

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002001-MR &
NO. 1999-CA-002003-MR

MARY BETH THACKER

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE RON JOHNSON, JUDGE
ACTION NO. 99-CR-00079 &
NO. 99-CR-00092

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: DYCHE, EMBERTON, AND MILLER, JUDGES.

MILLER, JUDGE: Mary Beth Thacker brings these appeals from judgments of the Harlan Circuit Court entered August 19 and 20, 1999, upon conditional pleas of guilty pursuant to Ky. R. Crim. P. 8.09. We affirm.

The sole issue in the appeals is whether Kentucky Revised Statutes (KRS) 189A.010(4)(c) is unconstitutional as it violates the Fifth, Eighth, and Fourteenth Amendment to the United States Constitution and Sections 2, 11, and 17 of the Kentucky Constitution. KRS 189A.010(4)(c) provides as follows:

- (4) Any person who violates the provisions of paragraphs (a), (b), (c) or (d) of subsection (1) of this section shall:

. . . .

- (c) If the alcohol concentration is below 0.18, for a third offense within a five (5) year period, be fined not less than five hundred dollars (\$500) nor more than one thousand (\$1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months. If the alcohol concentration is 0.18 or above, he or she shall be guilty of a Class D felony. (Emphasis added.)

Under the above statute, severity of punishment for an individual charged with a third-offense is dependent upon his level of intoxication. Simply put, the greater the drunkenness, the greater the punishment. Insobriety less than 0.18 is a misdemeanor. Insobriety to the extent of or over 0.18 is a felony. This prompts appellant to assert invalidity under a number of constitutional provisions. These constitutional attacks amount to but one assertion -- that a government may not subject its citizens to arbitrary, capricious, and unreasonable legislation. This Court recently addressed the constitutional issues raised in this appeal in Cornelison v. Commonwealth, Appeal No. 1999-CA-001825-MR, rendered July 7, 2000 (Discretionary Review pending.) The constitutional assaults were discussed in that decision with great certitude and rejected.

The answer to appellant's constitutional arguments is simple. Driving a motor vehicle is not a constitutionally protected right, but rather a governmental regulated privilege. The government has a broad interest in regulation against drunk driving. It is common knowledge that the greater the insobriety, the greater the risk. In short, we are of the opinion that KRS 189A.010(4)(c) is constitutional. See Commonwealth v. Howard, Ky., 969 S.W.2d 700 (1998).

For the foregoing reasons, the judgments of the Harlan Circuit Court are affirmed.

ALL CONCUR.

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