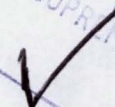


IN THE SUPREME COURT OF FLORIDA

FILED
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CLERK, SUPREME COURT
BY 

STATE OF FLORIDA,

Appellant,

v.

**RICHARD CATALANO,
et al.,**

Appellees.

CASE NO.: 11-1166

L.T. Case No. 2D10-973

L.T. Case No. 2D10-974

CRC08-0054APANO

CRC08-0055APANO

BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANT

Respectfully submitted

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STATEMENT OF IDENTITY AND INTEREST OF AMICUS

Amicus Curiae, Judith S. Ellis, is the organizer of the nonprofit group "Noise Free Florida," which seeks enactment and enforcement of laws to control the growing problem of unnecessary noise in an industrialized society. "Noise" is defined as "unwanted sound." In today's world that unwanted sound starts at the break of day and invades our lives well past dark, from illegally altered motorcycles and mufflers to low-flying aircraft, gas-powered yard equipment, barking dogs, construction, air conditioners, pool pumps, and that epitome of technology run amok, the bass-assisted "boom car." Along with approximately 10% of the US population, Amicus is a "noise sufferer," that is, someone in whom loud noise, especially when combined with low-frequency vibrations of the sort put out by boom cars, produces an accelerated heart rate, elevated blood pressure, and pain in the chest. Other members of this group, which consists of about 40 people in the greater Pinellas area, suffer pain in the head or stomach, nausea, dizziness, confusion or sweating. All noise sufferers share the common problem of otherwise uncharacteristic aggression as the body generates adrenaline in response to what it perceives as an attack.

Amicus, while recognizing that the laws and the courts have their own rules, believes that it is essential for this state to have a law *specifically*

prohibiting boom cars, and contends that there is no deficiency in the law in its present form. Moreover, it is our belief that an understanding of the great social, health and safety impact of this so-called hobby will aid the Court in analyzing the statute at issue.

SUMMARY OF ARGUMENT

Amicus believes strongly that this state, like every other state, needs a law to control noise pollution. In an industrialized society, citizens are assaulted by noise at every hour of the day and often into the night, and as is the need with the defiling of our water and air, laws must be put in place to deal with this particular form of pollution. There is a good reason why there are now about a half dozen web sites in this country addressing these problems – and dozens more overseas.

But as is often the case, the laws have not kept up with the technology. Just as society has had to reconsider communication regulations in light of the new so-called “social networking,” so it has to contend with the invention of the powerful car stereo boosted by the subwoofer. This is a relatively new phenomenon.

Amicus will argue that the State of Florida needs this law in its current form, and that the law as written serves the purpose for which it was intended and does not in fact impinge upon freedom of speech or expression.

ARGUMENT

I. THIS IS NOT YOUR FATHER'S CHEVROLET: THE SUBWOOFER-BOOSTED CAR STEREO DEMANDS ITS OWN TREATMENT UNDER THE LAW.

It is almost impossible to imagine that when the case law governing “plainly audible” was written, in the mid- to late-1990s, anyone could have anticipated a so-called “hobby” calculated to disturb and annoy large residential areas at all hours of the day and night. Advertising for these devices amply demonstrates that they are not in fact entertainment delivery systems but rather a form of urban weaponry (see the “Jackhammer,” Exhibit “A,” attached hereto). The “in-your-face” attitude is amply demonstrated by the advertisement attached hereto as Exhibit “B,” a form of discourtesy that would have been unimaginable 20 years ago. The preponderant verbs in promotions for subwoofers are “defy,” “destroy,” “damage,” and “ignite.” *In fact, the word “music” never appears.* A sampling of the slogans used by manufacturers of car stereo equipment is attached hereto as Exhibit “C.”

The usual methods of dealing with noise, including the use of decibel readers, are rendered useless by the subwoofer,¹ which generates vibrations

¹ *City of St. Petersburg v. Fresco's Ristorante*, 6th Cir. Case No. 07-1692, in which the City lost its case against a noisy restaurant because their counsel was easily able to demonstrate the fallibility of decibel meters.

that travel great distances, cannot be measured by decibel meters, are hard to locate at the source, and invade homes, schools and hospitals through doors, windows and floors. This is more than noise; it's an assault on the human mind and body. The subwoofer is the primary reason the audibility limits imposed by §316.3045 were reduced from 100 feet to 25 feet – at 100 feet law enforcement cannot home in on the source of the noise but at 25 feet it is easily identified. Officers will describe 25 feet as measuring the patrol car, the offender, and the distance between them. As such it has been an enormous boon to law enforcement.

Critics of the law complain that it does not target other noise-makers. From a purely social point of view, Amicus would point out that the candidate running for office and the ice cream vendor both have a socially acceptable purpose in their noise, and neither of them is likely to be cruising slowly down a residential street at 3:00 a.m. There is no social redemption for the loud car stereo; it is, in a word, a sort of urban weapon.

By any standard the subwoofer-boosted car stereo is a menace. Here are some noise-related facts and statistics the Court may not be aware of:

- In 1971, the World Health Organization (WHO) concluded that noise is a major threat to human well-being. WHO identified 7 areas impacted by noise:

1. Hearing impairment
2. Interference with spoken communication
3. Sleep disturbances
4. Cardiovascular disturbances
5. Disturbances in mental health
6. Impaired task performance
7. Negative social behavior and annoyance reactions

That assessment has not changed in the intervening 40 years; if anything, the threat has intensified.²

- Driver reaction time is negatively impacted by 20% when the decibels inside the car exceed 90.³ A loud car stereo is usually compared to the noise from a jet taking off, which is about 125 dBs.
- The stress of exposure to the combination of high volume and low-frequency vibrations has been demonstrated to cause elevated blood pressure, a racing heart beat, nausea, sweating, trembling, and pain in the head, chest

² Suter, A.H. (1991) *Noise and Its Effects*. Administrative Conference of the United States

³ Study by David Behm, Memorial University, Newfoundland, Canada, reported by RAC Foundation, April 2004.

and/or stomach. Constant exposure to this physical assault is a major contributor to cardiovascular disease.⁴

- People have died because they could not hear approaching emergency vehicles over the sound of their own or someone else's car stereo.
- The current estimate of hearing impairment among our nation's *middle school* children is 17-20% and climbing.
- Children coming into our elementary schools in the last 5-7 years are showing not just signs of hearing impairment but also indications of learning disabilities. As infants, with incomplete and vulnerable nervous systems, they were strapped into their car seats only inches from the source of the noise and vibration, an act described by one pediatrician⁵ as the equivalent of "putting the baby's brain in a blender." It is an interesting comment on our society that recently at least 4 states were considering banning smoking in a car with small children but no one seems concerned that we allow adults to abuse their children with unhealthy levels of noise, much of it consisting of foul language.

⁴ Hagler, Louis, M.D., and Lisa Goines, R.N., *Noise: An Audible, Airborne Pollutant* (2007)

⁵ Brian Fligor, Sc.D., Director of Diagnostic Audiology, Children's Hospital, Boston. Dr. Fligor's primary research is investigating causes of acquired hearing loss from ototoxicity and noise, particularly in the pediatric population.

- Law enforcement estimates that *at least* 1 car in 4 stopped for a loud car stereo will produce guns, drugs or people wanted on warrants.⁶

- The combination of loud noise and vibrations is perceived by the human body as an attack, resulting first in a flood of adrenaline (“fight or flight”) and then in often uncharacteristically aggressive behavior.⁷

Statistics kept by a Kentucky anti-noise activist from 2004 to 2009 demonstrate that on average of 3 times a month, somewhere in this country, someone is beaten, stabbed or shot over the issue of noise.⁸ Often the victim is a law enforcement officer who has pulled over a loud car only to find a hyped-up driver, tripping on his own adrenaline and looking for violence. Devotees of this so-called hobby have been known to become extremely abusive, threatening, and retaliatory at the very hint that someone is trying to limit their behavior. This is a fairly typical hostile entry in a chat group on an anti-noise web site: “I would just like to say _____ to whoever is

⁶ The sheriff’s office of Alachua County was the first to notice this connection, several years ago; in some cities it is believed that the figure is much higher.

⁷ U.S. Department of Justice, Office of Community Oriented Policing Services, Problem-Oriented Guides for Police Series, No. 7, *Loud Car Stereos*, by Michael S. Scott.

⁸ www.noboomers.com. The chronological listing of events has been discontinued, presumably because they became too numerous to keep track of.

reponsible [sic] for this site. I love my ‘boom car’ and no matter what stupid ass law our stupid ass country passes I will be forever bassing with my ear plugs and pissing people off.”⁹ Several times following Amicus’ appearance in the newspaper or on television speaking about this problem, she has received emails that would result in the arrest of the sender were he traceable, including one memorable communiqué that read, “I’d like to slit your throat and ____ the wound.”

- How seriously people are affected by this pollution depends on whether the “listeners believe third parties, including police, can control the noise. *If people believe a third party can control the noise but has failed to do so, they are more likely to be annoyed by the noise.*”¹⁰ Since 2004, Amicus has personally witnessed four individuals, one in Florida, one in Louisiana, one in California and one in Ohio, become literally deranged because local law enforcement not only couldn’t help them – they could not even hold out the *hope* of assistance.

⁹ Notice that the offender has concern for his own hearing but none whatsoever for those he’s inflicting his noise on.

¹⁰ U.S. Department of Justice, Office of Community Oriented Policing Services, *op. cit.* Emphasis added.

II. LOUD NOISE IS NOT A JUDGMENT CALL

Critics of §316.3045 like to say that in ticketing a loud car stereo, law enforcement is being subjective and making a judgment call. Supporters of the law will suggest to this Court that making judgment calls is what law enforcement does, all day, every day. Police and sheriff's deputies are trained to recognize illegal behavior when they see it – and when they hear it. A law enforcement officer's assessment that a loud car stereo noise is a ticketable offense is a perfectly valid judgment.

We ask the Court to consider the fact that most police officers are 'cocooned' in their cruisers, windows up against the weather, call radio on. They can hear almost nothing in this environment, so imagine what level of noise has to be coming from a car stereo 25 feet away for the officer to notice it. Translate that level of disturbance to all other motorists around the offender. "One may gain an idea of the magnitude of community disturbance which boom cars can inflict by making a rough calculation using the geometric equation for the area of circle ($a = 3.1416 \times r^2$). Assuming a one-block radius for projecting the noise and 14 residential lots per city block, a single stationary boom car can be heard by the occupants of about 44 homes in a residential zone. With 2.5 residents per house, before the auto even moves it can disturb 110 people. Bearing these numbers in mind, we

can easily see that a single boom car operator driving home after the bars close can potentially disturb the sleep of thousands."¹¹

Amicus was contacted a few years ago by a woman who lived in a senior retirement apartment complex across the street and several hundred feet from a store that sold and tested subwoofers. Every night around 10 o'clock her dying husband would sit up in his bed and cry out, 'Make it stop! Make it stop!'"

This is not a hobby, this is not a pastime. This is a plague.

III. THERE IS NO INFRINGEMENT ON FREEDOM OF SPEECH

Of all the arguments raised by the Respondents, that of freedom of speech is perhaps the most egregiously fallacious. Just as that freedom does not permit a person to shout "fire" in a crowded theater, nothing in the First Amendment grants him the right to force others around him to share his taste in entertainment. Messrs. Catalano and Schermerhorn needed only to roll up their car windows while listening to their respective choices of music to avoid imposing themselves on others. They are, it seems, part of the "Culture of Rude" that permeates our society today, one manifestation of which is the enhancement of car stereos so that they have become virtual weapons instead of entertainment delivery systems. The problem is of such

¹¹Michael Phillip Wright, *Media Violence, Noise Pollution and Gunfire*

serious proportions that the Department of Justice felt the need to dedicate an entire volume solely to advise and inform law enforcement on recognizing and dealing with “Loud Car Stereos.”¹²

Mr. Catalano, as quoted in the 2nd DCA opinion, argued that “there is no compelling governmental interest requiring disparate treatment of commercial or political speech versus amplified music.” We disagree. Here again the issue of content neutrality raises its head but here again Amicus points out that the social and health effects of the amplifications utilized by the candidate for office or the ice cream vendor are not comparable to a device that literally shakes nearby cars, prevents other motorists from hearing the sirens of emergency vehicles, damages the brains of very small children, interrupts thought processes, disturbs the sleep, diminishes the hearing of the driver and passengers, and even affects eyesight, causing loss of clarity, color perception and night vision.¹³ The COPS pamphlet agrees that “[p]laying car stereos loudly can be an act of social defiance by some....” It is a well-known fact among anti-noise activists that a person making loud noise, upon being asked as politely as possible to turn it down, will almost invariably turn it *up*. Reference to content neutrality in the

¹² Scott, *Loud car Stereos*, *op. cit.*

¹³ Bulletin of the Workers Health Centre, Australia 2005

context of this case invites a false comparison between a device designed solely to annoy and disturb (see attached Exhibits) and the use of a car sound system for acceptable social purposes.

People in the anti-noise movement share a single slogan when it comes to First Amendment issues: *Your freedom of speech stops at my ears.*

CONCLUSION

Amicus will leave it to the attorneys and judges who are parties to this judicial exercise to argue the finer points of constitutional law. However, in conclusion, she wishes to convey the following thoughts:

“The aim of enlightened governmental controls should be to protect citizens from the adverse effects of all forms of pollution, including noise pollution. People have the right to an unpolluted acoustical environment; one that is not imposed by others. Without enlightened legislation, and in the absence of vigorous and consistent enforcement of the law, the noisemakers and those who support them not only deny citizens this right, but also add to the burden of human disease and suffering.”¹⁴

In 1974, the Environmental Protection Agency (EPA) estimated that nearly 100 million Americans lived in areas where the daily average noise

¹⁴ Hagler, Louis, M.D., *op cit.*

levels exceeded those identified as being safe.¹⁵ However, in 1982, the government abruptly terminated federal funding for the Office of Noise Abatement and Control (ONAC), the vehicle by which the public was to be protected from the adverse effects of noise. This essentially ended any federal efforts to control noise; such control was left entirely up to State and local jurisdictions.¹⁶

So, with the states in charge of controlling this form of pollution for the last 37 years, what does the Florida Constitution say?

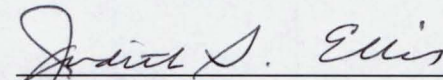
*Section 4. Freedom of speech and press.—Every person may speak, write and publish sentiments on all subjects **but shall be responsible for the abuse of that right.***

Which raises the question of how a very small but loud minority can impose itself on the rest of the population and then claim to be “expressing itself.” The very suggestion that one man’s loud music – any kind of music – can be freely and without punishment forced upon his neighbors flies in the face of decency and common sense.

¹⁵ Environmental Protection Agency. (1974) Information on levels of environmental noise requisite to protect public health and welfare with an adequate margin of safety. EPA/ONAC 550/9-74-004. U.S. Environmental Protection Agency.

¹⁶ Shapiro S.A. (1991) *The Dormant Noise Control Act and Options to Abate Noise Pollution*. Administrative Conference of the United States.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing has been furnished by U.S.

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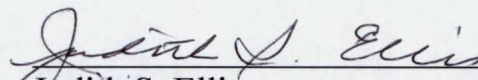
The Capital – PL 01

Tallahassee, FL 32399-1050

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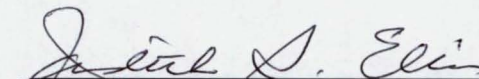
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Judith S. Ellis

CERTIFICATE OF FONT COMPLIANCE

I certify that this Amicus brief complies with the font requirements of Fla. R. App. P. 9.210 for computer-generated briefs.


Judith S. Ellis

Notice the anti-social advertising copy (in bold face). The manufacturer brags that this device is 'all about excess.'



For all you Escalade owners, Navigator drivers, and Hummer crews. For the players who know the game and the VIPs who know where the party's at. For anyone who's got what it takes to go to the extreme. Your woofer has arrived. The MTX Audio JackHammer. The most enormous, most mind-blowing, beast-of-a-subwoofer ever created.

EXHIBIT "A"

This isn't some oversized cone stuck to the same magnets from a 15" woofer. JackHammer is the real deal. Designed from the ground up to be the most massive subwoofer ever, JackHammer incorporates radical new technologies. It is even manufactured in MTX's custom facility with a magnetizer constructed just for this woofer—a magnetizer that wipes out any credit card that dares come within 25 feet! **JackHammer is the Biggest, Baddest, Boldest subwoofer...ever!**

YOU'VE GOT THE RIDE. YOU'RE ROLLIN' ON DUB DUBS. STOP PLAYIN' WITH THOSE TINY 15s AND SHOW 'EM WHAT YOU'RE ALL ABOUT. EXCESS IS IT AND JACKHAMMER IS ALL ABOUT EXCESS!

The JackHammer SuperWoofer represents extreme in every way and this enormous subwoofer lives for high SPL and window shattering bass. But, the T9922 is designed for sonic quality, and high SPL, what we call SQL. JackHammers are shipped in either the SPL mode, with dual 2 Ω voice coils, or as the SQL model with dual 4 Ω voice coils. A replaceable cone assembly is also available, for switching between "every day" listening (SQL), and competition (SPL).

6,000 RMS, 12,000 peak music power

23" tall

369 lbs.

900 ounce strontium ferrite magnet with extended magnetic field gap technology

Carbon fiber and glass fiber dust cap with aluminum honeycomb center

Expanded polypropylene cone with mica filler for reduced mass and increased stiffness

FEA designed progressive roll spider with 10 AWG integrated tinsel leads woven in to allow for 2.5" of linear cone movement one way

Aluminum shorting ring

6.5" voice coil with 17 AWG high temperature aluminum wire in a flat wound, long-excursion design incorporating 2.5" of Xmax

Aluminum heatsink to maintain the optimum voice-coil temperature

Replaceable cone kits available to switch between SQL & SPL models without removing the JackHammer SuperWoofer from its enclosure

**TURN IT
DOWN?**

**I DON'T
THINK SO**

**NOT YOU.
NOT ON YOUR TURF.
NOT WITH**

BOSS
AUDIO



BOSS AUDIO MEXICO TEL: 02-5709-42-00
MONTREUX TEL: 01-62-71001
NORTH CENTRAL AMERICA AND CARIBBEAN
BOSS LTD TEL: 800-884-7881 FAX: 800-871-6209
CANADA JAPAN CANADA TEL: 800-426-8888

EXHIBIT "B"

Sample Advertising Slogans

Loud car stereos need a specific law because the culture thrives on defiance and violence

Pioneer Electronics: "Disturb, Defy, Disrupt, Ignite"

JBL: "Either we love BASS or hate your neighbors"

JL Audio: "Be Very Afraid"

MSX: "Proud to be loud"

Kicker: You deserve a beating... Kicker's loudest, meanest subwoofer
ever!"

Concept: "When TOO loud ... is just right"

Lightning Audio: "Sonic submission"

Boss Audi System: "Turn it down? I don't think so."

Cerwin-Vega Mobile Audio: "Shake the living, wake the dead."

Crossfire: "We're louder. Deal with it!"

Earthquake Sound: "The Meanest, Loudest, Most Power, Mother F ____"

Viper Audio: "Cold Blooded Violent Fury and Multi-Channel Mayhem"

Onion High Performance: "Be Loud. Be Obnoxious"

EXHIBIT "C"