

IN THE SUPREME COURT OF FLORIDA

FILED
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MAY 22 1999

STACY BURCH,
KENNY MIKE BROWN,

Petitioners,

vs.

STATE OF FLORIDA,

Respondent.

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CASE NO. 73,826

PETITIONERS' REPLY BRIEF ON THE MERITS

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<u>Florida Constitution (1968)</u> Article III, Section 6	4,5,7

PRELIMINARY STATEMENT

Respondent, the State of Florida, the prosecuting authority below, will be referred to as "Respondent" or the "State". Petitioner, Kenny Mike Brown, the criminal defendant below, will be referred to as "Petitioner Brown". Petitioner Burch, the criminal defendant below will be referred to as "Petitioner Burch".

References to the two-volume record on appeal in the Brown case (DCA Case No. 88-930) will be designated "BR". References to the two-volume record on appeal in the Burch case (DCA Case No. 88-904) will be designated "R".

Respondent-State's Answer Brief on the Merits will be referred to as "RB".

STATEMENT OF THE CASE AND FACTS

Petitioners will rely on their Statement of the Case and Facts as found in their Brief on the Merits.

ARGUMENT

POINT ■

THE TRIAL COURT DID NOT ERR IN GRANTING
PETITIONERS' MOTION TO DECLARE SECTION 893.-
13(1)(e) UNCONSTITUTIONAL ON ITS FACE AND AS
APPLIED

A. Section 893.13(1)(e) Violates Article 111, Section 6,
Florida Constitution.

Section 893.13(1)(e), Florida Statutes (1987) was passed as part of the "Crime Prevention and Control Act," Chapter 87-243 (Section 4), Laws of Florida. This act contains seventy-six (76) sections, 16 separate subject matters¹ and three (3) short titles.² Thus the nature of Chapter 87-243 as well as the

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1. Drug Abuse Crimes
 2. Education and Drug Abuse
 3. Conveyances: forfeiture, title registration
 4. Vessel operation crimes
 5. Money Laundering Control Act
 6. Planting a "hoax bomb"
 7. Pawnbrokers and stolen property
 8. Entrapment
 9. Attempted burglary
 10. Witness tampering
 11. Appeal by state
 12. Judgment costs at sentencing
 13. Bookmaking
 14. Operating chop shops
 15. Crime prevention studies, training
 16. Safe Neighborhood Act

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1. "Crime Prevention and Control Act"
 2. "Money Laundering Control Act," Sections 30-36.
 3. "Safe Neighborhoods Act," Sections 55-73.

manner of its passage through the legislature demonstrate a clear violation of the "one subject rule" as embodied in Article 111, Section 6 of the Florida Constitution (1968).

In Blankenship et. al. v. State, 14 F.L.W. 950 (Fla. 2d DCA April 12, 1989), the Second District rejected the defendants' claim that Section 893.13(1)(e) violated the one subject rule. In so doing, the majority indicated that it agreed with the decision of the Fourth District in State v. Burch, 14 F.L.W. 382 (Fla. 4th DCA Feb. 8, 1989).

However Judge Hall dissented on this constitutional issue stating:

... I respectfully disagree with the majority and the decision of the Fourth District Court of Appeal in State v. Burch 14 F.L.W. 382 (Fla. 4th DCA Feb. 8, 1989), holding that chapter 87-243, Laws of Florida, does not violate article 111, section 6 of the Constitution of the State of Florida. Section 6 provides that "[e]very law shall embrace but one subject and matter properly connected therewith."

The seventy-six sections of chapter 87-243 cover sixteen separate subjects ranging from drug abuse crimes and hoax bombs to witness tampering.

As our supreme court pointed out in Bunnell v. State, 453 So.2d 808 (Fla. 1984), where the subjects of the different sections of an act have no cogent relationship and the

objects of the sections are separate and disassociated, the enactment of the act is in violation of the one subject provisions of article 111, section 6 of the Florida Constitution.

■ would, therefore, find chapter 87-243 unconstitutional in that it includes more than one subject within its provisions.

Id. at 951.

As indicated by Judge Hall, Chapter 87-243 covers sixteen (16) separate subjects ranging from money laundering to drug abuse crimes, vessel D.U.I. to hoax bombs, the establishment of safe neighborhoods to bookmaking, the outlawing of chop shops to granting the State of Florida a right to appeal a trial court's order granting a defendant's motion for judgment of acquittal after a jury verdict in a criminal case. On the authority of the unanimous decision of Bunnell v. State, 453 So.2d 808 (Fla. 1984), Chapter 87-243 is unconstitutional in that it includes more than one subject within its provision.

Respondent-State blithely proclaims that the one subject of this multi-subject legislation is alternatively "Crime Prevention and Control" (RB p.5), "controlling crime" or better still "fighting crime." (RB p.10). In Respondent's view, if an act has a title it passes constitutional muster under Article 111, Section 6. Rut the courts have ruled that a broad, general

concept may not be considered a single subject or the constitutional mandate would become meaningless. This Court in Bunnell and the Fifth District in Williams v. State, 459 So.2d 319, 320 (Fla. 5th DCA 1984), app. dismissed, State v. Williams, 458 So.2d 274 (Fla. 1984), rejected the contention that many separate matters maybe included together in one bill if all relate "somehow" or "someway" to a extremely broad general concept such as "criminal justice" or "crime prevention and control" as argued by the State in those cases. This requirement advanced by the State-Respondent should again be flatly rejected as this Court did in Bunnell.

Respondent-State along with the Fourth District in this cause relied almost exclusively on the Court's decision in Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987) which dealt with non-criminal legislation to counter the argument that chapter 87-243 does not violate the "single subject rule." This reliance is entirely misplaced.

In Smith, this Court did not articulate or establish a new test or standard to determine whether a particular legislative act violates Article 111, Section 6 of our constitution. Rather

this Court expressly relied on the test as found in State v. Canova, 94 So.2d 181, 184 (Fla. 1957) which in turn was based on the prior decision of this Court. Id. at 1087. There is no "common sense" test as suggested by the Fourth District in its opinion³ which has replaced these fundamental principles.

Further in Smith, this Court relied primarily on two cases that rejected Article 111, Section 6 challenges to tort-insurance legislative enactments i.e. State v. Lee, 356 So.2d 276 (Fla. 1978) and Chenoweth v. Kemp, 396 So.2d 1122 (Fla. 1981). However the criminal case directly on point with the instant case, Bunnell v. State, supra was decided well after this Court's decision in Lee and Chenoweth. The "time" distinction advanced by Respondent-State to circumvent the clear holding of Bunnell should therefore be rejected out of hand.

Article 111, Section 6 is an extremely important check on the legislative power. "The purpose of the requirement that each law embrace only one subject and matter properly connected with it is to prevent subterfuge, surprise, 'hodge-podge' and log

³ Judge Letts writing for the Fourth District stated: "Smith was decided in 1987, while Bunnell was decided in 1984. In accordance with Smith and our version of "common sense," referred to in Smith, we find that Chapter 87-243 does not violate the one subject rule." State v. Burch, supra at 386.

rolling in legislation." Santos v. State, 380 So.2d 1284, 1285 (Fla. 1980). The courts of our State must balance the deference due the legislative branch with the duty to protect our State Constitution and proper governmental process. Here there is a clear violation of the constitutional requirement that each enactment be limited to one single subject. Where legislation fails the Article 111, section 6 "one subject" rule, the courts must strike it down.

As to the other grounds advanced by Petitioners to declare section 893.13(1)(e) unconstitutional, Petitioners rely on their arguments as contained in their Brief on the Merits.

POINT II

THE TRIAL DID NOT ERR IN DISMISSING THE CHARGE FILED AGAINST PETITIONER BROWN ON THE ALTERNATIVE GROUND THAT THE MISCONDUCT BY THE POLICE IN THE PROSECUTION OF THIS MATTER ROSE TO THE LEVEL OF ENTRAPMENT AS A MATTER OF LAW OR A VIOLATION OF THE DUE PROCESS DEFENSE

Petitioner Brown relies on his argument under this point as found in Petitioners' Brief on the Merits.

CONCLUSION

Rased upon the arguments contained herein Petitioners respectfully request this Honorable Court to reverse the decision of the Fourth District Court of Appeal and declare section 893.13 (1)(e) unconstitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE

■ HEREBY CERTIFY that a copy hereof has been furnished to John Tiedemann, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401 by courier this 19th day of May, 1989.

