

IN THE SUPREME COURT OF FLORIDA

74,020

TOMMIE LYNN STALL,  
Petitioner,

vs.

Case No. 88-246

STATE OF FLORIDA,  
Respondent.

**FILED**  
SID J. WHITE

APR 10 1989

CLERK, SUPREME COURT

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

BRIEF OF PETITIONER ON JURISDICTION

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TENTH JUDICIAL CIRCUIT  
FLORIDA BAR NO. 0143265

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PRELIMINARY STATEMENT

Petitioner, TOMMIE LYNN STALL, was one of several Appellees in the Second District Court of Appeal and one of several defendants in the trial court. Respondent, the State of Florida, was the Appellant in the Second District Court of Appeal. The appendix to this brief contains a copy of the decision rendered March 31, 1989.

## STATEMENT OF THE CASE AND FACTS

Ms. Stall and her co-defendants were charged in a 47-count information alleging RICO, hiring persons to distribute obscene materials, distribution of obscene movies, distribution of obscene magazines, distribution of obscene articles, possession of obscene movies with intent to sell or distribute, possession of obscene instruments with intent to sell or distribute, and possession of obscene magazines with intent to sell or distribute, in violation of section 847.011, Florida Statutes (1985); section 895.03, Florida Statutes (1985); and section 895.04, Florida Statutes (1985 and Supp. 1986). These activities allegedly occurred from September 12, 1985, to March 7, 1987. Several pretrial motions to dismiss were filed; and the trial court entered an order on January 8, 1988, granting the motion to dismiss. In its order the trial court declared section 847.011, Florida Statutes (1985), unconstitutional under both the United States' and Florida Constitutions; found that the combined provisions of RICO and section 847.011, Florida Statutes (1985), have an unconstitutional chilling effect upon protected speech; and defined the reasonable man standard applicable to offenses involving obscene materials.

The State appealed this order to the Second District Court of Appeal on January 11, 1988; and the Second District Court of Appeal reversed the trial court on all three areas.

SUMMARY OF THE ARGUMENT

Due to the important issues attacking section 847.011, Florida Statutes (1985); section 895.02, Florida Statutes (1985); and section 895.04, Florida Statutes (1985 and Supp. 1986), and the fact that the trial court and Second District Court of Appeal were at opposite ends of the legal spectrum, this court should accept jurisdiction of this case.

ARGUMENT

ISSUE I

WHETHER THIS COURT SHOULD TAKE  
JURISDICTION OF A CASE THAT DECLARES  
SECTIONS 847.011 AND 895.02-04,  
FLORIDA STATUTES (1985 and Supp.  
1986) , VALID?

The following reasons justify the trial court's conclusion that Florida's obscenity statute and the RICO statute as it applies to obscenity is unconstitutional: (1) The statutes violate Florida's constitutional right to privacy. If one can possess obscene materials in one's own home, Florida has the right to protect the individual's right to acquire obscene materials; and the State has no compelling interests at stake to override that right. (2) The statute is vague in that it would apply to even "R" rated movies, the United States Supreme Court has been unable to set forth a bright line test of obscenity, and recent United States Supreme Court case law points out that the test for vagueness is the establishment of minimal guidelines to govern law enforcement--a test that Florida's statute does not meet. (3) Recent legislative changes in the statute have altered the standards to the obscenity test as set forth in United States Supreme Court decisions to the point where Florida's standards do not comply with the United States Supreme Court decisions. Florida's recent statute does not have the community standard in one of the prongs as required by United States Supreme Court decisions. This deletion is a fatal one to the statute. (4) The RICO statute reduces the level of scienter to that of strict

liability in carrying obscene materials, and strict liability in place of actual knowledge of the content of obscene materials can never be the standard. (5) The excessive punishment that turns a misdemeanor into a first-degree felony with mandatory prison time as required by the guidelines violates the cruel and unusual punishment provisions of the Eighth Amendment, United States Constitution. (6) Last but not least, a combination of the low level of scienter, the excessive punishment and the vague test all combine to have a chilling effect on the First Amendment inasmuch as it results in self-censorship.

The State also successfully attacked the reasonable man ruling made by the trial court. If this case goes to trial, the defendants have a right to call experts and lay persons to assist the jury in determining whether a work, as a whole, has a literary, artistic, scientific or political value to the reasonable man. Such testimony is necessary in that the average juror would not have such knowledge in all of these areas. Placing the burden on the State to prove that a work has no value is proper inasmuch as we are dealing with an objective standard. This burden is necessary in order to prevent an arbitrary enforcement of the law.

The above-stated reasons supporting the trial court's decision are, of course, only a summary. These reasons as well as the decisions rendered by the Second District Court of Appeal and trial court (attacked hereto as appendixes A and B) demonstrate that the issues in this case are of great import and deserving of this court's attention. The import of these issues was even



acknowledged by the Second District Court of Appeal when it unsuccessfully tried to have this court take jurisdiction under Florida Rules of Appellate Procedure 9.125 as a case requiring immediate resolution by this court (attached as appendixes C and D). This court, therefore, should accept jurisdiction of this case.

CONCLUSION

Based on the fact that the Second District Court of Appeal's opinion declares statutes valid on issues that are extremely complex and important, this court should accept jurisdiction of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy has been furnished to the Attorney General's Office, Park Trammell Building, Eighth Floor, 1313 Tampa Street, Tampa, Florida, 33602, by mail on this 7<sup>th</sup> day of April, 1989.

  
DEBORAH K. BRUECKHEIMER

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