

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,

v.

CASE NO. 96,766

GWENDOLYN FUCHS,
Respondent.

_____ /

ON DIRECT APPEAL FROM
THE FIFTH DISTRICT COURT OF APPEAL

BRIEF OF PETITIONER ON THE MERITS

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

KELLIE A. NIELAN
ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 618550

MARY G. JOLLEY
ASSISTANT ATTORNEY GENERAL
Fla. Bar. No. 0080454
444 Seabreeze Blvd.
Fifth Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

CERTIFICATE OF FONT AND TYPE SIZE 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

SUMMARY OF ARGUMENT 5

ARGUMENT

SECTION 827.04(1)(A) OF THE FLORIDA STATUTES
IS NOT UNCONSTITUTIONALLY VAGUE. 6

CONCLUSION 20

CERTIFICATE OF SERVICE 21

TABLE OF AUTHORITIES

Cases

American Bakeries Co. v. Haines City,
131 Fla. 790, 180 So. 524 (Fla. 1938) 12

Bell v. State,
289 So.2d 388 (Fla. 1973) 17

Bouters v. State,
659 So. 2d 235 (Fla.),
cert. denied, 516 U.S. 894 (1995) 7

City of New Smyrna Beach v. Bd. Of Trustees of Internal Imp. Trust Fund,
543 So. 2d 824 (Fla. 5th DCA 1989) 16

Dale v. State,
703 So.2d 1045 (Fla. 1997) 13, 14

Ferguson v. State,
377 So. 2d 709 (Fla. 1979) 8

Firestone v. News-Press Publishing Co.,
538 So. 2d 457 (Fla. 1989) 7

Forsyth v. Longboat Key Beach Erosion Control,
604 So. 2d 452 (Fla. 1992) 8

Goldstein v. Acme Concrete Corp.,
103 So.2d 202 (Fla. 1958) 9

Holmes County School Bd. V. Duffell,
651 So. 2d 1176 (Fla. 1995) 12,16

Miami Dophins, LTD. V. Metropoltan Dade County,
394 So. 2d 981 (Fla. 1981) 12,13

Schorb v. Schorb,
547 So. 2d 985 (Fla. 2d DCA 1989) 9,15

State v. Barone,
124 So. 2d 490 (Fla. 1960) 17,18

State v. Elder,
382 So.2d 687 (Fla. 1980) 7

<u>State v. Ferrari,</u>	
398 So. 2d 804 (Fla. 1981)	12,13,15
<u>State v. Fuchs,</u>	
24 Fla. L. Weekly D2310 (Fla. 5th DCA October 8, 1999)	
.	2, 6, 7, 15
<u>State v. Hagan,</u>	
387 So. 2d 943 (Fla. 1980)	8, 9
<u>State v. Lindsay,</u>	
284 So. 2d 377 (Fla. 1973)	17,18
<u>State v. Mitro,</u>	
700 So. 2d 643 (Fla. 1997)	8, 9, 10, 18
<u>State v. Purvis,</u>	
377 So. 2d 674 (Fla. 1979)	17
<u>State v. Shamrani,</u>	
370 So. 2d 1 (Fla. 1979), <u>reh. denied</u>	17,18
<u>State v. Stalder,</u>	
630 So. 2d 1072 (Fla. 1994)	7,18
<u>T.R. v. State,</u>	
677 So. 2d 270 (Fla. 1996)	8
<u>Wooten v. State,</u>	
332 So. 2d 15 (Fla. 1976)	8
Other Authorities	
Ch. 96-322, Laws of Florida	16
Section 39.01(11), Fla. Stat. (1997)	9, 10,19
Section 39.01(14), Fla. Stat. (1999)	9, 11
Section 39.002, Fla Stat. (1997)	9
Section 125.0104, Fla. Stat. (1977).	12,13
Section 212.03, Fla. Stat. (1977)	12,13
Section 713.34(3), Fla. Stat. (1979)	12
Section 775.087(1), Fla. Stat. (1997)	14

Section 790.001(6), Fla. Stat. (1997)	13,15
Section 800.04(2), Fla. Stat. (1997)	14
Section 810.08, Fla. Stat. (1997)	14
Section 810.09, Fla. Stat. (1997)	14
Section 812.13, Fla. Stat. (1995)	13, 14
Section 827.03, Fla. Stat. (Supp. 1996)	17
Section 827.04(3), Fla. Stat. (Supp. 1990)	17
Section 827.04(3), Fla. Stat. (1995)	15, 16
Section 827.04(1)(a), Fla. Stat. (1997)	
.	2,5,6,8,9,10,11,13,15,17,18,19,20
Section 847.001, Fla. Stat. (1997)	14
Section 984.02, Fla. Stat. (1997)	9
Section 984.03(12), Fla. Stat. (1997)	10, 19
Section 984.03(12), Fla. Stat. (1999)	10, 11
Section 985.02, Fla. Stat. (1997)	9
Section 985.03, Fla. Stat. (1997)	10
Section 985.03, Fla. Stat. (1999)	10, 11
Florida Rule of Appellate Procedure 9.030	2

CERTIFICATE OF FONT AND TYPE SIZE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

STATEMENT OF THE CASE

On May 6, 1998, Gwendolyn Fuchs ("Fuchs") was charged by information in the Osceola County Court with three counts of contributing to the delinquency or dependency of a child in violation of section 827.04(1)(a) of the Florida Statutes. (Vol. I, R. 20-22).

On June 22, 1998, Fuchs filed a motion to dismiss the information, claiming that § 827.04(1)(a) was unconstitutionally vague. Following a hearing, the county court granted Fuchs's motion, and pursuant to Florida Rule of Appellate Procedure 9.030(b)(4), certified the following as a question of great public importance to the Fifth District Court of Appeal:

WHETHER FLORIDA STATUTE 827.04(1)(A) IS
UNCONSTITUTIONALLY VAGUE IN THAT THE
PROHIBITED CONDUCT, OMISSIONS OR STANDARD OF
CONDUCT OF AN ACCUSED IS NOT DEFINED AND THE
STATUTE FAILS TO DEFINE THE TERMS
"DELINQUENT," "DEPENDENT" OR "CHILD IN NEED OF
SERVICES."

(Vol. I, R. 10-13).

On October 8, 1999, the Fifth District Court of Appeal answered the certified question in the affirmative, and held that § 827.04(1)(a) was void for vagueness. See State v. Fuchs, 24 Fla. L. Weekly D2310 (Fla. 5th DCA October 8, 1999).

Appellant filed a timely notice of appeal on October 11, 1999 pursuant to Florida Rule of Appellate Procedure 9.030(a)(1)(A)(ii).

STATEMENT OF FACTS

On April 7, 1998, at approximately 8:55 p.m., Osceola County police officer Thomas Forehand received an anonymous phone call regarding an eleven year-old boy being left home alone with his four and five year-old sisters. (Vol. I, R. 25).

Forehand went to the location, and spoke with the eleven year-old boy, Joshua Fuchs, who stated that his mother, Fuchs, had left to pick up her boyfriend, and would be back soon. (Vol. I, R. 25). Fuchs did not leave a phone number, and there was no telephone in the residence. (Vol. I, R. 25). Officer Forehand contacted Fuchs's father, Joshua's grandfather, and he stated he would come over if his daughter did not come back soon. (Vol. I, R. 25). Forehand spoke with the neighbor who wished to remain anonymous, and he told the officer that Fuchs often came home after 2:30 a.m. (Vol. I, R. 25). This neighbor agreed to watch the children until Fuchs returned home. (Vol. I, R. 25-26).

Officer Forehand returned to the home at 11:00 p.m., and Fuchs was still not home. (Vol. I, R. 26). Joshua indicated that he had contacted his grandfather, and his grandfather was on his way over. (Vol. I, R. 26). Mr. Fuchs arrived, and the children were left in his custody. (Vol. I, R. 26).

Officer Forehand responded to the residence at 4:20 a.m. after receiving a complaint that Mr. Fuchs had left, and the children were alone again. (Vol. I, R. 26). Forehand again spoke with Joshua who stated that his mother's boyfriend, Thomas Greene, was

asleep in the house. (Vol. I, R. 26). Greene told Forehand that he and Fuchs were at Calico Jack's in Kissimmee, and that Fuchs had been arrested. (Vol. I, R. 26). Greene then came to the house to watch the children. (Vol. I, R. 26). Forehand confirmed that Fuchs was in the Osceola County Jail. (Vol. I, R. 26).

SUMMARY OF ARGUMENT

The district court erred in declaring section 827.04(1)(a) of the Florida Statutes unconstitutional for vagueness because the terms "delinquent," "dependent," and "child in need of services" were not defined in the statute nor was there any reference in the statute to definitions of those terms in other chapters. In doing so, the district court ignored firmly rooted rules of statutory construction which require that related statutes be read in pari materia with each other. The terms "delinquent," "dependent," and "child in need of services" are defined in chapters 39, 984, and 985. These chapters have the same underlying purpose as section 827.04(1)(a), the protection of children, and thus, the definitions of those terms in those chapters should be applied to section 827.04(1)(a), eliminating any vagueness problem. Moreover, these terms, when read in the context of this statute, have a clear and distinct meaning to a person of ordinary intelligence, which also eliminates any vagueness problem.

ARGUMENT

SECTION 827.04(1)(A) OF THE FLORIDA STATUTES
IS NOT UNCONSTITUTIONALLY VAGUE.

The State appeals from the ruling of the Fifth District Court of Appeal which declared section 827.04(1)(a) of the Florida Statutes (1997) unconstitutional because certain terms utilized in the statute were vague. State v. Fuchs, 24 Fla. L. Weekly D2310 (Fla. 5th DCA October 8, 1999). In so doing, the district court answered the following question, certified by the county court as a question of great public importance, in the affirmative:

WHETHER FLORIDA STATUTE 827.04(1)(A) IS
UNCONSTITUTIONALLY VAGUE IN THAT THE PROHIBITED CONDUCT,
OMISSIONS OR STANDARD OF CONDUCT OF AN ACCUSED IS NOT
DEFINED AND THE STATUTE FAILS TO DEFINE THE TERMS
"DELINQUENT," "DEPENDENT" OR "CHILD IN NEED OF SERVICES."

Section 827.04(1)(a), Fla. Stat. (1997) provides that any person who:

commits any act which causes, tends to cause, encourages,
or contributes to a child becoming a delinquent or
dependent child or a child in need of services . . .
commits a misdemeanor of the first degree punishable as
provided in s. 775.082 or s.775.083.

In declaring this statute unconstitutional, the Fifth District agreed with the county court that the terms "delinquent," "dependent," and "child in need of services" were unconstitutionally vague. The district court found that the vagueness problem arose because the terms "delinquent," "dependent," and "child in need of services" did not have ordinary meaning, were not defined in the statute, and the statute did not,

at least, "specify a source to find a definition for these terms so that ordinary persons are not left to guess at the statute's meaning or differ as to its application." Fuchs, 24 Fla. L. Weekly at 2311 (citing Bouters v. State, 659 So. 2d 235, 238 (Fla.), cert. denied, 516 U.S. 894)(1995)(citation omitted). Yet, the district court acknowledged that there was "little doubt" that the terms "are intended to be understood as terms of art described in Chapters 39, 984, and 985, and not in the ordinary way these words are sometimes used." Id. at 2311.

In assessing a statute's constitutionality, this Court is bound "to resolve all doubts as to the validity of [the] statute in favor of its constitutionality, provided the statute may be given a fair construction that is consistent with the federal and state constitutions as well as with the legislative intent." State v. Stalder, 630 So. 2d 1072, 1076 (Fla. 1994)(quoting State v. Elder, 382 So. 2d 687, 690 (Fla. 1980)).

Further, "[w]henever possible, a statute should be construed so as not to conflict with the constitution. Just as federal courts are authorized to place narrowing constructions on acts of Congress, this Court may, under the proper circumstances, do the same with a state statute when to do so does not effectively rewrite the enactment." Id. (quoting Firestone v. News-Press Publishing Co., 538 So. 2d 457, 459-60 (Fla. 1989) (citations omitted)).

In order to withstand a vagueness challenge, a statute must be specific enough to give persons of common intelligence and understanding adequate warning of proscribed conduct. State v. Mitro, 700 So. 2d 643, 645 (Fla. 1997). However, the failure of the Legislature to define a statutory term does not in and of itself render a penal provision unconstitutionally vague. Id.; State v. Hagan, 387 So. 2d 943, 945 (Fla. 1980).

While acknowledging that "dependent," delinquent," and "child in need of services" are defined in Chapters 39, 984, and 985, the district court failed to apply well-established rules of statutory construction which permit the courts to look to these definitions and apply them to section 827.04(1)(a).

It is a basic rule of statutory construction that statutes which relate to the same or to a closely related subject or object are regarded as in pari materia and should be construed together and compared with each other. Ferguson v. State, 377 So. 2d 709, 710 (Fla. 1979). The courts should view the entire statutory scheme to determine legislative intent. Id. Where possible, courts must give effect to all statutory provisions and construe related statutory provisions in harmony with one another. T.R. v. State, 677 So. 2d 270, 271 (Fla. 1996)(quoting Forsythe v. Longboat Key Beach Erosion Control, 604 So. 2d 452, 455 (Fla. 1992))(citations omitted)(emphasis in original).

Applying these accepted rules of statutory construction, different facets of the same subject matter should be read in pari

materia. See e.g., Wooten v. State, 332 So. 2d 15, 17 (Fla. 1976). Likewise, in the absence of a statutory definition, resort may be had to case law or related statutory provisions which define the term. Mitro, 700 So. 2d at 645, Hagan, 387 So. 2d at 945. Moreover, when different statutes employ exactly the same words or phrases, the legislature is assumed to have intended the same meaning. Schorb v. Schorb, 547 So. 2d 985, 987 (Fla. 2d DCA 1989)(citing Goldstein v. Acme Concrete Corp., 103 So.2d 202, 204 (Fla. 1958)).

While the district court had "little doubt" that these terms were intended to be understood as described in chapters 39, 984, and 985, the district court failed to apply, or even consider, the rules of statutory construction which require courts to read statutes in pari materia and construe them in harmony, especially when the constitutionality of a statute has been challenged.

Here, chapter 39 (proceedings relating to children), chapter 984 (children and families in need of services), and chapter 985 (delinquency) define the terms "dependent," "delinquent," and "child in need of services." Each of these chapters sets forth the same legislative intent which is to provide general protections for children, substance abuse services, juvenile justice and delinquency prevention, and parental, custodial, and guardian responsibilities. See §§ 39.002, 984.02, and 985.02, Fla. Stat. (1997). Section 827.04(1)(a) is essentially the corresponding penal provision which makes acts undermining these general

protections of children unlawful. Because these chapters all relate to different facets of the same subject matter, the protection of children, the definition of "dependent" as provided in sections 39.01(11) and 984.03(12) of the Florida Statutes (1997)¹, the definition of "delinquent" as provided in sections 984.03(11) and 985.03(9) of the Florida Statutes (1997)², and the definition of "child in needs of services" as provided in sections 984.03(9) and 985.03(8) of the Florida Statutes (1997)³ may be applied to those terms in section 827.04(1)(a).

Because chapter 827 and chapters 39, 984, and 985 all have the same goal, the protection of children, this Court should apply these firmly rooted rules of statutory construction to use the definitions set forth in these related chapters and apply them in section 827.04(1)(a). This erases any vagueness issue, and upholds the constitutionality of a statute which is intended to protect children such as twelve year-old Joshua Fuchs, and his five and four-year old sisters. See Mitro, 700 So. 2d at 646 ("It is the legislature that has broad discretion in determining the necessary measures for the protection of the public health, safety, and

¹ This definition is now codified at §§ 39.01(14) and 984.03(12), Fla. Stat. (1999).

² This definition is now codified at §§ 984.03(11) and 985.03(10), Fla. Stat. (1999).

³ This definition is now codified at §§ 984.03(9) and 985.03(9), Fla. Stat. (1999).

welfare, and this Court may not substitute its judgment for that of the legislature as to the wisdom or policy of a legislative act").

In fact, this Court has even read these definitions into section 827.04(1)(a) when drafting the standard jury instruction for this crime. The standard jury instruction for section 827.04(1)(a) provides a note to the trial judge to prepare the definitions of "delinquency," "dependency," or "child in need of services" based upon the statutory definitions at the time of the alleged offense, and directly refers to section 39.01.⁴ Thus, this Court's own jury instruction even cross references these definitions and applies them to section 827.04(1)(a) when instructing the jury on the elements of the crime.

Notwithstanding the failure of the district court to address these rules of statutory construction, the district court also found section 827.04(1)(a) unconstitutionally vague because it failed to make any allusion or reference to the definitions provided in chapters 39, 984, and 985 in the text of section 827.04(1)(a).

Yet, the rule that related statutes should be read in *pari materia* with each other does not require such a reference. In fact, this Court has repeatedly held that statutes may be read in

⁴ The State notes that this standard jury instruction should be amended to refer the trial judge to chapters 984.03 and 985.03 for the definitions of delinquent and child in need of services as those definitions are no longer contained in chapter 39, following the renumbering and amendments to these chapters in 1997.

pari materia without such being specifically directed, because "(l)aws should be construed with reference to the constitution and the purpose designed to be accomplished, and in connection with other laws in pari materia, though they contain no reference to each other." Miami Dolphins, LTD., v. Metropolitan Dade County, 394 So. 2d 981, 988 (Fla. 1981)(quoting American Bakeries Co. v. Haines City, 131 Fla. 790, 180 So. 524, 528 (Fla. 1938)). Thus, while the legislature may direct that statutes be read in pari materia, the absence of that directive does not bar such a reading. Id. See also Holmes County School Bd. v. Duffell, 651 So. 2d 1176, 1179 (Fla. 1995).

For example, this Court has rejected a vagueness claim to a penal statute and applied this rule of construction, referring to the definitions in another chapter to define a particular statutory term even when that statute makes no reference to that outside definition. See State v. Ferrari, 398 So. 2d 804, 807 (Fla. 1981).

There, the defendant challenged section 713.34(3) of the Florida Statutes (1979) on the ground that it was vague. Section 713.34(3) was designed to attach criminal liability for embezzlement to contractors who misappropriated construction funds. In construing the statute, this Court acknowledged that the statute did not precisely define when a bill becomes due and owing for purposes of proving the embezzlement, but held that no such definition was necessary. Id. Instead, this Court determined that section 713.34(3) was to be read in pari materia with Florida's

version of the Uniform Commercial Code, chapter 672, and Florida contract law, and that such a reading shed light on the terms utilized in section 713.34(3), "simultaneously solving any vagueness problems." Id. See also Miami Dolphins, 394 So. 2d at 987-988 (when reading section 125.0104 of the Florida Statutes (1977) in conjunction with chapter 212, particularly section 212.03 of the Florida Statutes (1977) even though section 125.0104 does not refer to chapter 212, the pari materia construction makes § 125.0104 complete and remedies any vagueness problem).

This Court's holding in Ferrari makes clear that the fact that the text of a statute does not direct that it should be read in pari materia with other statutes is not controlling, and the district court's reliance upon such a notion to declare section 827.04(1)(a) void for vagueness was legally misplaced.

Moreover, the Florida Standard Jury Instructions are replete with further examples of such cross referencing by this Court. In Dale v. State, 703 So. 2d 1045, 1046-1047 (Fla. 1997), this Court noted that the robbery statute, section 812.13 of the Florida Statutes (1995), failed to define the terms "firearm" and "weapon," but then cited the Florida Standard Jury Instructions for robbery which provided that a firearm was "legally defined as (adapt from F.S. 790.001 as required by allegations)." This court noted that this instruction was a correct statement of the law. Id. at 1046. Thus, although the robbery statute did not define firearm and did not allude to section 790.001 for the definition of a firearm, this

Court approved the standard jury instruction which cross-referenced that definition when listing the elements of robbery. Id.

Such cross referencing to define certain terms, without any reference to the statute in which those terms are defined, also exists in the standard jury instructions for section 800.04(2) of the Florida Statutes (1997) which requires the trial judge to give applicable definitions from section 847.001 of the Florida Statutes (1997) when section 800.04(2) is charged. Under section 800.04(2), a person who forces or entices a person under sixteen years of age to commit an act of actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, actual lewd exhibition of the genitals, or any act or conduct which simulated sexual battery, commits lewd and lascivious conduct. Chapter 847, which deals with the obscene literature and profanity, defines deviate sexual intercourse, sexual bestiality, sadomasochistic abuse, and simulated. § 847.001, Fla. Stat. (1997). Accordingly, the standard instruction permits reference to chapter 847 for terms set forth in the related chapter 800 even though section 800.04(2) does not specifically refer to section 847.001 for those definitions.

In addition to the robbery statute noted in Dale, the standard jury instructions for trespass in a structure or conveyance, section 810.08, trespass on property other than a structure or conveyance, section 810.09, carjacking, section 812.133, and aggravation of felony by carrying a firearm, § 775.087(1), all

refer to the definition of a firearm as legally defined in section 790.001(6). Yet, none of those statutes specifically refer to section 790.001(6) for that definition. In all, an examination of these standard jury instructions reflects this Court's practice to look outside statutes when necessary in order to define its terms. This practice is equally applicable here. See Ferrari.

The district court also attached significance to the 1996 amendment to section 827.04(1)(a) which omitted "as defined under the laws of Florida" and declared that this deletion was "fatal" to the constitutionality of the statute.⁵ Fuchs, 24 Fla. L. Weekly at D2311.

Yet, this omission does not preclude this Court from applying the definitions of "dependent," "delinquent," and "child in need of services" set forth in chapters 39, 984, and 985 when applying the aforementioned rules of statutory construction. See Schorb, 547 So. 2d at 987 (when different statutes employ exactly the same words or phrases, the legislature is assumed to have intended the same meaning).

⁵ Prior to the 1996 amendment, § 827.04(3), Fla. Stat. (1995) read in pertinent part:

Any person who commits any act which thereby causes or tends to cause or encourage any person under the age of 18 years to become a delinquent or dependent child or a child in need of services, as defined under the laws of Florida, . . . is guilty of a misdemeanor of the first degree . . .

As indicated supra, the terms "delinquent," "dependent," and "child in need of services" are identically defined in chapters 39, 984, and 985, and the deletion of this phrase may be indicative of legislature intent to utilize those definitions through the rules of statutory construction, rather than restating those same definitions in the body of section 827.04. See Holmes County School Bd., 651 So. 2d at 1179 ("The legislature is presumed to know existing law when it enacts a statute"). The district court did not consider that the deletion may simply have been an effort on the part of the Legislature to keep the language of this statute concise.

Moreover, the preamble to Senate Bill 116, which changed section 827.04, specifically provides that the enactment was to clarify the offense of contributing to the delinquency or dependency of a child or child in need of services. See ch. 96-322, at 1762, Laws of Florida. The fact that the statutory changes in 1996 were meant as clarifications, not as substantive changes to the statute, renders the deletion of the language "as defined under the laws of Florida" not so significant. See City of New Smyrna Beach v. Bd. of Trustees of Internal Imp. Trust Fund, 543 So. 2d 824, 829 (Fla. 5th DCA 1989)("mere changes to statutory language does not necessarily indicate an intent to change the law for intent may be to clarify what was doubtful and to safeguard against misapprehension as to existing law").

In fact, a review of section 827.04 before and after it was amended in 1996 reveals that the first two subsections of that statute were moved into section 827.03, the child abuse statute, and contributing to the delinquency or dependency of a child became a separate statute. See §§ 827.03 and 827.04, Fla. Stat. (Supp. 1996). Although it became a separate section under chapter 827, the substance of the statute remained unchanged, and the prohibited conduct under the statute has remained the same.

Furthermore, the prohibited conduct, causing or tending to cause or encourage a child to become dependent or delinquent, has withstood repeated challenges for vagueness.⁶ See State v. Purvis, 377 So. 2d 674 (Fla. 1979); State v. Shamrani, 370 So. 2d 1 (Fla. 1979), reh. denied; Bell v. State, 289 So. 2d 388 (Fla. 1973); State v. Lindsay, 284 So. 2d 377 (Fla. 1973); and State v. Barone, 124 So. 2d 490 (Fla. 1960).

This Court has held that the statute conveys a sufficient, definite warning of the proscribed conduct when measured by common understanding and practice. Bell, 289 So. 2d at 389. This Court has further stated that the statute:

. . . provides persons with notice of the prohibited acts and is not so broad that it would lead to arbitrary and erratic arrests and convictions. This statute does not purport to punish conduct which by modern standards would be considered innocent.

⁶ The term "child in need of services" was inserted in 1990. See § 827.04(3), Fla. Stat. (Supp. 1990).

Lindsay, 284 So. 2d at 380. See also Shamrani, 370 So. 2d at 2 (proscribed acts will be those which person of common understanding would know would cause or tend to cause or encourage or contribute to the delinquency or dependency of a minor).

Notably, in assessing this statute, this Court has looked to chapter 39 for definitions of the statutory terms, including delinquent child and violation of law. See Lindsay, 284 So. 2d at 378-379; Barone, 124 So. 2d at 492.

Finally, the State asserts that even without reference to the statutory definitions provided in chapters 39, 984, and 985, when considered in the context of this statute, the terms "delinquent," "dependent," and "child in need of services" have a distinct, clear meaning. A person of common understanding will know when their behavior causes, tends to cause, encourages or contributes to the child becoming a delinquent, dependent or in need of services. Because these terms are understandable by the reasonable person, they are not vague and section 827.04(1)(a) is constitutional. See Mitro, 700 So. 2d at 646 (failure to define terms of "not available" and "authenticated" does not render statute unconstitutionally vague as common definition was one reasonable person would give in context of statute).

The State reiterates that this Court should resolve all doubts in favor of the constitutionality of section 827.04(1)(a). Stalder, 630 So. 2d at 1076. Applying the proper rules of statutory construction, section 827.04(1)(a) is not

unconstitutionally vague. When a mother leaves her three children, ages eleven, five, and four, home alone at night for an extended period of time, with no supervision, and no telephone, a person of common intelligence would consider that child "dependent" under section 827.04(1)(a).⁷ While section 827.04(1)(a) is a penal provision punishing those who engage in conduct such as Fuchs, the core of this statute is the protection of children. The same purpose underlies chapters 39, 984, and 985 and thus, the definitions of the terms "delinquent," "dependent," and "child of need of services" as provided in those chapters can be, and should be, readily applied here. Moreover, considering the statutory terms in the context of this statute as well as the conduct the statute proscribes, the prohibitions of section 827.04(1)(a) are not so unclear that a person of common intelligence and understanding would be unaware of the illegality of his or her conduct.

Accordingly, this Court should reverse the decision of the Fifth District Court of Appeal, and declare section 827.04(1)(a) of the Florida Statutes constitutional.

⁷ See §§ 39.01(11) and 984.03(12), Fla. Stat. (1997) defining "dependent child" as a child who has been abandoned or neglected.

nCONCLUSION

Based on the arguments and authorities presented herein, respondent respectfully requests that this Court reverse the decision of the Fifth District Court of Appeal, and declare section 827.04(1)(a) of the Florida Statutes constitutional.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

KELLIE A. NIELAN
ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 618550

MARY G. JOLLEY
ASSISTANT ATTORNEY GENERAL
Fla. Bar 0080454
444 Seabreeze Boulevard
Fifth Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Respondent's Brief has been furnished by delivery to Noel A. Pelella, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this _____ day of October, 1999.

Mary G. Jolley
Assistant Attorney General