

IN THE SUPREME COURT OF FLORIDA

NELSON WATTS,  
Petitioner,

vs.

STATE OF FLORIDA,  
Respondent.

**FILED**

SID J. WHITE

DEC 14 1983

CLERK, SUPREME COURT

By *m*  
Chief Deputy Clerk

64 613

Case No.

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

BRIEF OF PETITIONER ON JURISDICTION

JERRY HILL  
PUBLIC DEFENDER  
TENTH JUDICIAL CIRCUIT

L. S. ALPERSTEIN  
ASSISTANT PUBLIC DEFENDER

Hall of Justice Building  
455 North Broadway  
Bartow, FL 33830  
(813) 533-0931

ATTORNEYS FOR PETITIONER

TOPICAL INDEX TO BRIEF

	<u>PAGE NO.</u>
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2-3
ARGUMENT	
ISSUE. THE OPINION OF THE SECOND DISTRICT COURT OF APPEAL DENYING CERTIORARI EXPRESSLY DECLARES VALID SECTION 856.021, FLORIDA STATUTES, WARRANTING DISCRETIONARY REVIEW BY THIS COURT.	4
CONCLUSION	5
APPENDIX	
1. Decision of the Circuit Court of Polk County, Florida, in <u>Watts v. State</u> , (Tenth Circuit, Case No. <u>L-159</u> , opinion filed October 27, 1983)	A1-A2
2. Decision of the Second District Court in <u>Watts v. State</u> , <u>So.2d</u> (Fla.2d DCA, Case No. 83-2334, opinion filed November 23, 1983)	A3-A4
3. Decision of the Supreme Court of Florida in <u>State v. Ecker</u> , 311 So. 2d 104 (Fla.1975)	A5-A13
4. Decision of the United States Supreme Court in <u>Kolender v. Lawson</u> , <u>U.S.</u> , 102 S.Ct. <u>    </u> , 75 L.Ed.2d 903 (1983)	A14-A31
CERTIFICATE OF SERVICE	

TABLE OF CITATIONS

CASES CITED

PAGE NO.

Kolender v. Lawson  
\_\_\_ U.S. \_\_\_, 102 S.Ct. \_\_\_, 75 L.Ed.2d 903 (1983)

4

State v. Ecker  
311 So.2d 104 (Fla.1975)

4

OTHER AUTHORITIES

§856.021, Fla.Stat. (1981)

2,3,4

Art. V, §3(b)(3), Fla.Const.

4

Fla.R.App.P. 9.030(a)(2)(A)(1)

4

IN THE SUPREME COURT OF FLORIDA

NELSON WATTS, :  
Petitioner, :  
vs. : Case No.  
STATE OF FLORIDA, :  
Respondent. :  
..... :  
\_\_\_\_\_ :

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

BRIEF OF PETITIONER ON JURISDICTION

PRELIMINARY STATEMENT

References to the record on appeal as presented to the Circuit Court and the Second District Court of Appeal will be designated by "R" followed by the appropriate page number. References to the appendix to this brief will be designated by "A" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

A complaint affidavit was filed in the County Court for Polk County charging Petitioner with loitering and prowling, a violation of Section 856.021, Florida Statutes (1981). (R1) On February 3, 1983, Petitioner appeared in the County Court of Polk County, the Honorable J. Dale Durrance presiding, to answer this charge. (R5-20)

Officer Reaume testified that at about 8:43 p.m. on November 6, 1982, he observed Petitioner in the parking lot of a restaurant looking into cars. (R6) When Petitioner saw Reaume he began to walk in a easterly direction. (R6) Reaume followed Petitioner and was able to identify him from an earlier arrest. (R6-7,11)

Reaume notified the other patrol units in the area and circled the block in an attempt to stop Petitioner. (R7) Reaume next saw Petitioner back in the parking lot looking into cars. (R7) When Petitioner saw Reaume, he immediately ran in a southerly direction down the alley. (R7) The canine units were brought to track Petitioner, however, they were unable to locate him. (R11-12)

Reaume saw Petitioner about 10 days later and asked him why he ran. (R8) Petitioner told Reaume he ran because he did not want to talk to Reaume. (R8) Reaume ran a warrant check on Petitioner and let him go. (R8)

Petitioner testified that Reaume knew him. (R15) Petitioner knew nothing about the incident. (R14)

Petitioner was found guilty of loitering and prowling and was sentenced to 60 days in county jail. (R16,19) A notice

of appeal was filed March 4, 1982. (R22)

On appeal Petitioner raised the following question of law:

THE TRIAL COURT COMMITTED FUNDAMENTAL  
ERROR BY FINDING APPELLANT GUILTY OF  
LOITERING AND PROWLING BECAUSE SECTION  
856.021, FLORIDA STATUTES IS FACIALLY  
UNCONSTITUTIONAL.

On October 27, 1983, the Circuit Court of the Tenth Judicial Circuit affirmed the judgment of the trial court in an opinion declaring the statute constitutional. (A1-2)

On Novmeber 9, 1983, Petitioner filed a Petition for Writ of Certiorari in the Second District Court of Appeal. The question raised was the constitutionality of the Florida loitering and prowling statute.

In a decision dated November 23, 1983, the Second District Court of Appeal denied the petition for certiorari in an opinion expressly declaring valid the Florida loitering and prowling statute. (A3-4)

Petitoner new seeks discretionary review in this Court to determine the constitutionality of Section 856.021, Florida Statutes (1981).

ARGUMENT

ISSUE

THE OPINION OF THE SECOND DISTRICT COURT OF APPEAL DENYING CERTIORARI EXPRESSLY DECLARES VALID SECTION 856.021, FLORIDA STATUTES, WARRANTING DISCRETIONARY REVIEW BY THIS COURT.

The discretionary jurisdiction of the Court may be sought to review decision of a district court that expressly declared valid a state statute. Act.V, §3(b)(3), Fla.Const.; Fla.R.App.P. 9.030-(a)(2)(A)(1). Since the decision of the Second District Court of Appeal expressly declares valid Section 856.021, Florida Statutes, this Court should exercise its discretion and review the matter.  
(A3-4)

Although this Court has ruled on the validity of Section 856.021, Florida Statutes (1981), in State v. Ecker, 311 So.2d 104 (Fla.1975), subsequent to that decision the United States Supreme Court decided Kolender v. Lawson, \_\_\_ U.S. \_\_\_, 102 S.Ct. \_\_\_, 75 L.Ed.2d 903 (1983), which held the California loitering statute was unconstitutionally vague on its face because it encouraged arbitrary enforcement by failing to clarify what is contemplated by the requirement that a suspect provide credible and reliable identification. This Court in Ecker has construed the Florida loitering and prowling statute to require credible and reliable identification. As with the California statute declared invalid in Kolender, the Florida statute fails to clarify what is contemplated by the requirement that a person provide credible and reliable identification and thus encourages arbitrary enforcement. In light of the decision in Kolender, the decision of this Court in Ecker declaring Section 856.021 valid should be reviewed.

CONCLUSION

Petitioner, Nelson Watts, asks this Court to accept jurisdiction to determine the facial validity of the Florida loitering and prowling statute.

Respectfully submitted,

JERRY HILL  
PUBLIC DEFENDER  
TENTH JUDICIAL CIRCUIT

  
L. S. ALPERSTEIN  
Assistant Public Defender

Hall of Justice Building  
455 North Broadway  
Bartow, Florida 33830-3798  
(813) 533-1184

Counsel for Petitioner