

SUPREME COURT
STATE OF LOUISIANA
98-CA-2442

STATE OF LOUISIANA,
Appellant

VERSUS

JOSEPH DAVIS FERRIS,
Appellee.

ON DIRECT APPEAL FROM THE 13TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EVANGELINE, STATE OF LOUISIANA
HONORABLE PRESTON N. AUCOIN, JUDGE, PRESIDING
DOCKET NO. 56,984-T

AMICUS CURIE BRIEF OF
REGGIE P. DUPRE, JR., STATE REPRESENTATIVE
OF THE 53RD REPRESENTATIVE DISTRICT

REGGIE P. DUPRE, JR
State Representative
District 53
7706 Main Street
Houma, Louisiana 70360
(504) 876-9902
(504) 873-2016 (fax)

MAY IT PLEASE THE COURT:

INTRODUCTION

On April 15, 1996 Governor Mike Foster created, by executive order, the Louisiana Governor's Task Force on DWI and Vehicular Homicide (hereinafter DWI Task Force). Executive Order MJF 96-9. As a justification for creation of this task force, the executive order's preliminary comments included:

“WHEREAS: currently, Louisiana ranks twenty-first in the United States in population, but ranks fifth in the nation in alcohol-related fatalities and thirteenth in the nation in fatal crashes; and

WHEREAS: nearly 55 percent of Louisiana's traffic fatalities are alcohol-related, as compared to the national average of 43 percent; and

WHEREAS: Louisiana automobile owners pay high premiums for public liability insurance. Our state ranks tenth in the nation in costs for insurance, with an average premium of \$862.62; and

WHEREAS: there is a possible correlation between Louisiana's unusually high percentage of alcohol-related traffic fatalities and the unusually high insurance premiums paid by Louisiana motorists.”

I was appointed by the Governor as a member of this task force representing the Louisiana House of Representatives. The task force met several times between the fall of 1996 and the beginning of the 1997 Legislative Session. House Bill 720 authored by me (Representative Dupre) became the centerpiece DWI bill for the entire 1997 Regular Session. This bill was subsequently passed and signed by the governor to become Act 1296 of 1997. This Amicus Curie Brief is being filed to allow this Court a full understanding of the Legislative intention of the creation of the new criminal stature entitled “Underage Driving Under the Influence,” La. R.S. 14:98.1.

FEDERAL MANDATE

One of the first issues the DWI task force dealt with was the “Zero Tolerance” mandate by Congress for underage drinking and driving. Under 23U.S.C. § 1210.4, Congress held that the Secretary of the United States Department of Transportation shall withhold a percentage of a state's federal highway funding for not adopting and enforcing “a law that considers an individual under the age of 21 who has a Blood Alcohol Level [hereinafter BAC] of 0.02 percent or greater while operating a motor vehicle in the State to be driving while intoxicated or driving under the influence of alcohol.” This federal legislation provided that states failing to meet these requirements shall lose five percent of their federal highway funding if the requirements are not met by October 1, 1999. Further, states failing to meet this requirement by October 1, 2000 shall lose ten percent of their highway money. According to State Transportation budgets, our state receives approximately \$240 million a year in federal highway funding. Consequently, a loss of ten percent of our highway money equates to about \$24 million per year. Such a loss of federal highway money would be devastating to our already inadequate transportation system.

The language of 23 U.S.C. § 1210.4 is almost identical to 23 U.S.C. § 158, the National

Minimum Drinking Age Act, which requires states to adopt statutes having a minimum age of twenty-one for the purchase or public possession of alcoholic beverages in order to fully receive their federal highway funding. The constitutionality of these laws, namely 23 U.S.C. § 158, have been upheld by the United State Supreme Court in South Dakota v. Dole, 483 U.S. 203, 207. In Dole, the Court held that Congress has the power to “attach conditions on the receipt of federal funds.” Id. at 206. The only limitation to Congress’ broad spending power is that the exercise of this power must be in “the general welfare.” Id. at 207.

As to the constitutionality of LA R.S. 14:98.1, this court has already dealt with essentially the same constitutionality issues in Manuel v. State, 95-2189 (La. 3/8/96), 692 So. 2d 320, as it is now facing in the present case. In Manuel, this court, on rehearing, held that “the statutes establishing the minimum drinking age at a level higher than the age of majority are not arbitrary because they substantially further the appropriate governmental purpose of improving highway safety, and thus are constitutional.” Id. at 338.

BACKGROUND OF “ZERO TOLERANCE” DRINKING AND DRIVING LAWS

All fifty states and the District of Columbia now have statutes that establishes twenty-one as the legal age to purchase and publicly possess alcoholic beverages. National Highway Traffic Safety Administration, State Legislative Fact Sheet, Jan. 1998, at 1 [hereinafter NHTSA]. Consequently, it would be reasonable to assume that drivers under twenty-one should have no alcohol in their bodies. Before House Bill 720 of 1997 was filed, the DWI task force received testimony that approximately forty states had complied with the federal mandate under 23 U.S.C. § 1210.4 from Mr. James Champagne, the Executive Director of the Louisiana Highway Safety Commission.

As of January, 1998, “forty-six states and the District of Columbia have set the BAC limit at 0.02 or lower for drivers under age 21. NHTSA, supra, at 2. The only four states that have not yet adopted this lower BAC limit for young drivers are Mississippi, South Carolina, South Dakota, and Wyoming. NHTSA, supra, at 2. Studies from states which have adopted the federal “zero tolerance” standard have shown significant reductions in fatal crashes involving drivers under twenty-one. NHTSA, supra, at 2.

Before the successful passage of Act 1296 of 1997, Louisiana had its own version of a “zero tolerance” law under its DWI statute, La. R.S. 14:98. Under this statute a BAC of 0.04 was needed for a DWI conviction for persons under the age of eighteen years. This part of La. R.S. 14:98 was declared unconstitutional in the Nineteenth Judicial District Court. State v. Smith, 96-1798 (La. 10/21/97), 700 So.2d 493. In Smith, this Court dismissed the judgment because the defendant lacked standing to sue for postconviction relief. Id. at 495. Smith was pending in this Court during the 1997 legislative session. The potential problems in Smith caused great concern, and was an important factor in the decision to create a new, less onerous, “zero tolerance” statute

rather than simply amending our old DWI statute. In fact, footnote 3 of the Smith decision

stated:

The Legislature, after the judgment of unconstitutionality in the present case, arguable cured the age discrimination problem by deleting from Section 98 the language declared unconstitutional in this case and by enacting La.Rev.Stat. 14:98.1, which defines the crime of underage operating a vehicle when intoxicated and which provides that any person under the age of twenty-one (the legal drinking age) commits the crime merely by operating a motor vehicle when the operator's blood alcohol concentration is 0.02 percent or more by weight.

LEGISLATIVE INTENTION OF ACT 1296 OF 1997

The DWI task force did extensive research of how other states adopted the federal "zero tolerance" standard. A majority of states with a .02 BAC law amended their own version of DWI laws to make drivers under twenty-one fully accountable for DWI, while other states chose to create an entirely new statute dealing only with drivers under twenty-one. The Brief filed in the present case by Mary Ellen Hunley, Assistant Attorney General, lists the states that created a new statute similar to La. R.S. 14:98.1. Apparently, the other thirty or so states make their drivers under twenty-one follow the stricter BAC standard under the same penalties as a person twenty-one or older convicted for DWI.

In drafting this bill, the intention was to create a completely new, much less onerous, statute rather than subjecting our young people to La. R.S. 14:98. Specifically, I used Arkansas' statute as a model and even borrowed the same title from Arkansas. AR. Code Ann., Title 5, Subt. 6, Ch. 65, Subch. 3, § 5-65-303. The title of both La. R.S. 14:98.1 and the Arkansas statute is "Underage Driving Under the Influence," hereinafter called "Underage DUI." It is important to note that this statute punishes young drivers for driving under the influence of alcoholic beverages rather than driving while intoxicated. Consequently, Judge Preston Aucoin was mistaken when in his written reasons for judgment in the present case stated that "this statute under attack provides that for persons under the age of 21, results indicating alcohol concentration of .02 to .09 will be conclusive evidence of intoxication." It was not the legislative intention of Act 1296 to change any presumptive levels of intoxication in the laws of Louisiana. See La. R.S. 32:662.

There are substantial differences between La. R.S. 14:98 (DWI) and La R.S. 14:98.1 (Underage DUI) other than the minimum BAC levels needed for a conviction. A first offence conviction of DWI carries a penalty of a fine of not less than \$300 nor more than \$1,000 and may be imprisoned for not less than ten days, nor more than six months. On the other hand, a young person convicted of Underage DUI for the first time faces no jail time.

The following chart illustrates the significant differences between the two statutes:

	<u>La. R.S. 14:98 (DWI)</u>	<u>La R.S. 14:98.1 (Underage DUI)</u>
First offense		
Fine:	\$300 - \$1,000	\$100 - \$250
Jail:	10 days to 6 months	None
Suspend:	2 days jail and Ct approved	Ct approved Substance Abuse and

La. R.S. 14:98 (DWI)

La R.S. 14:98.1 (Underage

DUI)

Substance Abuse and Driver Improvement program; or 32 hours community service with 16 hours of Substance Abuse and Driver Improvement Program.

Driver Improvement Program

Second offense

Fine: \$750 - \$1,000
Jail: Mandatory 48 hrs then 30 days to 6 months
Suspend: 15 days jail and Ct approved Substance Abuse and Driver Improvement program; or 240 hours community service with 120 hours of the time in a Substance Abuse and Driver Improvement Program.

\$150 - \$500
None
10 days to 3 months
48 hrs Jail and Ct approved Substance Abuse and Driver Improvement Program; or 80 hours community service with 40 hours of the time in a Substance Abuse and Driver Improvement Program

Third offense

Fine: \$2,000 subsequent
Jail: 1-5 years,
Suspend: 6 months jail no probation and Ct approved Substance Abuse and/or Driver Improvement program. Owner vehicle impounded and sold. (with exceptions)

No Felony Level 3rd or

Fourth offense

Fine: \$5,000
Jail: 10 - 30 years days
Suspend: 2 years no probation and Ct approved Substance Abuse and/or Driver Improvement program. Owner vehicle impounded and sold. (with exceptions) 3 years no probation if previously ordered to attend program

N/A

La. R.S. 14:98F(2) (DWI)

La R.S. 32:853A(1)d (Underage DUI)

On driving record 10 years

2 years with no subsequent conviction of DWI or Underage DUI, otherwise conviction stays 4 years on driving record.

The provision for allowing an underage conviction of Underage DUI to remain on the offender's driving record for only two years is twofold. First, because it is a deterrent, the law provides for the removal of the stigma of this conviction sooner than the ten years mandated by the DWI law. Second, we believe that the youth of our state should have a second chance, i.e. a chance to learn from their mistake. Therefore, after two years from their conviction of DUI with a clean record, the conviction shall be purged from the records.

However, the fact that some of the penalties in DWI and Underage DUI are the same is intentional. Both of these statutes provide that drivers are to attend driver improvement and substance abuse classes. Furthermore, the penalties under Louisiana's Implied Consent Law

provides for the same suspension time of driving privileges under both DWI and Underage DUI. In my opinion, the possible loss of driving privileges creates a tremendous deterrent for young drivers to avoid drinking and driving. However, no one could possibly argue that the loss of driving privileges is preferable to the potential loss of our young.

CONCLUSION

The legislative intention of the creation of La. R.S. 14:98.1 is to prevent injury and loss of life of our young by creating a deterrent. Thus, a new separate statute providing for Underage DUI which is much less onerous than La. R.S. 14:98, DWI. However, Underage DUI is sufficient to let young drivers know that drinking while driving will not be tolerated in Louisiana. La. R.S. 14:98.1 is a carefully drafted statute designed to reduce the number of alcohol related accidents in our state. It is a fact that other states which have implemented this type of statute has experienced a reduction in their under age alcohol related vehicular fatalities. It stands to reason, therefore, that Louisiana would also experience a similar reduction. I sincerely believe that given a chance this new law will have multiple effects. First, it will reduce the number of persons under twenty-one years old who drive drunk on our highways and the loss of life which almost certainly accompanies it. Second, it would eventually reduce the number of persons over the age of twenty-one who drive drunk on our highways and the loss of life which accompanies it.

These governmental interests are certainly important enough to justify age classifications imposed on our young. If we have the right to impose laws which would deny them the ability to purchase and/or consume alcohol, then it stands to reason that we can impose a law which denies them the ability to drive a vehicle if they consumed alcohol.

Respectfully Submitted,

Reggie P. Dupre (Bar# 24082)
State Representative, District 53
7706 Main Street
Houma, LA 70360
Phone: (504) 876-9902
Fax: (504) 873-2016

Certificate of Service

I hereby certify that a copy of the above and foregoing pleading has been duly served upon all counsel of record via United States mail, postage prepaid, and/or fax, this 15th day of October, 1998.

Reggie P. Dupre, Jr.