## 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.	) Case No. 2D11-5616
WILLIE LEE, ROBERT MACIALEK, and JONATHAN McLEOD, a/k/a JONATHON G. McLEOD,	) ) )
Appellees.	) )

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 Willie Lee, Robert Macialek, and Jonathan McLeod. Each of these defendants had a

charge filed against them for possession of controlled substances under section 893.13, Florida Statutes (2011), 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.