IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant

vs. CASE NO. 66,450

DANNY PAUL MOOSBRUGGER,

Appellee

APPELLEE'S MAIN BRIEF

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TABLE OF AUTHORITIES

TABLE OF CONTENTS

PREFACE

Appellant is the State of Florida and the appellee is DANNY PAUL MOOSBRUGGER. The Parties will be referred to as the appellant and the appellee.

The following symbols will be used:

R - Record

POINT ON APPEAL

I

WHETHER FLORIDA STATUTE 839.25(1)(a) IS UNCONSTITUTIONALLY VAGUE IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I SECTION 9 OF THE FLORIDA CONSTITUTION.

STATEMENT OF THE CASE AND OF THE FACTS

Appellee will accept Appellant's statement of the case and of the facts for purposes of this appeal.

SUMMARY OF ARGUMENT

Florida Statute Section 839.25(1)(a) is unconstitutionally vague and open to arbitrary and circuitous application in violation of the due process guaranted by the United States and Florida constitution. This view is supported by the following Florida case authority:

MOOSBRUGGER V STATE, 461 So.2d 1033 (Fla.App. 24Dist. 1985)

STATE V DELEO, 356 So.2d 306 (Fla. 1978)

STATE V JENKINS, 454 So.2d 79 (Fla.App. 1Dist. 1984)

ARGUMENT
POINT ON APPEAL

I

WHETHER FLORIDA STATUTE 839.25(1)(a) IS UNCONSTITUTIONALLY VAGUE IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I SECTION 9 OF THE FLORIDA CONSTITUTION.

This Court has previously held that Florida Statute 839.25(1)(c) prohibiting "Official Misconduct" by a public servant with corrupt intent to obtain a benefit for himself or another by (c) "knowingly violating or causing another to violate, any statute or lawfully adopted regulation or rule relating to his office" to be unconstitutionally vague under the due process guarantees of the United States and Florida constitutions. STATE V. DELEO, 356 S0.2d 306 (Fla. 1978). The DELEO court stated:

> "While some discretion is inherent in prosecutorial decision making, it cannot be without bounds. The crime defined by the Statute, knowing violations of any statute, rule or regulation for an improper motive is simply too open-ended to limit prosecutorial discretion in any reasonable way. The statute could be used, at best, to prosecute, as a crime, the most insignificant of transgression or, at worst to misuse the judicial process for political purposes. We find it susceptible to

> arbitrary application because of its "'catch-all'" nature."

Florida Statute 839.25(1)(a), the section under which Appellee was convicted, suffers from the same constitutional deficiencies. Subsection (a) states:

> "Knowingly refraining or causing another to refrain from performing a duty imposed upon him by law."

The reasoning of the DELEO decision was followed in STATE V JENKINS, 454, So2d 79 (Fla.App. 1 Dist. 1984) wherein the court stated:

> "Comparison of the language of subsection (c), struck down in Deleo, with (a) at issue here, reveals that (a) is as vague and open to arbitrary and capricious application as (c), if not more so. Subsection (a) goes beyond the limits of (c) to provide for imposition of criminal sanctions for failure to perform duties which need not be related to the office of the accused."

JENKINS at 80.

Appellant argues that by applying the respective statutory provisions that cover the different public officials we can therefore derive the corresponding duties imposed by law spoken of in the statute. Appellant submits that this limiting construction provides the remedial glue necessary to

uphold the statute.

The argument is circuitous. First, the statutory language is not limited to Florida Statutes. It could arguably apply equally to Federal law, county ordinances, city ordinances or even interdepartmental regulations. As the lower Court stated:

> "There is simply no way of determining which of the myriad of public servants' duties are imposed...by law."

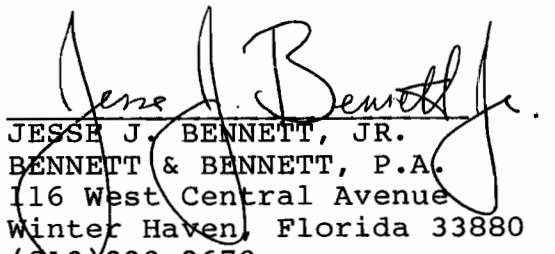
MOOSBRUGGER V. STATE, 461 So.2d 1033 (Fla.App. 2Dist. 1985) at 1034.

Second, the scenario proffered by Appellant requires the type of mental gymnastics which are clearly not associated with men of common intelligence. We should always be mindful that the people this law predominately effects are not lawyers but everyday people. Under the "limiting construction" argument of Appellant, a public official would need the legal reasoning and logic of a "Brandeis" or a "Holmes" in order to discern whether his contemplated behavior was prohibited.

CONCLUSION

The decision of the Second District Court of Appeal finding Section 839.25(1)(a) Florida Statutes to be unconstitutionally vague should be affirmed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

STATE OF FLORIDA

COUNTY OF POLK

I HEREBY CERTIFY that a true and correct copy of the foregoing appeal has been furnished to the Honorable GARY O. WELCH, Assistant Attorney General, Department of Legal Affairs, Office of the Attorney General, Park Trammell Building 1313 Tampa Street, Suite 804, Tampa, Florida 33602, this 12th day of March, 1985.

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