

IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA

Appellant,

vs.

RAYMOND G. MULLER,

Appellee.

Case No. 88,221

2d DCA Case No. 94-02958

Pasco Co. No. 94-10571XTWS-16

AMENDED
ANSWER BRIEF OF APPELLEE

ON APPEAL FROM THE SECOND DISTRICT
COURT OF APPEAL

ROBERT E. JAGGER
PUBLIC DEFENDER
SIXTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PASCO COUNTY

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CASE AUTHORITY CITED

Cases:

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Other Authority:

Art. I, § 2, Florida Constitution	3
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STATEMENT OF ISSUES ON APPEAL

ISSUE 1. THE COURT DID NOT ERR IN FINDING SECTION 316.193 (6) (d), FLORIDA STATUTES (1993), UNCONSTITUTIONAL AS VAGUE AND AS A DENIAL OF DUE PROCESS.

ISSUE II. THE COURT DID NOT ERR IN FINDING SECTION 316.193(6)(d), FLORIDA STATUTES (1993), VIOLATION OF EQUAL PROTECTION.

SUMMARY OF ARGUMENT

Property rights must be protected by notice and an opportunity to be heard. Florida Statute 316.193(6) (d) provides for notice only after the impound order is entered. Therefore, the statute is a denial of due process. Additionally, the statute is unconstitutional in that the method of challenge is extremely vague and replete with numerous jurisdictional problems.

The statute also violates equal protection because the division into classes of defendants bears no rational relationship to a legitimate state objective.

STATEMENT OF THE CASE AND FACTS

On January 15, 1994, Appellee Raymond G. Muller was arrested in Pasco County, Florida, and charged with Driving Under the Influence of Alcohol, contrary to Section 316.193 of the Florida Statutes, (R.1, 3). Appellee was seemingly drive his own vehicle at the time of the alleged offense. (R.1, 8). On March 18, 1994, Appellee was one of several defendants on whose behalf the Public Defender filed a combined pretrial Motion to Declare Section 316.193(6)(d), Florida Statutes, Unconstitutional. (R. 12-15). The motion was heard on April 8, 1994 (R. 29-49), and was granted as to Appellee on April 13, 1994. (R. 19-23). The State filed its Notice of Appeal on May 2, 1994. (R. 24).

The Second District dismissed the appeal in its opinion filed May 17, 1996. 21 Fla.L.Weekly D 1176. The State filed its Notice of Appeal on May 31, 1996.

ARGUMENT

ISSUE 1. THE COURT DID NOT ERR IN FINDING SECTION 316.193(6)(d), FLORIDA STATUTES (1993), UNCONSTITUTIONAL AS VAGUE AND AS A DENIAL OF DUE PROCESS.

The due process guarantee of the Florida Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law...." Art. I, § 9, Fla. Const. Due process ensures fair treatment through the proper administration of justice where substantive rights are at issue. Dept. of Law Enforcement v. Real Property, etc., 588 So.2d 957 (Fla. 1991). Every citizen has the procedural due process right to

have that course of legal procedure which has been established in our judicial system for the protection and enforcement of private rights. [Procedural due process] contemplates that the defendant shall be given fair notice[] and afforded a real opportunity to be heard and defend[] in an orderly procedure, before judgement is rendered against him.

State ex rel. Gore v. Chillinsworth, 126 Fla. 645, 657-58, 171 so. 649, 654 (1936).

Property rights are among the substantive rights expressly protected by Florida's Constitution. Art. I, § 2, Fla. Const. As substantive rights, property rights must be protected by procedural safeguards, including notice and an opportunity to be heard. Art. I, § 9, Fla. Const.; Dept of Law Enforcement v. Real Property, etc., supra at 964.

In the instant statute, notice is given after the impound order is entered. Only then may the owner/lienholder challenge the impoundment; the statute contains no provision for prior notice to the owner/lienholder.

The Florida Supreme Court has held that, in forfeiture cases, personal property may be seized prior to notice or an

opportunity for a hearing provided, however, that notice is given as soon as possible after the seizure. Dewt. of Law Enforcement v. Real Property, ect., supra. Upon request, an adversarial preliminary hearing may be held "prior" to final determination to determine whether there is provable cause to maintain the action. Id.

Conversely, Florida Statutes Section 316.193(6)(d) does not provide for notice prior to the final determination of impoundment (a seizure). Unless the owner/lienholder of the vehicle is the defendant convicted of DUI, the owner/lienholder has no notice prior to the order of impoundment at the time of conviction and sentencing. The notification process begins after the impound order. Only after the final order of impoundment is entered may the non-defendant owner/lienholder attack the validity of the impoundment.

The statute further provides that an owner/lienholder may challenge the impoundment by filing a Complaint in the county in which the owner resides. Fla. Stat. § 316.193(6)(d). The statute is silent, however, with respect to which court (County or Circuit) or which division (civil or criminal) has jurisdiction. Further, the statute does not provide a means by which a non-resident owner/lienholder may challenge the impound order. Thus, the statute's vagueness is replete with numerous jurisdictional problems with respect to the parties and the vehicle.

ISSUE II. THE COURT DID NOT ERR IN FINDING SECTION 316.193(6)(d), FLORIDA STATUTES (1993), VIOLATIVE OF EQUAL PROTECTION.

To withstand an equal protection attack, a statute must treat all persons equally within a given class, and the division into classes must bear some rational relationship to a legitimate state objective. Haber v. State, 396 So.2d 707 (Fla. 1981). The statute at bar does not treat all persons equally within the

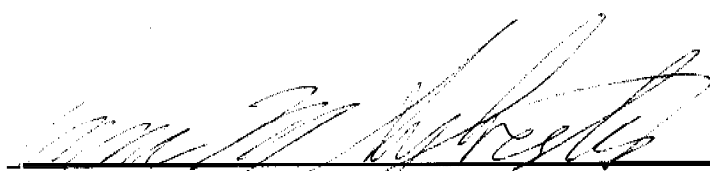
class of those convicted of DUI. The plain division in the classes [(1) defendant-owner; (2) defendant-lessee; and (3) defendant-borrower] bears no rational relationship to a legitimate state objective. The defendant-owner suffers the penalty of impoundment; the defendant-borrower does not; the defendant-lessee suffers the penalty of impoundment, but conceivably only for a shortened time. There is no rational reason to inflict the punishment of impoundment on defendant-owners one way, defendant-lessees another way, and defendant-borrowers not at all.

CONCLUSION

Section 316.193(6) (d) of the Florida Statutes is violative of the due process and equal protection clauses of the Florida Constitution. The order declaring the statute unconstitutional should be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been mailed to Bernie McCabe, State Attorney, P.O. Box 5028, Clearwater, Florida, 34618, and Robert A. Butterworth, Attorney General 2002 N. Lois Ave., Ste.700, Tampa, Florida, 33607 this 1st day of November, 1996.



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