

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO.: 96,910

STATE OF FLORIDA,

Petitioner,

vs.

CHARLES BRADFORD,

Respondent.

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RESPONDENT'S BRIEF ON JURISDICTION

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CERTIFICATE OF INTERESTED PERSONS

Counsel for Respondent, CHARLES BRADFORD, certifies the following persons and entities have or **may** have an interest in the outcome of this case.

1. The Honorable Joyce A. Julian  
Circuit Court Judge  
Seventeenth Judicial Circuit in and for  
Broward County, Florida
2. Robert R. Wheeler, Esq., Assistant Attorney General  
Celia Terenzio, Esq., Assistant Attorney General,  
Bureau Chief  
Robert Butterworth, Attorney General  
Appellate counsel for the State of Florida, Petitioner
3. Cynthia G. Imperato, Assistant Statewide Prosecutor  
Prosecuting Attorney
4. Michael E. Dutko, Esquire  
Trial counsel for Respondent  
Appellate Counsel for Respondent
5. Law Offices of Bogenschutz & Dutko, P.A.  
Trial counsel for Respondent  
Appellate counsel for Respondent
6. Charles Bradford  
Respondent



CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Florida Supreme Court Administrative Order issued on July 13, 1998, and modeled after Rule 28-2(d), Rules of the United States Code of Appeals for the Eleventh Circuit, counsel for the Respondent hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.



TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS . . . . . i  
CERTIFICATE OF TYPE SIZE AND STYLE . . . . . ii  
TABLE OF CONTENTS . . . . . iii  
AUTHORITIES CITED . . . . . iv  
PRELIMINARY STATEMENT . . . . . 1  
SUMMARY OF THE ARGUMENT . . . . . 2  
ARGUMENT . . . . . 3

JURISDICTION LIES WITH THIS COURT BECAUSE THE  
FOURTH DISTRICT COURT OF APPEAL EXPRESSLY  
DECLARED VALID A STATE STATUTE

CONCLUSION . . . . . 6  
CERTIFICATE OF SERVICE . . . . . 6



AUTHORITIES CITED

STATE CASES

Barr v. State, 24 Fla. L. Weekly D999 (Fla. 4<sup>th</sup> DCA,  
April 21, 1999) (A-1) . . . . . 3

Bradford v. State, 24 Fla. L. Weekly D1515 (Fla. 4<sup>th</sup> DCA)  
June 30, 1999) . . . . . 2, 3, 4

STATUTES

Florida Statute § 817.234 (1997) . . . . . 3, 4, 5

MISCELLANEOUS

Florida Constitution, Article V, Section 3(b) . . . , . . . . . 2



PRELIMINARY STATEMENT

Respondent, CHARLES BRADFORD, was the Defendant in the trial court and Appellant in the Fourth District Court of Appeal below. Respondent will be referred to herein as "Respondent" or 'Defendant.'" The State of Florida was the Plaintiff in the trial court and the Appellee in the District Court below. The State of Florida will be referred to herein as "Petitioner" or 'State."



SUMMARY OF THE ARGUMENT

This Court has jurisdiction, under Article V, Section 3(b)(3) of the Florida Constitution to review Bradford v. State, 24 Fla. L. Weekly D1515 (Fla. 4<sup>th</sup> DCA, June 30, 1999) because the Fourth District Court of Appeal expressly declared valid a state statute.



ARGUMENT

JURISDICTION LIES WITH THIS COURT BECAUSE THE  
FOURTH DISTRICT COURT OF APPEAL EXPRESSLY  
DECLARED VALID A STATUTE.

Respondent, CHARLES BRADFORD, adopts and incorporates the first four full paragraphs of Petitioner's Legal Argument set forth in Petitioner's Brief on Jurisdiction beginning at page 5. However, Respondent, BRADFORD, avers that the Fourth District Court of Appeal initially erred in declaring valid Florida Statute § 817.234(8). The appellate court then compounded its error by including language in the Bradford opinion construing the statute to require proof of the additional element of fraud for successful prosecution under the statute (see Appendix 1 included with Petitioner's Brief on Jurisdiction). As noted by Petitioner, the District Court's finding that subsection (8) prohibits only solicitation that was made with the purpose of "defrauding the patient's PIP insurer" or "with the intent to defraud the insurer," is directly contrary to the same court's holding in Barr, where the court did not require any proof of fraud or fraudulent intent to convict under the statute.

Contrary to the State's expressed concern that the holding in Bradford has overwhelming ramifications, including additional proof of fraud in order to secure a conviction, Respondent, BRADFORD,





suggests that the Appellate Court's inability to rationally reconcile the holding in Bradford with the holding in Barr demonstrates overwhelmingly the irreparable constitutional infirmities in this statutory subsection both as drafted and as applied to Bradford. In fact, the issue of "fraudulent intent" was one of the primary issues cited by Respondent, BRADFORD, in support of his original Motion to Dismiss based upon unconstitutionality of F.S. § 817.234(8) and in trying to demonstrate the difficulty in determining the elements of this criminal offense.<sup>1 2</sup>

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'The original argument was presented before the trial court in Defendant's Motion to Dismiss Based on Unconstitutionality of § 817.234(8) of the Florida Statutes filed on March 27, 1998, in the Seventeenth Judicial Circuit in and for Broward County, Florida under Case No. 97-1788CF10A. The argument appears at page 7 of the written motion.

<sup>2</sup>The same argument is incorporated into Appellant's Initial Brief and is included at page 8 of Appendix 3 filed before this Honorable Court with Petitioner's Brief on Jurisdiction, the text of which reads as follows: 'It is extremely significant to note the location of § 817.234(8) and its placement in the laws of the State of Florida. It sits ensconced amid the twenty pages of Chapter 817 which is generally entitled 'Fraudulent Practices." The specific statutory heading for § 817.234 is entitled "False and Fraudulent Insurance Claims." All subsections preceding subsection (8) require an intent to either 'injure, defraud, or deceive," or require the intent to "fraudulently violate" some other subsection. Suddenly subsection (8) appears, lacking completely any reference to fraudulent practices, false and fraudulent insurance claims, or the intent to either injure, defraud, or deceive or fraudulently violate. There is absolutely no distinction within this subsection between a legitimate claim made with the lawful intention of simply making a tort victim whole or with the criminal intent of defrauding an insurer or an alleged tortfeasor. It is extremely interesting to note at this juncture that in the instant case, had fraud been alleged or suspected, § 817.234(2), Florida Statutes,



Respondent, BRADFORD, urges this court to accept jurisdiction to resolve, if possible, the confusion, ambiguity, and conflict apparent in Florida Statute § 817.234(8) or, in the alternative, to declare once and for all that Florida Statute § 817.234(8) is so vague and ambiguous so as to be unconstitutional as drafted and as applied in the case at bar.

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would have applied and provided for criminal prosecution consistent with the heading of the chapter and the general evil attempted to be punished by the statutory scheme."



CONCLUSION

WHEREFORE, based on the foregoing, Respondent respectfully requests that this Court accept jurisdiction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this 16<sup>th</sup> day of November, to: CELIA TERENZIO, Assistant Attorney General, Bureau Chief, and ROBERT R. WHEELER, Assistant Attorney General, Office of the Attorney General, 1655 Palm Beach Lakes Boulevard, Suite 300, West Palm Beach, FL 33401-2299.

Respectfully submitted,

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