IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

PETITIONER,

v.

CHRISTOHPER DOUGLAS WEEKS,

RESPONDENT.

Case No. SC14-1856

PETITIONER'S INITIAL BRIEF

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Christopher Douglas Weeks, the Appellant in the First District Court of Appeal and the defendant in the trial court, will be referenced in this brief as Respondent or his proper name.

The record on appeal consists of three (3) volumes. The first volume, titled "Transcript of Record," will be referenced as "R.," followed by any appropriate page number. The second volume, titled "Motion Hearing Before the Honorable David Rimmer," will be referenced as "MH.," followed by any appropriate page number. The third volume, titled "Plea and Sentencing," will be referenced as "PS.," followed by any appropriate page number. The record on appeal also consists of one supplemental volume, referred to as "R. Supp.," followed by any appropriate page number.

All bold-type emphasis is supplied, and all other emphasis is contained within original quotations unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

On March 3, 2012, Respondent was charged by Amended Information with one count of possession of a firearm, ammunition, or electric weapon by a convicted felon and one count of driving while license cancelled, suspended, or revoked. (R. 24-25). Respondent filed "Defendant's Motion to Dismiss Count 1 Because the Gun is an Antique Firearm and F.S. § 790 is Unconstitutional," on June 4, 2012. (R. 34-38). In his motion, Respondent gave the following factual basis, and summarized the entirety of his argument as follows:

> In this case, the Defendant is a convicted felon. His wife researched Statute 790 and went to Academy Sports Store and Bass Pro Shop where she purchased a Christmas gift for the Defendant. The Christmas gift was a Traditions Muzzleloader 50 caliber gun with percussion cap firing method using black powder. Importantly, neither store ran a background check on her because the Muzzleloader is not considered by their interpretation of Statute 790 to be a firearm.
>
> Subsequently, the Defendant was arrested for possession of a firearm by a convicted felon.
>
> The defense argument is as follows: (1) it is not a firearm; (2) if the Court considers it to be a firearm then the statute is unconstitutional because it is vague.

(R. 34). At the hearing on the motion, it was revealed Respondent added a scope to the firearm. (MH. 6).

As to his first argument, Respondent argued that because the "rifle is an in-line percussion-cap, black-powder weapon . . . loaded with a propellant through the muzzle and tapped into place with a ram rod," and then ignited by a percussion cap, he believed the firearm was an antique for purposes of § 790.23, Florida Statutes. (R. 35). As to his second argument, Respondent argued § 790.23, Florida Statutes, is void-for-vagueness because "the evidence

shows a wide-spread 'common understanding and practice' even among the stores that sell the type of weapon purchased by the Defendant's wife is *not* prohibited by section 790.23." (R. 35)(emphasis supplied).

The State filed a motion seeking to strike ground one of Respondent's motion as improperly filed under Florida Rule of Criminal Procedure 3.190(b), and a response to ground two. (R. 44-45). The State argued the statute, as a whole, had been found to not be void-for-vagueness in *Ransom v. Wainwright*, 553 F. 2d 900 (5th Cir. 1977), and that the Fifth District Court of Appeal had held similarly in *State v. Bostic*, 902 So. 2d 225 (Fla. 5th DCA 2005). (R. 44-45).

The trial court held a hearing on the motion on June 27, 2012, before the Honorable David Rimmer. (MH.). Respondent testified he was a convicted felon, but wanted to go hunting. (MH. 4-5). In researching what kind of firearm he could possess, Respondent checked the internet, interpreting his findings as allowing him to have "a black powder muzzle loader that required a percussion cap firing system"; Respondent's wife then purchased the firearm in question as a Christmas gift for Respondent. (MH. 5). Respondent understood the muzzle loader to be a replica of an antique firearm. (MH. 5). Respondent indicated that the statute did not indicate one way or another whether he could have a scope on his firearm. (MH. 6). Respondent further testified he inquired of his father, a retired firearm's instruction for the Escambia County Sheriff's Office, who also interpreted the statute as allowing Respondent to possess the firearm. (MH. 6).

Respondent's wife, Talesha Weeks, testified she researched "the Florida

Statute," understanding he could have a replica of an antique firearm, including a black powder muzzle loader, with a percussion cap. (MH. 7-8). When Respondent's wife purchased the firearm, first from a Sport's Academy in Florida and then subsequently from a Bass Pro Shop in Alabama, where she discovered it on sale, she was not asked whether she was a convicted felon, for her I.D., or subjected to a background check. (MH. 8).

Defense counsel argued consistent with her written motion, specifically arguing that she wished the trial court to adopt the dissent in *Bostic*. (MH. 12-15). The State asserted the trial court should follow the Fifth District's decision in *Bostic*, and further noted that the State intended to present evidence that the firearm was "not a replica of a 1918 gun." (MH. 15). The trial court gave the following oral pronouncement:

> All right I'm looking at Pardo, P-A-R-D-O, versus State, 596 So. 2d 665. It's a Florida Supreme Court case from 1992 that says in the absence of inner district conflict district court decisions bind all Florida trial courts.
>
> And also in Brannon, B-R-A-N-N-O-N, versus State, 850 So. 2d 452, Footnote 4, Florida Supreme Court 2003 it says if there's no controlling decision by this Court of the District Court having jurisdiction over the trial court on a point of law, a decision by another district court is binding.
>
> So therefore the motion is denied.

(MH. 15-16). Respondent's case proceeded to a plea and sentencing hearing on July 5, 2012, where Respondent entered a negotiated plea of no contest and received a probationary sentence of 36 months. (PS. 2-5).

Respondent then appealed the denial of his motion to the First District Court of Appeal arguing § 790.23, Florida Statutes, is unconstitutionally

vague, as applied, as to whether the firearm possessed by Respondent was an antique. After briefing, the First District Court of Appeal released a written opinion on December 26, 2013. The Court later issued a revised opinion after the State sought clarification as to whether the Court's opinion declared the statute unconstitutionally vague as to all firearms, or just as applied to antique or replication firearms only.

In its revised opinion, the First District held § 790.23(1), Florida Statutes, is unconstitutionally vague as applied because the definition of "firearm" and "antique firearm," as defined by §§ 790.001(1) & (6), Florida Statutes, does "not give adequate notice of what constitutes a permissible replica of an antique firearm which may be lawfully carried by a convicted felon; therefore, arbitrary and discriminatory enforcement of section 790.23 may result." *Weeks v. State*, 146 So. 3d 81, 85 (Fla. 1st DCA 2014). In reaching this result and after analyzing the definition of "antique firearm," as provided in § 790.001(1), Florida Statutes (2012), the First District reasoned:

> [T]he term "antique firearm not only includes a firearm manufactured in or before 1918 which may possess a matchlock, flintlock, percussion cap, or a firearm with a similar firing system, but also a replica of such. Given the definition, the firing or ignition mechanism of the firearm determines whether a firearm qualifies as an "antique firearm" or a replica thereof regardless of the date of manufacture. Significantly, section 790.23 does not define the term "replica." Weeks possessed a black powder muzzle loader rifle with a percussion cap firing system. It is undisputed that this type of firing is of ancient vintage. His firearm also had a scope. Given the type of firing system, his firearm was arguably a replica of an antique, regardless of the scope. *See* § 790.001(1), Fla. Stat.

Id. at 83. The First District also certified conflict with the Fifth

District's decision in *Bostic*. *Id* at 82, 85.

SUMMARY OF ARGUMENT

The First District Court of Appeal certified conflict with the Fifth District's decision in *State v. Bostic*, 902 So. 2d 225, 228 (Fla. 5th DCA 2005), on what constitutes a "replica" of an "antique firearm" for purposes of possession of firearms by convicted felons. The First District, in *Weeks*, held § 790.23(1), Florida Statutes, is unconstitutionally vague as applied because the definitions of "firearm" and "antique firearm," as defined by §§ 790.001(1) & (6), Florida Statutes, do "not give adequate notice of what constitutes a permissible replica of an antique firearm which may be lawfully carried by a convicted felon; therefore, arbitrary and discriminatory enforcement of section 790.23 may result." 146 So. 3d 81, 85 (Fla. 1st DCA 2014). Further, the First District held it was the firing mechanism that must be evaluated to determine whether a firearm constitutes an antique for purposes of the statute. *Id.* at 83.

However, the Fifth District, in *Bostic*, held that having a similar ignition system to that of an antique firearm was not sufficient to render a firearm a replica. 902 So. 2d at 229. The *Bostic* Court held that a plain reading of the statute requires a "replica," as defined by Florida case law to mean "a reasonably exact reproduction of the object involved." *Id.* at 228. Both Bostic and Weeks were in possession of muzzle loading rifles that had scopes added to them.

The State would urge this Court to adopt the reasoning set forth by the Fifth District in *Bostic*. Unlike the First District, the *Bostic* Court's analysis and holding on the question of statutory vagueness is consistent with

well-settled case law. Alternatively, if the statute is deemed unconstitutionally vague, the First District's rationale in applying the statute would lead to an absurd result.

ARGUMENT

ISSUE I: WHETHER A BLACK POWDER PERCUSSION CAP MUZZLELOADER WITH AN ADDED SCOPE CONSTITUTES A REPLICA OF A FIREARM MANUFACTURED IN OR BEFORE 1918?(RESTATED)

Standard of Review

"A court's decision regarding the constitutionality of a statute is reviewed de novo as it presents a pure question of law." *State v. Catalano*, 104 So. 3d 1069, 1075 (Fla. 2012)(citing *Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n*, 838 So. 2d 492, 500 (Fla. 2003); *see also Russ v. State*, 832 So. 2d 901, 906 (Fla. 1st DCA 2002)("Issues involving constitutional challenges to, or constriction of, statutes are pure questions of law subject to *de novo* review.").

Burden of Persuasion

"There is a strong presumption that a statute is constitutionally valid, and all reasonable doubts about the statute's validity must be resolved in favor of constitutionality." *See State v. Catalano*, 104 So. 3d 1069, 1075 (Fla. 2012)(citing *DuFresne v. State*, 826 So. 2d 272, 274 (Fla. 2002)). "[T]he party challenging the constitutionality of a statute bears the burden of demonstrating that it is invalid." *Russ*, 832 So. 2d at 906. However, "any doubt as to a statute's validity should be resolved in favor of the citizen and against the State." *Catalano*, 104 So. 3d at 1075. (citing *DuFresne*, 826 So. 2d at 274).

Merits

In *Weeks v. State*, 146 So. 3d 81, 85 (Fla. 1st DCA 2014),the First

District Court of Appeal certified conflict with the Fifth District Court of Appeal's decision in *State v. Bostic*, 902 So. 2d 225, 228 (Fla. 5th DCA 2005), on what constitutes an antique firearm, or a replica thereof, as defined by §§ 790.23 & 790.001(1) & (6), Florida Statutes. The State would urge this Court to adopt the reasoning set forth by the Fifth District in *Bostic*. Unlike the First District, the *Bostic* Court's analysis and holding on the question of statutory vagueness is consistent with well-settled case law. Alternatively, if the statute is deemed unconstitutionally vague, the First District's rationale in applying the statute would lead to an absurd result.

Section 790.23, Florida Statutes, provides that it is unlawful for a convicted felon to take care of, have custody of, possess, or control any firearm. Section 790.001(6), Florida Statutes, provides:

> "Firearm" means any weapon (including starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

Further, § 790.001(1), Florida Statutes, defines:

> "Antique firearm" means any firearm manufactured in or before 1918 (including any matchlock, flintlock, percussion cap, or similar early type of ignition system) or replica thereof, whether actually manufactured before 1918, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

The First District Court of Appeal held § 790.23, Florida Statutes, is unconstitutionally vague as applied to replicas of antique firearms. *Weeks*, 146 So. 3d at 81, 85. The First District reasoned: "Given the definition, the

firing or ignition mechanism of the firearm determines whether a firearm qualifies as an 'antique firearm' or a replica thereof regardless of the date of manufacture." *Id.* at 83. However, the Fifth District Court of Appeal, in *State v. Bostic*, held that having a similar ignition system is not enough, but that a replica is "a reasonably exact reproduction of the object." 902 So. 2d at 228. In *Weeks*, the First District certified conflict with the Fifth District's holding in *Bostic*, this appeal, invoking this Court's discretionary review, follows. 146 So. 3d at 82, 85.

1. "Replica" as defined by § 790.001(1), Florida Statutes, is not unconstitutionally vague as applied to antique firearms possessed by convicted felons.

The void-for-vagueness doctrine is embodied within the due process clauses of both the United States and Florida Constitutions. *See* U.S. Const. amend. XIV, §1; Art. I, § 9, Fla. Const. "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972). Although a statute does "not have to set determinate standards or provide mathematical certainly," it must give "a person of ordinary intelligence fair notice of what constitutes forbidden conduct." *See Catalano*, 104 So. 3d at 1076 (citing *Grayned*, 408 U.S. at 110 & *Broadrick v. Oklahoma*, 413 U.S. 601, 608 (1973)); *Brown v. State*, 629 So. 2d 841, 842 (Fla. 1994)(citing *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972)); *see also Foster v. State*, 937 So. 2d 742, 744 (Fla. 4th DCA 2006)("'the standard for testing vagueness under Florida law is whether the statute gives a person of ordinary intelligence fair notice of what constitutes forbidden conduct.")(quoting *Sieniarecki v. State*, 756 So. 2d

68, 74 (Fla. 2000)). "A statute is not void for vagueness if the language '"conveys sufficient definite warning as to the proscribed conduct when measured by common understanding and practices."'" *Brown*, 629 So. 2d at 842 (quoting *Hitchcock v. State*, 413 So. 2d 741, 747 (Fla.)(quoting *United States v. Petrillo*, 332 U.S. 1, 8, 67 S.Ct. 1538, 91 L.Ed. 1877 (1947), *cert. denied*, 459 U.S. 960, 103 S.Ct. 274, 74 L.Ed.2d 213 (1982))).

Therefore, the question is whether the statute is unconstitutionally vague as applied to the black powder muzzle loader with a percussion cap firing system possessed by Weeks, and similarly possessed by Bostic, that both had an added fiber optic scope. "Before resorting to the rules of statutory interpretation, courts must first look to the actual language of the statute itself." *Koile v. State*, 934 So. 2d 1226, 1230 (Fla. 2006)(citing *Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000)). This Court has explained:

> When the statute is **clear and unambiguous, courts will not look behind the statute's plain language** for legislative intent or resort to rules of statutory construction to ascertain intent. In such instances, **the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result** or a result clearly contrary to legislative intent. When the statutory language is clear, "courts have no occasion to resort to rules of construction -- they must read the statute as written, for to do otherwise would constitute an abrogation of legislative power."

Id. (internal citations omitted)(emphasis added). Thus, the case law set forth by this Court supports the reasoning and conclusion reached by the Fifth District in *Bostic*.

In *Bostic*, the Fifth District explained:

> A **plain reading** of the statute requires that, in order to be exempt, a firearm must be either manufactured in or before 1918 or be a "replica" thereof. **A replica is defined by Florida case law as meaning a reasonably exact reproduction of the object involved that, when viewed, causes the person to see substantially the same object as the original.** Applying this definition to the facts at hand, **it is clear that merely having an ignition system similar to that found on an antique firearm is not sufficient to render a firearm a "replica" of a firearm manufactured in or before 1918.** The rifle possessed by the defendant, which included visible differences from an antique firearm such as a fiber optic sight, was not a "replica" of a firearm manufactured in or before 1918. Accordingly, the trial court properly denied the defendant's motion to dismiss.

902 So. 2d at 228-29 (internal citations omitted).

The First District correctly pointed out during its analysis in *Weeks* that when the Legislature fails to define a term within the statute, "[c]ase law and other statutes may provide a reasonable definition." *Weeks*, 146 So. 3d at 83 (citing *Brown*, 629 So. 2d at 843. As the Fifth District pointed out in *Bostic*, this Court defined "replica" in *Harris v. State*, 843 So. 2d 856, 863 (Fla. 2003), as being "a reasonably exact reproduction of the object involved that, when viewed, causes the person to see substantially the same object as the original." *Bostic*, 902 So. 2d at 228. However, the First District, in *Weeks*, explained:

> The case on which the State and the *Bostic* court have relied, *Harris v. State*, is distinguishable from the case before us. While it defined the term "replica," the *Harris* court was referring to an object which could be used at trial as demonstrative evidence. 843 So. at 863. A replica, as demonstrative evidence, must be a *reasonably* exact reproduction so that the jury is not misled as to the nature of the original. *Id*. Thus, in *Harris*, the court was eager to avoid misleading a jury. No such concern is present in the case at bar.

146 So. 3d at 84.

In *Harris*, this Court determined the plastic replica firearm "was the same size as the component exhibits and was a reasonably exact reproduction of the assembled weapon in [the] photograph." 843 So. 2d at 864. In reaching its decision, this Court cited to its previous holding in *Alston v. Shiver*, 105 So. 2d 785, 791 (Fla. 1958), which explained:

> Demonstrative evidence is admissible only when it is relevant to the issues in the case. Such evidence is generally more effective than a description given by a witness, for it enables the jury, or the court, to see and thereby better understand the question or issued involved. For this reason it is essential, in every case where demonstrative evidence is offered, that the object or thing offered for the jury to see be first shown to be the object in issue and that it is in substantially the same condition as at the pertinent time, or that it is such a reasonably exact production or replica of the object involved that when viewed by the jury it causes them to see substantially the same objection as the original.

The First District's rationale that this Court's definition of "replica," as set out in *Harris* and *Alston*, is inapplicable to the instant case due to there being no risk of misleading a jury is without merit. Despite the attempt to distinguish this Court's definition of "replica" in *Harris* from the instant case, this Court's definition is synonymous with the dictionary definition used by the First District in its *Weeks* opinion. *Weeks*, 146 So. 3d at 84 ("*Webster's New Universal Unabridged Dictionary* (Deluxe Second Edition) defines "replica" as "any very close reproduction or copy."). Therefore, the State would assert the *Bostic* Court correctly relied upon this Court's decision by interpreting the plain language of the statute, and finding the addition of a modern enhancement to an arguably antique firearm is not "reasonably exact."

However, if it is determined the definition of "replica" as defined by *Harris* and *Alston* is not applicable to the instant case, the plain language is clear as defined in the "plain and ordinary sense." *See Foster v. State*, 937 So. 2d 742, 744 (Fla. 4th DCA 2006)("'[W]here a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense.'")(quoting *Jones v. Williams Pawn & Gun, Inc.*, 800 So. 2d 267, 270 (Fla. 4th DCA 2001)(citing *Plante v. Dep't. of Bus. & Prof'l Regulation, Div. of Pari-Mutuel Wagering*, 685 So. 2d 886 (Fla. 4th DCA 1996))). As was the case in *Foster v. State*, where the Fourth District was tasked with determining whether the term "poison" was unconstitutionally vague, the term "replica" in the instant case "has a plain and ordinary meaning that is accepted and may be understood by a person of ordinary intelligence, so as to place the person on notice of forbidden conduct." 937 So. 2d at 744.

As noted by the First District in *Weeks*, *Webster's New Universal Unabridged Dictionary* (Deluxe Second Edition) defines "replica" as "any very close reproduction or copy." 146 So. 3d at 84. The *Merriam-Webster New Edition Dictionary* defines "replica" as "a copy exact in all details." *Merriam-Webster New Edition Dictionary* 615 (2004). The statute provides that the "replica" must be of an "antique," which is defined as "an object made in a bygone period," by Merriam-Webster's New Edition Dictionary. *Id.* at 31. "Antique" is defined by the *New College Edition of The American Heritage Dictionary of the English Language*, as "[b]elonging to, made in, or typical of an earlier period," and "[o]ld-fashioned." *The American Heritage Dictionary of the English Language*, *New College Edition* (1980).

Since a "replica" of an "antique" has an accepted meaning of an "exact copy" of an "old-fashioned" firearm, the First District's holding must be quashed because the addition of modern enhancements to the firearm squarely removed it from the meaning of the statute. In *Foster*, as noted, the Fourth District had to determine whether the term "poison" was unconstitutionally vague, both facially and as-applied, for purposes of § 859.01, Florida Statutes, which prohibits the poisoning of food or water. 937 So. 2d at 744. In finding the term not to be vague, the Court noted "'[t]he legislature cannot be expected to list every possible substance which causes harm when present in sufficient quantities. This would be an impossible standard to meet and is not mandated by our constitution.'" *Id.* at 744-45 (quoting *State v. Hamilton*, 388 So. 2d 561, 563 (Fla. 1980)). The same holds true in the instant case, as it would be an impossible feat for the legislature to list every possible antique and what constitutes a replica of that antique beyond their accepted meaning.

This Court's decision in *L.B. v. State*, 700 So. 2d 370 (Fla. 1997), is instructive on the instant issue. In *L.B.*, the minor was in possession of a weapon, a three and three-fourths inch knife, on school property in contravention to §790.115(2), Florida Statutes (1995). *Id.* at 371. The Second District determined § 790.0001(13) was "unconstitutionally vague as it excludes 'common pocketknives' from the definition of 'weapon.'" *Id.* However, this Court, in reviewing the Second District's decision determined that while § 790.001(13) is not "a paradigm of legislative drafting," the statute does give a person of ordinary intelligence fair notice on what conduct is

forbidden. *Id.* at 371-72. In reaching this conclusion the Court resorted to the dictionary definitions of both "common" and "pocketknife," as well as comparing the term "common" to the penal statutes that measure conduct by a "reasonable person standard." *Id.* at 372. This Court reasoned that in considering the following, the terms appealed to the norms of the community. *Id.* As in the instant case, the community standard of what is "antique" is something old and a replica of an antique would be something that looks like the older item and not made with modern enhancements.

Although the State's argument is that the statute is not void-for-vagueness because the plain language is clear, the State would assert that even if this Court was to find to the contrary, the legislative intent supports the State's position. *See Koile*, 934 So. 2d at 1231 ("[I]f the statutory intent is unclear from the plain language of the statute, then 'we apply rules of statutory construction and explore legislative history to determine legislative intent.'")(quoting *BellSouth Telecomms., Inc. v. Meeks*, 863 So. 2d 287, 289 (Fla. 2003)); *see also Kasischke v. State*, 991 So. 2d 803, 811 (Fla. 2008)("Where legislative intent is unclear from the plain language of the statute, we look to the canons of statutory construction.")(citing *Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000)).

Section 790.001, Florida Statutes, is titled "Definitions," thus read alone may be ambiguous. *See L.B.*, 700 So. 2d at 371("section 790.001(13) is not 'a paradigm of legislative drafting'")(quoting *State v. Manfredonia*, 649 So. 2d 1388, 1390 (Fla. 1995)). However, it is the State's position that the "definition" of "firearm" set out in subsection six and the "definition" of

"antique firearm," defined in subsection one, must both be read in *pari materia* with § 790.23, Florida Statutes, which prohibits the possession of firearms by convicted felons. By doing so, the language sufficiently conveys a "definite warning as to the proscribed conduct when measured by common understanding and practices," thus meeting the intent behind § 790.23, Florida Statutes. *Brown*, 629 So. 2d at 842 (quoting *Hitchock v. State*, 413 So. 2d 741, 747 (Fla.)(quoting *United States v. Petrillo*, 332 U.S. 1, 8, 67 S.Ct. 1538, 91 L.Ed. 1877 (1947), *cert. denied*, 459 U.S. 960, 103 S.Ct. 274, 74 L.Ed.2d 213 (1982))).

This Court explained in *State v. Snyder*, 673 So. 2d 9, 10 (Fla. 1996) that "[s]ection 790.23 is intended to protect the public by preventing the possession of firearms by persons who, because of their past conduct, have demonstrated their unfitness to be entrusted with such dangerous instrumentalities." (citing *Nelson v. State*, 195 So. 2d 853, 855, n.8 (Fla. 1967)). Thus, the Fourth District reasoned, "[t]he evil contemplated by section 790.23 is clearly the prevention of the possession and the use of firearms by convicted felons." *State v. Anderson*, 764 So. 2d 848, 850 (Fla. 3d DCA 2000). This clearly supports the position taken by the Fifth District in *Bostic*, that construes "replica" narrowly enough to honor the spirit of the statute.

The plain language, along with the intent behind the statute, supports the State's position that a "replica" means an "exact copy," and not a modern weapon, that might arguably be consistent with a primitive firearm in regards to its firing mechanism, but with modern additions for accuracy enhancements,

such as a fiber optic scope. The policy considerations behind the statutory scheme is not to prevent felons from possessing antique firearms that may be family heirlooms or have sentimental value, or even firearms that are used in some sort of reenactment. But instead, this statute is intended to keep dangerous instrumentalities, specifically firearms, out of the hands of individuals whose past conduct has deemed them incapable of being entrusted with such weapons, and who may be a danger to the public. *See Snyder*, 673 So. 2d at 10; *see also Anderson*, 764 So. 2d at 850.

An antique firearm possessed as an heirloom is not likely to be fired or updated with modern additions or enhancements. Further, replicas of antique firearms are frequently used in reenactments of events such as the Civil War and/or the Spanish American War, considering the time frame of 1918. This notion is clearly supported by the above argument concerning the spirit of the statute and the language itself. In *Williams v. State*, 492 So. 2d 1051, 1054 (Fla. 1986), *receded from on other grounds*, this Court determined that the legislature, by enacting § 790.23, Florida Statutes, did not intend for a convicted felon to be able to conceal a loaded firearm as long as that firearm was an antique. In reaching this conclusion, the Court noted:

> We do not believe that the legislature, when enacting section 790.23, intended that a convicted felon could be acquitted when possessing a concealed, loaded weapon by using the excuse that the weapon is an antique or a replica thereof. **This literal requirement of the statute exhalts form over substances to the determinant of public policy**, and such a result is **clearly absurd**.

Id. (emphasis added)(citing *Woollard v. Lloyd's & Companies of Lloyd*, 439 So. 2d 217 (Fla. 1983); *McKibben v. Mallory*, 293 So. 2d 48 (Fla. 1974).

Here too, the rationale reached by the First District, that all muzzleloaders are antiques, despite any modern additions or enhancements, is absurd in and of itself, and would only further a result contrary to public policy. This result would allow convicted felons to have carte blanche in possessing arguably antique firearms, or replicas, despite how dangerous they have become with the modern additions and enhancements. *See id; see also Kasischke*, 991 So. 2d at 813-14 (citing *Warner v. City of Boca Raton*, 887 So. 2d 1023, 1033 n.9 (Fla. 2004)("[A] statutory provision should not be construed in such a way that it renders the statute meaningless or leads to an absurd result."); *City of St. Petersburg v. Siebod*, 48 So. 2d 291, 294 (Fla. 1950)("The courts will not ascribe to the Legislature an intent to create absurd . . . consequences, and so an interpretation avoiding absurdity is always preferred."). The position that the legislature did not intend to allow convicted felons to possess all muzzleloaders is supported by the qualifying language of "in or before 1918" or that the ammunition can no longer be "available in the ordinary channels of commercial trade." This explicitly excludes modern weaponry, including modern muzzleloaders. As such, the First District's result in *Weeks* cannot stand.

2. Alternatively, if this Court determines the term "replica" as set out in § 790.001(1), Florida Statutes, is unconstitutionally vague as applied to replicas of antique firearms, the First District's rationale must be vacated as the result would be implausible.

The State's argument is that the term "replica," as set out in § 790.001(1), Florida Statutes, is not unconstitutionally vague when read in conjunction with § 790.23. However, if this Court were to determine the term

"replica" is unconstitutionally vague, the State would posit that the rationale for deeming the statute vague reached by the First District would lead to an implausible and absurd result. The First District found that given the definition of an "antique firearm" set out in § 790.001, "the firing or ignition mechanism of the firearm determines whether a firearm qualifies as an 'antique firearm' or a replica thereof regardless of the date of manufacture." *Weeks*, 146 So. 3d at 83.

The First District's opinion results in a convicted felon being able to possess any matchlock, flintlock, percussion cap, or similar early type ignition system, despite any alterations or additions. However, if this was what the legislature intended when enacting the statute, it would not have included the qualifying language that an antique firearm is one that was "manufactured in or before 1918," or that the ammunition is no longer "available in the ordinary channels of commercial trade." In fact, if the legislature would have meant the statute to be all-inclusive, the wording would provide that an "antique firearm" means firearms with matchlock, flintlock, percussion cap, or similar ignition systems, or replicas thereof.

Evidencing the State's position that the legislature did not mean to give a convicted felon free reign to possess any type of firearm with these firing mechanisms is the Florida Fish Wildlife Conservation Commission's, warning on hunting with a muzzleloader as a conflict felon:

> In regard to use of firearms by felons: ***It is illegal in Florida for convicted felons to possess firearms, including muzzle loading guns***, unless the convicted felon has had his/her civil rights restored and firearm authority restored by the state's Clemency Board or the gun qualifies as an antique firearm under Florida

> statute 790.001(1). Properly licensed convicted felons may hunt with bows or crossbows during hunting seasons when such devices are legal for taking game.

See Florida Fish and Wildlife Conservation Commission, Hunting with a felony conviction, http://myfwc.com/hunting/regulations/felony (last visited February 10, 2015).

Wikipedia discusses the basics of modern muzzleloaders as:

> Driven by demand for muzzleloaders for special extended primitive hunting seasons, **firearm manufacturers have developed in-line muzzleloading rifles with designs similar to *modern* breech-loading centerfire designs**. Knight Rifles pioneered the in-line muzzleloader in the mid-1980s. Savage Arms has created the 10ML-II which can be used with smokeless powder, reducing the cleaning required.

Muzzleloader, Wikipedia, http://en.wikipedia.org/wiki/Muzzleloader (last visited February 10, 2015)(emphasis added). Therefore, because these firearms, and even the firing mechanisms themselves, have evolved over time, determining whether a firearm is an "antique" or a "replica thereof" based solely upon the firing mechanism would lead to an absurd result.

In conclusion, because neither Weeks nor Bostic were in possession of an antique firearm, or a replica thereof, as contemplated by statute, it is the State's position that this Court should resolve the current conflict between the Districts by adopting the rationale set forth by the Fifth District in *Bostic*, when it determined the plain language of the statute was clear. If this Court were to adopt the rationale set forth by the First District, the result would be absurd, thus *Weeks* must be quashed.

CONCLUSION

Based on the foregoing discussion, the State respectfully requests this Court quash the decision of the First District Court of Appeal in *Weeks*, and adopt the rationale and holding of the Fifth District in *Bostic*.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by ELECTRONIC MAIL on February 20, 2015: RICHARD M. SUMMA, Assistant Public Defender, at Richard.Summa@flpd2.com.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12 point font.

Respectfully submitted and certified,
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