IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, v. ANTHONY T. BODDEN, Respondent.	Case No. SC03-622 Second DCA Case No. 2D01-3535

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

REPLY BRIEF OF PETITIONER ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, was the prosecution in the trial court and Appellee in the Second District Court of Appeal of Florida. Respondent, Anthony T. Bodden, was the defendant in the trial court and the Appellant in the Second District Court of Appeal. The symbol “R” designates the original record on appeal, including the transcript of the hearing on the motion in limine before the county court and the deposition of Dale Livingston.

STATEMENT OF THE CASE AND FACTS

Petitioner adopts the Statement of the Case and Statement of the Facts contained in the initial brief on the merits.

SUMMARY OF ARGUMENT

The Second District Court of Appeal erred when it affirmed the county court's order granting the motion in limine. In this reply brief, Petitioner addresses two of Respondent's arguments. First, Respondent erroneously argues that Florida Statutes section 316.1932 violates the Equal Protection Clause of the Florida and United State Constitution. The statute does not create an illegal classification since the statute bears a rational relationship to the State's purpose of determining whether drivers are operating vehicles under the influence. Second, Respondent mistakenly relies on the statutory language in Florida Statutes section 322.63 as support for his position that the Legislature gave the Florida Department of Law Enforcement (FDLE) authority to promulgate rules for urine testing. Instead, that statute supports Petitioner's argument that the Legislature intended for FDLE to promulgate rules only for blood and breath testing. Accordingly, Petitioner respectfully asks this Court to answer the certified question from the Second District Court of Appeal in the negative and reverse the Second District's opinion affirming the county court's granting of the motion in limine.

ARGUMENT

ISSUE

IN ADMINISTERING FLORIDA'S IMPLIED CONSENT LAW, IS THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT REQUIRED TO ADOPT RULES IN ACCORDANCE WITH THE FLORIDA ADMINISTRATIVE PROCEDURES ACT GOVERNING THE COLLECTION, PRESERVATION, AND ANALYSIS OF URINE SAMPLES OBTAINED BY LAW ENFORCEMENT PURSUANT TO FLORIDA STATUTE 316.1932(1)(a)?

In this reply brief, Petitioner addresses two of Respondent's claims in support of his position: one involves an alleged violation of equal protection and the other involves the applicability of Florida Statutes section 322.63. Petitioner disagrees with both positions and contends that the Second District's decision to answer the certified question from the county court in the affirmative was erroneous.

As to the first argument, Respondent claims that if this Court concludes that the term "approved" in Florida Statutes section 316.1932 applies only to breath and blood testing and not urine testing, then the statute makes an impermissible classification which violates the Florida and United States Constitution guarantees of equal protection. However, Respondent's argument is flawed because there is a rational basis for the difference.

In order to make the showing, Respondent must overcome a strong presumption of constitutionality in the enactment of

Florida Statutes section 316.1932. There is a strong presumption in favor of the constitutionality of statutes and statutes are presumed to be constitutional. State v. Kinner, 398 So. 2d 1360, 1363 (Fla. 1981). It is within the legislature's power to prohibit any act, determine the class of an offense, and prescribe punishment. State v. Bailey, 360 So. 2d 772, 773 (Fla. 1978). An act will not be declared unconstitutional unless it is determined to be invalid beyond a reasonable doubt. Burch v. State, 558 So. 2d 1, 3 (Fla. 1990).

The test to be used in examining a statutory classification on equal protection grounds is whether the classification rests on a difference bearing a reasonable relation to the object of the legislation. Soverino v. State, 356 So. 2d 269, 271 (Fla. 1978). If there is any reasonable basis for the classification created by the legislature, the law will be sustained. Bloodworth v. State, 504 So. 2d 495 (Fla. 1st DCA 1987). It is enough to satisfy constitutional requirements relating to equal protection if the statute applies equally and uniformly to all persons similarly situated. Selby v. Bullock, 287 So. 2d 18, 21 (Fla. 1973). The equal protection clause is violated only when the classification made by an act is arbitrary and unreasonable.

Daniels v. O'Connor, 243 So. 2d 144 (Fla. 1971).

Under the rational basis standard the party challenging the statute bears the burden of showing that the statutory classification does not bear a rational relationship to a legitimate state purpose. See Lite v. State, 617 So. 2d 1058, 1060 (Fla. 1993). Respondent failed to meet his burden. Respondent does not demonstrate how section 316.1932 makes an either arbitrary or unreasonable classification.

Petitioner argues that when it enacted 316.1932, the Legislature required the Florida Department of Law Enforcement (FDLE) to promulgate rules only for chemical tests or physical tests which determine the alcoholic content of a person's blood or breath, and not for urine tests which detect the presence of chemical or controlled substances. As such, blood or breath tests need to be "approved," but urine tests do not. However, there is a rational basis for the different treatment.

In enacting Florida Statutes section 316.1932, the Legislature informed drivers of this State that by accepting driving privileges, he or she gives implied consent to two different tests to determine whether he or she is under the influence of alcohol or a controlled substance. Petitioner submits that the State's purpose in enacting this statute is

to inform drivers about implied consent and to delineate the types of permissible testing procedures for driving under the influence offenses. The State has a legitimate interest in preventing and apprehending persons who operate motor vehicles under the influence of alcohol, a controlled substance, or a chemical substance.

The reason for the different types of testing relates to the different substances which each test measures. Blood and breath tests measure alcohol and give quantitative results, while urine testing measures controlled or chemical substances, such as marijuana or cocaine, and only determine its presence in a person's system. As such, the fact that Florida Statute section 316.1932 requires blood and breath testing to be "approved," while urine testing does not have to be "approved," does not make the statute violative of equal protection. The statutory classification is necessary for the State to analyze and determine whether a person has committed the offense of driving under the influence. Thus, section 316.1932 does not violate equal protection since the statute has a rational relationship to a legitimate state interest.

As to Respondent's second argument, Petitioner contends that his reliance on the language in Florida Statutes section 322.63 is misplaced. Respondent alleges that the language in

Florida Statutes section 322.63 supports his contention that the term “approved” in Florida Statutes section 316.1932 applies to urine, blood and breath tests. Florida statutes section 322.63(1) reads as follows:

> A person who accepts the privilege extended by the laws of this state of operating a commercial motor vehicle within this state shall, by so operating such commercial motor vehicle, be deemed to have given his or her consent to submit to an approved chemical or physical test of his or her blood, breath, or urine for the purpose of determining his or her alcohol concentration or for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or of controlled substances.

§ 322.63(1), Fla. Stat. (2001).

Florida Statutes section 322.63 deals with alcohol and drug testing for drivers who possess a commercial vehicle license. For purposes of section 322.63, the Legislature clearly intended for urine tests to be “approved” if the driver operated a vehicle with a commercial motor vehicle license when he committed the offense of driving under the influence. However, the statutory language in section 316.1932 does not support a similar outcome.

The fact that the Legislature placed the word “approved chemical or physical test” immediately preceding the words “blood, breath, or urine” in section 322.63 supports

Petitioner's argument that with respect to section 36.1932, the Legislature intended for the word "approved" to only apply to blood and breath testing. Section 322.63, along with other related statutes[1], is an example of other sections which provide specific statutory authority to FDLE to promulgate regulations for breath, blood, and urine testing. As Petitioner has previously argued, a reading of section 316.1932(1)(a)(1) in conjunction with these related statutes clearly shows that the Legislature's consistent intent was to require FDLE to promulgate rules for breath and blood testing, but not for urine testing. Clearly, the Legislature's intent when it enacted section 316.1932 was to make persons aware that by accepting driving privileges in Florida, he or she gives implied consent to two different tests: one, an approved chemical or physical test for the purpose of determining the alcoholic content of his or her blood or breath and two, a

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[1] Section 316.1932(1)(a)(2) requires an analysis of a person's breath to have been performed substantially according to methods approved by FDLE. § 316.1932(1)(b)(2), Fla. Stat (2000). Section 316.1933 (2)(b) also requires an analysis to have been performed substantially according to methods approved by FDLE with respect to a person's blood. § 316.1932(2)(b), Fla. Stat. (2000). Section 316.1934(3) states that "a chemical analysis of the person's blood to determine alcoholic content or a chemical or physical test of a person's breath, in order to be considered valid under this section [for presumptions] must have been performed substantially in accordance with methods approved by the Department of Law Enforcement." § 316.1934(3), Fla. Stat. (2000).

urine test for the purpose of detecting the presence of chemical or controlled substances. § 316.1932(1)(a)(1), Fla. Stat. (2000). Therefore, Respondent’s contention that the language in section 322.63 gives FDLE authority to promulgate rules for urine testing pursuant to section 316.1932 is not accurate. The statutory language in section 322.63 does not mandate FDLE to promulgate rules for urine testing under section 316.1932.

CONCLUSION

Petitioner respectfully requests that this Court answer the certified question in the negative and reverse the Second District Court of Appeal's decision to affirm the lower court's granting of the motion in limine.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Eilam Isaak, Esquire, 4021 North Armenia Avenue, Suite 200, Tampa, Florida 33607-1010 this ___ day of June, 2003.

_____
COUNSEL FOR PETITIONER

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

_____
COUNSEL FOR PETITIONER