



TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
SUMMARY OF ARGUMENT	4
ARGUMENT	3
FLORIDA'S RIGHT TO PRIVACY PROVISION OF THE STATE CONSTITUTION RENDERS SECTION 800.04, FLORIDA STATUTES (1991), UNCON- STITUTIONAL AS APPLIED TO THE PETITIONER WHERE THE TWO TEENAGERS ENGAGED IN A CONSENSUAL, ROMANTIC SEXUAL RELATION- SHIP.	
CONCLUSION	5
CERTIFICATE OF SERVICE	6

IN THE SUPREME COURT OF FLORIDA

QUARRY JONES, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE NO. 81,970  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

PETITIONER'S REPLY BRIEF ON THE MERITS

SUMMARY OF ARGUMENT

The petitioner has standing in the instant case to litigate the issue of his consensual partner's right to privacy and to challenge the application of Section 800.04, Florida Statutes (1991). He and the young woman had a close personal relationship and he has been subjected to criminal sanctions for that relationship. The petitioner presented the issue below in arguing against the state's motion in limine to preclude argument of consent as a defense and in his motion for judgment of acquittal.

The petitioner presented to the lower courts and now presents to this Court a narrow issue -- that the application of section 800.04 to this case infringes upon the rights to be "let

alone" and "free from governmental intrusion into [one's private] life" embodied in the Florida Constitution. Teenage men and women engaging in a romantic, consensual sexual relationship have the right to be "let alone" and this Court should vindicate that right. The statute, as applied, is unconstitutional.

## ARGUMENT

FLORIDA'S RIGHT TO PRIVACY PROVISION OF THE STATE CONSTITUTION RENDERS SECTION 800.04, FLORIDA STATUTES (1991), UNCONSTITUTIONAL AS APPLIED TO THE PETITIONER WHERE THE TWO TEENAGERS ENGAGED IN A CONSENSUAL, ROMANTIC SEXUAL RELATIONSHIP.

The state in its answer brief makes the claim that, simply because the defendant did not file a motion to dismiss, the constitutionality of the statute was not raised at the trial level. (Respondent's brief, pp. 2, 4) However, such is not the case. As found by the district court, and as noted in the petitioner's initial brief on the merits, this issue was preserved by the petitioner; both parties argued the constitutionality issue at trial in the state's motion in limine to preclude consent as a defense and again in the argument on the motion for judgment of acquittal. (R 13-17, 91-99) The trial court specifically found the statute constitutional. (R 98-99) Thus, the issue was presented below and preserved for appeal.

As argued in the initial brief on the merits, the statute is unconstitutional as applied to the defendant, where he and the alleged victim had an ongoing relationship and both consented to the sexual activity without coercion. (See Petitioner's Initial Brief on the Merits, pp. 14-29) This Court should vacate the district court decision and remand the case to the trial court for discharge or, in the alternative, for a new trial

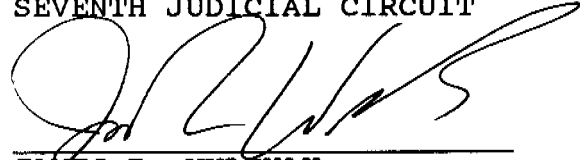
wherein the petitioner is permitted to present evidence of and argue consent as a defense.

CONCLUSION

BASED UPON the cases, authorities, and policies cited herein and in the initial brief on the merits, the petitioner requests that this Honorable Court quash the decision of the District Court of Appeal, Fifth District, and either declare Section 800.04, Florida Statutes (1991) unconstitutional and discharge the petitioner, or, in the alternative, at least remand for a new trial.

Respectfully submitted,

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT



---

JAMES R. WULCHAK  
CHIEF, APPELLATE DIVISION  
ASSISTANT PUBLIC DEFENDER  
Florida Bar No. 249238  
112 Orange Avenue - Suite A  
Daytona Beach, Florida 32114  
(904) 252-3367

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to: Joan Fowler, Esquire, Assistant Attorney General, Suite 300, 1655 Palm Beach Lakes Blvd., West Palm Beach, Florida 33401-2299, and Mr. Quarry Jones, No. 344375, P.O. Box 1360, Jasper, Florida 32052, this 15th day of September, 1993.



---

JAMES R. WULCHAK  
ASSISTANT PUBLIC DEFENDER