

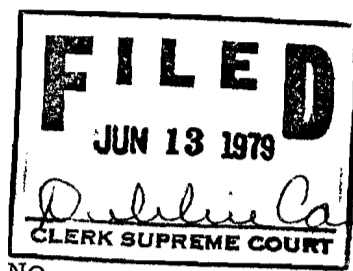
57,071

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,

v.

LEONARD G. FERRO,
Respondent.



Case No. _____

PETITION FOR WRIT OF CERTIORARI

A. BASIS FOR INVOKING JURISDICTION

COMES NOW Petitioner, State of Florida, and pursuant to Florida Constitution, Article V, Section 3(b) (3) and Florida Rules of Appellate Procedure 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 order passing upon a matter which, upon final judgment, would be directly reviewable by the Supreme Court: viz: declared Section 322.261 and Section 322.262, Florida Statutes unconstitutional.

B. FACTS UPON WHICH PETITIONER RELIES

Respondent Ferro was charged by Uniform Traffic Citation Number 531-719 with driving while under the influence in violation of Section 316.193(1), Florida Statutes, by citation numbered 531-720 with driving with unlawful alcohol blood level in violation of Section 316.193(3), Florida Statutes, and by citation numbered 531-721 with refusal to take a second breathalyzer test in violation of Section 322.261(1A), Florida Statutes. [Appendix 1-3]

Respondent filed a Motion to Suppress because of improper delgation of authority and another motion to suppress based on Fifth Amendment grounds. [Appendix 4-7]

On May 23, 1979, the trial judge granted the Motion to Suppress evidence because of improper delgation of authority and also ruled that any assertion of Failure to

Properly Incorporate Material by Reference was rendered Moot.

[Appendix 9-23]

C. 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 322.262, Florida Statutes, unconstitutional.

ISSUE

WHETHER SECTION 322.261 AND
322.262, FLORIDA STATUTES ARE
UNCONSTITUTIONAL?

D. ARGUMENT

The lower court erred in concluding the statutes constitute 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 brevity sake, petitioner incorporates, by reference, the argument contained therein and makes the same a part hereof. (See pages 6 through 20 of Kelly brief)

CONCLUSION

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

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL



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Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished, by U.S. Mail, to Paul Castagliola, Esquire, 3805 Central Avenue, Post Office Box 11747, St. Petersburg, Florida 33733, on this the 11th day of June, 1979.

A handwritten signature in cursive script, appearing to read "Charles P. ...", is written over a horizontal line.

Of Counsel for Petitioner