

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

M.R.,)	
)	
Appellant,)	
)	
v.)	Case No. 2D99-4040
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
)	
_____)	

Opinion filed August 16, 2002.

Appeal from the Circuit Court for
Hillsborough County, Perry Little, Judge.

James Marion Moorman, Public Defender,
Bartow, and Brad Permar, Assistant Public
Defender, Bartow, for Appellant.

Robert A. Butterworth, Attorney General,
Tallahassee, and Michael J. Neimand,
Assistant Attorney General, Tampa, for
Appellee.

DAVIS, Judge.

ON REMAND FROM THE SUPREME COURT OF FLORIDA

M.R. appeals the court's adjudication of delinquency for violating Tampa's
juvenile curfew ordinance. See Tampa, Fla. Code § 14-26(c) (1996). He argues that

the ordinance is unconstitutional. This court previously rejected his argument and affirmed the trial court's determination that the ordinance was constitutional. See M.R. v. State, 777 So. 2d 995 (Fla. 2d DCA 2000), quashed, 788 So. 2d 957 (Fla. 2001). In affirming the trial court, this court applied the heightened scrutiny test. See State v. T.M., 761 So. 2d 1140 (Fla. 2d DCA 2000), quashed, 784 So. 2d 442 (Fla. 2001). However, this court also certified two questions to the Florida Supreme Court as being of great public importance:

WHAT LEVEL OF SCRUTINY MUST A COURT APPLY WHEN REVIEWING THE CONSTITUTIONALITY OF A JUVENILE CURFEW ORDINANCE?

WHETHER THE TAMPA JUVENILE CURFEW ORDINANCE IS CONSTITUTIONAL?

Upon review, the Florida Supreme Court answered the first question by directing that the proper test for determining the constitutionality of a juvenile curfew ordinance is strict scrutiny. Accordingly, without answering the second question, the supreme court remanded this matter back to this court for application of the strict scrutiny test. M.R. v. State, 788 So. 2d 957 (Fla. 2001).

For the reasons stated in J.P. v. State, 2D97-1736 (Fla. 2d DCA Aug. 16, 2002), we find that the Tampa ordinance is unconstitutional and reverse the adjudication of delinquency. However, we again certify to the Florida Supreme Court the following questions to be of great public importance:

WHETHER THE TAMPA JUVENILE CURFEW ORDINANCE IS CONSTITUTIONAL?

Reversed.

CASANUEVA, J., Conkurs.

NORTHCUTT, J., Conkurs specially.

NORTHCUTT, Judge, Specially concurring.

I concur in my colleagues' majority opinion with one reservation. In J.P. v. State, 2D97-1736 (Fla. 2d DCA Aug. 16, 2002), on which today's ruling is based, I wrote a concurring opinion stressing that in my view it is an open question whether the city's interest in protecting children's welfare can ever justify a blanket prohibition against them leaving their homes during specified hours. Thus, as I did in that case, I agree that this ordinance is unconstitutional for at least the reasons described in the J.P. majority opinion.