IN THE
SUPREME COURT OF FLORIDA

CITY OF FORT LAUDERDALE,

Petitioner/Appellant,

vs.

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

JUNE DHAR,

Respondent/Appellee.
_____/

Respondent's Answer Brief

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

Louis C. Arslanian
Counsel for Respondent, June Dhar

5800 Sheridan Street
Hollywood, Florida 33021
(954) 922-2926 Tel.
arsgabriela@comcast.net
Florida Bar No. 801925

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Statement of Case and Facts

Dhar does not contest the City's Statement of Case and Facts.

Summary of the Argument

In somewhat related matters involving red light cameras, the Fourth District Court of Appeal did not hesitate in reversing and setting aside orders entered by a trial court invalidating §316.0083 or §316.075, Fla. Stat., on equal protection grounds as applied to particular situations where the Fourth District, applying the proper rational basis analysis, found certain distinctions [i) notices to the first owner, but not the second owner;[1] and ii) variance in penalties for red light violations observed by a police officer as opposed to violations observed by a red light camera[2]] to be constitutionally valid.

The same court, under the same standards and analysis, simply could not discern any conceivable rational basis to support a finding that §316.0083, Fla. Stat. (2012) was constitutionally valid as applied to short-term automobile renters like Dhar, because no such rational basis exists. The Fourth District's conclusions [that: i) short-term renters of motor vehicles are similarly situated with owners and lessees of motor vehicles; and ii) whether a person owns a vehicle, leases a vehicle or enters into a short-term rental agreement, the circumstances surrounding the

[1] *City of Fort Lauderdale v. Gonzalez*, 134 So. 3d 366 (Fla. 4th DCA 2014).
[2] *State v. Arrington*, 95 So. 2d 324 (Fla. 4th DCA 2012).

infraction, and the activity addressed by the statute are "the same"[3]] are completely sound and logical conclusions.

The Fourth District's ultimate conclusion that "no rational basis exists for the unequal treatment given to [Dhar][4]" is equally sound and logical. Under the 2012 version of §316.0083, owners and lessees of motor vehicles could pay less and remain anonymous, while short-term renters, not having these options, were forced to pay more and not remain anonymous without any reasonable basis.

While Dhar agrees with the various authorities cited by the City regarding the standards and burden, the City's argument that the Fourth District somehow misapplied the standards and improperly placed the burden on the City is without merit for a number of reasons:

a) One challenging a statute must only negate conceivable bases to support a particular classification; where none exist, one is not required to recite a laundry list of inconceivable bases and negate them.

b) The Fourth District in *Dhar* at 367 expressly cited to and distinguished its decision in *Gonzalez*, [using the term "*Cf.*" meaning "compare"] noting that "administrative efficiency" validated a distinction between the first listed owner and subsequently listed owners. Thus, the Fourth District was aware of and properly applied the standards involved in equal protection cases.

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[3] *City of Fort Lauderdale v. Dhar*, 154 So. 2d 366, 367 (Fla. 4th DCA 2014).
[4] *Id.*

c) The City, assumed to be presenting its best possible case, only cites to three bases to support the distinction or classification: culpability, deterrence and administrative convenience. The related matters of culpability and deterrence asserted by the City [I. Brf. 20-24] are not conceivable bases to differentiate since these matters apply to short-term renters of motor vehicles in exactly the same way that these issues apply to all owners and lessees of motor vehicles.[5]

d) The administrative convenience issue was considered by the Fourth District and properly rejected. Further, the City argues that when owners [or lessees] are provided a notice of violation, they are provided an option to pay a lessor fine arguing [I. Brf. at 26] that:

> "When owners [or lessees][6] choose this option, there is no subsequent administrative or financial burden on the court system."

Dhar agrees, and notes that this statement runs contra to the position of the City. If short-term renters could have chosen this option, as they now can under the amended statute, "there [would have been] no subsequent administrative or financial burden on the court system." Thus, the classification applied to short-term renters like Dhar actually defeats the administrative convenience.

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[5] The City cannot contest the finding by the Fourth District that: "The activity that is being addressed (either poor driving, ensuring that people are responsible when loaning their vehicle to others) is the same." *Dhar* at 367. Since the issues of culpability and deterrence are the same to any and all, these are not conceivable bases for a classification or distinction applied only to short-term renters.

[6] As noted by the City, under §316.003(26), the term "owners" includes lessees. See I. Brf. at 20, n. 6.

The City cannot claim that *Gonzalez* or *Arrington* are in conflict with the decision in *Dhar*. In Case No. SC15-399, the Court refused to accept jurisdiction based upon a conflict with these decisions. Yet, the City relies upon *Gonzalez* to support its claim of administrative convenience [I. Brf. at 25]; and cites to *Arrington* to support its culpability claim, arguing that the "Fourth District's failure even to acknowledge its own precedent in *Arrington* is jarring." I. Brf. at 23.

The City overlooks the fact that Judge May, a panel-member in *Dhar*, authored the opinion in *Arrington*. Essentially, the Fourth District, had no problem finding a rational basis for a classification or distinction under the facts in *Gonzalez* and *Arrington*. However, in the instant case, the same court with one of the same panel-members, could not find any rational basis to differentiate short-term renters from owners and lessees of motor vehicles.

Having found constitutionality in red light camera cases twice previously, it is clear that the Fourth District would not hesitate to find constitutionality in the instant case except for the fact that no rational basis exists for the unequal treatment given to short-term renters. The decision of the Fourth District must, therefore, be affirmed.

Standard of Review

Determination of whether a statute is constitutional is a pure question of law which is reviewed *de novo*. *Scott v. Williams*, 107 So. 3d 379, 384 (Fla. 2013).

Argument

I. THE FOURTH DISTRICT PROPERLY FOUND §316.0083, FLA. STAT. (2012), UNCONSTITUTIONAL UNDER EQUAL PROTECTION AND DUE PROCESS GROUNDS WHERE NO RATIONAL BASIS EXISTS FOR THE UNEQUAL TREATMENT OF SHORT-TERM RENTERS OF MOTOR VEHICLES.

The Fourth District conclusion that no rational basis exists for the unequal treatment of Dhar, a short-term renter of a motor vehicle, is proper. Where trial courts had found constitutional infirmity with §316.0083 and §316.075 previously in matters involving red light cameras, the Fourth District found rational bases in those cases, and reversed. See *Gonzalez* and *Arrington*. The Fourth District could not find any rational basis to support the unequal treatment, because none exists.

A. The Fourth District did not apply incorrect standards of law and did not improperly place the burden on the City.

Dhar does not contest any authority cited by the City regarding the appropriate standards or the burden of proof in equal protection cases. However, the City's brief, respectfully, is nothing more than a recitation of principles noting the difficult burden in proving that a statute is unconstitutional. The suggestions by the City that the Fourth District misapplied the standards and botched the burden of proof are contradicted by the Fourth District's recent decisions in *Gonzalez* and *Arrington*, and the fact that Judge May, a panel-member in *Dhar*, authored the opinion in *Arrington*.

As a matter of law, while the burden is high and upon the party challenging a statute, that party must only negate bases to support different and unequal treatment that are "conceivable." See *Eastern Airlines, Inc. v. Dep't of Revenue*, 455 So. 2d 311, 314 (Fla. 1984). Dhar was not burdened with negating bases that were inconceivable. Where the panel in *Dhar* could not find any rational basis for the unequal treatment of short-term renters, the Fourth District was only left with turning to the City to provide any rational basis.

The Fourth District in *Arrington* found several rational reasons why drivers were treated differently when charged with running a red light observed by a police officer, as opposed to drivers committing the same act, but observed by a red light camera. The Fourth District in *Gonzalez* found that administrative convenience served as a rational basis to find that notice to the first named owner was sufficient. That the Fourth District could not find a rational basis for the unequal treatment of short-term renters, having no option to pay the lower fine of $158.00 and no chance of remaining anonymous, where similarly situated owners and lessees of motor vehicles had such options, does not mean that the Fourth District applied the incorrect standard or misplaced the burden of proof.

The Fourth District simply could not find any rational basis to support the unequal treatment, but would have found such basis if one existed.

B. Despite claiming that "numerous rational bases for the differential treatment of renters" exist, the City can only cite to three such alleged bases [culpability, deterrence and administrative convenience] - none of which are conceivable or rational.

The City claims "there are, in fact, numerous rational bases for the differential treatment of renters as compared to owners under the Act." I. Brf. at 20. Yet, the City only cites to culpability, deterrence and administrative convenience to serve as these rational bases for the unequal treatment.

(1) Culpability and deterrence are not conceivable bases <u>to differentiate</u> since these matters apply equally to all owners and lessees of motor vehicles in the same way as they apply to short-term renters.

As to culpability, to "conform to the Act's purpose to penalize those who violate red light camera laws [I. Brf. at 22]," the flaw in the City's argument is obvious. The same issue of culpability applies to all owners and lessees, as well, in the exact same fashion. Culpability is not and cannot be a conceivable basis for different treatment where culpability applies "across the board"- not just to short-term renters of motor vehicles.

The same is true as to deterrence, "encourag[ing] compliance with red light camera laws." I. Brf. at 24. The Act is designed to deter all persons and encourage compliance by everyone. Deterrence is similarly not a conceivable basis for different treatment where deterrence, too, applies to all- not just renters.

The Fourth District found: "The activity that is being addressed (either poor driving, ensuring that people are responsible when loaning their vehicle to others)

is the same." *Dhar* at 367. The City does not and cannot reasonably contest this finding. Yet, this is the precise finding that precludes culpability and deterrence from serving as rational bases for differentiation or unequal treatment.

(2) Administrative convenience was considered and properly rejected by the Fourth District, and the City's arguments reveal that the unequal treatment to short-term renters defeats any argument regarding administrative convenience.

The Fourth District considered and properly rejected the City's argument that administrative convenience served as a rational basis for unequal treatment to short-term renters, citing to *Gonzalez*, using the term "*Cf.*" meaning "compare." As detailed by the City [I. Brf. at 25], administrative convenience served as a rational basis in *Gonzalez* for unequal treatment to secondary owners of vehicles. The Fourth District, thus, upheld the provisions permitting notice only to the first named owner. Administrative convenience served as a rational basis for unequal treatment in that situation presented in *Gonzalez*, but not in this case.

This finding by the Fourth District, distinguishing *Gonzalez*, based on a different set of circumstances, while subject to *de novo* review, is logically sound, especially in light of the arguments advanced by the City to support its position. The administrative convenience is actually defeated by the inequality "afforded" to short-term renters [not receiving an NOV, not permitted to pay the lessor fine of $158.00 and not permitted to keep anonymity].

This is best evidenced, not by argument of Dhar, but by the City's own argument. In the Initial Brief at 25-26, the City details how owners and lessors [See §316.003(26) defining owners as including lessors] "should be given the option after receiving an NOV to avoid challenging the violation in county court." The City then goes on to state that "[w]hen owners [or lessees] chose this option, there is no subsequent administrative or financial burden on the court system." The City concludes with the statement that the NOV option "alleviates the burden on the court system."

Clearly, as best evidenced by these statements, providing an NOV to short-term renters **is** administratively convenient and serves this purpose; and, not providing an NOV to short-term renters, unequally, **is not** administratively convenient and defeats this purpose. Respectfully, the Fourth District properly distinguished the situation presented in *Gonzalez* from the instant matter, and administrative convenience is not a rational basis for the unequal treatment of short-term renters presented in the instant case.

(3) The City's conclusion that short-term renters are "drivers," who should be treated as if committing the violation in view of a police officer, is flawed and incorrect.

The City incorrectly contends that a renter "should be treated like a driver pulled over by a police officer who observes him or her running a red light." I.

Brf. at 22. See also I. Brf. at 26 where the City contends that the Legislature has no obligation to provide the NOV option "to *all* drivers (renters) under the Act.

The flaw in this contention is that all persons who rent a motor vehicle are, in fact, drivers. As found by the Fourth District in *Dhar* at 367:

> "[w]hether a person owns a vehicle, leases a vehicle, or enters into a short-term rental agreement, the circumstances surrounding the infraction remain the same [and] [t]he activity that is being addressed (either poor driving, or ensuring that people are responsible when loaning their vehicle to others) is the same."

The City incorrectly concludes that all persons that enter into a short-term rental agreement are "drivers" or the person that allegedly committed the violation. This is an incorrect assumption on the part of the City. Just as an owner or a lessee may entrust his or her motor vehicle to a family member, a short-term renter is not precluded from doing the same. When renting a car on vacation, it is not uncommon for the person entering into the contract to designate other persons who will be permitted to drive the vehicle, usually a spouse, girlfriend or boyfriend, accompanying friends or other family member of driving age.

Admittedly, in the majority of instances, the person operating the vehicle when the alleged violation is observed by a red light camera is, in fact, the owner, lessee or person that entered into a short-term rental agreement. However, not every time a vehicle is owned is the owner the actual driver of the vehicle when the

infraction is observed. Not every time a vehicle is leased is the lessee the actual driver of the vehicle when the infraction is observed.

There is nothing in the record and nothing within common sense and experience to suggest, as the City does, that unlike owners and lessees, all renters are always the driver of the vehicle committing the infraction. I may have rented the car, but my girlfriend or my brother, designated as other drivers of the vehicle, may have operated the vehicle when the infraction occurred.

The above-quoted statement by the Fourth District is correct, and the City's contention is not. If an owner or a lessee are given the option to receive an NOV and either pay the smaller fine of $158.00 and remain anonymous, or provide an affidavit as to the identity of the actual driver, there is no rational basis conceived or offered to treat short-term renters unequally.

Essentially, the Fourth District found that a short-term renter, while no different than an owner or lessee, was treated unequally without a rational basis.

II. THE PRE-2013 VERSION OF §316.0083 IS ALSO UNCONSTITUTIONAL ON DUE PROCESS GROUNDS, AS WELL.

The Fourth District, in addition to finding an equal protection violation, also found that §316.0083 was invalid on due process grounds in providing unequal treatment to short-term renters of motor vehicles. The statute is unconstitutional on due process grounds for reasons similar to those advanced above. See *Warren v. State Farm Mut. Auto. Ins. Co.*, 899 So. 2d 1090, 1096 (Fla. 2005), holding that

the analysis involved in a due process determination closely resembles that of equal protection analysis.

In *Lasky v. State Farm Insurance Co.*, 296 So. 2d 9, 15 (Fla. 1974), the Court held that the test to determine whether a statute violates due process "is whether the statute bears a reasonable relationship to a permissible legislative objective and is not discriminatory, arbitrary or oppressive." Based on the reasons set forth above, and determinations made by the Fourth District, §316.0083 is discriminatory and arbitrary in its application to short-term renters.

Conclusion

For all of the reasons set forth above, the decision of the Fourth District in *Dhar* must be affirmed. While the 2013 amendment eliminates the problem, and provides that all involved in the process must now be initially served an NOV, the version of the statute at issue was unconstitutional as applied to short-term renters. The Fourth District correctly found that there was no conceivable rational basis to support the unequal treatment of short-term renters of motor vehicles.

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; Edward G. Guedes and Alicia H. Welch, 2525 Ponce de Leon Blvd., Suite 700,

Coral Gables, Florida 33134 by email to eguedes@wsh-law.com, awelch@wsh-law.com, szavala@wsh-law.com and jfuentes@wsh-law.com; and Ted Hollander, 1580 S. Federal Highway, Fort Lauderdale, Florida 33316 to TedHollander@theticketclinic.com; on this 22nd day of August, 2015; and further certify that the font Times New Roman, 14-Point Type was used throughout.

/s/ ***Louis Arslanian***

LOUIS C. ARSLANIAN
5800 Sheridan Street
Hollywood, Florida 33021
(954) 922-2926 Tel.
arsgabriela@comcast.net
FBN 801925