

Supreme Court of Florida

ORIGINAL

No. 81,999

RUSSELL CARINO, et al.,

Petitioners,

vs.

STATE OF FLORIDA,

Respondent.

[March 10, 1994]

PER CURIAM.

We have for review a decision certifying the following questions to be of great public importance:

A. ARE RULES 10D-42.023 AND 10D-42.024, FLORIDA ADMINISTRATIVE CODE, AS THEY EXISTED PRIOR TO AUGUST 1, 1991, VOID FOR VAGUENESS?

B. IF SO, DOES THIS PRECLUDE THE STATE'S USE OF TEST RESULTS OBTAINED ON BREATH-TESTING MACHINES MAINTAINED PURSUANT TO THOSE RULES IN A CRIMINAL TRIAL?

C. IS THE USE OF DIFFERENT (NOT UNIFORM) FORMS, REFLECTING DIFFERENT MONTHLY MAINTENANCE PROCEDURES FOR BREATH-TESTING EQUIPMENT, A DENIAL OF EQUAL PROTECTION?

D. IF SO, DOES THIS PRECLUDE THE STATE'S USE OF TEST RESULTS FROM THE BREATH-TESTING INSTRUMENTS SO TESTED IN A CRIMINAL TRIAL?

State v. Carino, 625 So. 2d 1215, 1215 (Fla. 4th DCA 1993) (incorporating questions previously certified in State v. Nevadomski, 619 So. 2d 310, 310 (Fla. 4th DCA 1993) and State v. Rochelle, 609 So. 2d 613 (Fla. 4th DCA 1992), review dismissed sub nom. Comrey v. State, 617 So. 2d 318 (Fla. 1993)). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

Initially, we disagree with the State's argument that the county court lacked jurisdiction to entertain a constitutional challenge to the administrative rule in this case. See Veilleux v. State, 18 Fla. L. Weekly S636 (Fla. Dec. 16, 1993). However, we agree with the resolution of the certified questions stated in the Fourth District's opinion in Rochelle, 609 So. 2d at 613-618, and adopt that opinion as our own. Accord Veilleux; Mehl v. State, 19 Fla. L. Weekly S16 (Fla. Dec. 23, 1993).

Accordingly, we answer questions A. and C. in the negative as qualified by Rochelle. The remaining two questions, being conditioned on affirmative responses to issues A. and C., accordingly are moot. The decision below is approved.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, SHAW, GRIMES, KOGAN and HARDING, JJ., concur.

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

Application for Review of the Decision of the District Court of
Appeal - Certified Great Public Importance
Fourth District - Case No. 92-0469

(Broward County)

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