

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant,

v.

CASE NO. 96,766

GWENDOLYN FUCHS,

Appellee.

\_\_\_\_\_ /

ON DIRECT APPEAL FROM  
THE FIFTH DISTRICT COURT OF APPEAL

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES . . . . .	ii
CERTIFICATE OF FONT AND TYPE SIZE . . . . .	1
SUMMARY OF ARGUMENT . . . . .	2
ARGUMENT	
SECTION 827.04(1)(A) OF THE FLORIDA STATUTES	
IS NOT UNCONSTITUTIONALLY VAGUE. . . . .	
CONCLUSION . . . . .	6
CERTIFICATE OF SERVICE . . . . .	7

TABLE OF AUTHORITIES

Cases

State v. Stalder,  
630 So. 2d 1072 (Fla. 1994) . . . . . 4

Other Authorities

Ch. 96-322, Laws of Florida . . . . . 3  
Section 827.03, Fla. Stat. (Supp. 1996) . . . . . 3,4  
Section 827.04(1)(a), Fla. Stat. (1997) . . . . . 2,3,4,5

CERTIFICATE OF FONT AND TYPE SIZE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

## SUMMARY OF ARGUMENT

The district court erred in declaring section 827.04(1)(a) of the Florida Statutes unconstitutional for vagueness because the terms "delinquent," "dependent," and "child in need of services" were not defined in the statute nor was there any reference in the statute to definitions of those terms in other chapters. In doing so, the district court ignored firmly rooted rules of statutory construction which require that related statutes be read in pari materia with each other. The terms "delinquent," "dependent," and "child in need of services" are defined in chapters 39, 984, and 985. These chapters have the same underlying purpose as section 827.04(1)(a), the protection of children, and thus, the definitions of those terms in those chapters should be applied to section 827.04(1)(a), eliminating any vagueness problem. Moreover, these terms, when read in the context of this statute, have a clear and distinct meaning to a person of ordinary intelligence, which also eliminates any vagueness problem.

ARGUMENT

SECTION 827.04(1)(A) OF THE FLORIDA STATUTES  
IS NOT UNCONSTITUTIONALLY VAGUE.

The State maintains that the district court erred in declaring section 827.04(1)(a) of the Florida Statutes unconstitutionally vague.

In her answer brief, Fuchs contends that the State seeks to revive by implication former versions of the current section 827.04(1)(a) of the Florida Statutes which was amended in 1996 in order to cure any vagueness problem. Fuchs then argues that there can be no such revival because when the Legislature struck the language "as defined under the laws of Florida" in the 1996 amendment, it expressly intended that courts not look beyond the statute for the definitions of "dependent," "delinquent," and "child in need of services." Fuchs relies primarily upon this 1996 amendment as the basis for her vagueness argument.

Yet, reliance upon this amendment is not so significant given the preamble to Senate Bill 116, which specifically indicated an intent on the legislature to only "clarify" this statute. See ch.96-322, at 1762, Laws of Florida. No substantive changes to the criminal conduct of contributing to the delinquency or dependency of a child were made. Instead, the 1996 amendment simply separated the contributing to the delinquency or dependency of a child

portion of the child abuse statute and made it its own statute. See §§ 827.03 and 827.04, Fla. Stat. (Supp. 1996). Given these circumstances, the deletion of the phrase "as defined under the laws of Florida" is not so significant for purposes of this vagueness challenge.

Moreover, this statutory amendment does not preclude this Court from applying the well-established rules of statutory construction set forth in Appellant's initial brief, which allow this Court to look to the definitions of "delinquent," "dependent," and "child in need of services" in chapters 39, 984, and 985 to cure any vagueness problem. In fact, those rules of statutory construction must be applied given the fact that the constitutionality of this statute is at issue. See State v. Stalder, 630 So. 2d 1072, 1076 (Fla. 1994)(quotations omitted)(this Court is bound "to resolve all doubts as to validity of statute in favor of its constitutionality").

Fuchs also attaches great significance to the police report as a basis for her contention that the statute was properly declared unconstitutionally vague. The fact that the police report cites the child abuse statute, section 827.03 of the Florida Statutes, as the basis for the arrest is insignificant. A full reading of the police report indicates that Fuchs was arrested for leaving her children alone and unsupervised in the middle of the night for an



extended period of time, conduct which supported the criminal charge under section 827.04(1)(a). The language of the arrest report is not dispositive and is insufficient to support the vagueness claim. Moreover, the facts of the case are not at issue as neither the county court nor the district court relied upon or considered the underlying facts of this case when declaring the statute unconstitutional.

The State reiterates that the rules of statutory construction require that statutes be read in pari materia with one another, and that the terms "delinquent," "dependent," and "child in need of services" are defined in chapters 39, 984, and 985. Because those chapters have the same underlying purpose as section 827.04(1)(a), the protection of children, application of those definitions to this statute cures any vagueness problem. Moreover, these terms, when read in the context of this statute, are understandable to a person of ordinary intelligence, and this also eliminates any vagueness problem.

CONCLUSION

Based on the arguments and authorities presented herein and in the initial brief, Appellant respectfully requests that this Court reverse the decision of the Fifth District Court of Appeal, and declare section 827.04(1)(a) of the Florida Statutes constitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Reply Brief has been furnished by delivery to Noel A. Pelella, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this \_\_\_\_\_ day of December, 1999.

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Mary G. Jolley  
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