IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

PETITIONER,

v.

CHRISTOHPER DOUGLAS WEEKS,

RESPONDENT.

Case No. SC14-1856

PETITIONER'S REPLY 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. The Petitioner's Initial Brief will be referred to as "IB," and Respondent's Answer Brief will be referred to as "AB," 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.

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)

Merits

The State would first note that Respondent correctly points out, in his Statement of the Case and Facts, that the State did inadvertently omit a portion of the definition of an "antique firearm" when it quoted § 790.001(1), Florida Statutes, (2012), in its Initial Brief. (AB. 2). The correct and complete definition, as provided by statute is:

> "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 or after the year 1918, and also any firearm using fixed ammunition manufactured in or 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.

§ 790.001(1), Florida Statutes (2012).

Second, Respondent points out that there was never any testimony to support the District Court or State's assertion that the scope was added to the muzzle loader possessed by Respondent. (AB. 2). However, the State would point out that the record does not indicate it was not added, either, and based upon the *Bostic* opinion, it is a valid assumption. In fact, Respondent testified he did not know one way or another whether he could or could not have a scope; therefore, it is clear these firearms can be purchased without them, which the State would certainly argue is more akin to an antique than one with a scope. (MH. 6). Despite the fact of who added the scope, there is no dispute the firearm had a scope, which was what the *Bostic* Court held was

significant in determining the gun was not a "replica" of an "antique firearm." *See State v. Bostic*, 902 So. 2d 225, 228-29 (Fla. 5th DCA 2005).

Also, the State would also agree that it stated on page 12 of its Initial Brief that Respondent possessed a firearm with an added "fiber optic scope" like *Bostic*. Respondent is correct that the record does not indicate that his scope was "fiber optic," but the *Bostic* opinion does state that Bositc's was. Therefore instead of saying Respondent possessed a firearm with a "fiber optic scope," the State should have pointed out Respondent possessed a firearm with a scope. However, one thing the record does support is Respondent's own testimony where he did discuss that in order to use the firearm, one had to put the percussion cap in the breech, which the State would note, as pointed out in its Initial Brief, that modern muzzle loading rifles are similar to modern **breech-**loading centerfire designs. (IB. 22)(quoting Muzzleloader, Wikipedia, http://en.wikipedia.org/wiki/Muzzleloader (last visited February 10, 2015)(emphasis added)).

The State used the term "fiber optic scope" again on page 19, but did so when arguing modern additions, in general, to a firearm certainly do not render it an antique for purposes of the statute. In fact, Respondent notes in his Answer Brief: "But for the inclusion of a 'scope,' appellant's black powder percussion cap muzzle loading rifle would undoubtedly qualify as an antique firearm under section 790.001, Florida Statutes." (AB. 8). Therefore, acknowledging this firearm differed from an antique.

In his Answer Brief, Respondent essentially argues that the First District's holding that an antique firearm is determined by the firing

mechanism, alone, should be correct because that is what a person of ordinary intelligence would look to when determining whether the firearm qualified under the statute, as it is the preeminent characteristic set out by statute in determining whether the firearm is an antique. (AB. 9-12). To support his argument, Respondent relies upon the fact that Weeks, his wife, and his father, as well as the witnesses who testified in the *Bostic* case all believed the firearm was considered one of ancient vintage. (AIB. 10-12). However, the State would point out that the reliance upon the *Bostic* dissent lends no support to the instant argument because there was no mention of the scope. *See Bostic*, 902 So. 2d at 229-32.

The State is in no way disputing that the firing mechanism is a significant factor to be taken into consideration when determining whether a firearm is antique, as Respondent correctly points out, it is included within the definition of "antique firearm" set out in the statute. However, the State asserts the firing mechanism is not the **only** factor to be taken into consideration when interpreting what constitutes a "replica." This is supported by the definition itself. As the State pointed out in its Initial Brief, if that was the intent of the legislature, then the statute would refer only to the firing mechanism, but instead contains qualifiers, including the words, "in or before 1918," and "replica," as well as refers to the firearm as a whole. (IB. 20).

The statute provides that the firearm had to be manufactured "in 1918, or before," or constitute a "replica" of such a firearm. *See* § 790.001(1), Florida Statutes. A person of ordinary intelligence would understand this to

mean that modern additions are not an exact replica of something manufactured in or before 1918. Even if the scope was not added by Weeks himself, there is no dispute the firearm had a scope, which is considered a modern addition. As such, the State maintains its position that the statute is clear. If the firearm, or additions to the firearm, render it different from one used in 1918, or before, it simply is not a replica.

Respondent asserts, when relying upon the testimony discussed in the *Bostic* dissent:

> If firearm experts with advanced knowledge of the applicable Florida law conclude that the muzzle loading rifle, even with advanced siting technology, qualifies as an "antique weapon" under Florida law, then a citizen of ordinary intelligence may reasonably conclude, *a fortiari*, that the rifle is an antique weapon under Florida which may be possessed by a convicted felon.

(AB. 12-13). The State would note that there is no indication anywhere that a firearms expert made a determination that a firearm with **advanced sighting technology** still constituted an antique based upon its firing mechanism. The witnesses testified they did not believe the firearm, itself, which was a black powder muzzle loader, constituted a firearm under the statute; only one indicated that they should not go by the way it looked. *Bostic*, 902 So. 2d at 230-31. However, the opinion makes no indication as to whether these firearms would have comported with the statute had they known the fiber optic scope had been added. Thus, this lends no support to the instant issue.

Respondent also argues that the State's reliance upon this Court's opinion in *Harris v. State*, 843 So. 2d 856 (Fla. 2003) "is not the least bit helpful," because it concerned demonstrative evidence. (AB. 13-14). However, as

discussed in the State's Initial Brief, the use of the definition of "replica" in *Harris* does lend support the instant case because the sole issue was to determine whether the evidence used in *Harris* was a replica of what it was supposed to be demonstrating in order to not confuse the jury. *Harris*, 843 So. 2d at 864. It is inconceivable to believe that a "replica" could mean one thing in *Harris*, but something else as it pertains to the instant case. The definitions are synonymous. A "replica" must be "substantially the same," to constitute an "exact copy." It is hard to believe the legislature meant that a replica firearm meant a firearm that was one that had the same firing mechanism, but could be different in all other respects.

Respondent also argues that the State's reliance upon *Williams v. State*, 492 So. 2d 1051 (Fla. 1986), is similarly misplaced. (AB. 14). Respondent claims that because the issue in *Williams* was whether the trial court erred in denying the defendant's motion for judgment of acquittal the opinion "bears no relation to the test for constitutional vagueness." (AB. 14). Despite Respondent's contentions, the *Williams* Court took into consideration the legislative intent behind enacting § 790.23, Florida Statutes, when evaluating the issue, noting that by allowing a convicted felon to claim his loaded concealed firearm was an "antique," would "exhalts form over substance to the detriment of public policy, and such a result is clearly absurd." *Williams*, 492 So. 2d at 1054 (citing *Woollard v. Lloyd's Companies of Lloyd*, 439 So. 2d 217 (Fla. 1983); *McKibben v. Mallory*, 293 So. 2d 48 (Fla. 1974)). Therefore, the *Williams* opinion is supportive of the State's position.

Respondent also points out that Williams' gun was clearly not an antique

because it used "fixed ammunition," that is "readily available in the ordinary channels of commercial trade." (AB. 14). Similarly, Respondent's gun was not an exact replica of a gun "manufactured in or before 1918," therefore, he, too, acted in contravention of § 790.23, Florida Statutes.

CONCLUSION

Based on the foregoing discussion, the State respectfully requests this Court quash the decision of the First District Court of Appeal in *Weeks v. State*, 146 So. 3d 81 (Fla. 1st DCA 2014), 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 March 24, 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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