional demand is not a demand that a statute necessarily apply equally to all persons. Thus, the equal protection clause does not require scientific precision in classification. That is, a classification having some reasonable basis does not offend the equal protection clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. The equal protection clause does not require absolute equality and uniformity of application in statutes. 10 Fla. Jur.2d, Constitutional Law Section 349.

A statute is not violative of equal protection merely because it may not cover the entire field that is subject to similar legislative regulations. Equal protection is not violated where a permissible classification includes one, but not others who might

have been included in the broader classification, as long as those within the legally formed class are accorded equal treatment under the law creating the classification. State v. White, 194 So.2d 601 (Fla. 1967); State v. Smith, 276 A.2d at 371 (equal protection is not denied because a penal statute might have gone farther than it did or might have included some persons or classes of persons who were excluded); Nixon v. Administrator of General Services, 433 U.S. 425, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977) (Mere underinclusiveness is not fatal to the validity of a law under the equal protection clause of the Fourteenth Amendment even if the law disadvantages an individual or identifiable members of the group) and 10 Fla. Jur.2d, Constitutional Law, Section 350 (West 1979).

The trial court erred by finding that since Section 322.055 merely failed to expressly include some persons other than petitioner, (i.e., purchasers or deliverers of controlled substances), petitioner's equal protection rights were violated. The trial court's finding overlooks the purpose of the statute and improperly focuses on what the statute does not prescribe as opposed to what the statute does prescribe. The statute does include possessors (petitioner), sellers and traffickers. Further, purchase was not a separate offense in Florida prior section 322.055's enactment in 1987. Ch. 87-243, Section 4, Laws of Fla. Therefore, it is understandable why the legislature did not expressly include purchase in the statute. Moreover, it is clear the offense of trafficking encompassesthe offenses of purchase and delivery. Section 893.135(1), Fla. Stat. (1989). Consequently,

the legislature, by the enactment of section 322.055 did not create or recognize different classes of offenders for separate treatment, although it has broad discretion to do so. Rather, it merely did not expressly include all possible offenses in the statute.

At any rate, any underinclusiveness is not fatal to the constitutional validity of the statute. As this Court held in State v. Yu, 400 So.2d at 765:

> . . . it is not necessary for a legislature to attempt to eradicate all evil, but only part of it; as the Court said in Pennsylvania v. Ashe, 302 U.S. 51, 55, 58 S.Ct. 59, 60, 82 L.Ed. 43 (1937), "The comparative gravity of criminal offenses and whether their consequences are more or less injurious are matters for [the state's] determination.

In LeBlanc v. State, 382 So.2d 299 (Fla. 1980), the defendant claimed that a domestic violence statute violated equal protection because it only applied to spouses. He argued that it should also apply to other family relations and unrelated parties sharing a home. This Court disagreed, stating:

> There is no suggestion that this statute fails to address the problem of domestic violence, or that members within the affected spousal class are treated differently. We reject appellant's contention that the statute must apply to all parties who might be involved with or affected by domestic violence. It is not a requirement of eaual protection that every statutory classification be all-inclusive. Rather, the statute must merely apply equally to the members of the statutory class and bear a reasonable relation to some legitimate state interest (emphasis supplied, citations omitted).

382 So.2d at 300.

In Smith, 276 A.2d at 379, the New Jersey Supreme Court

rejected the defendant's claim that the mandatory suspension of her driver's license upon conviction of an offense unrelated to the operation of an automobile denied her equal protection. Smith asserted that certain narcotic **users** and other more grievous violators (possessors and sellers) of the narcotics law were not subject to the automatic suspension mandate. In rejecting Smith's equal protection argument, the Court held:

> The constitutional prescription for equal protection does not mean that a designated sanction must reach or be imposed upon every class of violators of the narcotics laws to which it might be applied - that the Legislature must punish or regulate all such persons in precisely the same way or not at all.

276 A.2d at 371. See also Leicht, 402 So.2d at 1155 (Drug trafficking statute that singled, out only four of the controlled substances in statute for imposition of mandator: sentences, is neither arbitrary nor reasonable and its provisions apply equally to all persons similarly situated - statute **does** not violate equal protection clause); Wells, 402 F.Supp. at **859-60** (statute authorizing suspension of purchaser's right to operate motor vehicle in state until payment of amount of sales tax due has a rational basis, since it is clearly designed to aid in collection of tax and is constitutionality valid over claims of denial of equal protection and lack of any relation to an individual's ability to drive carefully and safely).

Respondent relies on the Fourth District's opinion for further argument on these issues. See State v. Lite, 592 So.2d **1202** (Fla. 4th DCA), jurisdiction accepted, 602 So.2d **942** (Fla. **1992).**

## CONCLUSION

Based on the preceding argument and authorities, respondent respectfully requests that this Court affirm the Fourth District's opinion.

Respectfully submitted,

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certificate of Service

I hereby certify that a true copy of this document has been furnished by courier to Robert Friedman, Criminal Justice Building, 421 3rd Street, W. Palm Beach, FL 33401, this 28th day of October 1992.

Of Counsel