

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Appellant,

vs.

ALEJANDRO NACHER,

Appellee.

CASE NO. CJAP 09-51

County Court Case No. 2009-CT-6976-O/A

Appeal from the County Court
of Orange County, Florida

Honorable Jerry L. Brewer,
County Court Judge

Esther M. Whitehead, Assistant State Attorney
for Appellant

Chelsea Simmons, Assistant Public Defender
for Appellee

Before Powell, Davis, and T. Turner, J. J.

FINAL ORDER REVERSING LOWER COURT

The trial court granted defendant/appellant's motion to dismiss, holding that *section 316.191, Florida Statutes*, under which appellant was charged, was unconstitutionally vague and overbroad. In so doing, the trial court relied on *State v. Wells*, 965 So. 2d 834 (Fla. 4th DCA 2007). The State appeals, citing *Reaves v. State*, 979 So. 2d 1066 (Fla. 1st DCA 2008), which is directly to the contrary.

Where, as here, when a conflict arises between two District Courts of Appeal in which a trial court is not located, the trial court is free to find either case persuasive and rule as it sees

fit. See *Pardo v. State*, 596 So. 2d 665 (Fla. 1992). We choose to align ourselves with the First District in *Reaves* and hold that *section 316.191, Florida Statutes*, is not unconstitutionally vague.

Further, we hold that *section 316.191, Florida Statutes*, is not unconstitutionally overbroad. See *Wells*, 965 So. 2d at 834.

Consequently, the order appealed from is

REVERSED and this case is **REMANDED** for further proceedings.

DONE and ORDERED at Orlando, Florida this 8th day of August, 2010.

/S/ _____
Rom W. Powell, Senior Judge

/S/ _____
Jennifer Davis, Circuit Court Judge

/S/ _____
Thomas W. Turner, Circuit Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished to Esther M. Whitehead, Assistant State Attorney, attorney for appellant, 415 N. Orange Avenue, Orlando, Florida 32801, and to Chelsea Simmons, Assistant Public Defender, attorney for appellee, 435 N. Orange Avenue, Suite 400, Orlando, Florida 32801, by mail, this 8th day of August, 2010.

/S/ _____
Judicial Assistant