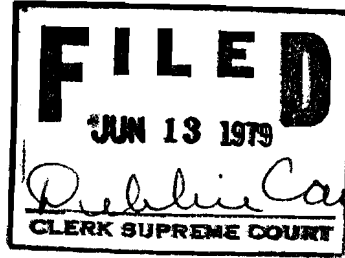


57,069

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,
vs.
ROBERT ALAN BENDER,
Respondent.



PETITION FOR WRIT OF CERTIORARI

BASIS FOR INVOKING JURISDICTION

Comes now petitioner, State of Florida, and pursuant to Fla. Constitution, Article V, Section 3(b)(3) and Fla. R. App. P. 9.100 and 9.030(a)(2)(B), files this petition seeking review by this court's certiorari jurisdiction in that the lower court entered an interlocutory order passing upon a matter which, upon final judgment, would be directly reviewable by the Supreme Court; viz: declared Sections 322.261 and 322.262, Florida Statutes, unconstitutional.

FACTS UPON WHICH PETITIONER RELIES

The respondent, Robert Alan Bender, was issued three (3) traffic citations on September 12, 1978, charging the following offenses:

- (1) Unlawful blood alcohol contrary to Section 316.193, Florida Statutes (A1)
- (2) Speeding contrary to Section 316.189, Florida Statutes (A2)
- (3) Driving while under the influence of alcoholic beverages contrary to Section 316.193, Florida Statutes (A3)

Respondent, on April 3, 1979, filed a Motion to Suppress Breathalyzer Because of Improper Delegation of Authority (A4); Motion to Suppress Breathalyzer for Failure to Properly Incorporate Material by Reverence (A7). The lower court, in a "form" Order filed May 21, 1979 (A-11) granted the former and denied the latter. All pertinent accusatory pleadings, motions, and Orders appear in the Appendix attached hereto.

NATURE OF RELIEF SOUGHT

Petitioner, State of Florida, requests this court provide certiorari review as provided in the aforementioned constitutional and rules of procedure provisions and for an Order quashing the lower court's ruling which held Sections 322.261 and 322.261, Florida Statutes, unconstitutional.

ISSUE PRESENTED

WHETHER SECTIONS 322.261 and 322.262, FLORIDA STATUTES ARE UNCONSTITUTIONAL.

ARGUMENT

The lower court erred in concluding the statute to constitute an improper delegation of authority. Petitioner attaches hereto as EXHIBIT I the brief filed in Kelly v. Florida, Case No. 56,509, pending before this court. For the sake of brevity petitioner incorporates, by reference, the argument contained therein and makes same a part hereof. (See pages 6 through 20 of Kelly brief)

WHEREFORE, Petitioner prays that this honorable court grant certiorari, quash the order of the lower court and hold Sections 322.261 and 322.262, Florida Statutes, constitutional.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL

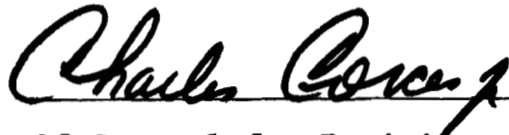


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Tampa, Florida 33602

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writ of Certiorari has been furnished by U. S. Mail to Joel P. Yanchuck, Esquire, Earle, Yanchuck & Thompson, P.A., Post Office Box 4192, St. Petersburg, Florida 33731, on this 11th day of June, 1979.


Of Counsel for Petitioner