

IN THE SUPREME COURT OF FLORIDA

FILED

S. D. J. WHITE

JUN 19 1989

CLERK, SUPREME COURT

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Deputy Clerk

RUTH ANN BLANKENSHIP, et. al.,:

Petitioners,

vs ■

Case No. 74,176

STATE OF FLORIDA,

Respondent.

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

INITIAL BRIEF OF PETITIONERS ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

The case histories and facts of the cases here consolidated are identical to the extent pertinent to the issues raised herein.

In late 1987 and early 1988, the State of Florida filed informations in the Circuit Court for Polk County which included one charge against each Petitioner of purchase of cocaine in violation of section 893.13, Florida Statutes (1987). Petitioners Byrd, Grabowski, Granger, Land, Lockett, Randall, Ray and Stewart were additionally charged with possession of cocaine with intent to purchase. The remaining Petitioners were additionally charged instead with simple possession of cocaine. Some Petitioners also had additional charges not pertinent to this Petition. All of these offenses allegedly occurred subsequent to October 1, 1987, the effective date of Chapter 87-243, Laws of Florida.

Petitioners each filed a Motion to Dismiss the charges of purchase of cocaine and, where applicable, possession of cocaine with intent to purchase (R8-28).¹ The motions are based on the unconstitutionality of Chapter 87-243. A hearing on the motions was held February 15, 1988 (R203-223). The trial court denied the motion (R225-228).

¹The record numbers cited correspond to the record of the first named Petitioner, Ruth Ann Blankenship. In the interest of avoiding confusion in this consolidated Petition, reference to the record numbers of the records of the other Petitioners is omitted. Certain other references to record numbers have also been omitted in this brief for the same reason.

Petitioners each entered pleas of nolo contendere, reserving the right to appeal the denial of the Motion to Dismiss. The trial court sentenced Petitioner Massey to eighteen (18) months prison, while the other Petitioners were placed on probation, some with conditions to serve county jail terms.

Petitioners each filed timely notices of appeal with the District Court of Appeal, Second District. Petitioners were each adjudged to be insolvent, and the public defender was designated to represent each Petitioner on appeal. In each of these cases, the District Court of Appeal, Second District, affirmed the order of the trial court denying the Motion to Dismiss. The district court certified to the supreme court a question of great importance.

SUMMARY OF THE ARGUMENT

Petitioners were convicted of purchase of cocaine, a criminal offense created by the passage of Chapter 87-243, Laws of Florida. Petitioners moved to dismiss the charges because Chapter 87-243 violates the "one subject rule" of Article 111, Section 6, of the Constitution of the State of Florida. The 1987 act does violate the "one subject rule" and the trial court erred in denying the motions. The court's errors require reversal of the convictions for purchase of cocaine.

ARGUMENT

ISSUE

THE TRIAL COURT ERRED IN NOT DISMISSING THE CHARGES OF PURCHASE OF COCAINE WHEN THE ENACTING LEGISLATION FOR THAT CRIME VIOLATES THE "ONE SUBJECT RULE" OF FLORIDA'S CONSTITUTION.

Among its many provisions, an enactment of Florida's 1987 legislative session, Chapter 87-243, Laws of Florida, created the new criminal offenses of purchase of a controlled substance and possession with intent to purchase a controlled substance. Petitioners were all charged with purchase of a controlled substance and some were also charged with possession of cocaine with intent to purchase. Petitioners challenged the constitutionality of the 1987 act by a motion to dismiss. Chapter 87-243 contravenes the hallowed "one subject rule" of Article III, Section 6, of the Constitution of the State of Florida. The motion to dismiss should have been granted.

Chapter 87-243, Laws of Florida, passed the Florida Legislature in the form of a committee substitute for House Bill 1467. The act was approved by the Governor on June 30, 1987, and took effect July 1, 1987. Chapter 87-243 violates Florida's "one subject rule" by encompassing a multitude of separate and disassociated subjects. The subject of creating and amending criminal offenses relating to drug abuse, which encompasses the "purchase" amendments to section 893.13, Florida Statutes (1987), is but one of many different subjects rolled up into the one act

that is Chapter 87-243.

The One Subject Rule

Article III, Section 6, of the Constitution of the State of Florida was part of the 1885 Enabling Act, the state's original constitution. The section states:

Laws - Every law shall embrace but one subject and matter properly connected therewith and the subject shall be briefly expressed in the title. No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection. The enacting clause of every law shall read: "Be it Enacted by the Legislature of the State of Florida."

The first sentence of Article 111, Section 6, is often referred to as the "one subject, one title rule" or simply as "the one subject rule." It imposes strict limitation on how the Florida Legislature is to conduct the business of making laws. Florida's founding fathers wanted to ensure that the state's legislative process could not adopt the practices of the United States Congress and many state legislatures where omnibus legislation, rider bills and logrolling are both commonplace and lawful. Such practices **allow** proposals to become law without majority support, merely because they are combined with legislation that is widely supported. Such practices also abridge the executive veto authority, as an undesirable provision cannot be stricken without "throwing the baby out with the bath water."

The Constitution places in the courts of this state the responsibility to be the watchdog of all legislation, to guarantee that the "one subject rule" is respected. The courts of Florida have performed this role on a number of occasions over time, including several times in recent years. In doing so, the courts have defined the purpose of the "one subject rule."

The purpose of the constitutional prohibition against a plurality of subjects in a single legislative act is to prevent a single enactment from becoming a "cloak" for dissimilar legislation having no necessary or appropriate connection with the subject matter. State v. Lee, 356 So.2d 276, 282 (Fla. 1978).

These provisions were designed to prevent various abuses commonly encountered in the way laws were passed by state legislatures. One was logrolling which resulted in hodgepodge or omnibus legislation. Colonial Investments Co. v. Nolan, 100 Fla. 1349, 131 So.178 (1930). As Justice Brown wrote in Nolan,

It had become quite common for legislative bodies to embrace in the same bill incongruous matters having no relationship to each other....And frequently such distinct subjects, affecting diverse interests, were combined in order to unite the members who favored either in support of all.... 131 So. at 179 (quoting Lewis' Sutherland, Statutory Construction, Section 3).

The logrolling problem has also been alluded to by our supreme court in its interpretation of Article 111, Section 6 of the 1968 constitution. If diverse and dissimilar matters were included within one law, the legislative process could be subverted by passing matters which really have not majority support in the legislative body, but which were passed because legislators were voting to approve other provisions included in the bill. It could also impair the Governor's veto power if he or she were forced to accept an unwanted

or undesirable provision in order to obtain the enactment of a desirable one. [footnotes omitted] Williams v. State, 459 So.2d 319 (Fla. 5th DCA 1984). ■

This Court has expressed that "wide latitude must be accorded the Legislature in the enactment of laws..." Lee, supra at 282. Legislation which has been approved under this standard includes the Florida Uniform Traffic Control Act, Santos v. State, 380 So.2d 1284 (Fla. 1980); the Insurance and Tort Reform Act of 1977, Lee, supra; the Medical Malpractice and Medical Liability Insurance Act, Chenoweth v. Kemp, 396 So.2d 396 (Fla. 1981); and the 1986 Tort Reform and Insurance Act, Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987).

The standard of "wide latitude" cannot shelter all legislation from judicial scrutiny, however, or there soon would no longer be a "one subject rule" in Florida. Examples of multi-subject legislation that have been invalidated include an act criminalizing both the trafficking of liquor and voluntary intoxication, Albritton v. State, 89 So. 360 (Fla. 1921); an act concerning both tax returns and land deed recording, Colonial Investments Co., supra; and an act that both defined a new criminal offense and restructured a criminal justice council. Bunne11 v. State, 453 So.2d 808 (Fla. 1984); Williams, supra.

While the State in its brief to the trial court and district court played heavily on case law approving civil-related legislation, Petitioners cite to the more relevant decisions on criminal legislation, and in particular to the recent decisions of

Bunnell and Williams. The act under review in both Bunnell and Williams, Chapter 82-150, Laws of Florida, created a new criminal offense of obstruction of justice by false information. It also mandated certain restructuring of the Florida Criminal Justice Council. Both the Florida Supreme Court and The District Court of Appeal, Fifth District, found that while these two matters shared the common, general object of improving criminal justice in Florida, they were nevertheless separate, distinct subjects. The concerns and immediate objects of each were distinct and disassociated.

Chapter 87-243

Chapter 87-243, Laws of Florida, shares the very same fault as the legislation struck down in Bunnell and Williams. It contains sections that create new criminal offenses. It has other sections that relate to the structure of councils and committees (including some at best marginally related to criminal justice).

Chapter 87-243 repeats the ills of Chapter 82-150, but it goes much further. Chapter 87-243 encompasses seventy-six (76) sections. The title alone contains no less than one thousand, four hundred and ten (1,410) words, somewhat stressing the constitutional requirement that the subject of a piece of legislation "shall be briefly expressed in the title." The act's various segments originated from so many separately filed bills and substitutes, it truly merits its popular title as the Omnibus Crime Prevention and Control Act of 1987.

An outline of the topics of each of the act's seventy-six (76) sections can be found in Exhibit A to the Memorandum in Support of Motion to Dismiss. Even affording wide latitude, Petitioners identify sixteen (16) separate subjects in Chapter 87-243, outlined below:

- 1) Drug abuse crimes: Sections 2-9, 12, 75
- 2) Education re: drug abuse: Sections 10-11, 13-19
- 3) Conveyances: forfeiture, title and registration Sections 20-23, 28-29
- 4) Vessel operation crimes: Sections 51-54
- 5) Money Laundering Control Act: Sections 30-38
- 6) Planting of a "hoax bomb": Section 39
- 7) Pawnbrokers and stolen property: Sections 40-41
- 8) Entrapment defense: Sections 42-43
- 9) Attempted burglary: Section 44
- 10) Witness tampering: Section 45
- 11) Appeals by the State: Section 46
- 12) Judgment costs at sentencing: Section 47
- 13) Bookmaking: Section 48
- 14) Operating chop shops: Section 49
- 15) Crime prevention studies and training: Sections 50-54
- 16) Safe Neighborhood Act: Sections 55-74

Without elaborating on all of the many distinctions among these sixteen (16) subjects, as done in more detail in Petitioners Memorandum in Support of Motion to Dismiss, a few examples are in order. The new crime of purchase of controlled substances (s.4)

is unrelated to the procedural appellate rights of the State of Florida (s.46). The changes and additions to vessel operation crimes (s.51-54) are unrelated to the changes the Legislature would make to the entrapment defense (s.42-43). All of the criminal offense sections are as unrelated to the crime prevention studies of Sections 50-54 as were the two subjects addressed in Chapter 82-150 by Bunnell and Williams. Costs imposed at sentencing (s.47) are unrelated to substantive matters such as the "Money Laundering and Control Act" (s.30-38) or witness tampering (s.45). As coup de grace, the "Safe Neighborhood Act" (s.55-74) does not belong under even the largest umbrella with the various substantive and procedural criminal matters of the act.

Applying the Rule to the Act

In its Orders Denying Motions to Dismiss, the trial courts accepted the State's argument that all provisions of Chapter 87-243 relate to a single subject, to wit: crime prevention and control. This holding is contrary to Florida Supreme Court authority.

At the district court level of Bunnell, the District Court of Appeal, Second District, used the same reasoning applied here by the trial court, i.e., that criminal justice is a suitable umbrella to shroud different topics as a single subject. State v. Bunne11, 447 So.2d 228 (Fla. 2d DCA 1983). The Florida Supreme Court rejected that reasoning and overturned the Second District decision. 1, supra at 809. In Williams, the District Court

of Appeal, Fifth District, highlighted the flaw in the Second District's holding:

The Bunnell court [referring to the Second District decision] reasoned that although not expressed in the title, it could infer from the provisions of the bill, a general subject, the criminal justice system, which was germane to both sections. Even if that subject was expressed, for example, in a title reading "Bill to Improve Criminal Justice in Florida," we think this is the object and not the subject of the provisions. Further, approving such a general subject for a non-comprehensive law would write completely out of the constitution the anti-logrolling provisions of article III, section 6. [footnote omitted] Williams at 321.

In its opinion affirming the trial courts in these cases, the District Court of Appeal, Second District, simply stated agreement with the decision of the District Court of Appeal, Fourth District, in State v. Burch, 14 FLW 382 (Fla. 4th DCA Feb. 8, 1989). In Burch, the State conceded that Chapter 87-243 does not pass constitutional muster under the Bunnell standard. The Fourth District Court at 14 FLW 385 accepted the State's argument that Bunne11 was inconsistent with Smith v. Dept. of Insurance, supra, and that the dicta of the 1987 Smith opinion supercedes Bunne11. The flaw in this reasoning is that Bunne11 and Smith are not inconsistent and Bunne11 is good law.

In Smith at 1087 the Court rejected the argument that tort law, contract law and insurance regulation must be considered separate subjects. Very similar complaints against combined tort and insurance reform legislation had been rejected previously in Lee, supra, and Chenoweth, supra. The court reasoned that to

achieve its goals in each instance the Legislature was reasonable in passing comprehensive legislation that covered tort, insurance, and contractual law as related to claims for personal injury and property damage. The Court noted in Smith at 1087 that many such claims are brought under both a contract and a tort theory and that liability insurance concerns both. The areas of law were so interconnected that the Legislative object--to assure the general availability of affordable insurance--could not be met without legislation that involved all three aspects.

A reading of the bills at issue in Lee (Ch. 77-467), Chenoweth (Ch. 76-260) and Smith (Ch. 86-160) demonstrates that these are truly "comprehensive" acts that systematically cover a number of interrelated facets in order to achieve a specific objective.

The same is true for Chapter 87-6, Laws of Florida, which necessarily encompassed a number of different areas of law, budget and operation in order to attempt to create a tax on services in Florida. Such a new tax could not be reasonably and responsibly created without comprehensive consideration of the various, necessarily affected areas. The Court found in In re: Advisory Opinion to the Governor, 509 So.2d 292 (Fla. 1987), that this act was not a "cloak" for dissimilar legislation, nor was it hodgepodge or logrolling legislation, because all of its sections were necessarily interrelated.

The difference between these bills and Chapter 87-243, is that each of them truly were comprehensive, whereas Chapter 87-

243 is not. Chapter 87-243, rather, is a grab bag collections of various pieces of proposed legislation whose only commonality is that they arguably relate to "crime prevention and control." Even if they do each somehow serve "crime prevention and control," the sixteen (16) or subjects of this bill are not interrelated or interconnected to each other. They each have no bearing on the expected effectiveness of the others. For example, the effectiveness of the "Money Laundering Control Act" is in no way affected by changes to jurisdiction for state appeals, or vice versa. The effectiveness of the "Safe Neighborhoods Act" is in no way dependent on alteration of the entrapment defense, or vice versa. The advantage to "crime prevention and control" to be occasioned by each segment is not dependent on passage of the others. Each of the sixteen (16) areas are quite independent.

"Comprehensive" must mean more than "large" in order to excuse expensive legislation from the "one subject rule." Petitioners submit that legislation that includes a great number of matters titled under one broad topic is comprehensive if its various components bear an interrelatedness to each other that make it reasonable to have to include all in one bill in order to achieve the specified objective. Legislation that combines separate matters that are not interrelated with each other is hodgepodge rather than comprehensive if the only commonality they hold is a relationship to one broad topic title.

Bunnell is distinguished from Lee, Chenoweth, Smith and In re - Advisory Opinion because the act in question in Bunnell was

not comprehensive. Even if the separate provisions each related to a common topic such as "criminal justice," they were not interrelated with each other such as to justify their being combined in one legislation. Bunnell has not been overruled and is controlling law for legislation such as Chapter 87-243 where the single thread of commonality is to a general topic such as "crime prevention and control." As held in Bunnell and Williams, a general topic heading does not make separate subjects of a bill interrelated with each other and does not make an assortment bill comprehensive.

The Florida Supreme Court has said that the subject of a bill "may be as broad as the Legislature chooses provided the matters included in the law have a natural and logical connection." Lee at 282. This does not provide carte blanche to the Legislature, however, to place disassociate subjects under one general heading in one bill. For example, all provisions of a bill entitled, "For the common good of the citizens of Florida," would surely be related to this very general topic title, but they would not necessarily be interconnected or interdependent to each other.

Petitioners agree that it is a common sense test that must be applied to determine if a piece of legislation meets the single subject requirement, as stated in Smith at 1087. A common sense reading of some expansive bills can demonstrate that there was reason to tie together so many aspects of concern into one bill in order to effectively achieve one purpose. With other bills, common sense can demonstrate that separate pieces of proposed

legislation, each with no bearing on the effectiveness of the other, have been lumped together in one bill--linked together only by their individual tethers to a general title. Common sense tell the reader of Chapter 87-243 that this is hodgepodge legislation--various proposals merged together by the use under one omnibus label, "crime prevention and control." It is common sense that exposes Chapter 87-243 as a myriad of unrelated pieces of legislation collected together under one omnibus umbrella. Bunnell has specifically prohibited using "criminal justice" as an umbrella to bring unrelated pieces of criminal legislation together in one bill.

The dangers to the Constitution are great. Consider the ramifications if all bills related to crime are each year tied into one act. What legislator dare vote "nay" to such an act? For example, is there any measure whether a majority of the Florida Legislature truly wished to abolish the time-honored, common law definition of the entrapment defense, honed by the United States and Florida Supreme Courts, and wished to put in its place a definition of its own? Or were legislators precluded from voting their conscience on the entrapment subject because forced to vote on the entire package, which included neighborhood improvement and drug education provisions?

In Chapter 82-150 the Florida Legislature tested the water of the "one subject rule" and its application to criminal legislation. Despite the fact that Chapter 82-150 was struck down, the Legislature has now dived in those same waters headfirst with

the omnibus Chapter 87-243.

Section 893.13, Florida Statutes, to the extent amended Chapter 87-243 is plagued with this violation of the "one subject rule." To the extent amended by this 1987 legislation, section 893.13 should be declared unconstitutional. The Motions to Dismiss charges brought under these amendments to section 893.13 should have been granted.

Only declaring Chapter 87-243 constitutionally invalid will adhere to the Florida Supreme Court's holding in Bunnell. Even more importantly, only in doing so can the "one subject rule" of Article III, Section 6, of the Constitution of the State of Florida survive and maintain a meaningful function in our state's law making process. Approval of Chapter 87-243 would effectively ring the death knell for Florida's esteemed "one subject rule."

CONCLUSION

Petitioners respectfully request that this Honorable Court hold Chapter 87-243, Laws of Florida, and, thereby, section 893.13, Florida Statutes to be unconstitutional, in violation of the "one subject rule" of the Constitution of the State of Florida. Petitioners request that this Court reverse the judgment and sentences for the offenses of purchase of cocaine and possession of cocaine with intent to purchase.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to the Tampa Attorney General's Office on this 15th day of June, 1989.

Respectfully submitted,



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