

SUPREME COURT OF FLORIDA

DANTE MARTIN,
Petitioner,

No. SC17-200

Vs.

L.T. Case No. 5D15-284

STATE OF FLORIDA,
Respondent.

On Discretionary Review from a Decision of the
Fifth District Court of Appeal

PETITIONER'S REPLY BRIEF ON THE MERITS

RUPAK R. SHAH
Escobar & Associates, P.A.
Florida Bar No. 112171
2917 W. Kennedy Blvd.
Suite 100
Tampa, FL 33626
Ph: (813) 875-5100
Email: rshah@escobarlaw.com

Attorney for Petitioner

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES CITED ii

ARGUMENT1

I. Section 1006.63(1) is unconstitutionally vague as applied to Petitioner and in all of its applications 1

II. Section 1006.63(1) and (5)(a) criminalize constitutionally protected conduct and speech.....4

III. The granting of any of Petitioner’s constitutional claims requires and compels a dismissal with prejudice of his manslaughter conviction.....4

CONCLUSION5

CERTIFICATE OF SERVICE6

CERTIFICATE OF COMPLIANCE6

TABLE OF AUTHORITIES

CASES

City of Chicago v. Morales, 527 U.S. 41 (1999)2, 3

Norman v. State, 215 So. 3d 18 (Fla. 2017).....4

People v. Anderson, 591 N.E. 2d 461 (Ill.).....3

People v. Lenti, 44 Misc. 2d 118 (N.Y. Co. Ct. 1964)3

State v. Allen, 905 S.W. 2d 874 (Mo. 1995)3

Tillman v. State, 471 So. 2d 32 (Fla. 1985)4

Westerheide v. State, 831 So. 2d 93 (Fla. 2002).....4

FLORIDA STATUTES

§ 1006.63, Fla. Stat. passim

§ 1006.63(1), Fla. Stat. passim

ARGUMENT

(Response to State's Issues I and II)

I. Section 1006.63(1) is unconstitutionally vague as applied to Petitioner and in all of its applications

The State mischaracterizes the plain language of section 1006.63(1) when it contends that “the statutory language specifically prohibits ‘brutality of a physical nature such as whipping [or] beating.’” *Answer Brief*, at 16. This is an incorrect statement of the law. Rather, section 1006.63(1) authorizes individuals to subject others to brutality and other acts that constitute hazing – provided that such activity is conducted as part of: (i) a customary athletic competition; (ii) a contest similar to a customary athletic competition; (iii) a competition; and/or (iv) any activity or conduct that furthers a legal and legitimate objective.

Contrary to the State's contention, the record does not plainly demonstrate that the Defendant engaged in conduct clearly proscribed by the plain and ordinary meaning of the statute. *Answer Brief*, at 17. Instead, the plain and ordinary meaning of the statute leaves a person of ordinary intelligence with the conclusion that brutality and other acts that constitute hazing are legally authorized.

On this issue, the State posits that “repeatedly striking someone as they attempt to make their way to the back of the bus is not a competition under any reasonable definition of that word.” *Answer Brief*, at 16. However, in the circuit

court the prosecutor agreed that the bus crossing would be a competition – so long as there is score-keeping and something awarded to the person that completes the crossing. [T8. 1018]. The State is adopting markedly different positions before this Court than from what was contended before the jury. In doing so, it is illustrating the critical flaws of this statute.

This statute is unconstitutionally vague because each of the four categories of protected conduct are susceptible to multiple definitions. *Initial Brief*, at 19-22, 30-31. For example: the State approves of the dictionary definition of “competition” selected and used by the district court below. *Answer Brief*, at 14-15. However, it opted to not address the claim in the Initial Brief that the word “competition” is defined in a different dictionary in a manner that would render the bus crossing a protected activity. *Initial Brief*, at 19-22. Such multiple possible definitions necessarily prevent a person of ordinary intelligence from being placed on sufficient notice of the conduct that the statute criminalizes. *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) (vagueness may invalidate a criminal law if it fails to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits).

The State further erroneously argues that the decisions of other states bolster its position that section 1006.63(1) is not void for vagueness. *Answer Brief*, at 14-15, 19. However, each of those decisions interpret hazing statutes that do not

provide for protected categories of conduct. *State v. Allen*, 905 S.W.2d 874, 876 (Mo. 1995); *People v. Anderson*, 591 N.E. 2d 461, 464 (Ill.); *People v. Lenti*, 44 Misc. 2d 118, 120 (N.Y. Co. Ct. 1964). The constitutional infirmity of section 1006.63(1) largely arises from the inclusion of protected categories of conduct that are not capable of sufficient clarity and notice. *Initial Brief*, at 30-34.

The State's claim that section 1006.63(1) is not void for vagueness also fails for the additional reason that the statute does not provide for sufficient standards for enforcement. *Answer Brief*, at 13-19; *Morales*, 527 U.S. at 56. The State did not address the statute's failure to sufficiently define *criminal* hazing so as to avoid arbitrary and discriminatory enforcement. *Initial Brief*, at 35-39.

The record also disproves the State's claim that the vagueness-related issues raised before this Court are not preserved for appellate review. *Answer Brief*, at 17. Petitioner specifically alleged to the circuit court that this statute was both vague as applied to the facts of the case and void for vagueness in its entirety. *Initial Brief*, at 1-5; [R2. 271-91; R3. 386-419; R5. 690-95]. In considering the State's claim, it bears noting that Petitioner made multiple attempts to secure a "full and meaningful evidentiary hearing" on his constitutional claims. *Initial Brief*, at 1-2. After the first motion was denied, Petitioner even filed a motion for reconsideration – which was similarly denied without a hearing or explanation. [R7. 1080-82, 1108-09].

Additionally, the State miscites *Norman v. State*, 215 So. 3d 18, 25 n.4 (Fla. 2017) and mistakenly claims that a petitioner must raise a claim before the circuit court *and* district court in order to litigate the matter before this Court. *Answer Brief*, at 18. Petitioner, however, properly preserved the issues being raised before this Court. *Westerheide v. State*, 831 So. 2d 93, 105 (Fla. 2002).

III. Section 1006.63(1) and (5)(a) criminalize constitutionally protected conduct and speech

Petitioner relies on the arguments made in his Initial Brief.

IV. The granting of any of Petitioner's constitutional claims requires and compels a dismissal with prejudice of his manslaughter conviction

The State erroneously claims that Petitioner's judgment of acquittal claim is not properly preserved. However, Petitioner's claim was specifically raised before the trial court, and under this Court's precedent it is therefore preserved for appellate review. *See, e.g. Tillman v. State*, 471 So. 2d 32, 35 (Fla. 1985).

Additionally, the record clearly establishes that the granting of any of Petitioner's constitutional claims would render his conviction for manslaughter to be the product of an unfair trial. The inclusion of the charges under section 1006.63 resulted in a trial focusing on hazing. Given this, should any of Petitioner's constitutional claims be granted, then a new trial is requested on his manslaughter conviction.

CONCLUSION

Given the above-stated reasons, Petitioner requests that (1) his convictions on counts 2, 3, and 4 be vacated because the applicable statute was unconstitutionally applied to him, (2) that his convictions on counts 2, 3, and 4 be vacated because section 1006.63 is void for vagueness, (3) his convictions on counts 2, 3, and 4 be vacated because those judgments cannot stand if this Court severs section 1006.63(5)(a) on overbreadth grounds, and (4) the trial court's denial for his motion for judgment of acquittal on count 1 be reversed, or in the alternative he be granted a new trial on count 1.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-service to: the Office of the Attorney General at CrimAppdab@myfloridalegal.com and Kristen Davenport, Esq. at Kristen.davenport@myfloridalegal.com this 6th day of November, 2017.

s/ Rupak R. Shah

Rupak R. Shah, Esq.
Escobar & Associates, P.A
2917 West Kennedy Blvd.
Tampa, Florida 33609
(813)875-5100 (office)
(813)877-6590 (Facsimile)
rshah@escobarlaw.com
FBN: 112171

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY the instant brief has been prepared with 14-point Times New Roman type, in compliance with Fla. R. App. P. 9.210(a)(2).

s/ Rupak R. Shah

Rupak R. Shah, Esq.
Escobar & Associates, P.A
2917 West Kennedy Blvd.
Tampa, Florida 33609
(813)875-5100 (office)
(813)877-6590 (Facsimile)
rshah@escobarlaw.com
FBN: 112171