097

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

STATE OF FLORIDA,

Petitioner,

vs. CASE NO. 82,999

MARY LEE MANFREDONIA and

JAMES D. SLAYTON,

Respondents.

_____/

DISCRETIONARY REVIEW OR APPEAL FROM
SECOND DISTRICT COURT OF APPEAL
LAKELAND, FLORIDA

BRIEF OF PETITIONER ON MERITS

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

WILLIAM I. MUNSEY, JR.
Assistant Attorney General
Florida Bar No. 0152141
Westwood Center
2002 N. Lois Avenue, Suite 700
Tampa, Florida 33607
(813) 873-4739

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CITATIONS

OTHER AUTHORITIES

STATEMENT OF THE CASE AND FACTS

On or about October 31, 1992, James Slayton was arrested for an "open house party" offense where at 10:30 P.M. Mr. Slayton was the adult in control of the structure located at 1159 35th Avenue, N.W.; and, at which time a minor did possess and consume alcoholic beverages and "pot" (marijuana). (R 01) On December 22, 1992, Mr. Slayton was charged by a criminal information with a violation of §856.015, Florida Statutes (1991). (R 03) There was no written motion to dismiss filed in the trial court. On March 3, 1993, Judge Ramsberger [sitting in County Court] conducted a hearing on a Motion to Dismiss. (R 34-36) Judge Ramsberger dismissed the information. (R 36) And, on March 12, 1993, a written order was rendered finding the statute unconstitutional on the basis of State v. Alves, 610 So.2d 591 (Fla. 5th DCA 1992).[1] (R 7) The "State" filed its Notice of Appeal for Second District review on March 25, 1993. (R 19)

---

[1] The trial court orally pronounced that the statute is unconstitutionally vague and overbroad. (R 36) The written order incorporates State v. Alves, 610 So.2d 591 (Fla. 5th DCA 1992) as the basis of dismissal. The Alves decision does not address constitutional overbreadth. However, should this latter aspect of the trial court oral pronouncement be before this Court, the "State" would rely on this Court's holding in Operation Rescue v. Women's Health Center, Inc., 626 So.2d 664, 674-75 (Fla. 1993), cert. granted sub. nom, Judy Madsen v. Women's Health Center, Inc., ___ U.S. ___, 114 S.Ct. 907, 127 L.Ed.2d 98 (No. 93-880)(awaiting decision). There this Court has relied on Grayned v. City of Rockford, 408 U.S. at 114-15, 92 S.Ct. at 2302, 33 L.Ed.2d 222 at 231 (1972) noting: "[a] clear and precise enactment may nevertheless be 'overbroad' if in its reach it prohibits constitutionally protected conduct.... The crucial question, then, is whether the [ban] sweeps within its prohibitions what may not be punished under the First ... Amendment[]." Mr. Slayton has not urged in the trial court that

On or about December 25, 1992, at 1:50 A.M., Mary L. Manfredonia hosted an open house party for minors where "beer" [in plain and open view] was being consumed by minors. (R 12) On February 2, 1993, Ms. Manfredonia was charged by a criminal information with a violation of §856.015, Florida Statutes (1991). There was no written Motion to Dismiss filed on behalf of Ms. Manfredonia. (R 40) On March 10, 1993, Judge Ramsberger [sitting in County Court] conducted a hearing on a Motion to Dismiss. (R 38-41) Judge Ramsberger dismissed the information. (R 40) The trial court's oral pronouncement found the statute unconstitutional; but, the oral pronouncement does not address whether the trial court has found the statute "void for vagueness" and/or "overbroad". And, on March 10, 1993, a written order was rendered granting dismissal. (R 18) On March 24, the trial court entered an Order which consolidated the Manfredonia and Slayton cases for appellate review. (R 11) The "State" filed its Notice of Appeal on March 25, 1993.[2] (R 19)

---

the "open house party" statute is unconstitutionally "vague" and/or "overbroad" as applied to him. And, under Florida law, there is no privilege to host "open house parties" for minors where alcohol and/or drugs are consumed by juveniles.

[2] It would appear that the prosecutor timely filed her Notice of Appeal pursuant to Fla.R.App.Pr. 9.140(c)(2). (R 19) The Order dismissing the Information was rendered on March 10, 1993. (R 18) The Notice of Appeal was filed on the March 25, 1993. (R 19) There is confusion in the record on appeal as the Prosecutor filed her First Amended Notice of Appeal on March 30, 1993. (R 20) The Prosecutor filed her Second Amended Notice of Appeal on April 1, 1993. (R 21) The "State" would urge that the Second District has overlooked the initial Notice of Appeal in dismissing the appeal as to Marylee Manfredonia. (R 19) See, Petitioner's Exhibit 001, p. 2. Should this Court determine that

On December 22, 1993, the Second District filed its opinion dismissing the appeal as to Marylee Manfredonia determining that the Notice was filed untimely; and, the Second District affirmed Judge Ramsberger's dismissal of the charges as to James Slayton and adopted the reasoning of the Fifth District in State v. Alves, 610 So.2d 591 (Fla. 5th DCA 1992). See, State v. Manfredonia, et al, 629 So.2d 306 (Fla. 2d DCA 1993). The former opinion has been submitted as Petitioner's Exhibit 002 and the latter, as a slip opinion, has been submitted as Petitioner's Exhibit 001.

Petitioner has sought both direct and discretionary review in this Court; and, on April 28, 1994, this Court entered an Order accepting jurisdiction and calendaring oral argument for September 2, 1994.

---

§856.015, Florida Statutes (1991) contains language specific enough to be enforceable, then the "State" would ask this Court to reinstate its appeal as to Marylee Manfredonia.

SUMMARY OF THE ARGUMENT

The "open house party" statute is not void on its face for vagueness. The statutory phrase "reasonable steps" is self-explanatory and is its own best definition of the idea intended to be conveyed by its use.

A reasonable step is a to interrupt with an unequivocal action. If the adult establishes an interruption, by an unequivocal action, intended to stop a minor's consumption of drugs or alcohol at an "open house party", then the adult's behavior is not criminal. For an adult to stand mute and see nothing; hear nothing; and, speak nothing is the passive evil this statute addresses.

The "open house party" statute is not facially invalid. The statute is not void for vagueness. Neither Mr. Slayton nor Ms. Manfredonia filed written motions to dismiss; thus, neither has challenged the statute as individually applied to them. Constitutionality as applied has not been exhausted in this case.

ARGUMENT

ISSUE I

WHETHER §856.015, FLORIDA STATUTES (1991) IS CONSTITUTIONAL ON ITS FACE?

(As Stated By The State)

Presently, §562.11, Florida Statutes (1993) makes it a misdemeanor of the second degree for a person to sell, give or allow to be served an alcoholic beverage to a person under the age of 21; and, §562.111, Florida Statutes (1993) makes it a misdemeanor of the second degree for a person under the age of 21 to possess an alcoholic beverage unless they are over the age of 18 and are employed by a licensed vendor to serve alcoholic beverages. Additionally, §827.04, Florida Statutes (1993) makes it a misdemeanor of the first degree to cause or encourage a person under the age of 18 to become delinquent; and, this would include providing a person under the age of 18 with drugs or alcohol.

Against, these laws, the Florida Legislature has promulgated §856.015, Florida Statutes (1991) which makes it a misdemeanor of the second degree for an adult who has control of any residence to allow an open house party at which alcoholic beverages or drugs are being possessed or consumed by minors and the adult knew or had reason to know that such acts would occur. The statute does give the adult in control a defense. The adult in control of the "open house party" can assert that he took reasonable steps to the prevent the possession or consumption of

the alcoholic beverage or drug. An exception is provided for legally protected religious observances[3]. The statute also provides definitions for "adult", "alcoholic beverage", "control", "drug", "minor", "open house party", and "residence".

The Second District has adopted the decision in State v. Alves, 610 So.2d 591 (Fla. 5th DCA 1992) in holding the statute unconstitutional. The Alves court restricted its holding to the statute's requirement that an otherwise innocent adult may be exposed to criminal liability if in hindsight the state disagrees with what the adult deemed to be reasonable steps in dealing with the situation that existed at the time of discovery of an illicit substance in the possession of a minor. The Alves panel held: "We think the requirement that one control the behavior of minors by taking reasonable steps to prevent them from consuming or possessing alcohol or controlled substances is too vague to be enforceable. The Alves panel relied on this Court's decision in Smith v. State, 237 So.2d 139 (Fla. 1970). There this Court set forth the constitutional standard of review under which "void for vagueness" challenges are governed. The issue before this Court is whether the words of §856.015, Florida Statutes (1991) ["reasonable steps" language] are sufficiently explicit to inform

---

[3] Examples would be Communion or Eucharist which is the Christian sacrament in which consecrated bread and wine are partaken of in celebration of Christ's Last Supper; and, Jewish Religious Festivals such as Passover (Peasch) where a sacramental meal is served to honor the tradition that the "destroyer" passed over the houses marked with the blood of the paschal lamb when he slew the first-born of Egypt.

individuals who are in control of the behavior of minors by taking "reasonable" steps to prevent them from consuming or possessing alcohol or controlled substances is too vague to be enforceable. Under this Court's teachings in Brock v. Hardie, 154 So. 690, 694 (1934), the test is that "men of common intelligence" would know of its meaning and would not be required to guess at its application. See, Richards v. State, 608 So.2d 917, 920 fn 1 (Fla. 3d DCA 1992) [citing cases explaining the "void for vagueness" doctrine]. The Richards court had found the "hate crime" statute to be void for vagueness; and, that decision was in conflict with Dobbins v. State, 605 So.2d 922 (Fla. 5th DCA 1992)(hate crime statute neither, vague nor overbroad). In State v. Stalder, 630 So.2d 1072, 1077 (Fla. 1994) this Court expressly approved Dobbins and disapproved Richards.

At bar, there is no question but that the mission of §856.015, Florida Statutes (1991) is laudable; and, the "State" submits that the statutory language is not inartful. There is a plain meaning to the words "reasonable steps". In Smith v. State, 237 So.2d 139 (Fla. 1970), this Court upheld the constitutionality of §317.221(1), Florida Statutes (1967); and, that statute read:

> **"No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the**

> duty of all persons to use due care." Fla. Stat. §317.221(1)(1967), F.S.A.
>
> (Text of 237 So.2d at 140, fnl.)

After reviewing the statute, this Court concluded that Brock v. Hardie, 154 So. 690, 694 (Fla. 1934) was not authority for James Clyde Smith. Justice Drew, in writing the Smith opinion observed:

> ... The holding of Brock, with reference to this question, is that "a statute which either forbids or requires the doing of an act in terms so vague that anyone of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." [footnote 4 omitted] This Court adopted that definition as its own and designated it as the test approved by the United States Supreme Court."
>
> (Text of 237 So.2d at 140)

At bar, the "State" urges that citizens of "common intelligence" would know the meaning of the "open house party" statute and would not be required to guess at its application. Justice Drew pointed to the observations of the Supreme Court of California in People v. Smith, 92 P.2d 1039, 1042 (Cal. 1939) and adopted the following language:

> "To make a statute sufficiently certain to comply with constitutional requirements it is not necessary that it furnish detailed plans and specification 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." * * *"

(Text of 237 So.2d at 141)

At bar, the "State" urges that impossible standards are not required in enacting state statutes; and, that the "open house party" statute conveys a definite warning as to the proscribed conduct when measured by common understanding. The question presented by a vagueness challenge is whether the language of the statute is sufficiently clear to provide definite warning of what conduct will be deemed a violation; that is, whether ordinary people would understand what the statute requires or forbids, measured by common understanding and practice. State v. Bussey, 463 So.2d 1141 (Fla. 1985); Gardner v. Johnson, 451 So.2d 477 (Fla. 1984); Zachary v. State, 269 So.2d 669 (Fla. 1972); Brock v. Hardie, 154 So. 690 (Fla. 1934); State v. Wilson, 464 So.2d 667 (Fla. 2d DCA 1985). The function or purpose of the void-for-vagueness doctrine is to assure that persons are given fair notice of what conduct is prohibited by a specific criminal statute and to curb the discretion afforded to law enforcement officers and administrative officials in initiating criminal prosecutions. Powell v. State, 508 So.2d 1307, 1309 (Fla. 1st DCA 1987), review denied, 518 So.2d 1277 (Fla. 1987). A statute will be held void-for-vagueness if the conduct forbidden by it is so unclearly defined that person "of common intelligence must necessarily guess at its meaning and differ as to its application." Connally v. General Construction Company, 269 U.S.

385, 46 S.Ct. 126, 70 L.Ed. 322 (1926), as quoted in Powell, 508 So.2d at 1309-10. Therefore, a statute which gives people of ordinary intelligence fair notice of what constitutes forbidden conduct is not vague.

A vague statute is one which fails to give adequate notice of what conduct is prohibited and which, because of its imprecision, may also invite arbitrary and discriminatory enforcement. Southeastern Fisheries Ass'n. v. Dept. of Natural Resources, 453 So.2d 1351, 1353 (Fla. 1984). In Warren v. State, 572 So.2d 1376, 1377 (Fla. 1991) this Court wrote:

> **A statute which does not give people of ordinary intelligence fair notice of what constitutes forbidden conduct is vague. Papachristou v. City of Jacksonville, 404 U.S. 156 ... (1972); State v. Winters, 346 So.2d 991 (Fla. 1977); Franklin v. State, 257 So.2d 21 (Fla. 1971). The language of the statute must "provide a definite warning of what conduct" is required or prohibited, "measured by common understanding and practice." State v. Bussey, 463 So.2d 1141, 1144 (Fla. 1985). To this end, a statute must be written "in language which is relevant to today's Society." Franklin, 257 So.2d at 23.**
>
> **(Text of 572 So.2d at 1377)**

When a statute does not specifically define a given word or phrase, the words should be afforded their plain, ordinary meaning. Southeastern Fisheries, 453 So.2d at 1353.

The State v. Alves, 610 So.2d 591, 594 (Fla. 5th DCA 1992) decision offers hypothetical situations in which the adult in control may or may not act or react ranging from disposal of the

contraband to calling the police. And, in answer to those examples, the "State" would urge that a criminal statute is not unconstitutionally vague on its face unless it is "impermissibly vague in all of its applications." Village of Hoffman Estates v. Flipside Hoffman Estates, Inc., 455 U.S. 489, 497 (1982), 71 L.Ed.2d 362, 102 S.Ct. 1186, rehearing denied (U.S.), 72 L.Ed.2d 476, 102 S.Ct. 2023. Any suggestion that the statute is susceptible to various hypothetical possibilities begs the constitutional issue. In other words, the fact that several interpretations of an ordinance or statute may be possible does not render the law void-for-vagueness. City of Daytona Beach v. Del Percio, 476 So.2d 197 (Fla. 1985).

The "State" would urge that Florida's "open house party" statute is not subject to the same constitutional infirmities published in Kolender v. Lawson, 461 U.S. 352, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983)[the California loitering statute requiring "credible and reliable" identification at police request was held unconstitutionally vague on its face]. The basis for the holding was that it encouraged arbitrary and discriminatory enforcement. It would appear that the statute was vague in all its possible applications. However, Justice Rhenquist and White dissented; and, wrote:

> ... whether or not a statute purports to regulate constitutionally protected conduct, it should not be unconstitutionally vague on its face unless it is vague in all of its possible applications. If any fool would know that a particular category of conduct would be within the reach the reach of the

> **statute, if there is an unmistakable core that a reasonable person would know is forbidden by the law, the enactment is not unconstitutional on its face and should not be vulnerable to a facial attack ...**
>
> **(Text of 75 L.Ed.2d at 917-918)**

Justice Rhenquist goes on to write: "If the officer arrests for an act that both he and lawbreaker know is clearly barred by the statute, it seems to me an untenable exercise of judicial review to invalidate a state conviction because in some other circumstance the officer may arbitrarily misapply the statute." Kolender, 75 L.Ed.2d at 918.

Thereafter, in United States v. Salerno, 481 U.S. 739, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987), the Court found no due process deprivation in the federal Bail Reform Act of 1985 [18 USC §§ 3141 et seq.] which permits pretrial detention without bail on the ground of dangerousness. Justice Rhenquist writes for the majority:

> **A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid. The fact that the Bail Reform Act might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid, since we have no recognized an "overbreadth" doctrine outside the limited context of the First Amendment.**
>
> **(Text of 95 L.Ed.2d at 707)**

Neither in the trial court nor in the Second District have either of the Respondents demonstrated that Florida's "open house

party" is facially unconstitutional. On this record, neither of the two Respondents have claimed that the "open house party" is unconstitutional because of the way it was applied to the particular facts of their individual case.[4] (R 34-37; 38-41) Petitioner understands the Slayton and Manfredonia arrest reports to read:

> The undersigned certifies and swears that he has just and reasonable grounds to believe, and does believe, that the above named defendant on the 20 day of October, 1992, at approximately 10:30 P.M. at 1159 - 35th Ave. No. in Pinellas County did then and there being an adult at the age of 21 y.o.a. and having control over a residence located at 1159 - 35 Ave. No. did have an open house party where a minor did possess or consume an alcoholic beverage or drug. Def. failed to take reasonable steps to prevent the possession or consumption of alcohol or drug.
>
> (R 1)
>
> The undersigned certifies and swears that he has just and reasonable grounds to believe, and does believe, that the above named defendant on the 25 day of December, 1992, at approximately 0150 A.M. at 8169 128th St. N. in Pinellas County did: unlawfully and knowingly while living at above address and have full control of said residence did allow an open house party at her residence knowing that all minors in her house where (sic) were drinking alcoholic beverages to wit: Beer. This occurred while Deputy Arena and I were observing through open windows and doors, also minors were standing outside the residence with beer in possession.
>
> (R 12)

---

[4] The two Motions to Dismiss were each presented ore tenus in open court. No written Motions to Dismiss were filed for appellate review.

Neither Mr. Slayton nor Ms. Manfredonia have claimed that the "open house party" is either vague or overbroad as applied to them individually. The oral pronouncements and written orders of the trial court do not address whether the "open house party" statute is unconstitutional as applied to Mr. Slayton and Ms. Manfredonia. The opinion of the Second District does not address whether the "open house party" statute is unconstitutional as applied to Mr. Slayton and Ms. Manfredonia. The "State" would submit that Respondents have not complied with the exhaustion doctrine as neither has urged in the trial court that the statute is unconstitutional as applied to them. All that is before this Court is the "facial validity" of the "open house party" statute. Neither Mr. Slayton nor Ms. Manfredonia, on this record, have asserted that the police have enforced the "open house party" statute in either an arbitrary or discriminatory manner.

The "State" would urge that the citizens of Florida are presumed to have good, common sense; and, that the "open house party" statute has not entrapped unwary citizens who are in control of juveniles. The sole question is whether "reasonable steps" is a term without explicit statutory definition to guide both the public and law enforcement. The "State" does not believe that a person must have the education, skills, insight, and judgment of Benjamin Spock, M.D. in order to comply.

A "reasonable step" is to interrupt with an unequivocal action. This is the standard. Nothing more and nothing less.

For example, should juveniles imbibe either alcohol and/or drugs at an open house party [such as the case at bar], the adult is to interrupt with unequivocal action; to wit, stop the consumption! At times in life, it is understood that there exists a duty to speak. When the obligations [either planned and invited or as surprise and uninvited] of an "open house party" are thrust upon an adult, there is a duty to take "reasonable steps" to stop the illegal consumption and/or possession of alcohol or drugs by minors. This could be a seizure of the contraband; a destruction of the contraband; notification of the legal guardian and/or law enforcement. What is a "reasonable step"? A "reasonable step" is self-explanatory and is its own best definition of the idea intended to be conveyed by its use. Would not an ordinary, cautious, and prudent adult know the standard a "reasonable step" calls for in the ordinary affairs of an adult in charge of children? Regretfully, there is a decrease of family sensitivities and it has become relevant to legislate behavior.

As an adult in control of children, common sense dictates that the adult is to steer juveniles in a lawful direction. The adult is not to follow the juveniles in mindless, lock step.

The "open house party" statute is not void vagueness. A "reasonable step" is to interrupt with an unequivocal action! This is the standard.

CONCLUSION

WHEREFORE, based upon the foregoing facts, arguments and authorities, Petitioner would pray that this Court would make and render an opinion disapproving and overruling both the decision below and State v. Alves, 610 So.2d 591 (Fla. 5th DCA 1992).

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

WILLIAM I. MUNSEY, JR.
Assistant Attorney General
Florida Bar No. 0152141
Westwood Center, Suite 7000
2002 N. Lois Avenue
Tampa, Florida 33607-2366
(813) 873-4739

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Marc A. Falco, Esq., Assistant Public Defender, Airport Business Center, Building 3, 14255--49th Street North, Clearwater, Florida 34620 on this 23rd day of May, 1995.

COUNSEL FOR PETITIONER