IN THE SUPREME COURT OF FLORIDA

CASE NO. SC01-1930

STATE OF FLORIDA,

Petitioner,

-vs-

EUGENE MICHAEL BYARS,

Respondent.

ON PETITION FOR DISCRETIONARY JURISDICTION FROM THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, the STATE OF FLORIDA, was the prosecution in the trial court and Appellant in the District Court of Appeal of Florida, Fourth District. Respondent, EUGENE MICHAEL BYARS, was the Respondent in the trial court and the Appellee in the District Court of Appeal. The parties shall be referred to as they stand before this Court. The symbol "R." designates the original record on appeal, and the symbol "T." designates the transcript of the trial court proceedings. The symbol "RB." designates the Respondent's Brief on the Merits.

STATEMENT OF THE CASE AND FACTS

Petitioner relies on the statements of the case and facts set out in Petitioner's initial brief on the merits.

SUMMARY OF ARGUMENT

The trial court erred in granting the motion to dismiss the burglary charge. Respondent's showing that the shop which he entered to shoot the victim was open to the public did not serve as a complete defense to burglary since the State showed that Respondent was not a member of the general public entitled to enter the shop, for an injunction precluded Respondent's entry there.

Indeed, the facts presented in the motion to dismiss established that Respondent no longer had the privilege of entering the shop for any purpose because there was a court ordered injunction in effect prohibiting Respondent from having any contact with the victim, including at her place of employment. In other words, despite the shop being open to the general public, it was not open to Respondent at the time he entered it with the intent to commit violence therein.

ARGUMENT

THE TRIAL COURT ERRED IN GRANTING RESPONDENT'S MOTION TO DISMISS, BECAUSE THE RESTRAINING ORDER ENJOINING RESPONDENT FROM ENTERING THE STRUCTURE WITHDREW THE CONSENT TO BE ON THE PREMISES OTHERWISE ENJOYED BY MEMBERS OF THE PUBLIC.

Respondent points out in his brief that penal statutes should be construed in favor of the accused (RB. 7). While this may be true, penal statues must not be construed so strictly "as to emasculate the statute and defeat the obvious intention of the legislature and bring about an unreasonable or absurd result." See City of Margate v. Singh, 778 So. 2d 1080, 1081 (Fla. 4th DCA 2001). A statute must not be construed in a way that renders it meaningless. Palm Beach County Canvassing Bd. v. Harris, 772 So. 2d 1220, 1234 (Fla. 2000).

The burglary statute prohibits entering or remaining in a structure with the intent to commit a crime therein, unless the premises are at the time open to the public or the defendant is not licensed or invited. See Section 810.02, Florida Statutes. Hence, where a defendant has not been invited or licensed to enter or remain in a structure, then he has committed burglary when he does so with the intent to commit an offense. Logically, then, where a defendant has been expressly excluded from the general public, he has committed burglary when he enters or remains in the structure with the intent to commit a crime.

Respondent asserts that the "unless" clause of the burglary

statute presents a complete defense when one of the circumstances of the clause has been established (RB. 7). However, recently, the legislature amended the burglary statute, in conformance with what it described as its original intent, to permit a finding of burglary, notwithstanding a licensed or invited entry, where a defendant remains in the structure after permission has been withdrawn. See Chapter 2001-58, Section 2, Laws of Florida. If a defendant is considered to have committed burglary by staying in a structure even after consent has been implicitly withdrawn, see Staff Analysis to HB 953, creating Chap. 2001-58, then would not it be an absurd result to construe the burglary statute to mean that a person who has been expressly uninvited several times to not enter a structure is impervious to a burglary charge simply because the structure is otherwise open to the public?

To allow Respondent's interpretation of the burglary statute would mean that the people of Florida have no recourse for punishing a defendant for entering public premises from which he has been enjoined **with the intent to commit a crime**. While the statues referenced by Respondent punish the act of violating legal orders, they do not serve to punish the defendant for his contemporaneous intent to do harm once on the premises (RB. 10-11). See, e.g.,Sections 741.31 and 784.047, Florida Statutes. Moreover, the act of trespass only refers to the act of entering the premises

"unauthorized" (RB. 10).[1] See Section 810.08, Florida Statutes. The burglary statute encompasses an additional element, intent.

Respondent objects to Petitioner's construing "open to the public" to pertain to the general public, as opposed to specific individuals (RB. 11). The definition of public, though, is "the people as a whole." See Webster's New Collegiate Dictionary (1973). Thus, the term "public" necessarily refers to the group rather than the individual, or the general rather than the specific. Here, Respondent stands alone, for the restraining orders specifically enjoined him from entering the consignment shop.

Respondent quips that one might be surprised to discover that Walmart was not open to the public because a cashier had a restraining order against her husband (RB. 12). However, the restraining order would not except anyone from the general public other than the cashier's husband. In other words, the open to the public status remains in tact; the husband's status in the public has changed as long as the cashier is in the store. Of course, under Respondent's hypothetical, it is the husband's contact with the cashier at issue. Here, it is Respondent's presence in the store that is at issue, because he was specifically enjoined from entry into the store, not just restrained from contact with the

[1] Section 810.08(1), Florida Statutes, begins, "Whoever, without being authorized , licensed, or invited, willfully enters or remains in any structure . . ." One would assume,according to Respondent's reading of the burglary statute, that where premises are open to the public, one is "authorized" to enter.

victim.

Respondent reads Petitioner's motion for certification to mean that Petitioner feels that the statute's language must be amended to effectuate the Petitioner's desired interpretation of burglary (RB. 13). However, in so doing, Respondent chooses to ignore that Petitioner argued, as it does here, that the burglary's statute's language does not preclude an interpretation of "public" like that advanced by Petitioner in this court. Petitioner continues to assert that Respondent lost his status as a member of the public permitted into the consignment shop when he was enjoined from entering the store.

Respondent criticizes Petitioner's reliance on State v. Woods, 624 So. 2d 739 (Fla. 5th DCA 1993) and Corn v. State, 332 So. 2d 4 (Fla. 1976) because they involve trespass instead of burglary and because the trespass statute does not contain the phrase "open to the public" (RB.13). Although the trespass statute does not contain the same language as the burglary statute, it does contain the language, "without being authorized, licensed, or invited." See Section 810.08(1), Florida Statutes. If a structure is open to the public, is a person "authorized" to enter it? Could it be that when a person is expressly restrained from entering the structure, he is no longer a member of the "public" "authorized" to enter the premises?

Respondent claims that this court should not be persuaded by

State v. Ocean, 546 P. 2d 150 (Ore. App. 1976) because Oregon has a subsection specifically defining "open to the public" as used in the Oregon burglary statute (RB. 14). Respondent must be operating under the belief, then, that Oregon's definition of "open to the public" significantly differs from a reasonable person's interpretation of the phrase. However, the sum of the definition is that premises are open to the public where a reasonable person would believe that no permission is necessary to enter. 546 P. 2d at 152. This definition seems basic. Indeed, herein, a reasonable person would have believed that the consignment shop was open for business and that the public could enter, as was the case. Notwithstanding this, Respondent was prohibited entry.

Finally, Respondent suggests that Petitioner's discussion of case law involving persons enjoined from entry onto premises that had been previously jointly occupied by them is "less than fully accurate" (RB. 15). Specifically, he argues that an opinion written after State v. Suarez-Mesa, 662 So. 2d 735 (Fla. 2d DCA 1995), Whetstone v. State, 778 So. 2d 338 (Fla. 1st DCA 2000), indicates that the issue is not so simple. Actually, the court in Whetstone cited to Suarez-Mesa in conceding that in some circumstances an injunction abrogates one's possessory interest in jointly-held premises. The court noted that such circumstances did not exist in Whetstone, though, because the defendant and the victim entered an oral lease as co-tenants **after** the injunction was

entered. 778 So. 2d at 343.

In fact, the opinion in Whetstone largely supports Petitioner's position. Referring to D.R. v. State, 734 So. 2d 455, 457 (Fla. 1st DCA 1999), the court said that there are three essential elements of burglary: (1) knowing entry into the dwelling, (2) knowledge that such entry is without permission, and (3) criminal intent to commit an offense within the dwelling. Id. at 341-342. All three of these elements are present in this case. Respondent knew that his entry was without permission even though the store was open to the public. To allow the open to the public status of the store to serve as a complete defense to burglary under these circumstances would be to allow a person who has violated injunctions barring his entry to escape penalty for his criminal plans, rendering an absurd result. See Allstate Ins. Co. v. Rush, 777 So. 2d 1027, 1032 (Fla. 4th DCA 2000)(statues must be construed to avoid an unreasonable result).

CONCLUSION

WHEREFORE based on the foregoing arguments and authorities, Petitioner respectfully requests this Honorable Court to answer the certified question in the affirmative, and reverse the decision of the Fourth District affirming the trial court's dismissal of the burglary count, with directions to reinstate the charge.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Jeffrey L. Anderson, Assistant Public Defender, 421 3rd Street, 6th Floor, West Palm Beach, FL 33401, on this ___ of December, 2001.

_____
MELYNDA L. MELEAR
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CERTIFICATE OF TYPEFACE

Petitioner certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

_____
MELYNDA L. MELEAR
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