

IN THE SUPREME COURT OF FLORIDA

JOHN SAVARY DAME,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. 74,617

OCT 9 1989

CLERK, SUPREME COURT

By

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RESPONDENT'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

Respondent relies on the Statement of the Case and Facts as set forth in the opinion of the First District Court of Appeal as an accurate portrayal of the facts and evidence adduced below. (Attached hereto and made a part hereof is an appendix containing a conformed copy of the lower court's opinion.)

SUMMARY OF ARGUMENT

The issue certified here is whether Florida Statute 893.13(1)(c) (1987) violates the state constitutional provision against inclusion of more than one subject in a legislative bill. This question is also pending in the Florida Supreme Court based upon the decisions of the Second and Fourth District Courts of Appeal upholding Chapter 87-243, Laws of Florida, against an identical attack. Blankenship v. State, 545 So.2d 908 (Fla. 2d DCA, 1989); Burch v. State, Case No. 73,826.

The state urges: first, that under the wide latitude of the legislature to comprehensively address criminal matters Section 87-243 does not violate the single subject rule; and second, assuming arguendo that Chapter 87-243 violated the single subject rule, the violation has been cured by the subsequent incorporation of its provisions into Florida Statutes.

ARGUMENT

ISSUE I

CH. 87-243, LAWS OF FLORIDA, DOES NOT VIOLATE THE "SINGLE SUBJECT" RULE.

The First, Second and Fourth District Courts have held that Ch. 87-243, Laws of Florida does not violate Article 111, Section 6 of the Florida Constitution. See e.g., Dame v. State, 14 FLW 1963 (Fla. 1st DCA, August 22, 1989) (instant case); Blankenship v. State, 545 So.2d 908 (Fla. 2d DCA 1989) (certified question to the Supreme Court); and, State v. Burch, 545 So.2d 279 (Fla. 4th DCA 1989). Respondent relies upon these authorities as well as the argument presented in its brief before this Court in Burch, (oral arguments held September 7, 1989, in case no. 73,826)

This Court has consistently held that "the subject of a law may be as broad as the legislature chooses provided the matters included in the law have natural and logical connection." Smith v. Dept. of Insurance, 507 So.2d 1080, 1087 (Fla. 1987) (upholding the 1986 Tort Reform and Insurance Act, Ch. 86-160, Laws of Florida, containing 70 Sections); Chenowith v. Kemp, 396 So.2d 1122, 1124 (Fla. 1981) (upholding ch. 76-260, Laws of Florida, covering a broad Range of statutory provisions dealing with medical malpractice and insurance); State v. Lee, 356 So.2d 276, 282 (Fla. 1978) (upholding ch. 77-468, Laws of Florida, containing 45 section dealing with insurance and torts).

The enactment under consideration has a broad subject, e.g., "crime prevention and control", and includes matters which are connected in various ways with that subject; but, contrary to the appellant's assertions, that does not make the law unconstitutional.

The bill is supported at the outset not only by the presumption of constitutionality, State v. Canova, 94 So.2d 181, 184 (Fla. 1957) ("the presumption is in favor of constitutionality"), but also by the pronouncements of Florida courts over many decades that the Legislature has great latitude in deciding which matters are sufficiently related to be included in the same act, and that only in plain cases of complete absence of any rational relationship will the contents of a law be held to violate the one subject rule. See, e.g., Lee, supra., at 283 ("widely divergent rights and requirements can be included without challenge in statutes covering a single subject matter"); Smith v. Chase, 91 Fla. 1044, 109 So. 94, 97 (1926) ("A wide latitude must of necessity be accorded the Legislature in its enactments of law"). Furthermore, in In re Advisory Opinion to the Governor, 509 So.2d 292, 313 (Fla. 1987), this Court stated that "the fact that the scope of a legislative enactment is broad and comprehensive is not fatal under the single subject rule as long as the matters included in the enactment have a natural or logical connection." And, it is significant that this Court has used absolute terms when finding that a particular enactment has

violated the "single subject" rule. ~~See~~ e.g., Bunnell v. State, 453 So.2d 808, 809 (Fla. 1984) ("no cogent relationship); Colonial Investment Co. v. Nolan, 100 Fla. 1349, 131 So. 178, 181 (1930) ["nothing in common between the two (subjects)"] (emphasis supplied). All that is necessary is that the several matters contained within the subject tend to make effective or promote the purpose of the legislation, or to be necessary or advisable as a side-effect of the legislation. E.g.,

Provisions that are necessary incidents to, or that tend to make effective or to promote, the object and purpose of the legislation that is included in the subject expressed in the title of the act, may be regarded as matter properly connected with the subject of the act...

Smith v. Chase, supra., 109 So. 94, 96-97 (Fla. 1926). (Emphasis supplied).

Ch. 87-243, Laws of Florida, which is the subject of the instant appeal, contains **76** sections, all of which focus upon combating the ever increasing crime rate in this State, and which, therefore, "have natural and logical connection" pursuant to Smith v. Dept. of Insurance, Chenoweth v. Kemp, and State v. Lee, supra.; and, at the very least, tend to promote the purpose of the legislation as expressed in its title, pursuant to Smith v. Chase, supra.

ISSUE II

ANY CONSTITUTIONAL DEFECTS IN CH. 87-243,
LAWS OF FLORIDA HAVE BEEN CURED BY THE
ENACTMENT OF SECTION 1, CHAPTER 87-83, LAWS
OF FLORIDA AND SECTION 1, CHAPTER 89-64,
LAWS OF FLORIDA.

The state's brief to the court on Burch v. State, case no. 73,826, orally argued on 7 September 1989, pointed out that any single subject violation in the enactment of Chapter 87-243 would be prospectively cured by the (then) anticipated reenactment of its statutory provisions. At oral argument, it appeared that the import of this argument was not fully apparent. Consequently, the state's position will be expanded and restated to make the import of the argument clear. The state's position assumes for the purpose of argument that Chapter 87-243 is found to contain more than one subject. Based on this assumption, the state argues in two prongs. First, the enactment of Chapter 87-83, Laws of Florida, incorporating Chapter 87-243 into the biennial "1987 Florida Statutes" as prima facie evidence of the law, cures or obviates any single subject challenge as of the effective date of Chapter 87-83. Second, alternatively, assuming that the preceding argument is rejected, the enactment of Chapter 89-64, Laws of Florida, which repeals Chapter 87-243, and other laws enacted during regular **and special sessions** of the 1987 legislature, and adopts the Florida Statutes 1987 as the official statute law of the state under "Florida Statutes 1989" definitively cures any single subject problems in Chapter 87-243 as of the effective date of Chapter 89-64, 16 June 1989.

In propounding these arguments, the state relies on three rules of appellate review. First, that the decision below has a presumption of correctness and the appellant has the burden of demonstrating error. Applegate v. Barnett Bank of Tallahassee, 377 So.2d 1150, 1152 (Fla. 1979). Second, that the court below should be affirmed even though based on erroneous reasoning if the decision is supported by an alternate theory. Id. Third, disposition of a case on appeal should be made in accordance with the law in effect at the time of appellate decision. State v. Lavazzoli, 434 So.2d 321, 323 (Fla. 1983).

Section 11.147, Florida Statutes (1987) provides for a Joint Legislative Management Committee. One of the functions of this joint committee under Section 11.148(21) is to maintain under its auspices a permanent and continuous statutory revision plan in the manner provided in Sections 11.242-11.246, Florida Statutes. The powers, duties and functions of the joint committee, as they relate to statutory revisions include continuous revisions of Florida Statutes and the incorporation therein of new laws enacted by the legislature. § 11.242. Among the specific duties is that of ensuring that the current biennial edition of Florida Statutes contains the law of a general nature enacted at the current session of the legislature and directed to be embodied in said edition. Section 11.242(4)(a). The legislature exercises its will and directs the joint committee by biennially enacting odd-year revisions to Sections 11.2421, 11.2422, 11.2424, and

11.2425. As amended by Chapter 87-83, Section 11.2421, Florida Statutes (1987) incorporates Chapter 87-243 into official Florida Statutes. The incorporated provisions of Ch. 87-243 are prima facie evidence of the law. There is no conflict between the statutory section at issue here, Section 893.13(1)(c), Florida Statutes (1987), and section four, Chapter 87-243, Laws of Florida. Because of the lack of conflict between the enrolled act, Chapter 87-243 and the prima facie statement of the law in Florida Statutes (1987), the state urges that Chapter 87-83 cures any single subject problems from the date of its enactment.

In this connection, properly applied, the single subject provision of article III, section 6 furnishes ground for a declaratory judgment challenge to criminal laws prior to their enforcement. A single subject challenge should not be a vehicle for after-the-fact challenges to criminal charges alleging violations of Florida Statutes when the defendant has been placed on notice prior to commission of the violation of criminal statute. A defendant so charged retains all the challenges to the constitutionality of the statute which are individual to him and which are prejudicial to him. See petitioner Burch's brief on the merits. Appellant is charged with violation of Section 893.13(1)(c), Florida Statutes (1987). His claim that portions of Chapter 87-243 address other criminal offenses with which he is not charged fails to show any prejudice from the alleged violation of the single subject rule. In order to sustain his

claim, appellant should be required to show prejudicial error and error, if any, should be subject to harmless error analysis. Section 924.33, Florida Statutes (1987).

In the event the preceding argument is rejected, the state next urges that the reenactment and adoption of Chapter 87-243 by Chapter 89-64 as the official statutory law of Florida and the repeal of Chapter 87-243 cures and obviates any single subject challenges. There is on-point case law so holding. In State v. Combs, 388 So.2d 1029 (Fla. 1980), this Court held:

In Santos v. State, 380 So.2d 1284 (Fla. 1980), we held that "article 111, section 6, does not require sections of the Florida Statutes to conform to the single subject requirement. The requirement applies to 'laws' in the sense of acts of the legislature." Id. at 1285. Section 777.04 was enacted as chapter 74-383, Laws of Florida, and adopted or re-enacted in chapter 77-266, Laws of Florida. Article III, section 6 of our constitution applied only to chapter 74-383, Laws of Florida, and only so long as it remained a "law." Once re-enacted as a portion of the Florida Statutes it was not subject to challenge under article III, section 6. There have been no subsequent pertinent amendments to justify a challenge at this point.

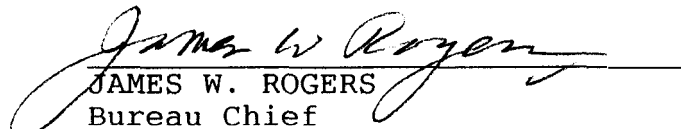
Combs, 388 So.2d at 1030-31. Under this holding, the adopted and reenacted provisions of Chapter 87-243 are valid as of the effective date of Chapter 89-64 but are invalid for the previous period. Cf. Thompson v. Intercounty Tel. & Tel. Co., 62 So.2d 16 (Fla. 1952) (Defect in title of act cured by reenactment of Florida Statute is cured from time of reenactment but is not valid theretofore).

CONCLUSION

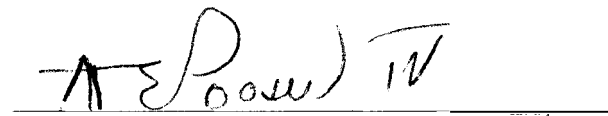
Respondent prays this Honorable Court approve the decision of the lower court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded via U. S. Mail to Kathleen Stover, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 9th day of September , 1989.



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