

IN THE CIRCUIT COURT OF THE NINTH  
JUDICIAL CIRCUIT, IN AND FOR  
ORANGE COUNTY, FLORIDA

SULTAANA FREEMAN,

PLAINTIFF,

vs.

CASE NO. CI02-2828

STATE OF FLORIDA  
DEPARTMENT OF HIGHWAY SAFETY  
AND MOTOR VEHICLES,

DEFENDANT.

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VOLUME I

THEREUPON, THE ABOVE-ENTITLED MATTER CAME ON FOR HEARING BEFORE THE HONORABLE JANET T. THORPE, JUDGE OF THE ABOVE-STYLED COURT, AT THE ORANGE COUNTY COURTHOUSE, 435 NORTH ORANGE AVENUE, ORLANDO, FLORIDA, ON THE 27TH DAY OF MAY 2003, COMMENCING AT 9:30 A.M., PURSUANT TO NOTICE.

COURT REPORTER: JOYCE LANGE

MR. MARKS: The document -- in fact, that's a blow-up for Your Honor, if I can get it on an easel possibly it would be of assistance.

If it please the Court, Your Honor, I'm here on behalf of my client, Suldaana Freeman. What the evidence will show is a Muslim woman of the Islamic faith. The evidence will show that she converted to Muslim -- converted to Islam in approximately 1997, and was living in the State of Illinois at that time.

While living in the State of Illinois at that time, pursuant to the law of Illinois she obtained a driver's license wearing a full-face veil. It will also be referred to in this trial in a variety of ways, but it's also a niqab, is also another way to refer to it, Your Honor.

Exercising her constitutional rights to move freely throughout this country, she decided to come down to the State of Florida, to move after she married her husband, because her husband lived in the State of Florida and grew up, in fact, in Winter Park, Florida, and had been there for almost his whole life for 35 years.

During that time, Your Honor, she needed a driver's license. She went to register her new vehicle -- her vehicle that she had in Illinois. Had no problem with the State of Florida registering her vehicle.

She went to the driver's license bureau and requested to get a photograph and requested to get a driver's license. She talked to several people there that -- you may hear evidence from these individuals or it may come in through stipulation, that she brought in appropriate identification under Florida law.

She brought in her Illinois driver's license which is an accepted form of identification by the State of Florida, and the evidence will support that, Your Honor.

In fact, Florida has an administrative code provision that specifically sets forth that the Illinois driver's license -- it's actually in the Florida Examiner's Manual, Chapter 3, that the Illinois driver's license is an acceptable form of identification.

It has been the law in the State of Illinois for many years that there are a religious exception to the requirement of a full-face photograph on a driver's license. In fact, there is a religious exception to having any photograph in the State of Illinois.

And this is a religious exception you just took judicial notice of that at least 13 states that we're aware of, Judge, have specific religious exceptions for photographs of driver's license.

Most of these religious exceptions stem from the result that Christians and a certain segment of the Christian religion believes that the Second Commandment prohibits photographs from being taken.

As a result, to accommodate these Christian beliefs, states throughout the United States acknowledge that they're going to issue a driver's license whether or not these individuals would submit to a photograph or not.

And you've got the case law in front of you, Your Honor, and you've got the statutes in front of you that address that issue. In fact, the judicial notice that you just took notice of, Your Honor, is in Arkansas, Idaho, Kansas, Louisiana, Minnesota, Missouri, North Carolina, Oregon, South Carolina, Wisconsin, Indiana and Vermont.

Vermont even has a statute that doesn't even require photographs at all on a driver's license. In fact, you have to pay an additional fee in Vermont. But the other states all have specific religious exceptions built into their driver's license statute, Your Honor.

And we're asking that the State of Florida do no less and to guarantee the fundamental

religious liberty rights to not only Christians, but for any individual that has a sincerely-held religious belief.

This case, Your Honor, is about religious liberty. I don't think there is any mistake about that. It's about whether or not this country, we're going to allow the religious diversity that we've had for many years, are we going to allow in this country all religions to practice their beliefs or are we going to separate them out and treat some differently than others.

Are we going to let our fears, are we going to let our prejudices trample these fundamental constitutional rights that go to the core of our founding fathers. It goes to the core of our founding constitutional liberties, Your Honor.

The right to religious liberty is the most fundamental of rights that we have and the right to free exercise of religion is what this country was founded upon, Your Honor, and for us to start chipping away and to allow the state to intrude upon the religious liberties I think is going down a path we do not want to go.

I guarantee you, Your Honor, if my client, Sultaana Freeman was a member of a majority religion in this State of Florida I would not be here today, and she would not be here today. I guarantee you if 9/11 did not happen, my client wouldn't be here today, and I wouldn't have to be here today, Your Honor.

It is undisputed in this case that my client--

MR. VAIL: Your Honor, this is not a proper opening. This is not restricted to the evidence that he is going to present --

MR. MARKS: I'll move on, Your Honor.

THE COURT: He's indicated he's moving on.

MR. MARKS: There is no dispute in this case, Your Honor, that my client, when she came to Florida in February 2001, was issued a Florida driver's license pursuant to the rules and regulations that were in place at that time.

The testimony is going to be the law has not changed. There has been no new law on this, Your Honor. The department has interpreted these rules and regulations for years to accommodate religious liberties, and after 9/11, they decided no longer to do that, Your Honor. That would be what the testimony supports.

In this particular case, Your Honor, you are going to have two primary claims to deal with. You're going to have a claim relating to Florida's Religious Restoration Act. And that case, Your Honor -- and that is set forth in Chapter 761.

The Florida Religious Restoration Act was enacted in 1998, and the Act is very simple. The Act sets forth the legislative intent to try and give religious liberty to most fundamental rights in the State of Florida.

The issue for your determination is going to be under 761.023, exercise of religion. Is my client exercising religion. The testimony is going to be, I believe, unrefuted, that that's exactly what my client does.

The State of Florida has addressed what exercise of religion is. That means an act or a refusal to act that substantially is motivated by a religious belief whether or not the religious exercise is compulsory or central to a larger system of religious belief.

It does not matter if there's evidence that all Muslim women use a full-face veil or not. That is not the test. It's not the test whether or not people may interpret the Koran or Sunnah or other Islamic texts differently. That is not the test.

The test is: Does my client believe this? Is she exercising a religious belief and whether it's

compulsory or not, Judge, the testimony is going to be unrefuted from my client that, in fact, that's exactly what she's doing, and that she has -- the state has required either she forfeit the right to drive in the State of Florida or she sacrifice her religious beliefs, and that is inappropriate under the Supreme Court case law that I'm going to address, Your Honor.

The second test is, after you get over the exercise of religion, it says the government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except that the government may substantially burden a person's exercise of religion only if it demonstrates the application of the burden to the person is in furtherance of a compelling state interest and is done in the least restrictive means.

What does that mean, Your Honor? The test set forth in 761.03 is simply the test that the Supreme Court of the United States has used for many, many years. It's the test that -- of free exercise claims. The test is set forth in virtually every case that I've cited to this Court, and it's the test that I set -- that you are already taking judicial notice on in other cases.

The law is quite simple, Judge, if the state -- if the state requires my client to choose between sacrificing a right or a benefit, then that is a burden on religion. Here is the Thomas versus Review Board case, Supreme Court case, 450 US 707. This case talks about where the state conditions receipt of important benefit upon conduct proscribed by religious faith or it denies such a benefit because the conduct mandated by religious faith, a burden on religion exists when the compulsion may be indirect, infringement upon free exercise is nonetheless substantial.

Your Honor, the fact in this case is that if the state is going to deny this right and it doesn't matter if it's a right, it doesn't matter if it is a benefit, it doesn't matter, because the Supreme Court has said it doesn't matter, it's too late in the day to say the withholding of benefit is okay because it's a right, she can choose whether or not she wants to drive. You can't do that. The Supreme Court has addressed that 20 years ago, Your Honor.

So, we are going to meet this test under 761 by the mere fact that my client cannot unveil her photograph because she would be sacrificing her religious beliefs, and that meets, in and of itself, the burden of 761.03.

It is then incumbent upon the state to come forth with compelling governmental interest and show that they are exercising it in the least restrictive manner, Judge.

They are not going to be able to do that. I mean, the law school 101 is strict scrutiny analysis is what applies here. That is the constitutional analysis. The constitutional analysis was set forth in the Florida RFRA Act.

That's what they did. They put a strict scrutiny analysis on it, and very few, if any cases can ever be cited where a court has found the compelling state interest to be met and done in the least restrictive manner because it's a test that's virtually impossible for the state to meet.

Why is it impossible for the state to meet, because virtually every time you have an act or a claim that is compelling state interest, there's exceptions in the statute, virtually every single time. And the State of Florida is no different than any other state, Your Honor.

The evidence is going to show, indisputably, by interrogatories and also by Sandra Lambert, I'm sure that will be testifying. I asked them simple questions in their interrogatories, Your Honor. I asked how many -- how many driver's licenses in the last five years have been issued without photographs on them.

They answered, 4,361. Well, there's 4,361 exceptions right there. Then I asked them, "Please state the number of persons during the last five years who have been issued a driver's license with some part of their head or face covered."

They have no idea. They don't admit that that's done every single day. They just don't even have a way to calculate it, Your Honor.

And then I asked them, "Please state the number of persons in Florida during the past five years who received a temporary driving permit." The evidence is going to be undisputed, Your Honor, a temporary driving permit does not have a photograph on it.

Over 800,000 people in the State of Florida admittedly by the state have been issued driving permits to drive in this State of Florida legally and they won't issue one to my client. That will undercut any compelling state interest.

If it is so compelling to have a photograph, Your Honor, if they're going to have evidence to support that, they're going to have to have some explanation for this, Your Honor, and they do not have explanation for allowing 800,000 people.

Now, of these 800,000 people, who are they? The evidence is going to show these are people convicted of drunk driving. These are people that can't pass tests. These are people that have bad vision. These are people that have medical problems. These are people that have -- have their licenses suspended for too many points. These are, actually, the people that are most at risk and most dangerous to the State of Florida, are the ones they're issuing temporary permits to and allowing to drive.

These 4300 that they issued are people out of state without photographs if they're not in state. These -- or in the military. So, Your Honor, if you're going to have 800,000 exemptions in this state, certainly you can have an exemption that identifies the religious liberty as an interest, which is exactly what 761 is going to do, Your Honor, if they are not going to be able to show a compelling state interest.

Now, every case, Your Honor, that has addressed this issue has ruled in my favor. Every single case, Your Honor. I cited to you three of them that you agreed to take judicial notice of, Your Honor. One is the Bureau of Motor Vehicles versus Pentecostal House of Prayer, that's 380 NE 1225 Indiana, 1978.

And in that case, Your Honor, the Court said -- I'll pull it up for you here. This is the words of the Court: "While we agree the state has a strong interest in insuring driver competency, the idea that the photograph requirement is necessary to that interest is patently absurd." "Patently absurd."

It was absurd in 1978 and it's absurd in the year 2003, Your Honor. They go on and talk about the exemptions in this law that they give them to other individuals that it's, in fact, a burden on the person not to have a license, so there's not going to be that many people that are going to be seeking such an exception because they understand it's a burden not to have a photograph on the license or to have a photograph with a veil, it may make their life more difficult.

They said there's not going to be an overwhelming amount of people that are going to be doing it. It's not going to be an administrative nightmare. We're going to allow -- we're going to require the State of Indiana, require that people be issued a license without a photograph.

The other case that I cited is a Dennis versus Shoren case. It went up to the Tenth Circuit and it went back down to the District Court in Colorado at 646 F.Supp 158, a 1986 case, Your Honor. And in this case, it is exactly -- exactly what we have today.

The Court says, "In Colorado, the usual term for a driver's license is four years," but the state issues --

MR. VAIL: Your Honor --

MR. MARKS: -- special licenses --

MR. VAIL: -- I'm going to object again. This is an argument about the law and I think it's out of place here in an opening statement. It should just be confined to the facts that will be presented.

MR. MARKS: This is in judicial notice, Your Honor. I'm going to say the facts in this case are identical to the facts we submitted in our case, Your Honor.

THE COURT: Then make that statement --

MR. MARKS: All right.

THE COURT: -- and don't read the case law, just submit it for judicial notice.

MR. MARKS: For example -- for example, when one is stopped for a suspected drunk driving, refusing or fails to pass a test --

THE COURT: Without reading it to me, this is opening.

MR. MARKS: In this case, Your Honor, specifically they looked at the medical exceptions, they looked at the drunk driving exceptions, and the state argued the same thing they're going to try and argue today. These are temporary licenses. It doesn't matter. They're different than a regular license.

The Court rejected that. The Court shot it down saying, whether it's a temporary exemption or whether it's a permanent exemption it doesn't matter. An exemption is an exemption. If you're going to give an exemption for secular reasons you have to give it for religious liberty reasons. Absolutely. You have no more compelling state interest for a secular reason than you do for a compelling state interest reason.

The other case, Your Honor, was the Querran (PH) versus Peterson case 728 F.2d 1121, Eighth Circuit. In that case, exactly what happened here, Your Honor. It reverses the case that Plaintiff's cite and talks about the exemptions set forth in the law. It was temporary exemptions in Querran.

There was temporary exemptions for learner's permits, for DUI people, for people out of state, exactly the kind of testimony you're hearing today. And the Querran court said, if you have these exceptions, you cannot meet the compelling state interest case. You've got to give this individual the license, Your Honor.

That doesn't even take into place the exemptions in the State of Florida. The testimony from Sandra Lambert and others are going to be we freely allow people to drive in the State of Florida with reciprocal licenses from other states, whether or not these states require a photograph or not. That will be in evidence, Your Honor.

You're going to hear testimony that foreign nationals come to this country. They do not get a driver's license with a photograph on it. You'll hear testimony to that effect, that they are issued a permit and they can drive freely in Florida and drive freely in the United States and not have any photograph on it whatsoever.

You're going to hear testimony from Sandra Lambert that, in fact, the driver's licenses, even if you have a picture, there's 18 years difference. It doesn't matter if the picture looks like the person or not.

Obviously, there's a change in the way people look after 18 years. I wished I looked the way I did 18 years ago, but I have a lot less hair, I just don't look the way I did, Your Honor. But, nevertheless, you can continually renew your license in the State of Florida for 18 years and the picture doesn't have to look anything like you whatsoever.

Can an individual wear beards? Absolutely. A man or a woman, if they want, can have a full-face beard. They could have a moustache. They can have sideburns. They can wear hats. They can wear turbans. They can wear glasses. They can wear virtually anything to hide their identity and that, according to Sandra Lambert is fine.

The State of Florida has no problem with that. If they are going to allow people to -- if they want to hide their identity, to hide it with all these other issues, then certainly they can allow my client a photograph wearing a veil with her face veiled to exercise her religious beliefs, Your Honor.

The testimony -- we may have expert testimony. We expect to have expert testimony on Islamic religion come in that support that my client's beliefs are sincerely held religious beliefs that support that she does have some foundation, the Koran and the Sunnah, and other religious documents to support her position.

We do not want to get into a position of arguing and interpreting Islamic law because I think the United States Supreme Court has been very clear that a circuit court judge or a district court judge should not be in the role of interpreting Islamic law or Christian law or any other type of religious scripture.

Obviously you are going to have scholars that may disagree on certain passages in any religious text. And again, I don't think that's really the issue in this case as long as my client has a sincerely-held religious belief that it's not based -- that is based on a religious text and it is not so bizarre as to be unbelievable, I think is what the courts have ruled, Your Honor.

The other issues that you are going to hear, Your Honor, is what are the requirements for a photograph for a driver's license in the State of Florida. You are going to hear Sandra Lambert testify to this. You may hear other people from the department testify to this.

And it's relatively simple, Your Honor. You can come to the State of Florida -- these are the department rules and regulations that will get into evidence, and this is what you have to bring. These are acceptable documents for a photograph -- for a driver's license in the State of Florida.

School records. They don't have a photograph. Transcript of birth. They don't have photographs. Baptism certificate. They don't have photographs. Insurance policies. They don't have photographs. Military or military dependent identification card. Sometimes they do and sometimes they don't have photographs.

A Florida or out of state driver's license, valid or expired. As the testimony will be, sometimes you have one, sometimes you don't. Ms. Freeman -- Mrs. Freeman had one, an Illinois one, a valid out of state driver's license with her veil on.

Florida license record of identification card. Selective service registration. Vehicle registration. That doesn't have an ID -- that doesn't have a photograph. Immigration form. Marriage certificate. That doesn't have a photograph on it.

A court order which included your legal name. My client had that. She submitted that. That doesn't have a photograph on it. Registration card. The law in the State of Florida, you don't have to give any identification to vote, because if you have a registration card and you show up, you're obligated -- people are obligated to allow you to vote.

Personal -- this one I love, Your Honor. Personal identification by an examiner or by a person well-known to the examiner. I don't know what that is, but certainly you don't need a photograph to support that.

Social security card. I think everybody's aware that you don't need -- you don't have a photograph on a social security card. Family Bible record. Parent consent form. Out of country

driver's license. Many countries don't have photographs on it.

These are the requirements to get a photograph in the State of Florida. Virtually none of them require any photographic ID. It's also supported not only in their Florida Examination Manual, but supported by Florida Administrative Code 15A1-0012, and it goes through a list of things that you are required to submit.

And you are only required to submit two forms of this identification, Your Honor. Two forms. None of these items or virtually none of them have a photographic ID on them, Your Honor.

So, if the State of Florida is issuing driver's licenses when they don't rely upon a photographic ID, they can certainly issue a driver's license without a photo ID on it or at least one that has my client exercising her constitutional right to veil.

The issue on legislative intent is going to be argued in this case, Your Honor. Well, here's the legislative intent, I think, that's going to get into evidence. The Florida driver's license is not a national ID card. It isn't. It was never intended to be.

322.263, the legislative intent in the State of Florida, and it says, "To provide maximum safety to all persons who travel and otherwise use public highways. To deny the privilege of operating a motor vehicle on public highways to persons whose conduct shows they shouldn't have a license."

These are the legislative intent, Your Honor. It's to show you're competent to drive and that the person who's driving is safe and that the person -- if they're not a safe driver, then obviously you have rules and regulations to properly cancel their driver's license for too many points or DUI.

But if you can pass the test, the vision test, if you can pass the driving test and you're otherwise competent to drive, that is what the legislative intent is for a driver's license, Your Honor. And a photo ID does absolutely nothing to support that legislative intent, Your Honor. Nothing.

There's going to be an issue here, Your Honor, on what the statutory construction is of the statute. We say that my client --

MR. VAIL: Your Honor, this is more legal argument. I believe he should stick to the facts.

MR. MARKS: Well, I'm going to put on evidence, Your Honor, that my client submitted to a photograph. She had a veil on, a full-face veil, and she was looking forward, right at the camera. That's the evidence I'm going to submit. No doubt about it.

THE COURT: It's already stipulated to, Mr. Marks.

MR. MARKS: And that, Your Honor, is a full-face photograph. A full-face photograph is not defined anywhere in Florida law. So, what do you do? You have to presume the Florida Legislature knows what they're doing when they write a law. I mean, actually look at a dictionary. And all you've got to do is look at a dictionary of definitions.

"Facing squarely toward the spectator in a given direction," that's a full face, Your Honor. Here's another dictionary definition. "With the face turned directly toward the spectator or in a specified direction."

There's nothing in the statute that says she has to be unveiled, that you have to show all facial features. Zero evidence of that will be put into evidence. Zero evidence do they have, Your Honor, on that particular point.

My client, we believe, has fulfilled the requirements of Florida Statutes, because if you read the statute, you don't even require that a driver that's looking for a Class E driver's license even

show up to have a photograph.

The testimony is going to be that they believe they are interpreting the Florida Statute and they think that this is what's required. Well, Judge, you have to follow the statutory scheme. They can't add words and change the meaning of the law. They have to follow the law the way it is, Your Honor.

You're going to hear testimony that they do, in fact, now make religious exceptions for some people. They make religious exceptions for nuns. They make religious exceptions for some people that cover parts of their face.

There's nowhere in the statute that says anything about that, but that's what the testimony is going to be, but they refused to make a religious exception for my client, Your Honor.

And the testimony is going to support the position that a driver's license must be issued in this case, Your Honor. And just to remind the Court where we are in this matter, we have the order from Judge Coleman on the motion to dismiss.

These are the issues here. Plaintiff has the burden of proving that she is exercising her religion. The Defendant then has the burden of proving that it has a compelling state interest and is exercising that interest in a least restrictive manner and that's the case, Your Honor.

Those are the issues for your determination in this case. We're going to be able to prove, number one; the State's not going to be able to prove, number two. And we're going to ask you, consistent with every other court that has looked at this issue, to require that my client be issued a driver's license by the State of Florida.

Thank you, Your Honor.