IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant,

v. Case No.: 81,805

EUGENE REDDEN, JR.,

Appellee.

_____/

REPLY BRIEF OF APPELLANT

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Preliminary Statement

Appellant, the State of Florida, the prosecuting authority in the trial court and appellee below, will be referred to in this brief as the state. Appellee, EUGENE REDDEN, JR., the defendant in the trial court and appellant below, will be referred to in this brief as appellee.

SUMMARY OF THE ARGUMENT

Initially, appellee's answer merits brief violates the appellate rules of procedure in failing to respond to the state's initial merits brief and in presenting issues not raised by the state. Such practices should be censured by this Court. In any event, the standing argument presented on behalf Bowles and Porter has nothing to do with the vagueness challenge; instead, it constitutes a claim that the statute does not apply to them. Finally, it is clear that the Second District Court of Appeal erred as a matter of law in applying overbreadth principles to a vagueness claim. Such a blending of doctrines is unwarranted by case law and results in bad precedent. Applying a proper vagueness analysis, appellee obviously had notice that his behavior was proscribed, and because appellee's conduct fell clearly within the purview of the statute, the statute was not selectively enforced against him.

ARGUMENT

Issue

WHETHER **FLA. STAT. §** 893.13(1)(i) (Supp. 1990) CONSTITUTIONALLY PROVIDES NOTICE OF THE CONDUCT PROHIBITED THEREUNDER AND IS ENFORCED IN A NONDISCRIMINATORY FASHION.

Reading the state's initial merits brief after reading appellee's merits brief makes painfully evident that appellee has done little more than copy his brief presented to the Second District Court of Appeal, without realizing that the state has rewritten its arguments to accommodate the district court decision on review and the decision of the First District upholding the statute. Appellee makes numerous references to the state's brief, but any presumption that he refers to the state's initial merits brief is erroneous. The propositions for which appellee cites the state's brief are not found at the referenced pages in the state's initial merits brief. For example, the state at no point refers to a "hard core" in its merits brief, yet appellee attributes such an argument to the State; appellee claims the state made an argument concerning chapter 420 in footnote six of its brief, which reflects an argument concerning only federal statutes; and appellee claims the state relied on Golden v. Acme Concrete Corp., 103 So. 2d 202 (Fla. 1958), which is conspicuously absent from the state's initial merits brief. See Appellee's

Merits Brief at 5, 11, 12, 28. See also Appellee's Merits Brief at 7 (no definition in state's brief at page 13); Appellee's Merits Brief at 31 (no "case-by-case" argument on page 19 of the state's brief).

Appellee's brief violates the appellate rules of procedure in that it wholly fails to respond to the state's initial merits brief. Further, appellee presents issues not raised by the state. In seeking review before this Court, the state appealed the actual ruling of the Second District, i.e., that section 893.13(1)(i) was unconstitutionally vague. Because this was the only point addressed by the Second District, the state addressed only this point before this Court. Appellee should have limited his answer merits brief to a response on that point alone. "[T]he arguments in the answer brief must be a response to those made in the initial brief." **P. J. Padovano, Florida Appellate Practice,** Appellate Briefs § 12.11, at 86 (Supp. 1993) (emphasis supplied).

Appellee makes clear that he is using this appeal as nothing more than a vehicle to seek review of issues not addressed by the Second District. This type of appellate practice is abominable, particularly in view of this Court's recent refusals to address issues which were outside the scope of conflict or a certified question. See State v. Hodges, 18 Fla. L. Weekly S225 (Fla. Apr. 15, 1993); Burks

v. State, 613 So. 2d 441 (Fla. 1993); Gibson v. State, 585 So. 2d 285 (Fla. 1991); Stephens v. State, 572 So. 2d 1387 (Fla. 1991). Because this Court's jurisdiction is premised on the vagueness issue only, it should decline to address the other points raised by appellee.

In any event, in arguing standing, another point addressed by appellee which the state did not address in its initial merits brief, appellee claims that Bowles and Porter, appellees in the Thomas consolidated case, case number 81,724, committed their offenses at private housing facilities. Appellee's Brief at 29. This contention is irrelevant to their facial challenge to section 893.13(1)(i). As is immediately apparent, a claim that the statute is inapplicable is an entirely different matter from a claim that the statute is unconstitutionally vague. Bowles and Porter's argument in this regard places them in a precarious position. If in fact their offenses were committed at private housing facilities, they may not raise a constitutional vagueness challenge to section 893.13(1)(i).

> Not only must a person be adversely affected by a statute in order to challenge its constitutionality but he also must be affected by the portion of the statute which he attacks. Thus, a person cannot raise an objection to part of the statute unless his rights are in some way injuriously affected thereby . . . .

* * * *

> One who is not himself denied some constitutional right or privilege may no be heard to raise constitutional questions on behalf of some other person who may at some future time be affected.

State v. Olson, 586 So. 2d 1239, 1242 (Fla. 1st DCA 1991).

Finally, in brief response to appellee's desire to have the phrase "public housing facility" specifically defined in section 893.13(1)(i), the state points to Smith v. State, 237 So. 2d 139, 141 (Fla. 1970) (citations omitted; emphasis supplied), wherein this Court held:

> "To make a statute sufficiently certain to comply with constitutional requirements it is not necessary that it furnish detailed plans and specifications of the acts or conduct prohibited. . . . *'The law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree.'*"

CONCLUSION

Based on the above cited legal authorities and arguments, the state respectfully requests this Honorable Court to follow Brown and Williams and quash the instant decision of the Second District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to STEPHEN KROSSCHELL, Assistant Public Defender, Post Office Box 9000, Drawer PD, Bartow, Florida 33830-9000, this 9th day of July, 1993.

GYPSY BAILEY
Assistant Attorney General