

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC02-2452

THE STATE OF FLORIDA,

Petitioner,

vs.

T.M., A.N., and D.N., Children,

Respondents.

ON PETITION FOR DISCRETIONARY REVIEW

REPLY BRIEF OF PETITIONER ON THE MERITS

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ARGUMENT

THE PINELLAS PARK JUVENILE CURFEW ORDINANCE IS CONSTITUTIONAL.

The Respondents contend that the Ordinance is fails strict scrutiny because it gives to the offices the authority to determine when the Ordinance has been violated. This contention also is based on a misunderstanding of the Ordinance. An arrest is lawful only after the arresting officer ascertains that the individual is under the age of eighteen and he does not fall within one of the exceptions. At that time, the officer has probable cause to arrest the individual for violating the Ordinance. As such, the Ordinance does not suffer the complained of infirmity. *State v. Ecker*, 311 So.2d 104 (Fla. 1975). In *Ecker*, the Court was faced with the exact claim in relation to the loitering and prowling statute. In rejecting this contention, the Court held:

The defendants contend that this statute authorizes police officers to use their unbridled discretion to arrest whomever they please. We disagree. This statute only authorizes an arrest where the person loitering or prowling does so under circumstances which threaten a breach of the peace or the public safety. While the statute might be unconstitutionally applied in certain situations, this is no ground for finding the statute itself unconstitutional.

We are not here dealing with the historical loitering and vagrancy statute that makes status a crime and gives uncontrolled discretion to the individual law enforcement officer to make the determination of what is a crime. As previously noted, the statute contains two elements: (1) loitering or prowling in a place at a time and in a manner not usual for lawabiding individuals, and (2) such loitering and prowling were under circumstances that threaten the public safety. Proof of both elements is essential in order to establish a violation of the statute. This statute comes into operation only when the surrounding circumstances suggest to a reasonable man some threat and concern for the public safety. These circumstances are not very different from those that the United States Supreme Court described as 'specific and articulable facts' in Terry v. Ohio, supra.

Clearly, when these elements are established and the individual either refuses or fails to properly identify himself or flees when confronted by a law enforcement officer, the offense has been established.

On the other hand, under circumstances where the elements are established but the accused, upon being confronted by a law enforcement officer, properly produces credible and reliable identification and complies with the orders of the law enforcement officer necessary to remove the threat to the public safety, or voluntarily offers a reasonable explanation for his presence that dispels the alarm and threat, then the charge under this statute can no longer properly be made.

Id. at 110.

Respondent's also contend that the ordinance violates due process because it automatically makes a parent subject to

criminal penalties unless the parent establishes that prior to the curfew violation, law enforcement is notified that the juvenile is missing from the parents residence or if the parent, despite reasonable care and diligence, does not have knowledge that the juvenile would violate the curfew ordinance. Respondents contend that the foregoing mandatory rebuttable presumption is unconstitutional because it shifts the burden of persuasion to the parents. This type claim has been rejected in the challenge to the rebuttable presumption dealing with possession of recently stolen property. § 812.022 (2), Florida Statutes, 2002. In *Edwards v. State*, 381 So.2d 696 (1980) this Court held that since there is a rational connection between the fact proven, that is, that the defendant possessed stolen goods and the fact presumed, that is, that the defendant knew the goods were stolen, the inference created by this section which states that proof of possession of property recently stolen, unless satisfactorily explained, gives rise to an inference that the person in possession knew or should have known that the property had been stolen did not violate the right to due process.

Finally, Respondents contend that ordinance is unique since no other criminal statute imposes responsibility on a parent for acts of the child. This contention overlooks the statute that

makes a parent liable for restitution caused by criminal act of the child. §985.231(1)(a)(9), Florida Statutes, 2002. *J.C.R. v. State*, 785 So.2d 550 (Fla. 4th DCA 2001)(Before a trial court may order a delinquent child's parents to pay restitution pursuant to section 985.231(1)(a)(9), Florida Statutes, the trial court must first determine that the parent failed to make a diligent and good faith effort to prevent the child from engaging in delinquent acts.)

CONCLUSION

For the foregoing reasons, Petitioner requests that this Court quash the decision of the District Court and find that Pinellas Park's Juvenile Curfew Ordinance is constitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **REPLY BRIEF OF PETITIONER** was furnished by U.S. mail : **BRUCE G. HOWIE**, Attorney for T.M., 5720 Central Avenue, St. Petersburg, Florida 33707; **ROBERT L. HAMBRICK**, Attorney for A.N. and D.N., 13575 58th Street North, Clearwater, Florida 33760; and to **EDWARD D. FOREMAN**, Pinellas Park City Attorney, 100 2nd Avenue North, Suite 300 St. Petersburg, Florida 33701, on this day of February, 2003.

MICHAEL J. NEIMAND
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief is type in Courier New 12-point font.

MICHAEL J. NEIMAND
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