ORIGINAL

In the

Supreme Court of the United States

JAMES Y. CARTER, PUBLIC VEHICLE LICENSE COMMISSIONER OF THE CITY OF CHICAGO,

PETITIONER,

V.

No. 76-1171

LUTHER MILLER, ON HIS OWN BEHALF AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED.

RESPONDENT.

Washington, D. C.
November 29, 1977
November 30, 1977

Pages 1 thru 48

Hoover Reporting Co., Inc.

Official Reporters
Washington, D. C.

546-6666

IN THE SUPREME COURT OF THE UNITED STATES

JAMES Y. CARTER, Public Vehicle License Commissioner of the City of Chicago, Petitioner, v. LUTHER MILLER, on his own behalf and on behalf of all others similarly situated, Respondent.	No. 76-1171

Washington, D. C.,

Tuesday, November 29, 1977.

The above-entitled matter came on for argument at 2:35 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

WILLIAM R. QUINLAN, ESQ., Corporation Counsel of the City of Chicago, 511 City Hall, Chicago, Illinois 60602; on behalf of the Petitioner.

ROBERT MASUR, ESQ., Legal Assistance Foundation of Chicago, Four North Cicero Avenue, Chicago, Illinois 60644; on behalf of the Respondent.

- - -

C O N T E N T S

[Second day - pg. 22]

- - -

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in Carter against Miller, 1171.

Mr. Quinlan, I think you may proceed.

ORAL ARGUMENT OF WILLIAM R. QUINLAN, ESQ.,

ON BEHALF OF THE PETITIONER

MR. QUINLAN: Mr. Chief Justice, and may it please the Court:

This case is here on a writ of certiorari from the Seventh Circuit, and involves what we view as two primary issues.

The first being: Is an ordinance that conclusively denies issuance of a public chauffeur's license to an applicant convicted of a crime involving the use of a deadly weapon violative of the equal protection clause, because revocation of a present licensee's previously granted license, is discretionary after a hearing rather than mandatory?

Secondly: Whether the ordinance violates the due process clause of the Fourteenth Amendment, because an applicant is presumed unfit for licensure after he has been convicted of an offense involving the use of a deadly weapon?

The facts in this case are primarily that the respondent, Miller, submitted an application to petitioner, Carter, who is the Chicago Public Vehicle Commissioner, for a taxicab driver's license. It's a public chauffeur's license,

but primarily it's used for taxicab drivers.

In the application, Mr. Miller acknowledged, in response to a question on the application form, that he had been convicted of armed robbery.

The Commissioner, citing the applicable municipal ordinance which prohibits the issuance of a cab driver's license to an applicant convicted of a crime involving the use of a deadly weapon, refused Mr. Miller a license.

Thereafter, respondent Miller filed the instant Section 1983 action, alleging violations of the Fifth, Eighth and Fourteenth Amendments, in the United States District Court for the Northern District of Illinois, seeking declaratory and injunctive relief. His complaint in the district court was dismissed.

The Seventh Circuit Court of Appeals reversed and this Court granted Commissioner Carter's petition for a writ of certiorari.

The Court of Appeals held that the ordinance results in a denial of equal protection because it discriminated irrationally among classes of ex-offenders. The Court declared that an applicant for a license, who has committed one of the described felonies, and a licensee who has done the same are similarly situated; and no justification exists for automatically disqualifying one and not the other.

This is basically the issue that we dispute, that

has been found contrary to our position in the Court of Appeals.

Initially, I think it is appropriate to observe that what we are dealing with here is primarily an equal protection case; it involves the traditional equal protection test which should be applied to an ordinance or any kind of statutory legislation of this nature.

There is no strict scrutiny test to be applied in this instance. We do not have a suspect classification. This Court has never ruled that ex-offenders fall into the category of suspect classification. Nor is there a fundamental right, in our opinion, involved in this case; in that again the Court, while it has ruled that the right to work is an important right, it has never ruled that the right to work is a fundamental right.

Furthermore, we believe it's important also to stress that what we are dealing with here is something that I think both the court below and the respondent has basically agreed, that the consideration of a criminal conviction is rationally related to the goal attempting to be achieved by the City Council; that is, primarily the protection of the taxicab passenger. And that this is a legitimate consideration.

The dispute revolves around the issue whether or not this ex-offender, who is disqualified by reason of being an applicant, automatically, violates the equal protection claus when that same type of individual is not automatically dis-

qualified if, in fact, he is already a licensee.

We think that there are primarily two factors which differentiate the circumstances of applicants and licensees, which justify the disparity and treatment of applicants and licensees.

First, a current licensee has a career at stake, a property interest in his employment, which may not be terminated except after a due process hearing.

QUESTION: Mr. Quinlan, --

MR. QUINLAN: Yes, sir?

QUESTION: -- does that factor have anything to do with the justification for the ordinance, namely, the protection of the passenger?

MR. QUINLAN: No, I would not say so, Your Honor. What we're really saying in this instance is that that is a legitimate classification, because there is a rational reason for the classification. I did attempt to point out, as I said earlier, that I do think that the ordinance itself is rationally related to the goal of protecting the taxicab passenger and providing for public safety. That, I think, the court below agreed was a rationally related purpose.

QUESTION: But that's not quite the same as saying that the discrimination or the classification is rationally related to the justification for the ordinance?

MR. QUINLAN: I am not sure I'm following you.

QUESTION: In other words, what I understand you to say is: there is a reason for a rule which protects the passenger from a driver who may have been guilty of an armed robbery. But that is not a reason for differentiating between two drivers, both of whom were convicted of armed robbery, one of whom had a prior license, one who did not.

MR. QUINLAN: That's correct. And I'm submitting there's another justification for that, in that they are a different category, in the sense that they possess different rights; namely, that the individual who is already licensed now has something at stake, namely, his career, his employment. The right to have that license can deprive him of his opportunity for employment.

I think this Court, in Bell vs. Burson, suggested the same thing when it indicated that the denial of the license there, on the basis of the allegation that he may or may not have been liable, merely because he was in an automobile accident and did not put up the appropriate insurance, would also indicate that once you have the license, your status changes.

We are submitting that that is the situation here, that the status of the two individuals have, in fact -- or the two categories are different, and have changed once the license has been issued.

So, to take the license, we must employ additional

procedural steps, rather than in denying the license.

QUESTION: Are there any cases holding that you can have different standards of eligibility for a position, for a lawyer or doctor, something like that, depending on whether you're already in the profession or merely seeking to get in?

MR. QUINLAN: Well, I think the Board of Regents vs. Roth and Perry vs. Sindermann indicates that what you're talking about is the problem of a property right or some sort of liberty.

QUESTION: That goes to the question of whether you're entitled to a hearing; but the question I'm asking is as to the substantive rules that define eligibility for the license or the profession, whatever. Are there any cases holding that the distinction that's present in this ordinance is a proper distinction?

That you have different rules for people who are in the business than for those who seek to get in.

MR. QUINLAN: At the moment I cannot honestly think of a specific case which so holds. I think, though, from a reading of the other cases in the generic area, this can be implied in determining what is the stake at interest here to be preserved. And I think that quite clearly if you are in the profession there is a greater stake at issue than if you are not in the profession.

QUESTION: Well, what good would a hearing do this man?

MR. QUINLAN: What good would a hearing do this man?

QUESTION: Yes.

MR. QUINLAN: Well, it indicated that the court below did not feel that any hearing whatsoever would be of any benefit to the individual. However, a hearing is provided both for a denial of a license for applicants as well as a denial of a license of an existing licensee.

What could be determined on a hearing would be whether or not he was in fact the individual, for one purpose; or whether in fact he was convicted of that crime.

Whether in fact, perhaps that crime -- that conviction was reversed on appeal.

QUESTION: I thought he filled out a blank and said all of that.

MR. QUINLAN: No, all he said was he was convicted or armed robbery.

QUESTION: Well, that's enough. What good would a hearing do him?

MR. QUINLAN: Well, as I'm saying, it wouldn't under the circumstances in this case, I think you're quite correct.

QUESTION: I understand that you draw a line for somebody that already has a license and somebody that doesn't have, with one you give a hearing and the other you don't. I don't see any difference. If you give him a hearing, it

wouldn't do him any good.

MR. QUINLAN: Well, in this case, this particular individual, I think you're absolutely correct, because he has admitted the fact that he was convicted of armed robbery --

QUESTION: That's what I'm talking about.

MR. QUINLAN: -- does not challenge that, does not suggest that he was not the individual, that it was reversed, or anything of that nature.

What I was suggesting was that in a hypothetical instance there would possibly be some purpose for going through with a hearing.

QUESTION: Mr. Quinlan, let me ask you one other question in terms of the justification for the ordinance; namely, the safety of the passenger.

Could not one reasonably conclude that the driver who has committed, more recently committed an offense poses a greater threat to the safety of a passenger than one who committed an offense many years ago? And that the existing driver -- a conviction of an existing driver therefore poses a greater threat to safety than one of an offender eight or ten years ago.

MR. QUINLAN: Well, I think that question really has two sub issues to it. The first that I would address is that what you're basically saying is that perhaps in a situation of licensed drivers, consideration of a conviction that occurred

more recently as opposed to one that occurred some time ago would be a pertinent consideration. I would consider that one in a classification first, namely, he is a licensed driver.

The second suggestion you're making is whether or not there is the difference between a conviction at the present time for a licensed driver and one -- from one who is not licensed at all. And, as I would indicate, I think the standard is different in judging licensed drivers, the test is much more strict; and, second of all, I think that would have to be a judgment that would have to be determined by the hearing officer in terms of dealing with licensed taxicab drivers. And he would have to make the individual judgment.

The other judgment has been made by the legislative body.

QUESTION: It seemed to me that what -- the thought that was running through my mind is that conceivably, to the extent that the distinction between the old offender and the recent offender is relevant, the recent offender is the more dangerous of the two and therefore he's the one who should be automatically excluded to protect the passenger, rather than the other one.

So, I wonder if your classification isn't perverse in terms of the reason for it.

MR. QUINLAN: Well, I would address that by saying that that primarily is a determination for the legislative

body in enacting a provision which provides qualification to obtain a license. They have made the legislative determination that one who has been convicted of an offense involving use of a deadly weapon should not receive a taxicab license.

We would then submit that the test that has to be applied to that is the traditional equal protection test: Is that rationally related to the goal, namely protecting the taxicab passenger? If that's true, then it meets that test. And we would submit that it does meet that test.

Now, the next step is going back to the same argument, we have provided greater rights for the cases of licensees. And it really doesn't directly relate as to whether it was more recent or less recent, the conviction, I would not think, under those terms.

However, this would be a consideration at the time of the hearing, I'm sure, that if -- and the circumstances surrounding it. But I don't think it's mandated, Your Honor.

QUESTION: I would assume that if a man had been sentenced for armed robbery and sentenced for twenty years and served five, and had a license, you wouldn't take it away from him. But if another armed robber was arrested, tried and convicted, and the judge suspended the sentence and said what a great man he was; no go. And nobody could change that, but the Legislature of Illinois.

MR. QUINLAN: That is correct, Your Honor.

And unless we get into the next argument, as to whether or not we should be dealing with the issue of whether this violates due process, which is the second question, and whether we should be applying substantive due process doctrine to legislative enactments. I think that's always a possibility, but then, as this Court has recognized, it's extremely fraught with dangers.

QUESTION: Well, I'm not there yet. I haven't gotten over the equal protection yet.

MR. QUINLAN: Well, I'm not sure I understood your approach. The equal protection is -- would be basically -- based primarily on whether or not this was a legitimate governmental interest; namely, the protection of the safety of the traveling public. We would submit that it is.

QUESTION: Well, I would assume that it would protect the public if every licensed driver who had been convicted had a big thing up on his windshield, "I'm a convicted felon, murderer". But the public doesn't know that. There's nothing -- there's no way that I can see that you can justify saying that a man who has not applied for a license until after he was convicted is automatically dangerous.

You see my problem?

MR. QUINLAN: As opposed to one who has a license?

QUESTION: Yes. I might think they're both dangerous.

MR. QUINLAN: I think we in the legislative body would concur with that. All I'm --

QUESTION: Then stop both of them from driving.

MR. QUINLAN: Well, we're not suggesting that we do not; we're suggesting that a different procedure is applied to the individual who has a license on the basis that he has more of a stake in that license after having received it; his career is at stake. He does have a license, is earning a living by use of that license. That is not true of the applicant, in that his interests at stake are less; therefore, his due process rights are less.

QUESTION: Well, how many drivers are involved in this, do you know?

MR. QUINLAN: In this type of situation? I personally know of one other case which was not appealed.

QUESTION: But you wouldn't -- there are no figures on it available?

MR. QUINLAN: No, there is not, Your Honor.

QUESTION: I shouldn't imagine that there were.

MR. QUINLAN: I would not assume so. I would assume those who did have this conviction or this problem would not apply, being aware of what the ordinance provided, being an absolute prohibition.

As I indicated primarily we felt that the Bell vs. Burson case, where the Court had said once a license is issued

there was continuing possession which may become essential in the pursuit of a livelihood indicates a basis for this distinction. It seems clear that the principle must apply with even greater force to the taxicab driver, which is inevitably related to the driver's livelihood.

As I indicated before, the interests and rights of the applicant are very different than those of the individual who has received his license.

Also, another factor that is relevant in terms of considering the difference between the two individuals is that the incumbent licensees have a work record, which is an indication of their fitness. Applicants have no such record, and the Commissioner would be compelled, in their case, to predict reliability or rehabilitation based upon whatever they might be inclined to present.

We are not submitting that this is administrative convenience, it is, rather, based on the City Council's conclusion that it is impossible to make the type of evaluations which a hearing on the question of rehabilitation, in terms of one who had been convicted previously, would require.

It is simply felt that such judgment would necessarily be speculative for the reason that the techniques for such evaluations are not available.

The Court has recognized that the Legislature may make classifications, if, in doing so, they do not violate the

equal protection clause.

In Marshall vs. United States, this Court upheld a statute which conclusively denied a convict, Narcotics Act, access to rehabilitative commitment if he had two or more felonies. There the Court has said: "The Court has frequently noted that legislative classifications need not be perfect or ideal. The line drawn by Congress at two felonies, for example, might, with as much soundness, have been drawn instead at one", but the Court has cut them off exclusively there at two. And this is a similar type of situation, a legislative judgment. They are drawing the line and cutting them off conclusively.

It is not something that is unique, it occurs in many other instances.

We believe the procedures applied under the Chicago ordinance do not result in a denial of equal protection or due process. Respondent's contention that all the applicants should be given a hearing would perhaps result in some ex-offender applicants gaining a license. But again it is not every situation that the legislative body must address itself to.

We feel that the Dandridge case indicated quite clearly that a legislative body could take one step at a time to deal with those particular types of problems that it felt was necessary to deal with, and it did not have to deal with each situation.

Furthermore, that while the ordinance does not apply to other types of occupational licensing, this we do not feel is -- or requires this to be held as violative of the equal protection clause. And the basis for that is primarily that again the legislative body has chosen to select out this area, and felt that this particular type of problem was more dangerous to the traveling public.

In a taxicab type of situation, the traveling public is particularly and uniquely uninformed in selecting a cab. They are also in a mobile and fluid type of situation. There is no supervision in that type of situation.

And, accordingly, to select this out and not to use it in other types of instances, say, in food purveyor's licenses and things of that nature, is not an unreasonable distinction for the legislative body to draw. It is reasonable that they would select that type of procedure and that they would employ this type of doctrine in that instance.

The respondents have suggested that this constitutes an irrebutable presumption, and, accordingly, it is violative of the due process clause.

We would submit that in trying to apply this type of principle, namely, the irrebutable presumption, that it is a type of situation that occurs in any instance where a legislative body draws a line and makes some sort of a classification. It can always be argued that the other side of the coin

is an irrebutable presumption and, accordingly, violative of due process.

We would submit that this is not an appropriate case in which to apply the doctrine of due process, nor irrebutable presumption involving due process. The reasons for this, we would submit that in the cases in which irrebutable presumption has been employed in most instances the twofold occurrences have taken place. One is either that the particular fact was never established in any type of a due process procedure. It is merely an alleged fact.

Two, that the fact itself was not necessarily related to the goal that was trying to be protected.

In this instance, we would submit that when we're talking about a conviction, the best use of the due process procedure has been employed, namely, the trial system, before a court of law. The determination has been made, the conviction has taken place. There we are not talking about a fact that may or may not be true or an allegation.

In the Schware case, there was a situation where there was several alleged facts, namely arrests; there was the use of aliases; and the membership in the Communist Party. All three of these were set forth as a basis for denying the fitness of the applicant to receive a license to practice law.

In none of those instances, namely, in the case of arrests, was there any determination that this was in fact the

case. The arrests were never processed any further, no conviction was obtained, it was merely an allegation. A membership in the Communist Party had nothing to do with whether or not this applicant was fit to practice law, was not rationally related. The aliases were used for the purpose because he was a Jewish member of society, who was active in Italian labor unions, and there was no indication that any of these were rationally related.

Finally, we would submit again that you'd have to look at the stake or the interest that the party has in receiving protection. And an individual who has not received a license does not have the same degree of stake or interest in that particular license at that time. And, accordingly, those factors would indicate that this is not an appropriate instance in which to apply the due process doctrine of irrebutable presumption.

QUESTION: Mr. Quinlan, could I ask one other question, please?

MR. QUINLAN: Surely.

QUESTION: About Roth v. Daly, the Illinois case --

MR. QUINLAN: Yes, Your Honor.

QUESTION: -- which held the -- as applied to the litigant in that case, held the last sentence of this section invalid. What's the -- would that case be distinguishable from this one on its facts? And, if not, what's the status

of the ordinance? Maybe it just sued in the wrong form. Is that the problem here?

MR. QUINLAN: Well, it's distinguishable in the facts, in that it involved an ambulance driver, Your Honor. And an ambulance --

QUESTION: Had he previously been licensed?

MR. QUINLAN: Yes, he had, Your Honor.

QUESTION: Oh, I see.

MR. QUINLAN: And then the ordinance was subsequently amended to apply to ambulance drivers. And then he went to apply for a re-licensing. At that time he was turned down on the basis of this provision in 28.1-3. He then went into court challenging the ordinance.

The court held that it was unconstitutional as applied to him. There is clearly language in that opinion which suggests that the prohibition on anyone who has been convicted of an offense with a deadly weapon was irreational and did not -- and was violative of the equal protection clause.

But the court did hold that it was unconstitutional as applied to him. We would submit the unique facts there clearly indicate that the case should be limited to just those facts.

QUESTION: And he re-applied.

MR. QUINLAN: He re-applied, that is correct. And it should be limited just to those facts because of the unique

nature of them.

QUESTION: One other very --

QUESTION: Mr. Quinlan, does this case consider the res judicata effect of that decision?

MR. QUINLAN: No, they do not, Your Honor.

QUESTION: Was thst decision brought to the Court's attention?

MR. QUINLAN: That decision was brought to the Court's attention, but the Court did not rely on that.

QUESTION: A different rationale.

Why was that case in the appellate court rather than the Illinois Supreme Court? Was it on a constitutional ground?

MR. QUINLAN: Well, first of all, Your Honor, it would involve an ordinance and not a statute.

QUESTION: I see.

MR. QUINLAN: To challenge a statute on constitutional grounds would go to the Illinois Supreme Court, but not to an ordinance.

QUESTION: I see.

MR. QUINLAN: I thank the Court.

MR. CHIEF JUSTICE BURGER: Mr. Masur, with only two minutes remaining, I think we'll not ask you to split your argument, we'll let you commence at ten o'clock tomorrow morning.

[Whereupon, at 2:58 o'clock, p.m., the Court was recessed, to reconvene at 10:00 a.m., Wednesday, November 30, 1977.]