IN THE

Supreme Court of Florida

Case Nos.: SC15-359 & SC15-399 (consolidated)
L.T. Case No.: 4D13-1187

CITY OF FORT LAUDERDALE,

Petitioner/Appellant,

v.

JUNE DHAR,

Respondent/Appellee.

PETITIONER'S BRIEF ON JURISDICTION

ON DISCRETIONARY REVIEW FROM
A DECISION OF THE FOURTH DISTRICT COURT OF APPEAL

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STATEMENT OF THE CASE AND FACTS

The City of Fort Lauderdale (the "City") appealed a county court order that dismissed a traffic citation. [App. at 1]. The county court ruled that section 316.0083(1)(d)3., Florida Statutes (2012), of the Mark Wandall Traffic Safety Program (the "Act") violated the equal protection and due process rights of Appellee/Respondent June Dhar ("Dhar"). [App. at 1].

A vehicle registered to a rental car company was detected by the City's red light camera system running a red light. [App. at 1]. After review of the violation, the rental car company was sent a notice of violation alleging that the described vehicle violated sections 316.074(1) and 316.075(1)(c)1. of the Florida Statutes. [App. at 1]. After receiving the notice of violation, the rental car company sent an affidavit identifying Dhar as the person having care, custody, or control of the vehicle at the time of the violation. [App. at 1]. Thereafter, Dhar was issued a uniform traffic citation. [App. at 1].

The county court dismissed the citation, ruling that Dhar was treated unequally as compared to a vehicle's registered owner or lessee because she was not initially issued a notice of violation under section 316.0083(1)(b)l.a., Florida Statutes (2012), and therefore could not avoid the payment of added court costs by paying the statutory penalty of $158.00. [App. at 2].

The Fourth District put the burden on the City to justify the Legislature's policy decision: "We find the City's attempt to justify the disparate treatment given to short-term renters to be wholly unpersuasive." [App. at 2]. The court thereafter agreed with the county court and affirmed. [App. at 3]. It stated that "short-term automobile renters are similarly situated to registered owners and lessees, and no rational basis exists for the unequal treatment given to Defendant by the City in applying this statute." [App. at 2].

The panel did not cite any authority for this conclusion. Indeed, the only case it cited, *City of Fort Lauderdale v. Gonzalez*, 134 So. 3d 1119, 1120 (Fla. 4th DCA 2014), held that "section 316.0083(1)(c)1.c, Florida Statutes (2011), did not violate equal protection or due process by providing that, in the case of a jointly owned vehicle, the traffic citation shall be mailed only to the first name appearing on the registration," because "the statute's distinction between a vehicle's first listed owner and its subsequent owners is rationally related to the state's legitimate interest in administrative efficiency."[1] [App. at 2].

The City timely filed both a notice of appeal (SC15-359) and a notice to invoke discretionary jurisdiction (SC15-399).

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[1] The Fourth District noted that that section 316.0083(1)(d)3. was amended by the Florida Legislature, effective July 2, 2013, and now allows all individuals charged with committing a red light camera violation to simply pay $158.00 through the issuance of a notice of violation. [App. at 3].

SUMMARY OF ARGUMENT

The Fourth District held section 316.0083(1)(d)3., Florida Statutes (2012), unconstitutional. That ruling implicates the mandatory appellate jurisdiction of this Court. The Court also has discretionary jurisdiction to grant review of this case. The Fourth District's decision expressly and directly conflicts with longstanding principles of equal protection jurisprudence.

On both bases, the Court should order merits briefing.

ARGUMENT

1. This Court Has Mandatory Jurisdiction Over this Case.

Pursuant to Article V, section 3(b)(1), Florida Constitution, and Florida Rules of Appellate Procedure 9.030(a)(1)(A)(ii), this Court has mandatory appellate jurisdiction over a decision declaring invalid a state statute.

Here, the Fourth District specifically held the state statute invalid:

> The City of Fort Lauderdale (the "City") appeals a final order from the county court dismissing a traffic citation on grounds that section 316.0083(1)(d)3., Florida Statutes (2012), of the Mark Wandall Traffic Safety Act violated Defendant June Dhar's equal protection and due process rights under the Constitution. We agree with the county court and affirm.[2]

[App. at 1]. On this basis alone, the Court has jurisdiction and should order merits briefing.

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[2] All emphasis is supplied unless otherwise noted.

2. This Court Has Discretionary Jurisdiction Over this Case.

In an abundance of caution, the City also invoked this Court's discretionary jurisdiction pursuant to Article V, section 3(b)(3) of the Florida Constitution. The decision of the Fourth District, on its face, expressly and directly conflicts with decisions from this Court and other district courts of appeal.

Statutes come clothed with a presumption of constitutionality and every reasonable doubt should be resolved in favor of upholding the legislative act. *Scott v. Williams*, 107 So. 3d 379, 384 (Fla. 2013). A statute challenged on equal protection grounds must be upheld if there is any conceivable state of facts or plausible reason to justify it, regardless of whether the Legislature actually relied on such facts or reason. *Samples v. Fla. Birth-Related Neurological*, 40 So. 3d 18, 23 (Fla. 5th DCA 2010); *Sasso v. Ram Prop. Mgmt.*, 431 So. 2d 204, 220 (Fla. 1st DCA 1983). The burden is on the party attacking the legislation to show that there is no conceivable basis that might support it, when no fundamental right is impaired and no suspect class is offended.[3] *Agency for Health Care Admin. v. Hameroff*, 816 So. 2d 1145, 1149 (Fla. 1st DCA 2002); *Zapo v. Gilreath*, 779 So. 2d 651, 654-55 (Fla. 5th DCA 2001).

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[3] The Fourth District did not identify any fundamental right or suspect classification infringed upon by section 316.0083(1)(d)3. There is none. For that reason, the analysis should be limited exclusively to determining whether a rational basis supports the decision the Florida Legislature made. *See Amerisure Ins. Co. v. State Farm Mut. Auto. Ins. Co.,* 897 So. 2d 1287, 1290 n.2 (Fla. 2005).

The face of the Fourth District's decision reveals that the court turned these longstanding principles on their heads. The Fourth District indulged no presumption in favor of the statute's constitutionality. It did not inquire whether any rationally conceivable set of facts would have justified the classification. Indeed, in conflict with the legal requirement that Dhar negate every conceivable rational basis for the statute, the panel required *the City* to "justify" the Florida Legislature's policy choices. [App. at 2]. Accordingly, this Court also has discretionary jurisdiction to review these express and direct conflicts.

3. This Court Should Review this Case.

It is important that the Court review this case.

First, the panel's decision causes confusion for practitioners seeking to apply equal protection jurisprudence in Florida. The panel's cursory decision gives short shrift to the substantial labor required to condemn a statute as unconstitutional. Thus, the mode of equal protection analysis provided on the face of the decision is irreconcilable with a line of cases setting forth the proper approach.

Second, this case is part of a larger effort by those who have been cited for red light violations to chip away at the Act. *See, e.g.*, *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014) (impending on jurisdictional briefs in this Court as Case No. SC15-236); *see also Clark v. State*, 2015 WL 1071056 (Fla. 5th DCA Mar. 13, 2015). Thus, the decision may cast doubt on the viability of the Act

in general and may spawn further unnecessary litigation. Consequently, even though the statutory provision at issue has now been changed, the Fourth District's decision remains a problem and should be reversed or quashed.

Third, the Fourth District's decision is wrong on the merits, thereby undermining the Florida Legislature's latitude to draw lines when enacting critical public policy initiatives. As would be shown in merits briefing, reasonably conceivable rational bases for the statutory provision at issue plainly exist. There are numerous conceivable and legitimate rationales relating to (1) the relative responsibility of owners and lessees versus people identified by affidavit as having had care, custody, or control of the vehicle at the time of a violation, (2) the need to provide additional deterrence to that latter category of persons, and (3) reasons of administrative efficiency and convenience.

Underscoring these reasonably conceivable rational bases for the statutory provision at issue, it remains only to note that, even though a person identified as having had care, custody, or control of the vehicle at the time of the violation is treated more severely than an owner, that person is not treated as severely as a driver caught live at the scene by a police officer. Unlike a traffic citation issued live at the scene, a traffic citation under the Act does not expose the person identified in the affidavit to points on the license and cannot be used in the establishment of that person's insurance rates. § 322.27(3)(d)6, Fla. Stat.

CONCLUSION

The Court has mandatory appellate and discretionary review jurisdiction over this case and, accordingly, should order merits briefing.

March 20, 2015. Respectfully submitted,

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Co-Counsel for Petitioner/Appellant, CITY OF FORT LAUDERDALE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy to the foregoing initial brief on jurisdiction was served via E-Mail upon the following counsel of record this 20th day of March, 2015, to:

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.210 and is prepared using Times New Roman 14-point font.

/s/Joseph Hagedorn Lang, Jr.
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APPENDIX

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2014

CITY OF FORT LAUDERDALE,
Appellant,

v.

JUNE DHAR,
Appellee.

No. 4D13-1187

[October 22, 2014]

Appeal from the County Court for the Seventeenth Judicial Circuit, Broward County; Steven P. Deluca, Judge; L.T. Case No. 12022175 T120A.

Cynthia A. Everett, City Attorney, and Bradley H. Weissman, Assistant City Attorney, Fort Lauderdale, for appellant.

James T. Forman of Law Offices of James T. Forman, P.A., Fort Lauderdale, for appellee.

PER CURIAM.

The City of Fort Lauderdale (the "City") appeals a final order from the county court dismissing a traffic citation on grounds that section 316.0083(1)(d)3., Florida Statutes (2012), of the Mark Wandall Traffic Safety Act violated Defendant June Dhar's equal protection and due process rights under the Constitution. We agree with the county court and affirm.

A vehicle registered to Dollar Rent A Car Systems, Inc. ("Dollar") was detected by an automated traffic camera running a red light, and after review of the violation, Dollar was sent a notice of violation alleging that the described vehicle violated sections 316.074(1) and 316.075(1)(c)1. of the Florida Statutes. In response, Dollar sent an affidavit identifying Defendant as the person having care, custody, or control of the vehicle at the time of the violation. Thereafter, Defendant was issued a uniform traffic citation.

Defendant filed a motion to dismiss, asserting that as a short-term renter of the motor vehicle, she was treated unequally as compared to a vehicle's registered owner or lessee because she was not initially issued a notice of violation under section 316.0083(1)(b)l.a., Florida Statutes (2012), and therefore could not avoid the payment of added court costs by simply paying the statutory penalty of $158.00. The trial court agreed and granted the Defendant's motion.

In finding that the Act violated Defendant's equal protection and due process rights, the trial court correctly noted that:

> There are significant advantages to having a [notice of violation] issued in one's name, as opposed to a [uniform traffic citation]. The cost of a [notice of violation] is $158.00, whereas the cost of a [uniform traffic citation] is $263.00. More importantly, the payment of a $158.00 [notice of violation] buys anonymity. If the [notice of violation] is paid timely, there will be no record of the infraction on one's driving record. Consequently, once a [uniform traffic citation] is issued, one's driving record will be permanently tarnished, unless the [uniform traffic citation] is dismissed in court. This distinct difference is to the detriment of [Defendant]; the option of paying the $158.00 [notice of violation] does not exist.

We find the City's attempt to justify the disparate treatment given to short-term renters to be wholly unpersuasive. Whether a person owns a vehicle, leases a vehicle, or enters into a short-term rental agreement, the circumstances surrounding the infraction remain the same. The activity that is being addressed (either poor driving, or ensuring that people are responsible when loaning their vehicle to others) is the same. Therefore, short-term automobile renters are similarly situated to registered owners and lessees, and no rational basis exists for the unequal treatment given to Defendant by the City in applying this statute. *Cf. City of Fort Lauderdale v. Gonzalez*, 134 So. 3d 1119, 1120 (Fla. 4th DCA 2014) (holding that "section 316.0083(1)(c)1.c, Florida Statutes (2011), did not violate equal protection or due process by providing that, in the case of a jointly owned vehicle, the traffic citation shall be mailed only to the first name appearing on the registration," because "the statute's distinction between a vehicle's first listed owner and its subsequent owners is rationally related to the state's legitimate interest in administrative efficiency.").

We note that section 316.0083(1)(d)3. was amended by the legislature, effective July 2, 2013, and now allows all individuals charged with committing a red light camera violation to simply pay $158.00 through the issuance of a notice of violation. We agree with the trial court that the legislature's initial failure to address the situation of short-term renters in the statute was likely a mere oversight which has now been corrected. Such an oversight cannot serve as a rational basis upon which to validate the disparate treatment afforded the Defendant in this case.

In sum, the City failed to present any meritorious argument that supports treating short-term renters differently than registered owners and lessees under the pre-2013 version of the statute. Accordingly, the county court's order granting Defendant's motion to dismiss the traffic citation for violating Defendant's equal protection and due process rights is affirmed.

Affirmed.

STEVENSON, MAY and KLINGENSMITH, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.