

# Supreme Court of Florida

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No. 87,587

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MARIO LAVON JENNINGS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

[October 31, 1996]

WELLS, J.

We have for review the decision of the district court in Jennings v. State, 667 So. 2d 442 (Fla. 1st DCA 1996), which expressly declares a state statute valid. We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

Mario Jennings was convicted of one count of selling cocaine within 1000 feet of a school and three counts of possessing cocaine within 1000 feet of a school with the intent to sell. Pursuant to section 893.13(1)(c), Florida Statutes (1993), the sale or possession of cocaine with the intent to sell, although

otherwise a second-degree felony, is a first-degree felony if the crime is committed within 1000 feet of a school and occurs "between the hours of 6 a.m. and 12 a.m." (Emphasis added). Since the incidents that gave rise to the convictions occurred on June 29, 1994, at 7:28 p.m. and on July 2, 1994, at 1:20 p.m., Jennings was convicted of a first-degree felony.

On appeal, Jennings argued that the term "12 a.m." in section 893.13(1)(c) is unconstitutionally vague because it fails to put reasonable persons on notice as to whether the period of time in which an offense is subject to reclassification ends at noon or midnight. The First District Court of Appeal affirmed his convictions and held that in context 12 a.m. means midnight.

We agree and adopt the well-reasoned opinion of Judge Benton in the court below. Accordingly, we approve the decision of the district court and sustain that portion of section 893.13(1)(c), Florida Statutes (1993), containing the reference to 12 a.m. against constitutional attack. The statute covers the eighteen-hour period from 6 a.m. until 12 a.m., which is the time that marks the beginning of the next day.

It is so ordered.

KOGAN, C.J., and OVERTON, SHAW, GRIMES, HARDING and ANSTEAD, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of  
Appeal - Statutory Validity  
First District - Case No. 95-411

(Columbia County)

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