IN THE SUPREME COURT OF FLORIDA

NO. 66,925

BELINDA McGUIRE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the prosecution at the trial court level and the appellant on appeal. Respondent was the defendant at the trial level and the appellee in the Fourth District Court of appeal. Parties will be referred to in this brief as they appear 6efore this Court. They symbol "R" followed by a number will constitute a page reference to the record from the lower court. All emphasis has been supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

THE CASE

This is an appeal from an adjudication of guilt for the offense of "Indecent Exposure by Wearing Improper Bathing Attire" (R 403).

The judgment was entered in the County Court for Palm Beach County, upon a jury's verdict that Belinda McGuire had violated Rule 16 D-2.04(1) (e) of the Florida Administrative Code which provides, in pertinent part:

> In every bathing area all persons shall be clothed as to prevent any indecent exposure of the person. All bathing costumes shall conform to commonly accepted standards at all times.

That regulation had been promulgated by the Florida Department of Natural Resources, and Ms. McGuire's arrest was at the behest of a Department park officer pursuant to the regulation and its statutory enforcement mechanism, Sections 258.007 (2) and 258.024(1) (a), Florida Statutes. Prior to trial the Court denied Ms. McGuire's motion to dismiss the charge based on the facial invalidity of the regulation (R 386-390).

The trial court imposed a fine of two hundred dollars (R 311, 404). This appeal raises constitutional claims regarding the validity of the regulation and the trial.

THE FACTS

The essential facts are undisputed.

A. The Conduct

Belinda McGuire was on the beach in May, 1982 at the John D. MacArthur Beach State Recreation Area. She was jogging on the portion of the area which has been known as "Air Force Beach" (R 62). She was not wearing a bathing suit top (R 62). The officer who cited her called her "polite" and described her conduct this way:

> I didn't feel anything was lewd and lascivious about it.
>
> (R 86).

B. The Beach

The Air Force Beach Area, when owned by John D. MacArthur, had, by custom, been a "clothing optional" beach. A letter from J. Roderick MacArthur, directed to the Governor and Cabinet of Florida, read to the jury, set the historical perspective for this case:

> As you may remember, my father owned the entire 345 acre area, part of which was sold and part donated to become a State park. He always resited the temptation to exploit it commerically, and not only tolerated it, but positively approved of

> the nude sunbathing (he had always been a skinny dipper himself). So the use of this beach by the clothing-optional people has been institutionalized for over a quarter of a century.
>
> (R 230)

The State, after taking over the operation of the MacArthur Recreation Area, in March of 1982 (R.162), posted notices referring to the Department of Natural Resources Regulation 16-D 2.04(1) (e)[1], but one of the park officers agreed that at the time of Ms. McGuire's arrest, the beach, by commonly accepted practice, was divided into clothed and clothing optional areas (R 129-130). She was in the clothing optional area, at least 100 to 150 yards from clothed people (R 130) and no children were present (R 86).

C. <u>The Suit and the Standards</u>

Much of the testimony in this case focused on swimming attire. Ms. McGuire wore no top to her swimsuit (R 197).

According to the MacArthur State Park Manager, Lt. John Fillyaw, a swimsuit top was not necessary for compliance with the Regulation - seashells would suffice:

> A. In my mind, if the seashell is large enough to cover the nipple portion of the breast,

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1 See State Exhibit 4, which in relevant part, states: Florida Statute 800.03, 258.011 and 16-D 204(e) prohibits any public nudity or indecent exposure.

legally it would probably be okay.

* * *

Q. And isn't it true then that you told Belinda McGuire that a seashell may be enough?

A. If it covered the nipple portion of the breast.

(R 236-237).

Another Park officer indicated he had seen skimpy bathing suits which revealed "pubic hair" and "nipple erection", "or something that would be close to seeing it" (R 126-127). He was unsure of the proper response to such a suit:

Q. Would you feel that a see through bathing suit worn by a woman would be - would conform to commonly accepted standards?

A. Depending on the degree of opaqueness or transparentness, as you said, that could have to weigh into it.

(R 127-128).

The two lay witnesses offerd by the State to prove "commonly accepted" standards of beachwear had different levels of tolerance. One called "too suggestive" a bathing suit top which "barely covered the nipple area, exposing everything but the nipple area" (R 107, 109).

Q. So it isn't really nudity that is offensive to you; it is scanty clothing?

A. I call it nudity.

Q. And your definition of nudity would include --

A. One inch of covering.

Q. What about two inches?

A. Oh, I don't want to go into that. I don't know.

(R 111).

The other witness testified her "sense of common decency" was offended by public beach nudity (R 94), but the testimony offered by the State was unclear as to the extent of the nudity which offended her. [2]

There is no dispute that the State's two lay witnesses and the Park officers testified that some sort of bathing suit top and bottom were standard beach attire in Palm Beach County

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Q. During these strolls, would you encounter nude persons who were not fully attired, properly attired?
A. Yes.
Q. Did you ever observe any females who were topless?
A. Yes, sir.
Q. Did you observe males who who were totally nude?
A. Yes.
Q. Females totally nude?
A. Yes.
[Objection, objection overruled]
Q. Is your sense of common decency offended when you observe this nudity?
A. On a public beach, yes sir.
Q. And you know that John D. MacArthur Park is a public beach?
A. Yes, sir.
Q. And nudity there offends your sense of decency?
A. Yes, sir.
(R 93-94)

(R 67,70,104,125). One description of adequate attire was:

> [B]reast covered and wearing some type of a bottom.
> I have seen some fairly small ones but, you know, bascially your genital area and buttocks and breasts [covered] for a woman, and for a male wearing a bottom.
>
> (R 125).

Although Belinda McGuire was "topless", her prosecution under a law which is open to differing interpretations of tolerated dress may be affirmed only if the regulation passes constitutional muster, and if her trial was fair.

This appeal addresses those issues.

I.

FLORIDA ADMINISTRATIVE CODE REGULATION 16-D 204(1)(e) IS REPUGNANT TO THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND, ON ITS FACE, VIOLATES THE CONSTITUTION OF THE UNITED STATES.

A. The Framework for Analysis

The facial attack on the Regulation has two facets: vagueness and overbreadth.

The void for vagueness doctrine serves to insure the constitutional "requirement that a legislature establish minimal guidelines to govern law enforcement". Smith v. Goguen, 415 U.S. 566, 574, 94 S.Ct. 1242, 39 L.ED.2D 605 (1974). The Supreme Court has recently written:

> As generally stated, the void for vagueness doctrine requires that a penal statute define the criminal offense with sufficient definitness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement ... Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policement, prosecutors and juries to pursue their personal predilections."
>
> Kolender v. Lawson, 461 U.S. 352 (1983)

The overbreadth doctrine invalidates criminal laws which sweep too broadly, i.e. those which sweep within the punitive ambit of both protected and unprotected actions or speech. This Court has adopted this test for judging overbreadth:

> [W]here conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep.
>
> State v. Elder, 382 So.2d 687, 690 (Fla.1980) quoting Broadrick v. Oklahoma, 413 U.S. 601,615 93. (1973).[3]

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[3] Since this case involves conduct, not speech, the Elder-Broadrick test is the relevant one.

In overbreadth challenges, a defendant need not claim his or her conduct is beyond regulation. Elder notes:

> We do agree, however, with the county court's threshold finding that a defendant may challenge a statute's validity on overbreadth grounds without first demonstrating that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity. Lewis v. City of New Orleans, 415 U.S. 130, 94 S.Ct. 970, 39 L.Ed.2d 214 (1974); State v. Keaton, 371 So.2d 86 (Fla.1979).
>
> Id, 382 So.2d at 689.

In accord is Robinson v. State, 393 So.2d 1076,1077 (Fla.1981), which reversed for overbreadth a conviction for violating Florida's anti-hood statute, despite the defendant's nolo contendere plea to the charge of being publicly hooded:

> Without speculating on whether the statute is intended to apply to any core activities which the legislature has an interest in preventing, we find that this law is susceptible of application to entirely innocent activities.

The most recent developments in the vagueness overbreadth principles view them as "logically related and similar doctrines", and allow all facial challenges to criminal laws capable of arbitrary enforcement under these standards:

> [W]e permit a facial challenge if a law reaches "a substantial amount of constitutionally protected conduct". ...Second, where a statute imposes criminal penalties, the standard of certainty is higher...This concern has, at times, led us to invalid date a criminal statute on its

face even when it could conceivably have had some valid applications. Kolender v. Lawson, supra, 461 U.S. at 358, n.8 [4] (citations omitted).

The regulation at issue in this case imposed criminal sanctions. The regulation of appropriate dress on Florida beaches reaches liberty interests of thousands of beachgoing people each day, thus meeting the "substantial amount of constitutionally protected conduct" test. Consequently, despite the fact that a properly drawn law could conceivably regulate beach dress and apply to Ms. McGuire's admitted conduct, the Regulation must be measured for facial compliance with the Constitution under the vagueness and overbreadth principles enunciated above.[5]

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[4] In light of Kolender, the limitations placed on standing to mount facial constitutional attacks in South Florida Free Beaches v. City of Miami, 548 F.Supp. 53,57 (S.D.Fla.1982), are no longer applicable. See South Florida Free Beaches v. City of Miami,is 734 So.2d 608, 611, (11th Cir. 1984). ["In attacking the constiututional validity of the laws as being overbroad, South Florida and Bryant claim that they restrict activities beyond nude sunbathing. The plaintiff s have standing to raise this issue."] (citations omitted). Free Beaches is discussed in detail, infra.

[5] The application of these principles makes it unnecessary to reach the questions of whether there is a "liberty interest" in naturism, or in Mr. MacArthur's words, "skinny dipping". Although case law has lent support to some protected interests in expression through dress or style, Richards v. Thurston, 424 F.2d 1281 (1st Cir.1970), the fact that a facial challenger's conduct need not be beyond regulation, minimizes the need to focus on those issues to decide this case.

Nevertheless, we do not abandon that claim, and indeed, contend that the liberty interests protected by the Fourteenth Amendment include the right to practice naturism in public places customarily reserved for those practices. cf. Williams v. Kleppe, 533 F.2d 803, 807 (1st Cir.1976); Williams v. Hathaway, 400 F.Supp. 122 (D.Mass.1975).

If the regulation fails those tests, the judgment below must be reversed.

B. The Regulation Fails the Constitutional Test

The pertinent portion of Rule 16-D 2.04(1)(e) states:

> In every bathing area all persons shall be clothed as as to prevent any indecent exposure of the person. All bathing costumes shall conform to commonly accepted standards at all times.

We begin our analysis with the bathing costume provision.[6]

C. Commonly Accepted Bathing Costume Standards

In Kolender, the Supreme Court's discussion provides a close analogy to the instant case.

> Section 647(e), as presently drafted and construed by the state courts, contains no standard for determining what a suspect has to do in order to

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[6] The charge to the jury followed the Regulation and called for proof of three elements:

> First, that the defendant Belinda McGuire was in or at a public bathing area in the State of Florida;
> Secondly that the defendant was not clothed as to prevent any indecent exposure of her person; and
> Thirdly, that the defendant's bathing costume did not conform to commonly accepted standards at the time for Palm Beach County, Florida public beaches.
>
> (R 295).

> satisfy the requirement to provide a "credible and reliable" identification. As such, the statute vests virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute and must be permitted to go on his way...
>
> Kolender, 461 U.S. at 352.

Similarly, Regulation 16-D 2.04(1)(e) contains no standard for determining what a suspect swimmer has to do in order to meet its commonly accepted bathing costume requirement.

The testimony of the Park officers is unrebuttable evidence of the complete discretion given to them by the regulation. The Park Manager, Lt. Fillyaw, believed two seashells would be acceptable:

> In my mind, if the seashell is large enough to cover the nipple portion of the breast, legally it would probably be okay.
>
> (R 236-237).

A second officer was unsure whether erect nipples and pubic hair, visible through an opaque swimsuit, were covered by the Regulation:

> Depending on the degree of opaqueness or transparentness, as you said, that would have to weigh in to it.
>
> (R 127-128).

Thus, the State's witnesses bring the Regulation's

vagueness and overbreadth into sharp focus. Where is the line crossed? How is a bather to know what will pass muster as an acceptable bathing costume? At what point does a bathing costume become too small or too revealing? Citizens are entitled to sufficient definiteness in criminal laws so that going to the beach does not carry a risk of imprisonment because of an officer's personal notion of opacity or interest in seashells or style.

Other Courts have been constitutionally critical of suitable bathing dress ordiances. See Chapin v Town of Southhampton, 457 F. Supp. 1170, 1176-77 (E.D.N.Y.1978), which declared such a provision to be unreasonable and overbroad.

In Robinson v. State, supra, unreasonable overbreadth led the Florida Supreme Court to invalidate the anti-hood law because

> ...this law is susceptible of application to entirely innocent activities. It is susceptible of being applied so as to create prohibitions that completely lack any rational basis.

The bathing costume law is subject to the same Constitutional criticisms. Beaches are Florida's treasure, and they are populated by persons, innocent sunseekers, wearing an infinite variety of bathing costumes. Had the Department of Natural Resources wanted to mandate covering of the nipple, it could have drafted a rule saying so. Like Kolender, "this is not a case where further precision in the statutory language is

either impossible or impracticable." Id., 103, S.Ct. at 1860.

The Department chose vagueness and overbreadth rather than precision. Therefore, the bathing costume provision is invalid.

D. The Indecent Exposure Provision[7]

The regulation requries that

> In every bathing area all persons shall be clothed as to prevent any indecent exposure of the person.

In South Florida Free Beaches, supra, the Court, faced with challenges by nudists to a variety of State and local laws, said this about a city ordinance prohibiting bathing "naked or insufficently clothed to prevent improper exposure of (one's) person":

> "Naked is perfectly clear to anyone of reasonable intelligence and to most other people as well. "Insufficiently clothed to prevent improper exposure" is not clear in the abstract. It is not vague, however, as applied to public nudity, because of sufficiency of clothing. Free Beaches, supra,548 F. Supp. at 57.

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[7] The Court need not address this section of the Regulation if the bathing costume provision is invalidated. Under the charge given to the jury, n.3, supra, that provision was sine qua non for conviction. If it is unconstitutional, the case ends.

If it is not invalid, then the inquiry turns to the indecent exposure portion of the offense. If it is facially invalid, the case ends. If not, the arguments on the evidence, the prosecutor's comments and jury instructions which are made infra must be addressed by the Court.

Thus the Court agreed that a provision, closely akin to the instant regulation, would have been vague had it not been read in the context of total nudity.

This case does not involve total nudity. It is bottomed upon breasts. Although the Florida Supreme Court has held that exposed breasts on public beaches violates Section 877.03, Florida Statutes,(disorderly conduct by corrupting the public morals or outraging the sense of public decency), Moffett v. State, 340 So.2d 1155 (Fla.1977), the prosecution here is not under that statute. Instead it is tied to "indecent exposure", and no case stands for the proposition that merely allowing the seeing of a breast constitutes "indecent exposure". Indeed, such exposure

> ...essentially requires lewd display of a person's sexual organs or of other parts of the body generally kept covered in public. See Hoffman v. Carson [250 So.2d 891 (Fla.1971)] (construing "lewd" and "indecent").
>
> Free Beaches, supra, 548 F.Supp. at 59 (emphasis supplied).

There is no dispute that Ms. McGuire's conduct was not lewd or lascivious (R 86). It is only the vagueness and overbreadth of the provision which permitted the case to commence. For under the unlimited and undefined "indecent exposure" portion of the regulation, an arresting officer has

unfettered discretion to decide "indecency"[8]

A nursing mother exposing her breast for an infant's suckling could run afoul of the proviso. All of the concerns over seashells, style and opacity discussed supra reappear in seeking to determine the standards for enforcement of the regulation.

The "indecent exposure" sentence, like the bathing costume sentence, fails the vagueness and overbreadth test of the Constitution.[9] Therefore the regulation must be invalidated and the judgment below reversed.

II

IF REGULATION D-2.04(1)(E) IS FACIALLY CONSTITUTIONAL, THE CONVICTION MUST BE REVERSED FOR VIOLATING THE FOURTEENTH AMENDMENT BECAUSE THE JURY INSTRUCTIONS FAILED TO PROPERLY FRAME THE ESSENTIAL ELEMENTS OF THE ALLEGED OFFENSE AND THE EVIDENCE WAS SUFFICIENT TO MEET THE BURDEN OF PROOF SET BY THOSE INSTRUCTIONS.

A. The Jury Instructions Were Erroneous

The trial judge gave this instruction to the jury:

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[9] Another aspect of the overbreadth problem is that neither sentence denotes the ages of persons who would be subject to their provisions. Is a seven year old girl wearing only a bathing suit bottom within the scope of the regulation? An eleven year old girl? Is a two year old boy prohibited from having his swimsuit changed on the beach? This lack of definiteness is added reason for demanding a precisely drawn regulation, not one which is capable of absurd application. Cf Steffens v. State, 343 So.2d 90,91 (3rd DCA 1977).

> Before Belinda McGuire, the defendant in this case, may be found guilty of the violation of the Department of Natural Resources regulation as cited, the State must prove the following three elements: First, that the defendant, Belinda McGuire, was in or at a public bathing area in the State of Florida; and secondly, that the defendant was not clothed so as to prevent any indecent exposure of her person; and thirdly, that the defendant's bathing costume did not conform to commonly accepted standards at the time for Palm Beach County, Florida public beaches.
>
> Now the term indecent exposure means in such a manner as to be offensive to common decency, or lewd or obscene. (R 294-295) (emphasis supplied).

The all inclusive definition of indecency was objected to, but the court stood by its ruling that "[i]ndecent exposure" included the notion of "offensive to common decency" as well as lewdness or obscenity. (R252-253).

That is not the law. In Duvallan v. State, 404 So.2d 196 (1st DCA 1981), the Court addressed the meaning of Florida's indecent exposure statute in a case where the defendant picketed the State Capitol in a placard which exposed her "bare backside and the sides of her breasts". Id. at 197. The Court zeroed in on the relevant language of the pertinent statute (Section 800.03, Fla.Stat.) and wrote:

> The Florida Supreme Court has recognized that the term "vulgar or indecent manner" must be construed as necessarily relating to a lascivious exhibition of those private parts of a person which propriety requires to be customarily kept covered in the presence of others. Lascivious means that the exposure or exhibition must be "lewd" involving an unlawful indulgence in lust, eager for sexual indulgence. Chesebrough v. State, 255 So,2d 675 at 677, 678 (Fla.1971).
>
> Id. 404 So.2d at 197.

In Hoffman v. Carson, 250 So.2d 891,893 (Fla.1971), the Florida Supreme Court observed that "vulgar or indecent manner" relates to "lascivious exhibition".

The trial court in this case expanded the definition of indecency beyond the bounds of precedent. Had Ms. McGuire been prosecuted under the more definite statutory indecent exposure principles, a conviction would have required some lewdness or lasciviousness. She was entitled to similar protection under the regulation, which contained no definition of indecent exposure.

Instead, the trial judge's instruction allowed the jury to convict if it found the conduct to be merely offensive. Therefore, the instruction was erroneous.

B. There Was No Evidence of Lewdness

An over-inclusive jury instruction might be harmless error if the valid portions of the instructions were supported by substantial evidence.

That is not the case here. The testimony is uncontroverted. The arresting officer described Ms. McGuire's conduct by saying:

> I didn't feel anything
> was lewd and lascivious
> about it.
>
> (R 86).

In Duvallan, the arresting officer testified that he observed Ms. Duvallan's "bare backside and the sides of her breasts, but he saw nothing lewd or lascivious about her conduct". 404 So.,2d at 197.

Therefore, the Court found no evidence of the requisite lewd conduct necessary to support an indecent exposure conviction. Id. The same conclusion obtains here. A conviction obtained without an evidentiary basis violates the Fourteenth Amendment. Thompson v. Louisville, 362 U.S. 199, 4 L.Ed.2D 560, 99 s.CT. 2781 (1979). Thus the conviction of Belinda McGuire should be reversed and the charge against her dismissed.

III

THE ADMISSION OF EVIDENCE RELATING TO TOTAL NUDITY AND THE PROSECUTOR'S CHALLENGE TO THE JURY TO SET COMMUNITY STANDARDS FOR THE FUTURE REQUIRE A NEW TRIAL.

A. The Evidentiary Excesses

Ms. McGuire was arrested because she wore not bathing suit top. This case did not involve bare bottoms, pubic exposure or total nudity. Nevertheless, the trial judge continually allowed the prosecutor to explore and exploit total nudity in his

presentation of evidence.

A lay witness, introduced to show community standards, was asked if on her Air Force Beach strolls she observed "males who were totally nude" and females totally nude" (R 93-94). The objection to these questions was overruled (R94), and the prosecutor was allowed to continue:

> Q. Is your sense of common decency offended when you observe this nudity?
>
> A. On a public beach, yes sir.
>
> (R 94).

The same pattern of total male and female nudity questioning reoccurred with the State's other lay witness (R 100-101).

The Court also allowed the prosecutor to inject the spectre of children being corrupted by a woman's breasts when he permitted one officer to testify that his "family" (R 122-123) would be offended, and allowed another officer to say that he would not take his children to a semi-nude beach (R 143).

There were no children at the beach where Ms. McGuire was arrested (R 86).

Both lines of questioning - total nudity and familial responses - were improper in this case. Total nudity was not relevant to the charged conduct. Its injection into the case conjured sexual images which could only stir passion and prejudice. Nor was there any need to evoke images of children

being protected from scandalous conduct. First, no children observed Ms. McGuire. Second, the regulation's community standards for bathing attire were not tied to corrupting youth, and raising that spectre also served only the purpose of provoking passion and prejudice.

B. The Prosecutor's Comments

In his final argument, the prosecutor again invoked images of total nudity, and urged, over defense counsel's objection, that the jury convict in order to save county beaches from nudity:

> You will dictate whether or not a group of people will be able to appear nude, topless at Carlin Beach, Juno Beach, Dubois Jupiter, Riviera, Palm Beach, Lantana, Boca Raton, Boynton, Delray, Lake Worth Beach.
>
> (R 264) (emphasis supplied).

The prosecutor's reference to the jury verdict dictating the scope of future conduct bolsters the regulation's lack of standards. A jury's role is to apply the facts to the law, not make the law; that is the legislative authority's function. More importantly for this point, by allowing the jury to think its verdict would decide future conduct, even future conduct involving total nudity, the Court enlarged the jury's role and denied Belinda McGuire's right to have the jury try only her case, or her facts.

C. The Need for a New Trial

In Washington v. State, 86 Fla. 533, 98 So. 605 (1923) the Florida Supreme Court held:

> Any attempt to pervert or misstate the evidence or to influence the jury by the statement of facts or conditions not supported by the evidence shoulld be rebuked by the trial court and, if by such misconduct a verdict was influenced, a new trial should be granted.
>
> Id. 98 So.2d at 609.

The Fourth District Court of Appeal recently reversed a conviction for excess prosecutorial zeal in closing argument, quoting the Deas v. State, 119 Fla. 839, 161 So. 729 (1935) admonition against, inter alia, "'assertions of matters not in evidence, or...an appeal to prejudice or sympathy calculated to unduly influence a trial jury...'". Meade v. State, 431 So.2d 1031, (Fla. 4th DCA 1983). The court adopted the long stated rule that reversal is required unless the court can "determine from the record that the conduct or improper remarks of the prosecutor did not prejudice the accused". Id. See also Ryan v. State, 457 So. 2d 1084 (Fla. 4th DCA 1984).

It was not fair to make total nudity and the protection of children an issue in this case. The admixture of evidentiary excesses and the closing argument references to total nudity, raising the spectre of county beaches being populated by nudists, went too far.

Belinda McGuire should have been tried only for her conduct. Making her trial a vehicle for deciding a future dress code for all Palm Beach County beaches prejudiced her right to a fair trial. Therefore, the conviction should be reversed.

CONCLUSION

If the Court determines the regulation is facially unconstitutional, or that there was no evidence of the essential element of lewdness, then the decision below should be vacated and Ms. McGuire should be discharged from custody.

If the Court concludes that the evidentiary excesses and prosecutor's comments deprived her of a fair trial, then the conviction should be reversed and the case remanded for a new trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following persons by U.S. Mail, on this 17th day of June, 1985:

6-305-837-5062

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