

IN THE SUPREME COURT OF FLORIDA

NELSON WATTS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

Case No. 64,613


DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA

BRIEF OF RESPONDENT ON JURISDICTION

JIM SMITH  
ATTORNEY GENERAL

KATHERINE V. BLANCO  
ASSISTANT ATTORNEY GENERAL  
Park Trammell Building  
1313 Tampa Street, Suite 804  
Tampa, Florida 33602  
(813) 272-2670

COUNSEL FOR RESPONDENT

**FILED**  
SID J. WHITE  
JAN 14 1984  
CLERK, SUPREME COURT  
By   
Chief Deputy Clerk

ISSUE

WHETHER THE OPINION OF THE SECOND  
DISTRICT COURT OF APPEAL WHICH  
DENIES CERTIORARI, AND EXPRESSLY  
DECLARES VALID SECTION 856.021,  
FLORIDA STATUTES, WARRANTS DIS-  
CRETIONARY REVIEW BY THIS COURT.

Petitioner, Nelson Watts, seeks to have this Court review the decision of the Second District Court of Appeal which expressly declared valid Section 856.021, Florida Statutes. Essentially, Petitioner seeks to have this Court revisit and reverse its opinion in State v. Ecker, 311 So.2d 104 (Fla. 1975), cert. denied, 423 U.S. 1019, 96 S.Ct. 455, 46 L.Ed.2d 391 (1975), which upheld the validity of Section 856.021.

In support of its argument that this Court should again address the validity of Section 856.021, Florida Statutes, Petitioner relies on the decision of the United States Supreme Court in Kolender v. Lawson, \_\_\_ U.S. \_\_\_, 75 L.Ed.2d 903, 103 S.Ct. \_\_\_ (1983). The Second District Court of Appeal was asked to analyze the instant case in light of Kolender and opined "while some of the authorities and reasoning relied upon in Ecker have now been disapproved in Kolender, we feel that Section 856.021 is so much more definitive than the California Statute was to render the result in Ecker still valid." Watts v. State, \_\_\_ So.2d \_\_\_, 8 F.L.W. 2796 (Fla. 2 DCA, Opinion filed November 23, 1983). No further review is warranted.

CONCLUSION

Respondent, State of Florida, respectfully requests that this Court decline to accept jurisdiction to redetermine the validity of Section 856.021, Florida Statutes.

Respectfully submitted,

JIM SMITH  
ATTORNEY GENERAL

*Katherine V. Blanco*

KATHERINE V. BLANCO  
Assistant Attorney General  
Park Trammell Building  
1313 Tampa Street, Suite 804  
Tampa, Florida 33602  
(813) 272-2670

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States Mail to L. S. Alperstein, Esquire, Assistant Public Defender, Hall of Justice Building, 455 North Broadway, Bartow, Florida on this the 30th day of December, 1983.

*Katherine V. Blanco*  
\_\_\_\_\_  
Of Counsel for Respondent