

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

STATE OF FLORIDA,

Appellant,

v.

TALVON ACKERMAN, CALEB HELM,  
WILLIAM ICKES, VERNON JOHNSON,  
TIMOTHY KELLEHER, and ROSE  
MAYES,

Appellees.

Case No. 2D11-4997

Opinion filed October 24, 2012.

Appeal from the Circuit Court for Manatee  
County; Scott M. Brownell, Judge.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Elba Caridad Martin-  
Schomaker, Assistant Attorney General,  
Tampa, for Appellant.

James Marion Moorman, Public Defender,  
and Matthew D. Bernstein, Assistant Public  
Defender, Bartow, for Appellees.

VILLANTI, Judge.

The State appeals the dismissal of certain criminal charges filed against  
Talvon Ackerman, Caleb Helm, William Ickes, Vernon Johnson, Timothy Kelleher, and

Rose Mayes. Each of these defendants had at least one charge filed against them for delivery, sale, and/or possession of controlled substances under section 893.13, Florida Statutes,<sup>1</sup> and each of these defendants sought dismissal of those charges based on the alleged facial unconstitutionality of section 893.13.

The trial court dismissed the charges at issue based on its finding that section 893.13 was unconstitutional pursuant to Shelton v. Secretary, Department of Corrections, 802 F. Supp. 2d 1289 (M.D. Fla. 2011), rev'd, 691 F.3d 1348 (11th Cir. 2012). Because the Florida Supreme Court upheld the constitutionality of section 893.13 in State v. Adkins, 37 Fla. L. Weekly S449 (Fla. July 12, 2012), we reverse the order of dismissal and remand with instructions that the trial court reinstate the charges as to each of these defendants.

Reversed and remanded for further proceedings.

SILBERMAN, C.J., and CRENSHAW, J., Concur.

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<sup>1</sup>Defendant Johnson was charged under section 893.13, Florida Statutes (2010), while the remaining defendants were charged under section 893.13, Florida Statutes (2011). The applicable language of the two statutes is the same.