IN THE
SUPREME COURT OF FLORIDA

CITY OF FORT LAUDERDALE,

Petitioner/Appellant,

vs.

CASE NO.: SC15-359 & SC15-399
L.T. Case No.: 4D13-1187

JUNE DHAR,

Respondent/Appellee.
_____/

Respondent's Answer Brief on Jurisdiction

On Discretionary Review from a Decision of the Fourth District Court of Appeal

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STATEMENT OF CASE AND FACTS

Respondent June Dhar does not disagree with the facts as presented by the City of Fort Lauderdale ["the City"] in its jurisdictional brief. The City's Statement at 2, n.1, includes the reference to the amendment to the statute at issue, §316.0083(1)(d)(3), which remedied the infirmity and disparate treatment found by the panel of the Fourth District Court of Appeal. By way of the legislature's amendment, all individuals, including those renting vehicles, charged with committing a red light camera violation could simply pay $158.00 through the issuance of a notice of violation. App. at 3.

SUMMARY OF THE ARGUMENT

If the Fourth District did declare §316.0083(1)(d)(3) "invalid," the Court would have mandatory jurisdiction under Art. V, §3(b)(1), Florida Constitution. While it appears that the Court may have mandatory jurisdiction over "as applied" unconstitutionality in addition to situations where a statute is found facially invalid, the Court should find that the subsequent correction by the legislature obviates the need for mandatory jurisdiction. What was apparently invalid has been corrected by the legislature. Further, Dhar contends that the phrase in Art. V, §3(b)(1) "decisions of district courts of appeal declaring invalid a state statute" should be strictly construed to those decisions finding a statute facially invalid, as opposed to a decision finding a statute invalid as applied.

Regarding discretionary jurisdiction, the City's jurisdictional brief resembles a brief on the merits. The City does not cite to any authority in conflict with the decision at issue to provide discretionary jurisdiction to the Court.

Argument

I. The Court does not have mandatory jurisdiction where the Fourth District merely found the statute unconstitutional as applied to persons renting vehicles, and where the legislature has corrected the statute at issue.

While the City cites to no authorities regarding mandatory jurisdiction under Art. V, §3(b)(1), Dhar is mindful of the Court's decisions in *State v. Robinson*, 873 So. 2d 1205 (Fla. 2004) and *D.M.T. v. T.M.H.*, 129 So. 3d 320 (Fla. 2013). In both decisions the Court initially concluded where a district court of appeal declared a particular statute unconstitutional as applied to particular facts or circumstances, the Court had mandatory jurisdiction.

Thus, the Court has found that decisions of district court of appeals that declare a statute unconstitutional as applied to certain facts or circumstances meets the requirement of mandatory jurisdiction stated in Art. V, §3(b)(1) – "The supreme court: (1) Shall hear appeals . . . from decisions of district courts of appeal declaring invalid a state statute . . ."

The number of cases and categories of cases over which the Court is vested jurisdiction has dwindled over the years to the extent that the district courts of appeal are the final arbiter in most matters. The Court at one time accepted

jurisdiction over matters directly passing upon a statute's validity or constitutionality. See *Snedeker, et al. v. Vernmar, Ltd., et al.,* 151 So. 2d 439 (Fla. 1963). Currently, as part of the erosion of cases automatically ending up in the Court, the provision now reads as quoted above [a decision that declares a statute invalid]. In *Snedekar, et al.* at 441-442, the Court rejected an argument, under the then-existing phrase [passing upon a statute's validity], that appeals to the Court should only be limited to facial challenges, but not as applied challenges.

Dhar is not aware of any decision considering this same argument as to the current phrase in Art. V, §3(b)(1). Dhar contends that where a statute is facially unconstitutional, mandatory jurisdiction would apply because the statute would have to be found "invalid." However, where a statute, as here, is completely valid as to all vehicle owners, except those who enter into short-term rental agreements, the entire statute is not being found invalid.

A. Since the Florida Legislature has amended the statute to correct the problem with §316.0083(1)(d)(3), the Court should also conclude that mandatory jurisdiction is not present.

In addition to the argument set forth above regarding as applied challenges, the legislature has corrected the limited circumstances addressed in the decision submitted to this Court for review. If this controversy was reviewed, the City's argument regarding whether a "rational basis exists for the unequal treatment given

to Defendant by the City in applying this statute [See App. at 2]" would run into the amendment and remedial measure taken by the legislature.

Further, by virtue of the amendment, future cases like the instant case are not possible. If the Court does have mandatory jurisdiction over as applied challenges, it would seem that its sole basis for jurisdiction would stem from the potential need to alleviate or clarify subsequent cases and controversies involving the same class or persons. This is not possible here. The legislature has corrected the problem. Thus, the Court should find that mandatory jurisdiction is not presented.

II. The City has failed to show any basis for discretionary jurisdiction.

The authorities cited by the City in its brief at 4 do not conflict with the subject decision in a way to confer discretionary jurisdiction. While a statute must be upheld on equal protection grounds if there is any plausible reason for justification, the Fourth District, applying the correct standard, found that no rational basis existed for unequal treatment to those persons entering a short-term rental agreement of a motor vehicle. The authorities cited by the City simply do not conflict with the subject decision.

Conclusion

For all the reasons set forth above, Respondent Dhar respectfully submits that the Court should decline to accept jurisdiction over this matter.

Certificate of Service/Compliance

I HEREBY CERTIFY that a true and correct copy was delivered to: Cynthia Everett and Bradley Weissman, 1300 W. Broward Boulevard, Fort Lauderdale, Florida 33312 to ceverett@fortlauderdale.gov, bweissman@fortlauderdale.gov; Joseph Hagedorn Lang and Kevin P. McCoy, at P.O. Box 3239, Tampa, Florida 33601-3239 to jlang@cfjblaw.com, jgrayson@cfjblaw.com, tpaecf@cfjblaw.com, kmccoy@cfjblaw.com, and rosborne@cfjblaw.com; Ted Hollander, 1580 S. Federal Highway, Fort Lauderdale, Florida 33316 to TedHollander@theticketclinic.com; and Jason T. Forman, 633 S. Andrews Avenue, Fort Lauderdale, Florida 33301 to attorneyforman@yahoo.com on this 14th day of April, 2015; and further certify that the font Times New Roman, 14-Point Type was used throughout.

/s/ ***Louis Arslanian***

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