IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs. CASE NO. 79,150

CECIL B. JOHNSON,

Respondent.
_____/

STATE OF FLORIDA,

Appellant,

vs. CASE NO. 79,204

CECIL B. JOHNSON,

Appellee.
_____/

APPELLANT/PETITIONER'S INITIAL BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

This is an appeal of right on the merits. By notice filed January 8, 1992, the State invoked this Court's mandatory jurisdiction[1] to review a district court decision declaring a legislative act (i.e., ch. 89-280, Laws of Florida) invalid. This act is a "state statute'' for purposes of this Court's mandatory jurisdiction. *See* Pinellas County Veterinary Medical Society, Inc. v. Chapman, 224 So.2d 307 (Fla. 1969) (directly reviewing trial court judgment holding a special act unconstitutional under Art. V, §4, Fla. Const. (1885), which conferred jurisdiction to review final judgments passing upon the validity of a "state statute").

Earlier, the State invoked this Court's discretionary jurisdiction[2] to review a question certified to be of great public importance. In response to that notice this Court issued its January 8, 1992, order postponing its decision on jurisdiction and establishing a briefing schedule. The State acknowledges that its delay in filing the notice of appeal of right led this Court to issue its January 8 order.

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[1] Art. V, §3(b)(1), Fla. Const.; Fla.R.App.P. 9.030(a)(1)(A)(ii).

[2] The notice was filed December 30, 1991; and invoked this Court's jurisdiction pursuant to Art. V, §3(b)(4), Fla. Const., and Fla.R.App.P. 9.030(a)(2)(A)(v).

STATEMENT OF THE CASE

Respondent, Cecil B. Johnson, was convicted for the sale or delivery of cocaine (R 19); and sentenced as an habitual, violent felon. (R 31-2).

Before the First District, Respondent challenged only his sentence. That court reversed on the ground that ch. 89-280, Laws of Florida, violated the one-subject rule in Art. 111, §6 of the Florida Constitution. It certified a corresponding question of great public importance.[3] Johnson v. State, 16 FLW D2876 (Fla. 1st DCA Nov. 15, 1991).

On December 10, 1991, the First District denied the State's motion to certify a second question of great public importance. On December 30, the State filed a notice to invoke this Court's discretionary jurisdiction to review the question actually certified.

Notice of direct appeal, invoking this Court's mandatory jurisdiction, was filed January 8, 1992. By order dated January 14, 1992, the two cases were consolidated.

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[3] The question reads:

> Whether the ch. 89-280 amendments to section 775.084(1)(a)1, Florida Statutes (989), were unconstitutional prior to their re-enactment as part of the Florida Statutes, because in violation (sic) of the single subject rule of the Florida Constitution.

STATEMENT OF THE FACTS

Respondent was convicted for sale or delivery of cocaine (R 19), a second degree felony (R 29) committed on July 5, 1990. (R 5). By notice, as amended, the State declared its intent to seek Respondent's sentencing as an habitual violent felon. (R 16).

Respondent was so sentenced, based upon his 1987 conviction for aggravated battery. (T 181, 187). He received a prison term of 25 years, with a 10-year minimum. (T 187). No challenge to the constitutionality of the habitual violent felony offender statute was raised before the trial court.

SUMMARY OF ARGUMENT

Issue I: Preservation of Substantive Issue

Whether ch. 89-280, Laws of Florida, violates the one-subject rule in Art. 111, §6 of the Florida Constitution was not raised before the trial court. The number of subjects in a legislative act cannot be fundamental error. Therefore, Respondent improperly raised the issue for the first time before the First District.

The First District had neither jurisdiction nor the discretion to entertain a non-fundamental error alleged for the first time on appeal. Its decision must be vacated, thereby upholding Appellant's sentence.

Issue II: One-Subject Challenge to Chapter *89-280*, Laws of Florida

Chapter 89-280, Laws of Florida, contains two components, one addressing habitual felons and career criminals; the other, repossession of automobiles. Both components logically relate to controlling crime. Chapter 89-280 does not violate Art. 111, §6 of the Florida Constitution.

ARGUMENT

ISSUE I

WHETHER A CRIMINAL DEFENDANT'S RIGHT TO DUE PROCESS CAN BE DENIED MERELY BY THE NUMBER OF SUBJECTS IN A LEGISLATIVE ACT.

The number of subjects in an otherwise proper legislative act (i.e., ch. 89-280, Laws of Florida) cannot be fundamental error. Respondent's failure to raise a one-subject challenge before the trial court precluded review by the First District. Consequently, that court's decision on the merits must be vacated, thereby affirming Respondent's sentence.

Chapter 89-280, Laws of Florida, contains nine substantive sections. These nine sections form, in essence, two components. The first component (§§1-3, ch. 89-280) addresses the habitual felon and career criminal statutes. Respondent has never maintained these two topics constitute more than one subject. The second component (§§4-9, ch. 89-280) addresses repossession of motor vehicles. These two components relate to the single subject of controlling crime.

This Court need and should not reach the merits of the constitutionality of the statute. Respondent did not raise this issue before the trial court. Therefore, the district court was without authority to rule on the merits, unless it first found that violation of the one-subject rule was fundamental error.

Inexplicably, the opinion below was completely silent in this issue, despite extensive briefing by the State.[4]

It is a settled rule of appellate review that "[e]xcept in cases of fundamental error, an appellate court will not consider an issue unless it was presented to the lower court. [citations omitted]." Steinhorst v. State, 412 So.2d 332, 338 (Fla. 1982).

The meaning of "fundamental error" has been frequently addressed by this Court and the district courts. In Sanford v. Rubin, 237 So.2d 134, 137 (Fla. 1970), this Court reviewed the Third District's holding that a challenge to the constitutionality of a special act[5] was cognizable for the first time on appeal as fundamental error. Specifically, the district court held the act was unconstitutional because its title did not fully reflect the act's contents, contrary to Article 111, section 16 of the Florida Constitution of 1885. (Note: section 16 is now embodied in the current constitution as Art. 111, §6, the provision at issue here.)[6] This Court rejected the

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[4] The State raised the preservation issue before the First District. See the State's answer brief at pages 2-7. [Note: By special designation to the Clerk served January 15, the State requested its answer brief be included in the record on appeal.]

[5] The State notes that the legislative act at issue in Sanford was not a "statute" in the commonly used sense; that is, a portion of the codified general law of Florida. At issue was a special act, which by definition is not of statewide applicability and not codified.

[6] Section 6 reads in pertinent part:

> Laws.--Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

proposition that constitutionality of the statute was fundamental and could be raised for the first time on appeal.

The Sanford court made two general points which deserve close attention. First, "'[f]undamental error,' which can be considered on appeal without objection in the lower court, is error which goes to the foundation of the case or goes to the merits of the cause of action." *Id.* Second, an "Appellate Court should exercise its discretion under: the doctrine of fundamental error very guardedly." *Id.*

Sanford was a civil case. The same doctrine is applied in criminal cases. In Castor v. State, 365 So.2d 701 (Fla. 1978), the Court reaffirmed the rule that contemporaneous objections were required and rejected the argument that the error was fundamental. In the context of jury re-instruction, the court reiterated that the doctrine of fundamental error must remain a "limited exception." *Id.* at 704. This Court also declared that the error, to be fundamental, must "amount to a denial of due process." *Id.*, citing State v. Smith, 240 So.2d 807 (Fla. 1970).

This Court has consistently limited the scope of fundamental error. *See* Clark v. State, 363 So.2d 331, 333 (Fla. 1978) ("We have consistently held that even constitutional errors, other than those constituting fundamental error, are waived unless timely raised in the trial court. Sanford.") It was even more emphatic in Ray v. State, 403 So.2d 956, 960 (Fla. 1981):

> [F]or error to be so fundamental that it may be urged on appeal, though not properly

> presented below, the error must amount to a denial of due process. [citing Castor, *supra]*.
>
> * * *
>
> We agree with Judge Hubbart's observation that the doctrine of fundamental error should be applied only in the rare cases where a jurisdictional error appears or where the interests of justice present a compelling demand for its application. citing Porter v. State, 356 So.2d 1268 (Fla. 3d DCA) (Hubbart, J., dissenting), remanded, 364 So.2d 892 (Fla. 1978), rev'd. on remand, 367 So.2d 705 (Fla. 3d DCA 1979).[7]

The cases holding and applying the above principles are many and of long standing. Representative decisions include: Ellis v. State, 74 Fla. 215, 76 So. 698 (1917): ("[I]t is suggested that the statute is unconstitutional. This question was not raised in the trial court, and, as the statute is not patently in conflict with organic law, the suggestions ... do not properly present the validity of the law for consideration by this court."); Silver v. State, 188 So.2d 300, 301 (Fla. 1966) (This Court strongly criticized and refused to condone decision of district court to address constitutionality of statute when constitutionality not raised in trial court); Whitted v. State,

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[7] In Porter, the issue was whether an unchallenged to comment on a defendant's exercise of his right to silence was fundamental error. The district court, J. Hubbart dissenting, originally held that it was, but reversed itself after remand for reconsideration in light of Clark. The point for this Court to recognize is that the right to silence is unquestionably a fundamental constitutional right in the sense of "important" or "basic." However, in the context of unobjected to error, "fundamental error" is a legal term-of-art of exceptionally narrow scope. This Court must reject the ubiquitous tendency of contemporary defense lawyers to debase the legal language by seeing "fundamental error" everywhere.

362 So.2d 668, 672 (Fla. 1978) (failure of defendant to raise constitutionality of statutory provision under which convicted precludes appellate review). This Court's attention is invited to Eutzy v. State, 458 So.2d 755 (Fla. 1984). There, the court held that the constitutionality of statutory authority to override jury recommendation in death penalty case not cognizable for first time on appeal. *Id.* at 757. If constitutionality of a statute providing for judicial override of a recommended life sentence is not fundamental error, then certainly the mere number of subjects in a legislative act cannot possibly be such.

Davis v. State, 383 So.2d 620, 622 (Fla. 1980) is particularly instructive. It involved a nolo plea which purported to reserve the right to appeal the trial court's denial of motions to dismiss. On appeal, Davis challenged the constitutionality of the statute under which he was convicted. This Court, relying on Silver, *supra*, held there was no jurisdiction to consider the challenge:

> In the case sub judice the defendant entered a plea of nolo contendere and did not reserve any right to raise the constitutional question on appeal. The statute was not attacked at the trial level. Defendant has exercised his right to one appeal. If he had desired to appeal to this Court, he only had to raise a constitutional question before the trial court and, in event of an unfavorable ruling, could have appealed directly to this Court. Not having followed this course, he is clearly wrong in his effort to activate the jurisdiction of this Court.
>
> For the reason stated, jurisdiction is declined and the judgment of the circuit court is not disturbed.

Id. *See* Brown v. State, 376 So.2d 382, 385 (Fla. 1979), (reserved issue must be totally dispositive and that the constitutionality of a controlling statute is an appropriate issue for reservation). Brown necessarily implies that the constitutionality of a controlling statute must be preserved.

The above holdings are also reflected in the First District's case law. *See* State v. McInnes, 133 So.2d 581, 583 (Fla. 1st DCA 1961) ("It is fundamental that the constitutionality of a statute may not generally be considered on appeal unless the issue was raised and directly passed upon by the trial court."); Randi v. State, 182 So.2d 632 (Fla. 1st DCA 1966) (constitutionality of statute may not be raised for first time on appeal).

The above holdings apply to the constitutionality of statutes under which the defendants were convicted. The same rule applies to sentencing statutes. *See* Gillman v. State, 346 So.2d 586, 587 (Fla. 1st DCA 1977) (constitutionality of sentencing statute not cognizable when raised for first time on appeal). *See also*, Knight v. State, 501 So.2d 150 (Fla. 1st DCA 1987) (ex post facto and equal protection challenges to sentencing statutes not cognizable when raised for first time on appeal).

It is uncontroverted that Respondent did not raise, or otherwise preserve, the issue of whether ch. 89-280, Laws of Florida was enacted in violation of the single subject rule in Art. 111, §6 of the Florida Constitution. Thus, the question is

whether violation of the single subject rule is fundamental thereby justifying consideration of the issue although not raised below.

The question answers itself. As declared by the decisions above, error that is fundamental deprives the defendant of due process. The number of subjects in a legislative act does not remotely implicate any procedural or substantive due process rights.

Due process takes two forms, substantive and procedural. Substantive due process requires only that there be a rational basis for the relevant changes in ch. 89-280. State v. Saiez, 489 So.2d 1125, 1129 (Fla. 1986); State v. Olson, 586 So.2d 1239 (Fla. 1st DCA 1991). The rational basis for habitual offender statutes is that society requires greater protection from recidivists and sentencing as habitual felons provides greater protection. Eutsey v. State, 383 So.2d 219, 223-224 (Fla. 1980). Respondent has not, and cannot, reasonably maintain the mere number of subjects in ch. 89-280 has anything to do with this unassailable purpose.

Procedural due process, in turn, has two aspects: reasonable notice and a fair opportunity to be heard. State v. Beasley, 580 So.2d 139 (Fla. 1991); Goodrich v. Thompson, 96 Fla. 327, 118 So. 60, 62 (1928). Here, Respondent was given reasonable notice and a fair opportunity to be heard. He has never maintained otherwise, or that the number of subjects in ch. 89-280 affected the fairness of his sentencing. Had Respondent

thought differently, "he only had to raise a constitutional question before the trial court and, in the event of an unfavorable ruling, could have appealed directly to this Court. Not having followed this course, he is clearly wrong in his effort to activate the jurisdiction of this Court." Davis, 383 So.2d at 622.

The State recognizes that the facial validity of a statute may be challenged for the first time on appeal. Trushin v. State, 425 So.2d 1126 (Fla. 1983). However, this is a very narrow exception to the rule that issues not raised in the trial court may not be raised on appeal. There are two aspects to the facial challenge: overbreadth and vagueness. Overbseadth only arises when the statute in question impinges an behavior protected by the first amendment to the United States Constitution and by Article I, §4 of the Florida Constitution. State v. Olson, 586 So.2d at 1243-1244. There can be no suggestion here that the number of subjects in ch. 89-280 impinges on First Amendment rights. The same conclusion applies to facial vagueness. Nothing in the mere number of subjects in ch. 89-280 would cause a person of common intelligence to guess at the meaning of any particular substantive possession. Therefore, the exception noted in Trushin is factually and legally inapplicable.

Other rules and points of law support the proposition that a single subject challenge does not meet the criteria for fundamental error or facial invalidity. Single subject and title

defects under Article 111, §6 are cured by the biennial reenactment of the Florida Statutes. State v. Combs, 388 So.2d 1029 (Fla. 1980); Belcher Oil Co. v. Dade County, 271 So.2d 118, 121 (Fla. 1972). If violation of Article 111, section 6 were fundamental error, or constituted facial invalidity, reenactment could not cure either error.

Assuming that chapter 89-280 violates Article 111, §6, the error is not fundamental and does not cause either the statute or the act to be facially invalid. In view of the settled law that an appellate court will not entertain an issue or an argument not presented below unless the alleged error is fundamental or *goes* to the facial validity of the statute, Respondent here may not challenge the constitutionality of ch. 89-280. As this Court held in Davis, there is no jurisdiction to entertain such appeals.

Since the First District had no jurisdiction to review error that was neither fundamental nor preserved, its decision on the merits must be vacated, thereby affirming Appellant's sentence.

ISSUE II

WHETHER ALL THE PROVISIONS OF CHAPTER *89-280,* LAWS OF FLORIDA, RELATE TO CONTROLLING CRIME.

Although the merits should not be reached, the State will address the issue. To withstand an attack alleging the inclusion of more than one subject, various topics within a legislative enactment must be "properly connected." Art. 111, §6, Fla. Const. This term has been addressed many times, most recently in Burch v. State, 558 So.2d 1 (Fla. 1990). In upholding a **broad** criminal statute, this Court found that each of the "three basic areas"[8] addressed by ch. 87-243, Laws of Florida, bore a "logical relationship to the single subject of controlling crime." *Id.* at 3.

Chapter 89-280 contains two basic areas: (1) policies and penalties as to career criminals and habitual felons; and (2) repossession of motor vehicles. Both relate to controlling crime. They are properly connected and do not violate Art. 111, **s.6** of the Florida Constitution.

Elaboration is useful. Article 111, **§6** has long been extant in Florida's constitutions.[9] It is "designed to prevent various abuses commonly encountered in the way laws were passed . . . [such as] logrolling, which resulted in hodgepodge or omnibus

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[8] The three areas were: ((1) comprehensive criminal regulations and procedures, (2) money laundering, and (3) safe neighborhoods. Id. at 3.

[9] *See* the Commentary to Art. III, **§ 6**, noting that the 1968 version is "close in substance to Sections 15 and **16** of Art. III of the **1885** Constitution." 25A Fla. Stat. Annon. ***656*** (1991 ed.).

legislation." Williams v. State, 459 So.2d 319 (Fla. 5th DCA 1984), *dismissed,* 458 So.2d 274 (Fla. 1984). *See* Burch v. State, *supra* at 2 (noting that the purpose of Art. 111, § 6 is to prevent duplicity of legislation and to prevent a single enactment from becoming a cloak for dissimilar legislation).

At the outset, the problems of log rolling are not so compelling or frequent in criminal legislation. To the contrary, the fact that ch. 87-243 was designed to be a comprehensive response to burgeoning drug crime led the Burch court to uphold that act. *See id.* at 3 (simply because "several different [e.s.] statutes are amended does not mean more than one subject is involved").

The repossession provisions of ch. 89-280 amend part I of ch. 493, Florida Statutes.[10] That past, entitled "Investigative and Patrol Services," addresses private conduct (i.e., investigative and security services) normally provided by law enforcement officers.

The changes in the second basic area of ch. 89-280 were necessitated by problems with repossessions conducted by private individuals. The problems rose to criminal significance, as violations of Part I of Chapter 493 are first-degree misdemeanors. See §493.321 (1989).

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10 Ch. 493 was repealed, reenacted and renumbered by ch. 90-364, Laws of Florida. For convenience, all cites to ch. 493 are to the 1989 version, thus corresponding to the statutory section numbers in ch. 89-280.

Chapter 493, Part I, is also designed to protect the public against abuse by repossessors, etc., and provides criminal penalties.[11] The habitual felon statute is also designed to protect the public against repeat felons.

This Court has consistently held that the Legislature must be accorded wide latitude in the enactment of laws. Therefore, Art. 111, § 6 of the Florida Constitution must not be used to deter or impede legislation by requiring laws to be unnecessarily restrictive in their scope and operation. State v. Lee, 356 So.2d 276, 282 (Fla. 1978). *See* Smith v. City of St. Petersburg, 302 So.2d 756, 758 (Fla. 1974) ("For a legislative enactment to fail, the conflict between it and the Constitution must be palpable.").

In Bunnell v. State, 459 So.2d 808 (Fla. 1984), this Court invalidated §1, ch. 82-150, Laws of Florida, as having "no cogent relationship" (id. at 809) with the remainder of that act. Specifically, the subject law reduced membership of the Florida Criminal Justice Council, and created the criminal offense of obstructing justice through false information. Chapter 89-280, in contrast, includes no such disparity. There is a cogent relationship between its habitual or career felon provisions, and

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[11] Part I also addresses investigative and patrol issues, and detection of deception. For example, §493.30(4) defines "private investigation" to include, among other activities, the obtaining of information relating to certain crimes; the location and recovery of stolen property; the cause, origin, or responsibility for fires, etc.; and the securing of evidence for use in criminal (and civil) trials. These duties are quasi-law enforcement in nature.

its repossession provisions, Both respond to frequent incidence of criminal activity; both seek to deter repeat offenses. Both seek to protect the public. Repossessors and investigators, although private individuals, are performing the quasi-law enforcement duties. The parts of ch. 89-280 are sufficiently related to survive a two-subject challenge, even though ch. 89-280 is not a comprehensive crime bill like the one upheld in Burch, *supra*. Chapter 89-280 contains but one subject.

If Respondent has identified a two-subject problem in ch. 89-280, that problem was cured by the 1991 Legislature. Chapter 89-280 was enacted, obviously, in 1989. All 1989 changes to the Florida Statutes have been adopted and enacted as the official statutory law. See Ch. 91-44, Laws of Florida, effective May 2, 1991 (attached as Appendix B) (codified in §11.2421, Florida Statutes [1991]).[12]

Through ch. 91-44, the Legislature reenacted all of ch. 89-280, as codified. This re-enactment cured any constitutional defect arising from inclusion of more than one subject in the original act.. State v. Combs, 388 So.2d 1029 (Fla. 1980). The reason is obvious. Art. I, § 6 applies to acts of the Legislature, not to the reenacted (codified) statutes. *Id.* at 1030. "Once reenacted as a portion of the Florida Statutes, it [the statute at issue] was not subject to challenge under article

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[12] The State acknowledges that Appellant's current offense was committed on July 15, 1990 (R 5); and falls between the effective date of ch. 89-280 (10/1/89) and the effective date (5/2/91) of ch. 91-44.

111, section 6." *Id.* As of May 2, 1991, ch. 89-280 is constitutional as to a two-subject challenge. *See* Thompson v. Inter-County Tele. & Tel. Co., 62 So.2d 16 (Fla. 1952) (en *banc)* (tax statute with defective title valid from time of revision), Therefore, §775.084, Florida Statutes (1989), is no longer subject to a two-subject challenge.

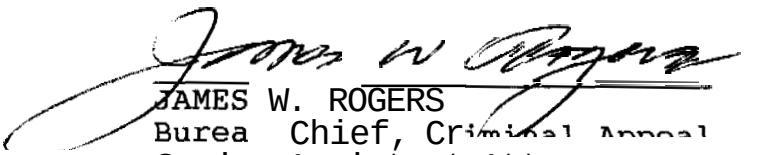
To sum: this issue is not preserved for review, as it was not raised below and does not involve fundamental error. If preserved, ch. 89-280 includes only one subject. Moreover, the Legislature has cured any two-subject problem. The State specifically requests this Court, should it agree with Respondent on the merits, to recognize the curative effect of ch. 91-44; and to state that any two-subject challenge to ch. 89-280 must be predicated on an offense occurring from October 1, 1989 (effective date of ch. 89-280) through May 2, 1991 (effective date of ch. 91-44). *See* Tims v. State, 17 FLW D____ (Fla. 1st DCA Jan. 14, 1992) (the "narrow holding" of Johnson [opinion below] is predicated, in part, upon an offense committed between October 1, 1989 and May 2, 1991).

CONCLUSION

The opinion below must be reversed, thereby affirming Appellant's sentence.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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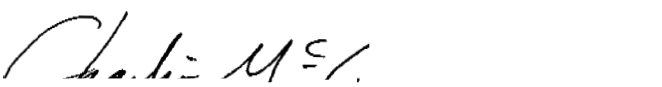

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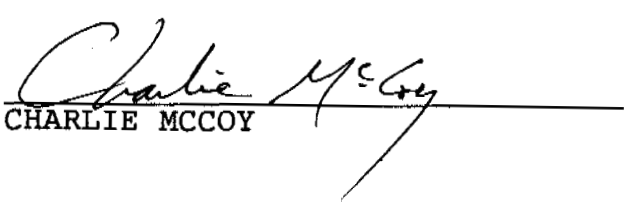
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Steven Rothenburg, Assistant Public Defender, Leon County Courthouse, Fourth Floor, North, 301 South Monroe Street, Tallahassee, Florida 32301, this 24t! day of January, 1992.



CHARLIE MCCOY

91-110559-RR

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

CECIL B. JOHNSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

_____/

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND DISPOSITION THEREOF IF FILED.

CASE NO. 91-742

Opinion filed November 15, 1991.

An Appeal from the Circuit Court for Duval County, John Southwood, Judge.

Nancy A. Daniels, Public Defender, and Steven A. Rothenburg, Assistant Public Defender, Tallahassee, for Appellant.

Robert A. Butterworth, Attorney General, and Charlie McCoy, Assistant Attorney General, Tallahassee, for Appellee.

JOANOS, Chief Judge.

Appellant was found guilty of sale or delivery of cocaine, and after proper notice and submission of proof of prior convictions, he was sentenced as an habitual violent felony offender. The issues on appeal are: (1) whether Chapter 89-280, Laws of Florida, which amended section 775.084, the habitual felony offender provision, violates the one-subject rule of the Florida Constitution, and (2) whether section 775.084, Florida

Statutes (1989), is inequitable, irrational, and vague, in violation of Article I, sections 9 and 16 of the Florida Constitution, and the Fourteenth Amendment to the U.S. Constitution. We reverse, and certify as a question of great public importance whether Chapter 89-280 violates the single subject rule of the Florida Constitution.

Since the instant offense was committed within the time period between the October 1, 1989, effective date of the 1989 amendments to the habitual felony offender provisions and their re-enactment, effective May 2, 1991, as a part of the Florida Statutes, we address appellant's argument that section 775.084, Florida Statutes (1989), as amended, violates the one-subject rule. See Ch. 89-280, § 12, Laws of Fla.; Ch. 91-44, Laws of Fla. The single subject rule of Article III, section 6, Florida Constitution,[1] is not violated where the different targets of an act are naturally and logically connected. The subject matter of an act may be as broad as the legislature chooses, so long as the matters included have a natural or logical connection. See Burch v. State, 558 So.2d 1 (Fla. 1990); Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987); Chenoweth v. Kemp, 396 So.2d 1122 (Fla. 1981); State v. Lee, 356 So.2d 276 (Fla. 1978); Alterman Transport Lines, Inc. v. State, 405 So.2d 456 (Fla. 1st

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[1] Art.III, § 6, Fla. Const. (1968), provides in part: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."

DCA 1981); Blankenship v. State, 545 So.2d 908 (Fla. 2d DCA 1989), approved, 556 So.2d 1108 (Fla. 1990). The test for determining duplicity of subject "is whether or not the provisions of the bill are designed to accomplish separate and disassociated objects of legislative effort." Burch v. State, 558 So.2d at 2, quoting State v. Thompson, 120 Fla. 860, 163 So. 270 (1935).

The single subject rule reference to "laws" applies to acts of the legislature. Santos v. State, 380 So.2d 1284 (Fla. 1980). Once an act is re-enacted as a portion of the Florida Statutes, it is no longer subject to challenge under Article III, section 6. State v. Combs, 388 So.2d 1029 (Fla. 1980); Alterman Transport Lines, Inc. v. State, 405 So.2d at 461.

The title of the act at issue designates it an act relating to criminal law and procedure. The first three sections of the act amend section 775.084, Florida Statutes, pertaining to habitual felony offenders; section 775.0842, Florida Statutes, pertaining to career criminal prosecutions; and section 775.0843, Florida Statutes, pertaining to policies for career criminal cases. Sections four through eleven of the act pertain to the Chapter 493 provisions governing private investigation and patrol services, specifically, repossession of motor vehicles and motorboats.

The state argues that there is a "cogent relationship" between the habitual felony provisions and the repossession provisions of the act. The state notes that appellant's offense

occurred between the October 1, 1989, effective date of Chapter 89-280 and the May 2, 1991, effective date of Chapter 91-44, which re-enacted the 1989 amendments as a part of the Florida Statutes. We find it somewhat difficult to discern a logical or natural connection between career criminal sentencing and repossession of motor vehicles by private investigators. Therefore, while the statute is not presently susceptible to a constitutional single subject challenge, see State v. Combs, 388 So.2d at 1030, we deem that in the narrow time frame of this case, appellant has raised a viable question concerning the legitimacy of the 1989 amendments to section 775.084, prior to their formal incorporation into the Florida Statutes. In making this determination, we are cognizant that the fourth district has held, with a citation to Burch v. State, 558 So.2d 1 (Fla. 1990), but without further discussion, that Chapter 89-280, amending section 775.084, does not violate the single subject rule of Article III, section 6, Florida Constitution. See Jamison v. State, 583 So.2d 413 (Fla. 4th DCA 1991); McCall v. State, 583 So.2d 411 (Fla. 4th DCA 1991).

We find it unnecessary to address appellant's other constitutional challenges to section 775.084, since they have been considered and rejected numerous times by this court and other district courts of appeal. See, e.g., Wagner v. State, 578 So.2d 56 (Fla. 1st DCA 1991); Wilson v. State, 574 So.2d 1170 (Fla. 1st DCA 1991), review denied, 583 So.2d 1038 (Fla. 1991); Smith v. State, 573 So.2d 1015 (Fla. 1st DCA 1991); Akbar v.

State, 570 So.2d 1047 (Fla. 1st DCA 1990); Barber v. State, 564 So.2d 1169 (Fla. 1st DCA), review denied, 576 So.2d 284 (Fla. 1990); Arnold v. State, 566 So.2d 37 (Fla. 1st DCA 1990), review denied, 576 So.2d 284 (Fla. 1991); King v. State, 557 So.2d 899 (Fla. 5th DCA), review denied, 564 So.2d 1086 (Fla. 1990); Mitchell v. State, 575 So.2d 798 (Fla. 4th DCA 1991); Collins v. State, 571 So.2d 583 (Fla. 4th DCA 1990).

Accordingly, we reverse appellant's sentence as an habitual violent felony offender, and remand for resentencing. However, we certify the following question to the supreme court as a question of great public importance:

> WHETHER THE CHAPTER 89-280 AMENDMENTS TO SECTION 775.084(1)(a)1, FLORIDA STATUTES (1989), WERE UNCONSTITUTIONAL PRIOR TO THEIR RE-ENACTMENT AS PART OF THE FLORIDA STATUTES, BECAUSE IN VIOLATION OF THE SINGLE SUBJECT RULE OF THE FLORIDA CONSTITUTION.

ALLEN, J., and WENTWORTH, Senior Judge, CONCUR.

A water management district, upon entering into such interagency agreement with the Department of Natural Resources shall provide notice of such action by publication in a newspaper having general circulation in the affected area.

Section 42. This act shall take effect July 1, 1989.

Approved by the Governor July 5, 1989.

Filed in Office Secretary of State July 5, 1989.

CHAPTER 89-280

Senate Bill No. 582

An act relating to criminal law and procedure; amending s. 775.084, F.S.; providing that prior convictions for qualified offenses outside of the state may be used to determine if a defendant is a habitual felony offender; expanding the definition of qualified offense for purposes of habitual felony offender; adding aggravated battery to the list of previous convictions for which habitual violent felony offender penalties may be imposed; amending s. 775.0842, F.S.; providing for career criminal prosecution of arrestees who qualify as habitual felony offenders or habitual violent felony offenders, and reenacting s. 775.0843(1) and (5), F.S., relating to policies for career criminal cases, to incorporate said amendment in references; amending s. 493.30, F.S.; defining the term "repossession"; amending s. 493.306, F.S.; limiting the number of repossessor interns a repossessor may supervise; amending s. 493.317, F.S.; revising prohibited acts; creating s. 493.3175, F.S.; providing procedures for the sale of repossessed property; providing a penalty; amending s. 493.318, F.S; providing procedures for the disposition of certain recovered property not covered by a security agreement; amending s. 493.321, F.S.; providing penalties; requiring certain information to be displayed on certain vehicles; providing for review and repeal; amending s. 901.15, F.S.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 775.084, Florida Statutes, 1988 Supplement, is amended to read:

775.084 Habitual felony offenders and habitual violent felony offenders; extended terms; definitions; procedure; penalties.—

(1) As used in this act:

(a) "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in this section, if it finds that:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses;

2. The felony for which the defendant is to be sentenced was committed within 5 years of the date of the conviction of the last prior felony or other qualified of-

fense of which he was convicted, or within 5 years of the defendant's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later;

3. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this section; and

4. A conviction of a felony or other qualified offense necessary to the operation of this section has not been set aside in any post-conviction proceeding.

(b) "Habitual violent felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in this section, if it finds that:

1. The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

a. Arson,

b. Sexual battery,

c. Robbery,

d. Kidnapping,

e. Aggravated child abuse,

f. Aggravated assault,

g. Murder,

h. Manslaughter,

i. Unlawful throwing, placing, or discharging of a destructive device or bomb, ~~or~~

j. Armed burglary, or;

k. Aggravated battery;

2. The felony for which the defendant is to be sentenced was committed within 5 years of the date of the conviction of the last prior enumerated felony or within 5 years of the defendant's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for an enumerated felony, whichever is later;

3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this section; and

4. A conviction of a crime necessary to the operation of this section has not been set aside in any post-conviction proceeding.

(c) "Qualified offense" means any offense, substantially similar in elements and penalties to an offense in this state, which is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, ~~or of~~ the United States or any possession or territory thereof, or any foreign jurisdiction, that was punishable under the law of such jurisdiction ~~state or the United States~~ at the time of its commission by the defendant by death or imprisonment exceeding 1 year.

(2) For the purposes of this section, the placing of a person on probation without an adjudication of guilt shall be treated as a prior conviction if the subsequent offense for which he is to be sentenced was committed during such probationary period.

(3) In a separate proceeding, the court shall determine if the defendant is a habitual felony offender or a habitual violent felony offender. The procedure shall be as follows:

(a) The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as a habitual felony offender or a habitual violent felony offender.

(b) Written notice shall be served on the defendant and his attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence so as to allow the preparation of a submission on behalf of the defendant.

(c) Except as provided in paragraph (a), all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

(d) Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.

(e) For the purpose of identification of a habitual felony offender or a habitual violent felony offender, the court shall fingerprint the defendant pursuant to s. 921.241.

(4)(a) The court, in conformity with the procedure established in subsection (3), shall sentence the habitual felony offender as follows:

1. In the case of a felony of the first degree, for life.

2. In the case of a felony of the second degree, for a term of years not exceeding 30.

3. In the case of a felony of the third degree, for a term of years not exceeding 10.

(b) The court, in conformity with the procedure established in subsection (3), may sentence the habitual violent felony offender as follows:

1. In the case of a felony of the first degree, for life, and such offender shall not be eligible for release for 15 years.

2. In the case of a felony of the second degree, for a term of years not exceeding 30, and such offenders shall not be eligible for release for 10 years.

3. In the case of a felony of the third degree, for a term of years not exceeding 10, and such offender shall not be eligible for release for 5 years.

(c) If the court decides that imposition of sentence under this section is not necessary for the protection of the public, sentence shall be imposed without regard to this section. At any time when it appears to the court that the defendant is a habitual felony offender or a habitual violent felony offender, the court shall make that determination as provided in subsection (3).

(d) A sentence imposed under this section shall not be increased after such imposition.

(e) A sentence imposed under this section shall not be subject to the provisions of s. 921.001. The provisions of chapter 947 shall not be applied to such person. A defendant sentenced under this section shall not be eligible for gain-time granted by the Department of Corrections except that the department may grant up to 20 days of incentive gain-time each month as provided for in s. 944.275(4)(b).

Section 2. Section 775.0842, Florida Statutes, 1988 Supplement, is amended to read:

775.0842 Persons subject to career criminal prosecution efforts; ~~duties of officers or prison superintendent.—~~

~~(1)~~(a) A person who is under arrest for the commission, attempted commission, or conspiracy to commit any felony in this state shall be the subject of career criminal prosecution efforts provided that such person qualifies as a habitual felony offender or a habitual violent felony offender under s. 775.084 ~~has previously been convicted of two or more felonies as outlined in section 775.084(1).~~

~~(b) As used in this section and ss. 775.0841 and 775.0843, a previous felony conviction is a conviction of a felony in this state or a conviction of a crime in any other jurisdiction when:~~

~~1. A sentence to a term of imprisonment of 1 year or more or a sentence of death could have been imposed therefor.~~

~~2. The offender was over the age of 18 years at the time the offense was committed or was transferred for adult criminal prosecution pursuant to section 39.09(2) or any similar statute in another jurisdiction.~~

~~3. The defendant was imprisoned on at least one occasion for conviction of a felony or other qualified offense necessary for the operation of this section prior to commission of the present felony.~~

~~4. The defendant has not received a pardon on the ground of innocence for any felony or other qualified offense that is necessary for the operation of this section.~~

~~5. A conviction of a felony or other qualified offense necessary to the operation of this section has not been set aside in any post-conviction proceeding.~~

~~(2) Whenever it shall become known to any superintendent of a prison or to any probation, parole, or law enforcement officer that any person charged with or convicted of a felony has been convicted once previously within the meaning of paragraph (1)(b), this fact shall immediately be reported to the state attorney of the judicial circuit in which the charge lies or the conviction occurred.~~

Section 3. For the purpose of incorporating the amendment to section 775.0842, Florida Statutes, 1988 Supplement, in references thereto, subsections (1) and (5) of section 775.0843, Florida Statutes, 1988 Supplement, are reenacted to read:

775.0843 Policies to be adopted for career criminal cases.—

(1) Criminal justice agencies within this state shall employ enhanced law enforcement management efforts and resources for the investigation, apprehension, and prosecution of career criminals. Each state attorney, sheriff, and the police

chief of each municipality with a population in excess of 50,000 shall designate a career criminal program coordinator with primary responsibility for coordinating the efforts contemplated by this section and ss. 775.0841 and 775.0842. Enhanced law enforcement efforts and resources shall include, but not be limited to:

(a) Assignment of highly qualified investigators and prosecutors to career criminal cases.

(b) Significant reduction of caseloads for investigators and prosecutors assigned to career criminal cases.

(c) Coordination with federal, state, and local criminal justice agencies to facilitate the collection and dissemination of criminal investigative and intelligence information relating to those persons meeting the criteria of a career criminal.

(5) Each career criminal apprehension program shall concentrate on the identification and arrest of career criminals and the support of subsequent prosecution of such career criminals. The determination of which suspected felony offenders shall be the subject of career criminal apprehension efforts shall be made in accordance with written target selection criteria selected by the individual law enforcement agency and state attorney consistent with the provisions of this section and s. 775.0842.

Section 4. Subsection (16) is added to section 493.30, Florida Statutes, to read:

493.30 Definitions, part I.—As used in this act:

(16) "Repossession" is the legal recovery of a motor vehicle or motorboat as authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause. A repossession is complete when a licensed repossessor is in control, custody, and possession of such motor vehicle or motorboat.

Section 5. Subsection (6) of section 493.306, Florida Statutes, is amended to read:

493.306 License requirements.—

(6) In addition to any other requirements, an applicant for a Class "E" license must have 1 year of work experience performing repossessing, 1 year as a Class "EE" repossessor intern, or a combination of 1 year of work experience and internship. A Class "E" repossessor may not supervise more than six Class "EE" repossessor interns at one time.

Section 6. Subsections (7) and (8) are added to section 493.317, Florida Statutes, to read:

493.317 Prohibited acts by Class "E" and Class "EE" licensees.—In addition to other requirements imposed by this part or by rule of the department, repossessor licensees and repossessor interns are prohibited from:

(7) FAILING TO REMIT MONEYS.—Failing to remit moneys, collected in lieu of repossession, to a client within 10 working days.

(8) FAILING TO DELIVER NEGOTIABLE INSTRUMENT.—Failing to deliver to a client a negotiable instrument which is payable to the client, within 10 working days after receipt of such instrument.

Section 7. Section 493.3175, Florida Statutes, is created to read:

493.3175 Sale of property by a licensee; penalty.—

(1) A licensee must have written authorization from the owner or lienholder to sell repossessed property for which the licensee has a negotiable title.

(2) A licensee must send the net proceeds from the sale of repossessed property to the owner or lienholder, within 20 working days after the licensee executes the documents which permit the transfer of legal ownership to the purchaser.

(3) A person who violates a provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 8. Subsection (2) of section 493.318, Florida Statutes, is amended to read:

493.318 Repossessor required to prepare and maintain inventory.—

(2) Within 5 working days after the date of a repossession, the repossessor shall give written notification to the registered owner or lessee of the property prior to repossession of the whereabouts of personal effects or other property inventoried pursuant to this section. At least 20 days prior to disposing of such personal effects or other property, the repossessor must, by certified mail, notify the registered owner or lessee of the intent to dispose of said property. ~~Upon written notification to the person who controlled the property prior to repossession, the personal property contained within the repossessed property may be disposed of 10 days after notification.~~

Section 9. Section 493.321, Florida Statutes, is amended to read:

493.321 Violation; penalty.—

(1) Except as provided in s. 493.3175, any person who violates any provision of this part is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who is convicted of any violation of this part shall not be eligible for licensure for a period of 5 years.

Section 10. Vehicles used solely for the purpose of repossession by a Class "E" or "EE" licensee shall be identified during repossession by the license number of the licensee. The license number shall be displayed on the side of the vehicle and shall appear in lettering no less than 4 inches tall and in contrasting colors from the background.

Section 11. Each section which is added to chapter 493, Florida Statutes, by this act is repealed on October 1, 1990, and shall be reviewed by the Legislature pursuant to section 11.61, Florida Statutes.

Section 12. This act shall take effect October 1, 1989, and shall apply to offenses committed on or after the effective date.

Approved by the Governor July 5, 1989.

Filed in Office Secretary of State July 5, 1989.