DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

MATTHEW TYLER MEINECKE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-2880

November 30, 2022

Appeal from the County Court for Lee County; Josephine M. Gagliardi, Judge.

Alexander Bumbu, Pacific Justice Institute – Florida Office, Miami, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Kiersten E. Jensen, Assistant Attorney General, Tampa; and Jonathan S. Tannen, Assistant Attorney General, Tampa (substituted as counsel of record), for Appellee.

SLEET, Judge.

Matthew Tyler Meinecke challenges his convictions and sentences for trespass within a school safety zone and disruption of school function. We affirm and write only to address his arguments challenging the constitutionality of the statutes under which he was convicted.[1]

On February 1, 2019, during the time that students were being released for dismissal, Meinecke was standing on a sidewalk that directly abuts the campus property of Fort Myers High School. While there, Meinecke played loud music and shouted religious messages through a bullhorn at students as they exited the school. His actions caused a delay in the orderly dismissal of the students because many students stopped to record him with their phones and/or altered their path of exit to go around him and some parents in the carline stopped to watch him.

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[1] Meinecke also argued that under the authority of *Gray v. Kohl*, 568 F. Supp. 2d 1378 (S.D. Fla. 2008), the State of Florida and its officers are permanently enjoined from enforcing section 810.0975(2)(b), Florida Statutes (2019), that the State's evidence was insufficient to prove all the elements of the disruption of school function charge, and that the trial court erred in denying his request for a special jury instruction. We find no merit in any of these arguments and reject them without further comment.

Multiple school administration employees radioed the school resource officer to investigate. The officer approached Meinecke, advised him that he was "disrupting a school function," and indicated that he had to leave. Meinecke responded that he did not have to leave and that he had "done it before," and he continued to shout religious messages at the students. The officer arrested Meinecke for trespass within a school safety zone and disruption of school function.

Prior to trial, Meinecke filed three motions to dismiss the charges, challenging the constitutionality of sections 810.0975(2)(b) and 877.13(1)(a), Florida Statutes (2019), on vagueness and overbreadth grounds. The trial court denied the motions, and Meinecke was subsequently convicted by a jury.

Constitutional Challenges

"A trial court's decision regarding the constitutionality of a statute is reviewed de novo as it presents a pure question of law." *Montgomery v. State*, 69 So. 3d 1023, 1026 (Fla. 5th DCA 2011) (citing *Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n*, 838 So. 2d 492, 500 (Fla. 2003)). "There is a strong presumption that a statute is constitutionally valid, and all

reasonable doubts about the statute's validity must be resolved in favor of constitutionality." *Id.* (citing *DuFresne v. State*, 826 So. 2d 272, 274 (Fla. 2002)).

Vagueness Challenge to Section 810.0975(2)(b)1

> In order for a criminal statute to withstand a void-for-vagueness challenge, the language of the statute must provide adequate notice of the conduct it prohibits when measured by common understanding and practice. "The language of a statute must 'provide a definite warning of what conduct' is required or prohibited, 'measured by common understanding and practice.' "

State v. Brake, 796 So. 2d 522, 527 (Fla. 2001) (citations omitted) (quoting *Warren v. State*, 572 So. 2d 1376, 1377 (Fla. 1991)). "A statute which does not give people of ordinary intelligence fair notice of what constitutes forbidden conduct is vague." *Warren*, 572 So. 2d at 1377. "[A]ny doubt as to a statute's validity that is raised in a vagueness challenge should be resolved 'in favor of the citizen and against the state.' " *Brake*, 796 So. 2d at 527 (quoting *Brown v. State*, 629 So. 2d 841, 843 (Fla. 1994)).

Section 810.0975 is titled "School safety zones; definition; trespass prohibited; penalty," and subsection (2)(b)1 of the statute provides as follows:

> During the period from 1 hour prior to the start of a school session until 1 hour after the conclusion of a school session, it is unlawful for any person to enter the premises or trespass within a school safety zone or to remain on such premises or within such school safety zone when that person does not have legitimate business in the school safety zone or any other authorization, license, or invitation to enter or remain in the school safety zone.

(Emphasis added.) "[T]he term 'school safety zone' means in, on, or within 500 feet of any real property owned by or leased to any public or private elementary, middle, or high school or school board and used for elementary, middle, or high school education." § 810.0975(1).

Meinecke maintains that section 810.0975(2)(b) is unconstitutionally vague because it does not define the term "legitimate business." He argues that the phrase "legitimate business" could result in enforcement of the statute against purely innocent, inadvertent, and constitutionally protected conduct in public and quasi-public areas within school safety zones.

The Third District rejected a similar argument in *A.C. v. State*, 538 So. 2d 136, 137 (Fla. 3d DCA 1989). At issue in that case was section 228.091, Florida Statutes (1987), which has been renumbered as section 810.097. The version of section 228.091

that was at issue in *A.C.* was titled "Trespass upon grounds or facilities of a school; penalties; and arrest" and provided that "[a]ny person who . . . [d]oes not have legitimate business on the campus . . . and who enters or remains upon the campus or other facility of such school" after being told not to enter or to leave by an employee as set forth in the statute commits a trespass. *Id.* at 137 n.1 (quoting § 228.091(2)).

The Third District held that the phrase "legitimate business on the campus," "when read in context, has an ordinary meaning which is reasonably understandable to a person of ordinary intelligence, to wit: that one entering or remaining on a school campus must lack any purpose for being there which is connected with the operation of the school." *Id.*; *see also E.W. v. State*, 873 So. 2d 485, 487 (Fla. 1st DCA 2004) (interpreting the term "legitimate business on the campus" as used in section 810.097 and holding that it "refers to any purpose for being there which is connected with the operation of the school"); *A.S.P. v. State*, 964 So. 2d 211, 212 (Fla. 2d DCA 2007) (interpreting the term "legitimate business on the campus" as used in section 810.097 and concluding that A.S.P. was at school "on the day in question for the

legitimate business of obtaining his scores on a test he had taken to enter a GED program" (citing *E.W.*, 873 So. 2d at 487)).

We agree with the Third District's reasoning in *A.C.* and apply it here to conclude that the term "legitimate business in the school safety zone" that appears in section 810.0975(2)(b)—like the term "legitimate business on the campus" that appeared in section 228.091 and now appears in section 810.097—"is sufficiently definite for constitutional purposes to describe, albeit in general terms, the type of activity which a person must *lack* in order to expose oneself to possible criminal liability under the statute." *A.C.*, 538 So. 2d at 137. When read in context, the term "legitimate business in a school safety zone" as used in section 810.0975(2)(b) can be understood by a person of ordinary intelligence to mean "that one entering or remaining [in a school safety zone] must lack any purpose for being there which is connected with the operation of" any of the areas included within the school safety zone. *Id.*; *see also State v. Hagan*, 387 So. 2d 943, 945 (Fla. 1980) ("[W]here a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense.").

Meinecke relies on *Gray v. Kohl*, 568 F. Supp. 2d 1378, 1388 (S.D. Fla. 2008), wherein the United States District Court distinguished the term "legitimate business" in section 810.0975(2)(b) from use of the term in section 810.097 because the latter is modified by the words "on the campus." The *Gray* court concluded that "[section] 810.0975(2)(b) has no language, such as 'on [the] campus,' that limits the scope of 'legitimate business.' " *Id.* The *Gray* court went on to state:

> Therefore, no inference limiting the scope of "legitimate business" to any purpose connected to the purpose of the school is warranted. Even if such an inference could be extrapolated from the text of the statute, to do so would increase the sweep of the statute by criminalizing the presence of any non-exempt [sic] person within 500 feet of school property who enters or remains in the area with no reason connected to the purpose *of the school*.

Id. (emphasis added).

This reading of section 810.0975(2)(b) is far too narrow and completely ignores the plain wording of the statute. Just like section 810.097 addresses trespasses on a school campus and thus requires an individual to have "legitimate business on the campus" to avoid criminal liability, section 810.0975(2)(b) addresses trespasses in a statutorily-defined school safety zone and thus

requires an individual to have "legitimate business in the school safety zone" to avoid criminal liability. The *Gray* court improperly excises the words "in the school safety zone" from the statute. *See State v. Bodden*, 877 So. 2d 680, 686 (Fla. 2004) ("[W]ords in a statute are not to be construed as superfluous if a reasonable construction exists that gives effect to all words."). As such, we decline Meinecke's invitation to adopt *Gray*'s vagueness analysis.[2]

Meinecke also argues that section 810.0975(2)(b) is vague because it does not define from whom "other authorization, license, or invitation" must be obtained. Again, we point out that "where a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense." *Hagan*, 387 So. 2d at 945. We conclude that when read in context, the words "authorization, license, or invitation" can be understood by a person of ordinary intelligence to mean that approval to be present must be obtained by a person with authority over the particular area of the school safety zone at issue.

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[2] "[A] federal district or appeals court ruling that a Florida statute is unconstitutional is not binding on [Florida state] [c]ourt[s]." *Taylor v. State*, 120 So. 3d 540, 552 (Fla. 2013).

Overbreadth Challenge to Section 810.0975(2)(b)

Meinecke also argues on appeal that section 810.0975(2)(b) is overbroad both facially and as applied. "A statute is overbroad when it criminalizes legal as well as illegal activity and has a chilling effect on First Amendment freedoms." *K.L.J. v. State*, 581 So. 2d 920, 921 (Fla. 1st DCA 1991) (citing *Clark v. State*, 395 So. 2d 525 (Fla. 1981)).

> Under the First Amendment facial overbreadth doctrine, "[l]itigants . . . are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression."

Martin v. State, 259 So. 3d 733, 739 (Fla. 2018) (alteration in original) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973)). However, "[p]rior to finding a law overbroad on its face, a court should 'first determine that the regulation is not "susceptible to a reasonable limiting construction." ' " *Romero v. State*, 314 So. 3d 699, 702-03 (Fla. 3d DCA 2021) (alteration in original) (quoting *O.P-G. v. State*, 290 So. 3d 950, 959 (Fla. 3d DCA 2019)); *see also Figueroa-Santiago v. State*, 116 So. 3d 585, 588 (Fla. 2d DCA 2013) ("When addressing a facial challenge to a statute, courts should

construe the statute using a construction that is constitutional whenever it is possible to do so without rewriting the statute.").

Meinecke maintains that on its face the statute regulates an individual's constitutionally protected right to free speech in traditionally public areas such as sidewalks, streets, residential neighborhoods, public parks, and hospitals. Further, he asserts that the State's compelling interest can be accomplished using less restrictive means that do not infringe upon constitutional rights.

However, section 810.0975(2)(b) does not regulate speech or expression. Rather it addresses the presence in a school safety zone by someone who does not have legitimate business connected to the lawful function of the areas within the school safety zone or other authorization to be there. "This statute is designed to primarily regulate conduct (i.e.[,] trespass within a school safety zone) rather than pure speech." *J.L.S. v. State*, 947 So. 2d 641, 645 (Fla. 3d DCA 2007) (rejecting a facial overbreadth challenge to section 810.0975(2)(b) that is nearly identical to the one raised here by Meinecke). Such conduct is not protected by the First Amendment as the act of merely being present within the school safety zone—with or without legitimate business or other

authorization—is not itself an expressive act intended to communicate. *Cf. id.* at 644 ("The Constitutions protect not only speech and the written word, but also conduct *intended to communicate*." (emphasis added) (quoting *Wyche v. State*, 619 So. 2d 231, 233 (Fla. 1993))). "Rarely, if ever, will an overbreadth challenge succeed against a law or regulation that is not specifically addressed to speech or to conduct necessarily associated with speech (such as picketing or demonstrating)." *Virginia v. Hicks*, 539 U.S. 113, 124 (2003).

But "a statute is facially invalid if it prohibits a substantial amount of protected speech. . . . In order to maintain an appropriate balance, we [must] vigorously enforce[] the requirement that a statute's overbreadth be *substantial*, not only in an absolute sense, but also relative to the statute's plainly legitimate sweep." *Martin*, 259 So. 3d at 739-40 (quoting *United States v. Williams*, 553 U.S. 285, 292 (2008)). Here, the burden is on Meinecke to establish "from both the text of the statute and from actual facts that substantial overbreadth exists." *J.L.S.*, 947 So. 2d at 645 (citing *Hicks*, 539 U.S. at 122).

Like the Third District did in *J.L.S.*, we too conclude that Meinecke has not met this burden. *See id.* In *J.L.S.*, the Third District rejected the appellant's argument that section 810.0975(2)(b) "is impermissibly overbroad because it impedes the right of speech, association, movement, and peaceful political and/or social assembly within the designated school zone." *Id.* The court reasoned that "[u]nder the plain language of this statute, . . . a person is not in violation if that person (1) has legitimate business in the school zone[] or (2) otherwise has authorization, license, or invitation to enter or remain in the school zone." *Id.* Thus, people seeking to engage in constitutionally protected speech or conduct within the school safety zone need only obtain authorization to do so. *Id.* But "the fact that a person may be exercising [F]irst [A]mendment rights while violating otherwise proper restrictions upon his or her entry to a public facility does not insulate that person from prosecution for trespass." *Id.*

"The purpose of this statute is clearly the protection of school children. . . . [T]his is a compelling governmental interest." *Id.* In furtherance of that compelling interest, the statute limits who can be present in and around schools when students are likely to be

present to individuals who have legitimate business in the school safety zone or other authorization. Accordingly, we conclude that section 810.0975(2)(b) is not facially overbroad.

Meinecke also argues that section 810.0975(2)(b) is overbroad as applied to him specifically because it criminalizes his right to free speech on a public sidewalk. We disagree.

In order to maintain his challenge that the statute is overbroad as applied, Meinecke "is required to establish that [his] own admitted conduct was wholly innocent and its proscription not supported by any rational relationship to a proper governmental objective." *State v. Ashcraft*, 378 So. 2d 284, 285 (Fla. 1979). But Meinecke was in the school safety zone at the statutorily-prohibited time without legitimate business related to the school safety zone or other authorization to be there. Meinecke's exercising his First Amendment rights while there does not save him from prosecution for trespass. *See J.L.S.*, 947 So. 2d at 645.

Nevertheless, "[w]here the asserted overbreadth of a law may have a chilling effect on the exercise of [F]irst [A]mendment freedoms, a challenge will be permitted even by one who does not show that his own conduct is innocent and not subject to being

regulated by a narrowly drawn statute." *Ashcraft*, 378 So. 2d at 285. But such is not the case here, where the challenged statute criminalizes nonexpressive conduct, not speech, and does not substantially burden First Amendment rights relative to the scope of the statute's "plainly legitimate applications." *Hicks*, 539 U.S. at 120. Under the statute, "it is [an individual]'s nonexpressive *conduct*—his entry in violation of the [statute]—not his speech, for which he is punished as a trespasser." *Id.* at 123. Meinecke was not arrested because of the words he was saying; he was arrested based on his presence in the school safety zone during the hour of school dismissal absent legitimate business or other authorization to be there. *See J.L.S.*, 947 So. 2d at 645. And "[t]he proscriptions of the statute . . . apply to all persons who enter school safety zones, not just those who seek to engage in First Amendment activities." *Id.*

Furthermore, regulation of who can and cannot enter a school safety zone when school children are present is rationally related to the purpose of section 810.0975(2)(b), which is the "compelling

governmental interest" of "protecti[ng] . . . school children." *J.L.S.*, 947 So. 2d at 645.[3]

As-applied overbreadth challenge to section 877.13(1)(a)

Meinecke next argues that section 877.13(1)(a), under which he was charged with disrupting school function, is also overbroad as applied. That section makes it unlawful to "knowingly . . . disrupt or interfere with the lawful administration or functions of any educational institution, school board, or activity on school board property in this state." *Id.* Meinecke maintains that the law criminalizes his First Amendment-protected speech. We reject this argument for the same reasons we rejected Meinecke's as-applied challenge to section 810.0975(2)(b).

The record reflects that Meinecke was on a sidewalk that abuts school property during school dismissal and that he was

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[3] For this same reason, Meinecke's alternative argument—that even if found to be constitutional, section 810.0975(2)(b) should be read to include within the term "legitimate business in a school safety zone" the exercise of free speech in the public fora encompassed by the school safety zone—must also fail. *See Grayned v. City of Rockford*, 408 U.S. 104, 115 (1972) ("[R]easonable 'time, place[,] and manner' regulations may be necessary to further significant governmental interests, and are permitted.").

playing loud music and shouting through a bullhorn at the students. Meinecke's motions to dismiss acknowledged that he intentionally confronted each student as he or she exited the campus. He wanted to draw attention to himself so his message would be conveyed, and consequently, he drew the attention of students, parents, and school personnel away from the safe dismissal of school children. It was his conduct, not the content of his message, that caused the disruption of school administration or functions and resulted in his arrest. *See Hicks*, 539 U.S. at 123 ("[I]t is [his] nonexpressive *conduct* . . . not his speech, for which he is punished. . . .").

"The obvious intent of section 877.13 is to ensure that the educational institutions and their administrators are free to perform their lawful functions without undue or unwarranted interference or disruption from others." *M.C. v. State*, 695 So. 2d 477, 480 (Fla. 3d DCA 1997). The statute's proscription bears a rational relationship to that governmental objective. *See Ashcraft*, 378 So. 2d at 285 (holding that to succeed on an as-applied overbreadth challenge, an individual must establish that the statute's proscription is "not supported by any rational relationship to a

proper governmental objective"); *see also Grayned v. City of Rockford*, 408 U.S. 104, 118 (1972) ("[E]xpressive activity may be prohibited if it 'materially disrupts classwork or involves substantial disorder or invasion of the rights of others.' " (quoting *Tinker v. Des Moines Sch. Dist.*, 393 U.S. 503, 513 (1969))).

For the reasons discussed, we reject Meinecke's constitutional challenges of sections 810.0975(2)(b) and 877.13(1)(a) and affirm his convictions and sentences.

Affirmed.

KELLY and KHOUZAM, JJ., Concur.

Opinion subject to revision prior to official publication.