047

IN THE SUPREME COURT OF FLORIDA

CASE NO. 89,249

THE STATE OF FLORIDA,

Petitioner,

-VS-

RONALD MITRO,

Respondent.

ON APPEAL FROM THE DISTRICT COURT OF APPEAL,
THIRD DISTRICT

BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

This case is an appeal from the Third District Court of Appeal (hereafter, "Third District"), In its opinion, the Third District expressly held that §877.18, Fla. Stat. (1994) is unconstitutionally void for vagueness. Mitro V. State, 21 Fla. L. Weekly D2132 (Fla. 3d DCA October 2, 1996). As such, this Court has jurisdiction. Art. V, §3(b)(1), Fla. Const. and Fla. R. App. P. 9,030(a)(1)(A)(ii).

The Petitioner, THE STATE OF FLORIDA, was the prosecution in the trial court and the Appellee in the Third District Court of Appeal. The Respondent, RONALD MITRO, was the Defendant in the trial court and the Appellant in the Third District Court of Appeal. In this brief, the parties will be referred to as they stood in the trial court. The symbols "R." and "T." will refer to the record on appeal and the transcripts of the proceedings, respectively.

STATEMENT OF THE CASE AND FACTS

On August 11, 1994, the State charged the Defendant by amended information with sixteen counts of violating §877.18, Fla. Stat. (1994). (R. 10-25). On March 22, 1995, the Defendant filed a motion to dismiss. (R. 437-514). In his motion, the Defendant claimed that §877.18 was void for vagueness, overbroad, ambiguous,

and capable of arbitrary application. The Defendant also argued that the statute constituted an improper exercise of the State's police power. Finally, the Defendant challenged the statute as impermissibly prohibiting lawful conduct, because the statute did not include the element of criminal intent.

A hearing took place on April 20, 1995. (T. 1-42). At the conclusion of the hearing, the trial court denied the Defendant's motion. T. 38). Thereafter, on September 26, 1995, the Defendant entered a plea of nolo contendere to eleven counts of the informat on, and he expressly reserved his right to appeal the denial of his motion to dismiss. (T. 46-54). The trial court then withheld adjudication and placed the Defendant on probation for one year. (R. 530-32). The Defendant filed his notice of appeal on or about October 27, 1995. (R. 527-28).

On October 2, 1996, the Third District Court of Appeal reversed the trial court and held that §877.18 is unconstitutionally void for vagueness. The State filed its notice to invoke jurisdiction on October 29, 1996. This appeal now follows.

STATUTES AT ISSUE

The following Florida statutes are at issue in the instant appeal:

> **877.18. Identification card or document purporting to contain applicant's age or date of birth; penalties for failure to comply with requirements for sale or issuance**
>
> (1) It is unlawful for any person, except a governmental agency or instrumentality, to sell **or** issue, or to offer to sell or issue, in this state any identification card or document purporting to contain the age or date of birth of the person in whose name it was issued, unless:
>
> (a) Prior to selling or issuing such card or document, the person has first obtained from the applicant and retains for a period of 3 years from the date of sale:
>
> 1. An authenticated or certified copy of proof of age as provided in s. 232.03; and
>
> 2. A notarized affidavit from the applicant attesting to the applicant's age and that the proof-of-age document required by subparagraph 1. is for such applicant.
>
> (b) Prior to offering to sell such cards in this state, the person has included in any offer for sale of identification cards or documents that such cards cannot be sold or issued without the applicants' first submitting the documents required by paragraph (a).
>
> (c) The identification card or document contains the business name and street address of the person selling or issuing such card or document.
>
> (2) For the purposes of this section, the term "offer to sell" includes every inducement, solicitation, attempt, or printed or media advertisement to encourage a person *to* purchase an identification card.
>
> (3) **All** records required to **be** maintained by this section

shall be available for inspection without warrant upon reasonable demand by any law enforcement officer, including, but not limited to, a state attorney investigator or an investigator for the Division of Alcoholic Beverages and Tobacco.

(4) A person who violates the provisions of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. *775.083,* or s. 775.084. The failure to produce the documents required by subsection (1), upon lawful request therefor, is prima facie evidence of a violation of this section.

(5) The state attorney for any county in which a violation of this section occurs or the Attorney General may enjoin any sale or offer for sale in violation of this section by temporary and permanent injunction by application to any court of competent jurisdiction.

232.03. Evidence of date of birth required

Before admitting a child to prekindergarten or kindergarten, the principal shall require evidence that the child has attained the age at which he or she should be admitted in accordance with the provisions of s. 232.01, s. 232.04, or s. 232.045. The superintendent may require evidence of the age of any child whom he or she believes to be within the limits of compulsory attendance as provided for by law. If the first prescribed evidence is not available, the next evidence obtainable in the order set forth below shall be accepted:

(1) A duly attested transcript of the child's birth record.filed according to law with a public officer charged with the duty of recording births;

(2) A duly attested transcript of a certificate of baptism showing the date of birth and place of baptism of the child, accompanied by an affidavit sworn to by the parent;

(3) An insurance policy on the child's life which has been in force for at least 2 years;

(4) A bona fide contemporary Bible record of the child's birth accompanied by an affidavit sworn to by the parent;

(5) A passport or certificate of arrival in the United States showing the age of the child;

(6) A transcript of record of age shown in the child's school record of at least 4 years prior to application, stating date of birth; or

(7) If none of these evidences can be produced, an affidavit of age sworn to by the parent, accompanied by a certificate of age signed by a public health officer or by a public school physician, or, if neither of these shall be available in the county, by a licensed practicing physician designated by the school board, which certificate shall state that the health officer or physician has examined the child and believes that the age as stated in the affidavit is substantially correct.

POINT INVOLVED ON APPEAL

WHETHER THE LOWER COURT ERRED IN HOLDING THAT 5877.18 **IS** VOID FOR **VAGUENESS.**

SUMMARY OF THE ARGUMENT

The Third District erred in holding that §877.18 is unconstitutionally void for vagueness. The statute is specific enough to give persons of common intelligence and understanding adequate warning of the proscribed conduct. That is, the statute is specific enough such that a reasonable vendor would know that the statute applies to both adults and children. Moreover, the statute is not unconstitutionally vague because the phrase "not available" is easily understood. Finally, the statute is not unconstitutionally vague because the phrase "authenticated or certified copy" is also easily understood.

ARGUMENT

THE LOWER COURT ERRED IN HOLDING THAT §877.18 IS VOID FOR VAGUENESS.

The Third District's holding that §877.18, Fla. Stat. (1994) is unconstitutionally void for vagueness is incorrect. The law is clear that legislative enactments are presumed to be constitutional, and courts should resolve every reasonable doubt in favor of the constitutionality of legislative acts. Sandlin v. Criminal Justice Standards & Training Com'n, 531 So. 2d 1344 (Fla. 1988); Bunnell v. State, 453 So. 2d 808 (Fla. 1984). In this case, the Third District should have found §877.18 to be constitutional.

In order to withstand a void-for-vagueness challenge, a statute must be specific enough to give persons of common intelligence and understanding adequate warning of the proscribed conduct. Trushin v. State, 425 So. 2d 1126, 1130 (Fla. 1983) (citing Sanicola v. State, 384 So. 2d 152 (Fla. 1980)). Moreover, "it is not necessary that [the statute] furnish detailed plans and specifications of the acts or conduct prohibited. Impossible standards are not required." Morales v. State, 407 So. 2d 230, 231 (Fla. 3d DCA 1982).

In the instant case, §877.18 is specific enough to give ordinary citizens adequate notice of what behavior is prohibited.

As such, it is not unconstitutionally vague. For example, §877.18 clearly sets forth what behavior is prohibited. That is, the statute specifically makes it "unlawful for any person, except a governmental agency or instrumentality, to sell or issue, or to offer to **sell** or issue, . . . any identification card or document purporting to contain the age or date *of* birth of the person in whose name it was issued. . . ." unless the person issuing the identification card or document first obtains and retains for three years proof the the applicant's age. Id. The statute then specifically delineates what types of proof of age are acceptable by referring to the proofs of age set forth in §232.03, Fla. Stat. (1994).

In holding that S877.18 is unconstitutionally vague, the Third District stated that since §232.03 refers to the types of proof of age necessary to enroll a child in prekindergarten or kindergarten, "a reasonable vendor would have considerable doubt whether the section 232.03 documentation is required for all applicants, or only for child applicants." Mitro, 21 Fla. L. Weekly at D2133.

Respectfully, the State submits that the statute is clear enough such that a reasonable vendor would know exactly what is required to lawfully sell unofficial identification cards. That is, those seven forms of proof of age set forth in §232.03 are the

only methods of proof of age a person selling unofficial identification cards may accept.

Moreover, a reasonable vendor would know that these forms of proof of age apply to both children and adults. That is, although §877.18 incorporates §232.03 by reference, this does not mean that §877.18 is restricted *to* children. This reference to §232.03 was simply a shorthand way of listing those proofs of age that the legislature decided would be necessary in order for people to obtain unofficial identification cards. The statute does not force anyone to speculate as to the reach of the law. Individuals, including the Defendant, who endeavor to sell unofficial identification cards must simply **do** what the statutes specifically tell them to do.

Additionally, as will be discussed below, §877.18's incorporation of §232.03 more specifically addresses the issue of proof of one's age than Florida's voter registration statute, Florida's official identification card statue, and Florida's application for driver's license statute. Since these valid statutes, all of which require individuals to prove their age, are less specific than 55877.18 and 232.03, the unofficial identification card cannot be impermissibly vague.

For example, in order to qualify to vote, a person must be at

least 18 years of age. §97.041, Fla. Stat. (1994). However, if the supervisor of elections has a question regarding the registrant's qualifications to vote, "the supervisor may require satisfactory proof of his [the registrant's] qualifications." §97.041(2), Fla. Stat. (1994). The phrase "satisfactory proof" is not defined, and it is much more vague that the specific forms of proofs of age set forth in §232.03. Also, the voter registration statute leaves it to the supervisor of elections to determine what proof of age *is* "satisfactory." §97.041(2), Fla. Stat. (1994).

Similarly, any person 12 years *of* age or older may obtain an official identification card from the Department of Transportation. §322.051, Fla. Stat. (1994). However, to obtain such a card, an individual must complete an application and pay an application fee. Id. As part of the application, the applicant must present "proof of birth satisfactory to the department, and other data that the department may require." Id. Additionally, in order to obtain a driver's license, an individual must complete an application, and as part of this application, the applicant must present "proof of identity satisfactory to the department [and] proof of birth date satisfactory to the department,,.," §322.08(2), Fla. Stat. (1994).

As with §97.041, neither 5322.051 nor §322.08 defines the term "satisfactory proof." Moreover, §322.051 does not indicate what

"other data" might be required. Also, as with §97.041, both §322.051 and §322.08 allow another entity (the supervisor of elections pursuant to §97.041 and the department of transportation pursuant to §§322.051 and 322.08) to determine what *is* "satisfactory proof'' of one's age. Hence, Florida's voter registration statute, Florida's official identification card statute and Florida's application for driver's license statue are not as definitive on the issue of proof of age as Florida's unofficial identification card statute is.

As these statutes are written, the State can refuse to allow a person to register to vote if that person lacks "satisfactory proof" of his or her age. Similarly, the State can refuse to issue a person an official identification card or a driver's license if that person lacks "satisfactory proof" of his or her age. These age proof provisions are nevertheless valid despite the fact that the term "satisfactory proof" is never defined and despite the fact that these statutes leave it to the supervisor of elections and the department of transportation to determine what proof is "satisfactory."

If the State can deny both the right to vote and the privilege of driving upon a finding that \\satisfactoryproof'' of a person's age has not been provided, surely the legislature can require

vendors *of* unofficial identification cards to only accept the specific proofs of age set forth in §232.03. In the instant case, by referring to §232.03, the legislature specifically delineated exactly what proofs of age vendors of unofficial identification card statutes can accept. These are all valid methods of proving one's age. As such, the Third District erred when it held that the unofficial identification card statute is impermissibly vague.

The Third District also improperly found fault with §877.18 on the **basis** that the "term 'not available' is susceptible to multiple interpretations." Mitro, 21 Fla. L. Weekly at 2133. In fact, the word "available" is defined **as** "suitable; useable; accessible; present **or** ready for immediate use. Having sufficient force or efficacy; effectual; valid." Black's Law Dictionary 135 (6th ed. 1990). Thus, the phrase "not available" in §232.03(7), Fla. Stat. (1994) is easily understandable, and it is therefore not vague.

Also, the context within which the phrase "not available" is used helps to define that term. That is, §232.03 reads, "If the first prescribed evidence is not available, the next evidence obtainable in the order set forth below shall be accepted." (emphasis added). The term "obtain" is defined as "To get hold of by effort; to get possession of; to procure; to acquire, in any way." Black's Law Dictionary 1078 (6th ed. 1990).

Thus, if a potential customer's birth certificate is not available (not present or ready for immediate use), the vendor must then ask to see a duly attested transcript of a baptism certificate. If the customer cannot obtain (acquire) a baptism certificate, the vendor must then ask the customer if next item is obtainable, and so on down the list. **If** the vendor finds that none of the six proofs of age set forth in §232.03(1)-(6) "can be produced," the forms of proof of age set forth in §232.03(7) are acceptable. If the customer cannot comply with subsection seven, the vendor cannot lawfully sell that person an unofficial identification card.

Hence, a reasonable seller of unofficial identification cards would understand that he or she must ask each applicant for the §232.03 forms of proof *of* age in the appropriate order. Of course, it is possible, given the detailed forms of proof of age required by §232.03, that some individuals will be unable to produce any of the accepted forms of proof of age. As noted above, vendors may not legally sell unofficial identification cards to such individuals. This, however, does not render the unofficial identification card statute vague. Rather, since the statute is clearly worded, and since persons of common intelligence would be able to understand the statute, the Third District erred in holding

that §877.18 is impermissibly vague.

Additionally, the Third District improperly held that 8877.18 is unconstitutionally vague because the statute "requires an 'authenticated or certified copy of proof of age,' ... but does not explain what 'authenticated' means.'' Mitro, 21 Fla. L. Weekly *at* 2133. As noted by the Third District, §877.18 requires the seller to retain an authenticated or certified copy of proof of age for three years. §877.18(1)(a)1, Fla. Stat. **(1994)**. However, contrary to the Third District's holding, the phrase "authenticated or certified copy" is easily understood.

For example, the phrase "authentic copy" is commonly defined as "[a] copy which is of such authority as to prove the form and contents of the original from which it is taken." Black's Law Dictionary 132 (6th ed. 1990), and the phrase "certified copy" is defined as "[a] copy of a document or record, signed and certified as a true copy by the officer to whose custody the original is entrusted." Black's Law Dictionary 228 (6th ed. 1990); see also §90.902, Fla. Stat. (1994) (setting forth those documents which are self-authenticating). It is clear, then, that a person of common intelligence would understand what the requirement of authenticated or certified copies entails because the definition of these terms is easily ascertainable.

In addition, the statute does not need to explain how to obtain certified or authenticated copies since a person of common intelligence and understanding would know how to procure such copies. While the requirement of certified or authenticated copies may make securing an unofficial identification card either difficult or burdensome, it certainly does not make the statute unconstitutionally vague.

As a final matter, although it may be either impractical or, in many cases, impossible for adults to comply with the §232.03 proof of age requirements, this is an insufficient basis to give rise to a finding of unconstitutional vagueness. That is, even though the legislature did not indicate why it did not permit other forms of proof of age (such as a driver's license) to be utilized, the legislature nevertheless saw fit limit the methods of age proof that applicants may use in order to obtain an unofficial identification card. The legislature was entitled do this, and this Court should not substitute its judgment for that of the legislature as to the wisdom or policy of the legislative act. State v. Yu, 400 So. 2d 762, 765 (Fla. 1981), appeal dismissed, 454 U.S. 1134, 102 S.Ct. 988, 7 L.Ed.2d 286 (1982); Sixty Enterprises, Inc v. Roman & Ciro, Inc., 601 So. 2d 234, 236 (Fla. 3d DCA 1992).

In any event, valid policy reasons exist for making it rather

difficult to obtain an unofficial identification card. That is, if the statute allowed for almost any type of identification to satisfy the age proof requirement, there would be practically no way of preventing a huge influx of fake unofficial identification cards. Moreover, if the legislature allowed for more limited proofs of age (such as a driver's license) to suffice, there is still no way to insure that the more limited proof of age is not fraudulent. Only by requiring those proofs of age consistent with those required for enrolling a child in kindergarten or prekindergarten is the State able to insure that unofficial identification cards accurately reflect the identities and ages of the card holders.

Furthermore, specific age and identification requirements are in the **public** interest and are necessary to insure that fake identification cards are not produced by unethical vendors. This *is* in the public interest because if people were able to easily obtain unofficial identification cards, unscrupulous individuals could use such cards to commit various fraud type crimes. Also, by ensuring accurate representations of card holders' ages, the legislature has reduced the likelihood that children will be able to obtain false identification cards for the purpose of avoiding Florida's **21** year-old minimum drinking age. See §562.11, Fla. Stat.

(1994).

Moreover, by making it a crime to fail to obtain the requisite proofs of age set forth in §232.03, the legislature properly placed the responsibility for limiting the proliferation of bogus identification cards squarely upon the shoulders of the vendors of such cards, These vendors, as opposed to the State, properly bear such responsibility because the State is not in the business of selling fake identification cards, and the State has no incentive to sell such cards.

In other words, the legislature knew that State agencies such as the Department of Transportation will not knowingly issue fake driver's licenses or fake official identification cards. On the other hand, the legislature had no such guarantee with respect to the vendors of unofficial identification cards. Thus, it was necessary and proper for the legislature to have included strict proof of age requirements in the unofficial identification card statute. It was also essential and appropriate for the legislature to have made it a crime to sell unofficial identification cards without complying with the strict proof of age requirements.

CONCLUSION

Based upon the arguments and authorities cited herein, the Third District improperly held that §877.18 is unconstitutionally void for vagueness. This Court should reverse the Third District and direct the court to affirm the trial court's order denying the Defendant's motion to dismiss.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent was mailed this 16th day of January, 1997, to Benedict P. Kuehne, Esq., NationsBank Tower, Suite 2100, 100 S.E. 2d Street, Miami, Florida, 33131-2154.

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