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Abstract

Appellees, George Joyce and Alvin Leige Hutcheson were charged by information, in the counties of Orange and Duval, respectively, with the crime of simple child abuse' pursuant to Section 827.04(2) Florida Statutes.

KEYWORDS: scienter, abuse, child

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Appellees, George Joyce and Alvin Leige Hutcheson were charged by information, in the counties of Orange and Duval, respectively, with the crime of simple child abuse[1] pursuant to Section 827.04(2) Florida Statutes. The crime is committed by "(i) depriving a child of necessary food, shelter, or medical treatment, willfully or by culpable negligence; and (ii) by permitting, knowingly or by culpable negligence, the child's mental or physical health to be materially endangered."[2] Hutcheson was charged with committing both forms of child abuse against his three-year-old daughter,[3] while Joyce was charged only with permitting "material endangerment" of his child's health.[4]

Each of the appellees moved to dismiss the informations filed against them, claiming that the simple child abuse statute is unconstitutionally vague, indefinite and overbroad.[5] Additionally, Hutcheson con-

1. As distinguished from aggravated child abuse which is proscribed by § 827.03 FLA. STAT. (1975). In the recent case of Faust v. State, 354 So. 2d 866 (Fla. 1978), the Supreme Court of Florida upheld § 827.03 FLA. STAT. (1975) against a challenge that the statute was unconstitutionally vague and overbroad.

2. State v. Joyce, 361 So. 2d 406, 407 (Fla. 1978) (Boyd, J., concurred specially with opinion). Prior to being amended in 1977, § 827.04(2) FLA. STAT. (1975), provided:

> Whoever, willfully or by culpable negligence, deprives a child of, or allows a child to be deprived of, necessary food, clothing, shelter, or medical treatment, or who, knowingly or by culpable negligence permits the physical or mental health of the child to be materially endangered, shall be guilty of a misdemeanor of the first degree, punishable as provided in Sections 775.082, 775.083, or 775.084.

3. The Information filed against Hutcheson specifically alleged as follows:

> Alvin Leige Hutcheson, III, on the 21st day of November, 1976, in the County of Duval, and the State of Florida, did willfully or by culpable negligence, deprive a child, to wit: Misty Hutcheson, age three (3) years, of the necessary food, clothing, shelter, or medical treatment, or did knowingly or by culpable negligence permit the physicial or mental health of said child to be materially endangered, contrary to the provisions of Section 827.04(2), Florida Statutes.

Brief of Appellee Hutcheson at 2, State v. Hutcheson, 361 So. 2d 406 (1978).

4. 361 So.2d at 407.

5. *Id.*

tended that the phrase "materially endanger" was unconstitutionally vague and overbroad because it did not advise the ordinary man of specifically what conduct is prohibited by the statute.[6] The respective trial courts granted each appellee's motion to dismiss, thus directly passing upon the constitutional validity of Section 827.04(2) Florida Statutes.[7] On direct appeal[8] of the consolidated cases, the Supreme Court of Florida reversed and HELD: Section 827.04(2) Florida Statutes (1975) is not unconstitutionally vague, indefinite and overbroad.[9]

Common law required that crimes be defined with appropriate definiteness.[10] In *International Harvester Co. of America v. Kentucky,*[11] the United States Supreme Court held that the requirement of definiteness in penal statutes is an essential element of due process of law.[12] This standard was adopted more than forty years ago by the Supreme Court of Florida in the case of *Brock v. Hardie,*[13] and has since been consis-

6. Brief of Appellee Hutcheson at 2, State v. Hutcheson, 361 So.2d 406 (1978).

7. 361 So.2d at 407. In dismissing the information against Hutcheson, the trial court stated as follows:

> The statute under attack is Florida Statute Section 827.04(2), child abuse. In the case of Winters v. State (Fla. 1977), (Case No. 49,987), decided on March 31, 1977, the Florida Supreme Court struck down the negligent treatment of children statute, Florida Statute Section 827.05, in that the statute was vague, indefinite and overbroad, violative of due process of law. The statute sub judice suffers the same defects and therefore is unconstitutional on its face.

Brief of Appellee Hutcheson at 3.

8. FLA. CONST. art. V, §3(b)(1) provides: "The supreme court: (1) Shall hear appeals from final judgments of trial courts . . . passing on the validity of a state statute . . . ."

9. State v. Joyce, 361 So.2d 406, 408 (1978).

10. Pierce v. United States, 314 U.S. 306, 311 (1942).

11. 234 U.S. 216 (1914).

12. *Id.* U.S. CONST. amend. XIV provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ." *See* Connally v. General Const. Co., 269 U.S. 385, 395 (1926) (application of the statute depends upon the varying impressions of the juries; the constitutional guaranty of due process cannot be allowed to rest upon support so equivocal); Collins v. Kentucky, 234 U.S. 634, 638 (1914) (challenged statute violated the fundamental principles of justice embraced in the conception of due process of law).

13. 114 Fla. 670, 154 So. 690 (1934). In *Brock,* the court in determining the constitutional validity of a state anti-trust statute, stated as follows:

> Whether the words of the Florida Statute are sufficiently explicit to inform those who are subject to its provisions what conduct on their part will render them liable to its penalties is the test by which the statute must stand or fall, because . . . a "statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ

tently reaffirmed by that court.[14]

To withstand a constitutional challenge for vagueness, a penal statute must give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute.[15] The statute must also set forth ascertainable standards of guilt;[16] however, such standards must

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as to its application violates the first essential of due process of law."

154 So. at 694. Definiteness in penal statutes has also been held to be a requirement of the Florida Constitution. *See* Steffens v. State, 343 So.2d 90 (Fla. 3rd DCA 1977). In *Steffens*, the defendant petitioned for a writ of habeas corpus, after being convicted for violating a municipal ordinance which prohibited, *inter alia*, topless waitresses and entertainers. *Id.* The petition for the writ was granted and the state appealed. *Id.* In holding the municipal ordinance to be unconstitutionally vague, the court stated:

> The law is well settled that a penal statute or ordinance which forbids the doing of an act in terms so vague that people of common intelligence must necessarily guess at its meaning and differ as to its application violates the due process clause of the 14th Amendment to the United States Constitution and Article I, Section 9, of the Florida Constitution (1968).

Id. at 91. *See* text accompanying note 12 *supra.* FLA. CONST. art. I § 9, provides: "No person shall be deprived of life, liberty or property without due process of law . . . ."

14. *See, e.g.*, State v. Llopis, 257 So.2d 17 (Fla. 1971); Zachary v. State, 269 So.2d 669 (Fla. 1972); State v. Dinsmore, 308 So.2d 32 (Fla. 1975); State v. Wershow, 343 So.2d 605 (Fla. 1977).

15. Papachristov v. Jacksonville, 405 U.S. 156, 162 (1972); *See* Lanzetta v. New Jersey, 306 U.S. 451 (1939); United States v. Harris, 347 U.S. 612 (1954).

16. Winters v. New York, 333 U.S. 507, 515 (1948). In *Winters*, the defendant was charged with possessing, with intent to sell, certain obscene magazines, contrary to subsection 2 of §1141 of the New York Penal Laws (repealed and superceded 1950) which provided as follows:

> § 1141. Obscene prints and articles
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> 1. A person . . . who,
>
> 2. Prints, utters, publishes, sells, lends, gives away, distributes or shows, or has in his possession with intent to sell . . . or otherwise offers for sale, loan, gift or distribution, any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, and principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime; . . .
>
> Is guilty of a misdemeanor . . . .

333 U.S. at 508. In determining that the penal statute was unconstitutionally vague because there was no ascertainable standard of guilt, the court also noted that the standard for certainty of a penal statute is higher than for a statute which relies on civil sanctions for enforcement. *Id.* at 518. The Court observed, however, that the entire text of the statute may furnish an adequate standard for certainty. *Id. See also* Raeback v. New York, 391 U.S. 462 (1963) (per curiam). *But see* Smith v. Peterson, 313 Cal. App. 2d 241, 280 P.2d 522 (1955) (the fact that the meaning of a statute is difficult to ascertain or susceptible to different interpretations does not render the statute void).

not be unreasonable or impossible to understand.[17]

Other courts have proposed additional reasons for objecting to penal statutes which are indefinite. Some courts and commentators have suggested that such statutes encourage the police to rely upon criteria outside the statute in determining whether an arrest should be made.[18] Further, statutes which are indefinite or vague in effect delegate to judges and juries the legislative power to determine which acts shall be criminal.[19]

In construing penal statutes, the courts must balance two competing considerations.[20] It is well established that there is a presumption of the constitutional validity of penal statutes[21] and that, if possible, a court should construe a penal statute so as not to conflict with the constitution.[22] It is also well established that, where there is doubt as to the

17. United States v. Petrillo, 332 U.S. 1 (1946). In *Petrillo*, the defendant was charged with violating a provision of the Communications Act of 1934, 48 Stat. 1064, 1102, as amended by an Act of April 16, 1946, ch. 138, 60 Stat. 89 (1946) (current version at 47 U.S.C. § 506 (1970)) which provides as follows:

> Sec. 506(a) It shall be unlawful by the use of express or implied threat of the use of force . . . to coerce . . . a licensee — (1) to employ or agree to employ in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such employee to perform actual services.

332 U.S. at 3. The Court held that the statute was not unconstitutionally vague and stated as follows: "The language here challenged conveys a definite warning as to the proscribed conduct when measured by common understanding and practices. The Constitution requires no more." *Id.* at 8. *See e.g.*, Roth v. United States, 354 U.S. 476 (1957).

18. *See* Note, *The Void for Vagueness Doctrine in the Supreme Court*, 109 U. PA. L. REV. 67, 76 (1960).

19. United States v. Cohen Grocery Co., 225 U.S. 81, 87 (1921) (Congress cannot delegate legislative power to the courts and juries).

20. *See* Brief of Appellant at 7, State v. Joyce, 361 So.2d 406 (Fla. 1978).

21. Gitlow v. New York, 268 U.S. 652 (1925). In *Gitlow*, the Court stated that, when construing penal statutes: "[e]very presumption is to be indulged in favor of the validity of the statute." *Id.* at 668.

22. State v. Gale Distributors, Inc., 349 So.2d 150 (Fla. 1977). In *Gale*, the defendant was charged with selling sound on tape without the owner's consent in violation of Section 543.041(2) FLA. STAT. (1975). In upholding the constitutional validity of the statute against an attack for vagueness the court stated:

> This court is committed to the proposition that it has a duty, if reasonably possible and consistent with constitutional rights, to resolve all doubts as to the validity of a statute in favor of its constitutionality and to construe it so as not to conflict with the Constitution.

Id. at 153.

constitutional validity of a penal statute, it must be strictly construed in favor of the accused.[23]

In *Joyce,* the appellees had argued that the trial court's invalidation of Section 827.04(2) Florida Statutes was consistent with the Florida Supreme Court's earlier decision in *State v. Winters.*[24] The court in *Winters* had reiterated the requirements that penal statutes be strictly construed and that their meaning should be sufficiently explicit so that members of the community may determine what conduct is prohibited.[25] In holding that Section 827.05 Florida Statutes was unconstitutionally vague, the *Winters* court had observed that, under the statute, a person with no intent to do wrong could be punished because the statute did not require willfulness or culpable negligence as an essential element of the offense.[26] The *Winters* court also examined the language of the statute concerning "necessary shelter" and observed that the statute provided no guidelines for determining what specifically qualifies as "necessary."[27] While acknowledging that it is not necessary to constitutional validity that the statute furnish detailed specifications of the conduct prohibited,[28] the court stated: "Such a statute is dangerous and does not provide due process of law."[29]

23. United States v. Resnick, 299 U.S. 207, 209 (1937). *See* State v. Llopis, 257 So.2d 17 (Fla. 1971) (penal statutes are to be strictly construed in favor of the person against whom the penalty is sought to be imposed); Allure Shoe Corp. v. Lymberis, 173 So.2d 702 (Fla. 1965); Reino v. State, 352 So.2d 853 (Fla. 1977); United States v. Insco, 496 F.2d 204 (5th Cir. 1974).

24. 361 So.2d at 407. In *Winters,* the defendant was alleged to have negligently deprived his seven children of "necessary shelter" by allowing them to live in an insect infested structure which had garbage strewn on the floor, a clogged toilet and no mattresses or bedsheets for the children. Winters was charged by information with violating § 827.05 FLA. STAT. (1975) (superseded by §827.05 FLA. STAT. (1977)) which provides as follows: "Negligent treatment of children — whoever negligently deprives a child of, or allows a child to be deprived of necessary food, clothing, shelter or medical treatment is guilty of a misdemeanor of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084." State v. Winters, 346 So.2d 991, 992 (Fla. 1977).

25. 346 So.2d at 993.

26. *Id.* at n.1. The court in *Winters* observed that the language of § 827.04(2) FLA. STAT. (1975) and § 827.05 FLA. STAT. (1975) is similar but distinguished the former in that it requires willfulness or culpable negligence as an element of the crime.

27. *Id.* at 993. The court pointed out that, under the language of the statute, a palatial mansion might fail to qualify as "necessary shelter," if it had no heat.

28. *Id. See* Orlando Sports Stadium, Inc. v. State, 262 So.2d 881 (Fla. 1972); Smith v. State, 237 So.2d 139 (Fla. 1970).

29. 346 So.2d at 993. Boyd, J., in a dissenting opinion stated with respect to the phrase "necessary shelter" that: "The requirement that the support be necessary to the

In *Joyce*, the court distinguished its holding in *Winters* by stating that the basis for its decision declaring Section 827.05 Florida Statutes to be unconstitutionally vague and indefinite was that the statute criminalized acts of simple negligence.[30] The statute under attack in *Winters* did not require scienter; however, Section 827.04(2) Florida Statutes, does require willfulness (scienter) or culpable negligence as an essential element of the crime of child abuse. The *Joyce* court pointed out that this distinction had been noted in its decision in *Winters*.[31]

The element of scienter or criminal intent is not always a constitutional requirement for upholding the constitutional validity of penal statutes.[32] For example, most states have regulatory statutes which have been enacted in exercise of the state's police power. The purpose of such statutes is usually to achieve some social betterment, rather than to punish criminals.[33] Statutes which do not require scienter as an element of the offense are considered *mala prohibita*,[34] rather than *mala in se*,[35] and such statutes have been held to meet constitutional muster.[36]

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child prevents conviction of those who offer minimum support. Since economic abilities of persons charged with the duty of care vary, a more specific standard cannot be enacted. The statute is not vague." *Id.* at 994. *See* United States v. Reese, 92 U.S. 214 (1876).

30. 361 So.2d at 407.

31. *Id. See* note 26 *supra.*

32. United States v. Balint, 258 U.S. 250 (1928). In *Balint*, the Court discussed the requirement of scienter in criminal statutes and stated:

> While the general rule at common law was that scienter was a necessary element in the indictment and proof of every crime, and this was followed in regard to statutory crimes . . . there has been a modification of this view in respect to prosecutions under statutes the purpose of which would be obstructed by such a requirement.

Id. at 251.

33. *Id.*

34. In Coleman v. State, 119 Fla. 653, 161 So. 89, 90 (1935), the court defined *mala prohibita* as: "[T]hose things which are prohibited by statute because they infringe upon the rights of others, though no moral turpitude may attach, and they are crimes only because they are prohibited by statute."

35. *Id.* The court in *Coleman* defined *mala in se* as: "[T]hose acts which are immoral or wrong in themselves such as burglary, larceny, arson, rape, murder, and breaches of the peace . . . ." 161 So. at 90.

36. Lanz v. Dowling, 92 Fla. 848, 110 So. 522, 525 (Fla. 1926), where the court wrote, "[W]hen a statute makes criminal an act not *malum in se* or infamous without requiring the act to be knowingly or willfully done, criminal or fraudulent intent is not an element of the offense and need not be proven."

The *Joyce* court noted that the United States Supreme Court has consistently upheld the constitutional validity of penal statutes which require scienter as an essential element of the offense.[37] Statutes making it a crime to sell goods at "unreasonably low" prices with intent to destroy competition;[38] to "knowingly" transport explosives through congested areas,[39] or to sell meat falsely labeled "Kosher" with "intent to defraud,"[40] have all withstood constitutional challenges for vagueness because scienter was an essential element of the offense.

In *Screws v. United States*,[41] the United States Supreme Court upheld the constitutional validity of a federal statute which was similar to the statute under attack in *Joyce* in that it required "willfulness" to commit the offense. The Court held that the statute was saved from being held void for vagueness only because it required scienter as an element of the offense.[42] The Court in *Screws* reasoned that in requiring that the act be "knowingly" or "willfully" committed, the accused could not later claim that he had no warning or knowledge that his act was a violation of the law.[43] The United States Supreme Court has defined

37. 361 So.2d at 407.

38. United States v. National Dairy Products Corp., 372 U.S. 29 (1963) (selling "below cost" with predatory intent, was held to be within the statute's prohibition against selling at "unreasonably low" prices).

39. Boyce Motor Lines, Inc. v. United States, 342 U.S. 337 (1952) (defendant was charged with violating a statute which made it a crime to knowingly violate a federal regulation).

40. Hygrade Provision Co. v. Sherman, 266 U.S. 497 (1925). In *Sherman*, the defendant was charged with violating the Laws of New York, 1922, cc.580, 581 (current version at N.Y. Agriculture and Markets Law § 201-a (1972) (McKinney)) which made it a crime for: "[A]ny person, who with intent to defraud sells, or exposes for sale any meat preparation and falsely represents the same to be Kosher." *Id.* In upholding the constitutional validity of the statute, the Court stated: "[S]ince the statute requires specific intent to defraud in order to encounter their prohibitions, the hazard of prosecution which appellants fear loses whatever substantial foundation it might have in the absence of such a requirement." *Id.* at 502-03.

41. 325 U.S. 91 (1945).

42. *Id.* at 101. In *Screws*, the defendant, a county sheriff in Georgia, allegedly beat a negro prisoner to death while transporting him to the county jail. Screws was charged with violating § 20 of the Criminal Code, 18 U.S.C.A. § 52 (current version at 18 U.S.C. § 242 (1970)) which makes it a crime to "willfully subject" a person to deprivation of his civil rights while acting under color of state law. *Id.* Justice Douglas, in speaking for the majority stated: "[T]he requirement of a specific intent to do a prohibited act may avoid those consequences to the accused which may otherwise render a vague or indefinite statute invalid." *Id.*

43. *Id.* at 102.

"willfulness" as "bad faith or evil intent;"[44] or as possessing a "bad motive."[45] The Supreme Court of Florida has similarly defined "willfulness" as having an "unlawful intent."[46] The highest courts of Illinois[47] and Pennsylvania[48] have upheld the constitutional validity of child abuse statutes similar to Section 827.09(2) Florida Statutes against challenges for vagueness because the statutes required "willfulness" (scienter).[49]

Additionally, with respect to the term "culpable negligence," the court in *Joyce* noted that in the recent case of *State v. Green,*[50] another

44. United States v. Murdock, 290 U.S. 389, 398 (1933) (conduct is defined as criminal if one "willfully" fails to pay tax, to make a tax return, or to keep required tax records and furnish needed information).

45. Spies v. United States, 317 U.S. 492 (1943) (statute made it a felony to willfully attempt to evade a tax).

46. Chandler v. Kendrick, 108 Fla. 450, 146 So. 551 (1933).

47. People v. Vandiver, 51 Ill.2d 525, 283 N.E.2d 681 (1971). In *Vandiver,* the defendant allegedly beat his three-year-old stepdaughter. He was charged by information pursuant to ILL. REV. STAT. ch. 23, § 2354 (1969) which provides as follows:

> It shall be unlawful for any person having the care or custody of any child, willfully to cause or permit the life of such child to be endangered, or the health of such child to be injured, or willfully cause or permit such child to be placed in such a situation that its life or health may be endangered.

Id. at 682. The Illinois court also distinguished the statute on the basis that it required that the act be done "willfully." Citing Screws v. United States, 325 U.S. 91 (1945), the court stated: "Thus, the statute requires more than a mere voluntary doing of an act from which injury to health may result. This additional requirement of willfulness has been held to avoid uncertainty which may otherwise render a vague and indefinite statute invalid." 51 Ill.2d 526, 283 N.E.2d at 682.

48. Commonwealth v. Mack, 359 A.2d 770 (Pa. 1976). In *Mack,* the defendant was charged pursuant to a state statute which makes it a crime to endanger the welfare of children. *Id.* at 771. The statute was taken, with two minor changes, from the American Law Institute's Model Penal Code § 230.4 which provides: "A parent, guardian or other person supervising the welfare of a child under 18 commits a misdemeanor if he knowingly endangers the child's welfare by violating a duty of care, protection or support." *Id.* at n.2. In upholding the constitutional validity of the statute, the court observed that the phrase "endangers the welfare of a child" is not esoteric and is easily understood by members of the public. *Id.* at 772. The aforementioned statute is similar to § 827.04(2) FLA. STAT. (1975) in that both require that the prohibited conduct be done "knowingly." *See* note 2 *supra.*

49. *Id.*

50. 348 So.2d 3 (Fla. 1975). In *Green,* the defendant was alleged to have injured a person by discharging a pistol. He was charged by information pursuant to § 784.05 FLA. STAT. (1975). In the opinion, the court quoted the statute which provides:

> (1) Whoever, through culpable negligence, exposes another to personal injury shall be guilty of a misdemeanor of the second degree, punishable as provided in

criminal statute which required "culpable negligence" had withstood a constitutional attack for vagueness.[51]

The court also recognized that, in *Winters*, the language concerning necessary shelter had been faulted by the court for not providing sufficient guidelines for determining the degree of deprivation necessary to constitute a violation of the statute.[52] Justice Boyd, in his dissenting opinion in *Winters*, attacked the court's implication that the phrase "necessary" was vague and thus violative of due process.[53] It is apparent from the record that the trial court in Duval County may have relied upon this language in granting the appellee's motion to dismiss and in holding Section 827.04(2) Florida Statutes to have suffered the same defects as Section 827.05 Florida Statutes in *Winters*.[54] The court in *Joyce*, however, stated that the language in its opinion in *Winters* faulting the term "necessary" was dicta and formed no basis for its holding.[55]

The court reasoned in support of this contention that, if the language criticizing the term "necessary" shelter had been held to suffer from the constitutional infirmity of vagueness, then its prior decision in *Campbell v. State*[56] would have been addressed and expressly overruled

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§ 775.082, § 775.083, or § 775.084; (2) Whoever through culpable negligence inflicts actual personal injury on another shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

Id. at 4. The defendant argued that the general public does not understand the meaning of the term "culpable negligence" and therefore cannot know what acts are prohibited by the statute. The court defined "culpable negligence" as "[T]he omission of an act which a reasonably prudent person would do or the commission of an act which such a person would not do." 348 So.2d at 4. The court observed that members of the public would recognize that reckless acts, which create a risk of danger, were prohibited by law, whether or not they understood the meaning of culpable negligence. *Id.*

51. *Id.*

52. 361 So.2d 406 at 407.

53. 346 So.2d at 994. *See* State v. Joyce, 361 So.2d 406, 408 (Boyd, J., concurring specially).

54. *See* note 7 *supra.*

55. 361 So.2d at 407.

56. 240 So.2d 298 (Fla. 1970), *appeal dismissed*, 402 U.S. 936 (1971). In *Campbell*, the defendant allegedly whipped and beat his seven-year-old stepdaughter. Campbell was charged by information with violating § 828.04 FLA. STAT. (1969) (superseded by § 827.04 FLA. STAT. (1977) which provides as follows:

> Torturing or unlawfully punishing children—whoever tortures, torments cruelly or unlawfully punishes, or willfully with malice, wantonly or unlawfully deprives of necessary food, clothing, or shelter, any person under the age of sixteen (16) years, and whoever willfully with malice or wantonly torments or deprives of necessary sustenance or rainment, or unnecessarily or excessively chastizes or

in *Winters*. In *Campbell*, the court upheld the constitutional validity of the former child abuse statute,[57] which contained the phrase "unnecessarily or excessively chastizes" against a challenge for vagueness. The *Campbell* court stated: "Criminal laws are not to be considered vague simply because the conduct prohibited is described in general language."[58]

Next, the court dealt with appellee Hutcheson's contention that the term "materially endanger" was also unconstitutionally vague. The word "materially" was defined by the Court as "to an important degree" and "endanger" was defined as "to expose to danger."[59] In holding that the terms were not unconstitutionally vague, the court reasoned that the statute prohibits conduct which, in a significant way, permits the physical or mental health of a child to be exposed to danger.[60] The court then held that this language was sufficiently clear to inform men of common understanding of the conduct prohibited by the statute.[61]

Finally, the court held that Section 827.04(2) Florida Statutes is not unconstitutionally vague, indefinite and overbroad[62] and, in an effort to clarify its prior holding in *Winters*, the court once again emphasized that its criticism of the term "necessary" was dicta where inconsistent with its holding in *Joyce*.[63]

Justice Boyd, concurring specially, noted that he had dissented in *Winters* because of the court's treatment of the term "necessary" and also stated: "I am happy to see the Court, today, recede from language in *Winters* which, at the very least, intimates that in matters of child

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mutilates his child or ward, or whoever willfully with malice or wantonly deprives such child or ward of necessary treatment and attention is guilty of a felony, and upon conviction thereof shall be punished by imprisonment not exceeding two years or by fine not exceeding two thousand dollars ($2,000.00) or both.

Id. at 299. The court held that the words complained of "unnecessarily or excessively" were not unconstitutionally vague when considered with the entire text of the statute. In Winters v. New York, 333 U.S. 507 (1948), the United States Supreme Court held that where a statute is uncertain, the entire text of the statute may provide the standard of certainty needed to defeat a constitutional challenge for vagueness. *See also* State v. Lindsey, 284 So.2d 377 (Fla. 1973).

57. 240 So.2d at 299.

58. *Id.*

59. 361 So.2d at 408. The court cited WEBSTERS NEW 20th CENTURY DICTIONARY (2d ed. 1957) when defining both terms.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

abuse a standard of what is 'necessary' for a child's welfare is too vague to apprise the public of unlawful conduct."[64]

In *State v. Joyce,* the Supreme Court of Florida implicitly recognized that "there are some areas of human conduct where legislatures cannot establish standards with great precision."[65] Child abuse is one such area. There is growing concern among the general public with respect to acts of child abuse. Public policy demands that children be protected from abuse. However, the specific acts which constitute child abuse are often difficult to articulate in statutory terms. The United States Supreme Court has interpreted the Constitution to forbid prosecution pursuant to criminal statutes which are vague. In *Joyce* the court left intact an effective tool with which the state protects the welfare of its children. The court also hastily clarified its misleading and ambiguous decision in *Winters* in order to prevent other courts from mistakenly following in the steps of the Orange and Duval County Courts. The Supreme Court of Florida, while not addressing the issue of whether a person can be convicted of violating Section 827.04(2) Florida Statutes by culpable negligence alone, has determined that if the acts of child abuse are done willfully, the constitutional requirements are satisfied.

Edward J. Culhan, Jr.

64. *Id.* (Boyd, J., concurring specially with opinion).
65. See *Smith v. Goguen,* 415 U.S. 556, 581 (1974).