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IN THE SUPREME COURT OF FLORIDA

CASE NO. 89,249

THE STATE OF FLORIDA,

Petitioner,

-vs-

RONALD MITRO,

Respondent.

**FILED**

SID J. WHITE

APR 10 1997

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

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ON APPEAL FROM THE DISTRICT COURT OF APPEAL,  
THIRD DISTRICT

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REPLY BRIEF OF PETITIONER

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## INTRODUCTION

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.

## SUMMARY OF THE ARGUMENT

The lower court erred in holding that §877.18 is unconstitutional. First, §877.18 is specific enough to give ordinary citizens adequate notice of what behavior is prohibited. Additionally, overbreadth analysis is inappropriate since no First Amendment rights are substantially implicated. Furthermore, §877.18 is neither ambiguous nor arbitrary. Also, §877.18 is a proper exercise of the State's police power. Finally, the legislature was entitled to dispense with an intent requirement because §877.18 punishes the affirmative act of selling unofficial identification cards without obtaining the proper proof of age and without maintaining proper records.

## ARGUMENT

THE LOWER COURT ERRED IN HOLDING THAT §877.18  
IS UNCONSTITUTIONAL.

In its opinion, the lower court specifically held that §877.18 was unconstitutionally void for vagueness, and the State, in its initial brief, argued that the lower court erred in so holding. The Defendant, in his answer brief, argued that not only is §877.18 void for vagueness, but it is overbroad; it is subject to arbitrary enforcement; it is an improper exercise of the police power; and it is missing a criminal intent element.

**a. Section 877.18 is not void for vagueness.**

The State relies upon and reiterates the arguments set forth in its initial brief as to the void for vagueness issue. The State, however, adds the following:

In his brief, the Defendant claims that §877.18's requirement of a notarized affidavit is an additional aspect of the statute which renders it void for vagueness. (Respondent's brief at 32). To the contrary, individuals do not have a fundamental right to obtain unofficial identification cards, and the fact that the legislature made it difficult for some people to obtain unofficial identification cards does not make §877.18 impermissibly vague. By requiring a notarized signature, the legislature helped to ensure

that applicants are who they say they are. See Chapter 117, Fla. Statutes.

**b. Section 877.18 is not unconstitutionally overbroad.**

The Defendant's argument that 5877.18 is unconstitutionally overbroad is completely without merit. The overbreadth doctrine does not apply in the instant case because neither the First Amendment to the United States Constitution nor Article I, Sections 4 and 5 of the Florida Constitution are substantially implicated by the statutes at issue. Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc, 455 U.S. 489, 494, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982); State v. Saez, 489 So. 2d 1125, 1127 (Fla. 1986); Trushin v. State, 425 So. 2d 1126, 1131 (Fla. 1983).

Moreover, as the United States Supreme Court has noted,

where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep.

Broadrick v. Oklahoma, 413 U.S. 601, 615, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973). Furthermore, "the overbreadth doctrine is an unusual remedy that must be used sparingly, especially where the statute in question is primarily meant to regulate conduct and not merely pure speech." Schmitt v. State, 590 So. 2d 404, 412 (Fla. 1991), cert. denied, 504 U.S. \_\_\_, 112 S.Ct. 1572, 118 L.Ed.2d 216 (1992)(cit-



ing Broadrick, supra).

In the instant case, the First Amendment is not substantially implicated by §877.18 since the statute forbids neither the free expression of ideas nor the free association of individuals. The statute simply regulates conduct -- the sale of unofficial identification cards. The statute is therefore not unconstitutionally overbroad. See e.g. State v. Freund, 561 So. 2d 305, 304 (Fla. 3d DCA 1990), rev. denied, 593 So. 2d 1051 (Fla. 1991) (Constitutional overbreadth doctrine did not apply to statute prohibiting possession of alcoholic beverages by persons under the age of 21 since no First Amendment privilege was implicated).

**c. Section 877.18 is neither ambiguous nor does it subject anyone to arbitrary enforcement.**

Contrary to the Defendant's contentions, §877.18 is not ambiguous. Rather, it is clearly worded statute which any reasonable person of ordinary intelligence would understand. Moreover, it does not subject anyone to arbitrary enforcement. That is, the only people subject to the enforcement of the statute are those individuals who sell unofficial identification cards without following the clear dictates of the statute. Had the Defendant simply followed the law, he would not have been prosecuted. Hence, the instant statute is neither ambiguous nor

arbitrary.

- d. Section 877.18 does not violate substantive due process, and it is therefore a proper exercise of the State's police power.**

It is axiomatic that penal statutes enacted under the State's "police power" derive from the State's sovereign right to enact laws for the protection of its citizens, and the legislature is entitled to enact legislation which is reasonably construed as expedient for the protection of the public health, safety, and welfare under the authority of the State's police power. In re Forfeiture of 1969 Piper Navajo, 592 So. 2d 233, 235 (Fla. 1992); Saiez, 489 So. 2d at 1127. Additionally, the means selected by the legislature to exercise the State's police power must have a reasonable and substantial relation to the object sought to be attained and not be unreasonable, arbitrary, or capricious. Saiez, 489 So. 2d at 1128. Where statutes are enacted pursuant to a valid exercise of the State's police power, such statutes do not violate substantive due process. 1969 Piper Navajo, 592 So. 2d at 235; Saiez, 489 So. 2d at 1127-28.

In the instant case, §877.18 can be reasonably construed as expedient for the protection of the public health, safety, and welfare under the authority of the State's police power. Piper Navajo, 592 So. 2d at 235. Moreover, the means selected by the

legislature in enacting §877.18 have a reasonable and substantial relation to the object sought to be attained, and they are not unreasonable, arbitrary, or capricious. Saiez, 489 So. 2d at 1128.

Although the legislature did not explicitly express its intent in §877.18, it is possible to surmise the what the legislature's intent was. That is, the legislature enacted §877.18 to ensure that unofficial identification cards accurately reflect the age and identity of the holders of such cards. This is in the public interest because, as noted in the State's initial brief (Petitioner's brief at 17), if people were able to easily obtain unofficial identification cards, unscrupulous individuals could use such cards to commit various fraud type crimes.

Also, the legislature was most likely concerned with children obtaining false identification cards. Again, as noted in the State's initial brief (Petitioner's brief at 17), 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 purposes of avoiding Florida's 21 year-old minimum drinking age.

Finally, by requiring the sellers of unofficial identification cards to maintain accurate records of the applicants' proof of age, and **by** enabling various representatives of the State to enforce

compliance with §877.18, the legislature furthered the legitimate goal of preventing the proliferation of falsified identification cards.

All of the above stated goals of §877.18 are examples of how §877.18 was enacted to further the protection of the public's health, safety, and welfare. Piper Navajo, 592 So. 2d at 235. Hence, it is clear that §877.18 is a proper exercise of the State's police power. Id.

Furthermore, the means selected to enforce the legitimate goals of §877.18 bear a reasonable and substantial relation to the object sought to be obtained, and they are not unreasonable, arbitrary, or capricious. Saliez, 489 So. 2d at 1128. For example, by requiring stringent age proof and identification requirements, the legislature lessened the likelihood that individuals would be able to obtain fake identification cards which reflect inaccurate ages. This not only helps to keep dishonest people from using fake identification cards to commit fraudulent crimes, but it also helps to prevent underage children from using phony identification cards to obtain alcohol. Also, by including the provision which requires the sellers of unofficial identification cards to keep accurate records of applicants' information, the State is better equipped to enforce compliance with 5877.18 and to prevent the proliferation of

bogus identification cards.

Additionally, although the Defendant claims that §877.18's record keeping requirement prevents the statute from being consistent with the State's police power, it is clear that "[i]t is within the proper exercise of the police power, where regulation of a vocation is in the public interest, to require the keeping of certain records and that they be made available for inspection." Conner v. Alderman, 159 So. 2d 890, 892 (Fla. 2d DCA 1964). Here, in enacting §877.18, the legislature decided to regulate the unofficial identification card business, and, as addressed above, this is in the public's interest. Thus, the record keeping requirement is consistent with the State's police power. Id. Moreover, the record keeping requirement applies to all sellers of unofficial identification cards, and the record keeping requirement lists exactly what the seller of unofficial identification cards is required to retain for three years. That is, sellers of such cards must keep authenticated or certified copies of the forms of age proof listed in §232.03(1) - (7).

Finally, although the Defendant has cited Saiez, supra; Delmonico v. State, 155 So. 2d 368 (Fla. 1963); and Robinson v. State, 393 So. 2d 1076 (1980) in support of his claim that §877.18 is not proper exercise of the State's police power, it should be

noted that these cases are inapposite. These cases concerned statutes which criminalized the possession of credit card embossing machines, spear fishing equipment and masks, respectively, and this Court found that in each case, the subject statute made it illegal to possess an item which could be wholly innocent. On the other hand, §877.18 does not forbid the possession of anything. Rather, it simply regulates the sale of unofficial identification cards. Moreover, as discussed above, the means selected by the legislature to enforce the regulation of such sales is reasonably and rationally related the legitimate goal of minimizing the spread of false identification cards.

**e. The legislature was not required to include an intent element in 5877.18.**

The Defendant's final argument is that "[t]he identification card statute at issue does not purport to include a criminal intent element. Thus, it penalize conduct which is not ordinarily criminal and which was not done with any wrongful intent." (Respondent's brief at 45). This argument should also be rejected.

The law is clear that the "legislature may dispense with intent as an element of a crime and prescribe punishment without regard to the mental attitude of an accused." Wnlfram v. State, 568 So. 2d 992, 994 (Fla. 5th DCA 1990) (citing State v. Dunmann, 427

So. 2d 166 (Fla. 1983)). Moreover, "crimes proscribing conduct not prohibited at common law or crimes 'mala prohibita', which usually result from neglect, do not require any criminal intent." State v. Gruen, 586 So. 2d 1280, 1281 (Fla. 3d DCA 1991).

In the present case, although §877.18 does not make it illegal for a seller of unofficial identification cards to "knowingly" or "intentionally" sell such cards without obtaining proper proof of age and identification, this is not necessary because it punishes certain affirmative acts -- not a failure to act. See State v. Oxx, 417 So. 2d 287, 289-90 (Fla. 5th DCA 1982). That is, 5877.18 makes it unlawful for sellers of unofficial identification cards to sell such cards without verifying the applicants' actual age and without maintaining proper records. The legislature has properly decided to regulate the unofficial identification card industry, and the legislature has also properly imposed criminal sanctions for failure to follow the statute. However, the legislature was not required to include an intent element in 6877.18. Oxx, supra.

As a final matter, it should be noted the instant statute is similar to §517.12, Fla. Statutes, and in State v. Houghtaling, 181 So. 2d 636, 637 (Fla. 1966), this Court stated that the legislature had the power to dispense with a scienter requirement in the enactment of chapter 517, By analogy, if the legislature properly

dispensed with a scienter requirement as to §517.12, the legislature also properly dispensed with an intent requirement as to §877.18.

For example, §517.12, Fla. Statutes provides that no dealer, associated person or issuer of securities shall sell or offer to sell securities unless the person has first registered with the Department of Banking and Finance. Moreover, §517.302 (1), Fla. Statutes makes it a third degree felony for violating any of the provisions of chapter 517. Hence, pursuant to §§517.12 and 517.302(1), if a person sells securities without first registering with the department of banking and finance, that person has committed a third degree felony. More importantly, any person who violates the registration requirement of §517.12 is guilty regardless of his or her intent. Houghtaling, 181 So. 2d at 637. Similarly, pursuant to §877.18, if a person sells an unofficial identification card without first obtaining the requisite proof of age from the applicant, that person has committed a third degree felony. As with chapter 517, §877.18 applies regardless of the seller's intent.

In sum, since the legislature was entitled to dispense with the intent requirement in §877.18, and since 5877.18 punishes the affirmative act of selling unofficial identification cards without



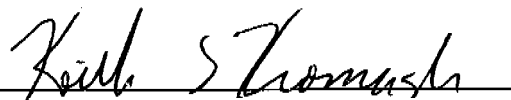
obtaining the proper proof of age, it cannot be said that §877.18 improperly fails to require proof of criminal intent.

#### CONCLUSION

Based upon the arguments and authorities cited herein, as well as the arguments and authorities cited in the State's initial brief, the Third District Court of Appeal improperly held that §877.18 is unconstitutionally void for vagueness. Additionally, as set forth in this reply brief, §877.18 is not overbroad; it is not subject to arbitrary enforcement; it is not an improper exercise of the police power; and it is not missing a criminal intent element.


Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct **copy** of the foregoing Brief of Petitioner was mailed this 8<sup>th</sup> day of April, 1997, to Benedict P. Kuehne, Esq., NationsBank Tower, Suite 2100, 100 S.E. 2d Street, Miami, Florida, 33131-2154.

  
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