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**FILED**

SID J. WHITE

FEB 5 1992

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT.

By [Signature]  
Chief Deputy Clerk

STATE OF FLORIDA,  
Petitioner,

v.

CASE NO. 79,150 ✓

CECIL B. JOHNSON,  
Respondent.

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STATE OF FLORIDA,  
Appellant,

v.

CASE NO. 79,204 /"

CECIL B. JOHNSON,  
Appellee.

RESPONDENT/APPELLEE'S ANSWER BRIEF ON THE MERITS

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

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TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
I PRELIMINARY STATEMENT	1
II STATEMENT OF THE CASE AND FACTS	2
III SUMMARY OF ARGUMENT	3
IV ARGUMENT	4
<u>ISSUE I</u>	
THE FACIAL VALIDITY OF A STATUTE MAY BE RAISED FOR THE FIRST TIME ON APPEAL,	4
<u>ISSUE II</u>	
SECTIONS 775.084, FLORIDA STATUTES (1989), CHAPTER 89-280, LAWS OF FLORIDA, VIOLATES THE ONE SUBJECT RULE OF THE FLORIDA CONSTITUTION.	5
V CONCLUSION	9
CERTIFICATE OF SERVICE	9

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
<u>Blankenship v. State</u> , 545 So.2d 908 (2d DCA 1990)	7
<u>Bunnell v. State</u> , 453 So.2d 808 (Fla. 1984)	7,8
<u>Chenowith v. Kemp</u> , 396 So.2d 1122 (Fla. 1981)	7
<u>State v. Burch</u> , 558 So.2d 1 (Fla. 1990)	6,7,8
<u>State v. Thompson</u> , 120 Fla. 860, 163 So. 270 (1935)	6
<u>Trushin v. State</u> , 425 So.2d 1126 (Fla. 1982)	4
 <u>STATUTES</u>	
Section 493.30(16), Florida Statutes	6
Section 493.306(6), Florida Statutes	6
Section 493.317(7), Florida Statutes	6
Section 493.317(8), Florida Statutes	6
Section 493.3175, Florida Statutes	6
Section 493.318(2), Florida Statutes	6
Section 493,3176, Florida Statutes	6
Section 775.084, Florida Statutes	3,5,6
Section 775.0842, Florida Statutes	6
Section 775.0843, Florida Statutes	6
 <u>CONSTITUTIONS</u>	
Article III, Section 6, Florida Constitution	3,5,8

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Appellee. :

RESPONDENT/APPELLEE'S ANSWER BRIEF ON THE MERITS

I PRELIMINARY STATEMENT

This is an appeal from the Fourth Judicial Circuit. The record on appeal will be referred to as "R," followed by the appropriate page number. There are two volumes in the record. All proceedings below were before Circuit Judge John D. Southwood. The defendant is the respondent/appellee and will be referred to as the respondent.

## II STATEMENT OF THE CASE AND FACTS

An information was filed against the respondent on July 23, 1990, charging **Sale** or Delivery of Cocaine (Vol. I. p.5). On July 26, 1990, the State of Florida filed notice of its intent to have the respondent classified **as** an Habitual Violent Felony Offender (Vol. I. p.7). The respondent pled not guilty **and** a jury trial was held, At trial, the respondent was found guilty **as** charged (Vol. I. p.19). The respondent filed a motion for a new trial on February 7, 1991 (Vol. I. p.20). The motion for a new trial was denied (Vol. II. p.179).

On February 21, 1991 the respondent was declared an Habitual Violent Felony Offender by the trial court, and sentenced to twenty five years DOC with a ten year minimum mandatory prison term (Vol. 11. p.187). The respondent was sentenced based upon his 1987 conviction for aggravated battery (Vol. 11. p.181, 187). The respondent filed a timely notice of appeal on February 27, 1991 (Vol. I. p.37). The issue before this Court was raised for the first time on appeal.

### III SUMMARY OF ARGUMENT

The facial validity of the statute includes the assertion that the statute violates the single subject rule of Article III, Section 6, of the Florida Constitution. The respondent was sentenced under a constitutionally infirm statute. Because the statute under which the respondent was sentenced was constitutionally flawed and the error was fundamental, the District Court was correct to reach the merits of the argument

Chapter 89-280, Section 775.084, Florida Statutes violates the one subject **rule** of the Florida State Constitution. The law in Chapter **89-280** embraces two subjects. These subjects are the habitual felony offender and the repossession of motor vehicles. There is absolutely no connection between the **law** governing the habitual felony offender and the repossession of motor vehicles. Chapter 89-280, Section **775.084**, Florida Statute is unconstitutional.

## IV ARGUMENT

### ISSUE I

#### **THE FACIAL VALIDITY OF A STATUTE MAY BE RAISED FOR THE FIRST TIME ON APPEAL.**

The respondent raised the single subject challenge to Chapter **89-280** for the first time on appeal. The issue was never brought before the trial court in the respondents case. However, because the issue concerns the facial validity of a statute, the issue need not be argued at the trial level for the matter to be preserved for appeal. **As** this court has said in Trushin v. State, 425 So.2d 1126 (Fla. 1982):

The facial validity of a statute, including an assertion that the statute is infirm because of overbreadth, can be raised for the first time on appeal even though prudence dictates that it be presented at the trial level to assure that it not be considered waived.

Id. at 1129, The First District Court was correct in reaching the merits of the respondents single subject challenge. The constitutionality of the statute was attacked on fundamental grounds and, **as** a result, the respondent never waived the right to argue the single subject violation for the first time on appeal. Fundamental errors **may** be argued on appeal without objection, and without having been raised at the trial level, and they are not waived for purpose of appeal.

ISSUE II

**SECTIONS 775.084, FLORIDA STATUTES (1989),  
CHAPTER 89-280, LAWS OF FLORIDA, VIOLATES  
THE ONE SUBJECT RULE OF THE FLORIDA  
CONSTITUTION.**

An information was filed against the respondent on July 23, 1990, charging Sale or Delivery of Cocaine (Vol. I. p.5). On July 26, 1990, the State of Florida filed notice of intent to have the respondent classified as an Habitual Violent Felony Offender (Vol. I. p.7). The respondent pled not guilty, and a jury trial was held. At trial, the respondent was found guilty as charged (Vol. I. p.19). On February 21, 1991 the respondent was declared an Habitual Violent Felony Offender by the trial court, and sentenced to twenty five years DOC with a ten year minimum mandatory prison term (Vol. 11. p.187). The respondent was sentenced as a habitual violent felony offender based upon his 1987 conviction for aggravated battery (Vol. 11. p.181, 187).

Respondent's offense date was July 5, 1990 which was after the October 1, 1989, effective date of Section 775.084, Florida Statutes (1989), Ch. 89-280, Laws of Fla.

Section 775.084, Florida Statutes (1989), Ch 89-280, Laws of Florida violates the one subject rule of Article 111, Section 6, of the Florida Constitution. Article 111, Section 6 of the Florida Constitution provides that:

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."

Chapter 89-280 embraces two subjects: habitual felony offenders or habitual violent felony offenders, and the repossession of motor vehicles. The first three sections of Chapter 89-280 amended sections 775.084 (habitual offender statute), 775.0842 (career criminal statute), and 775.0843 (policies for career criminals), Florida Statutes. Section four of Chapter 89-280 created section 493.30(16), Florida Statutes, defining "repossession". Section 493.306(6), adding license requirements for repossessors. Section six created section 493.317(7) and (8), prohibiting repossessors from failing to remit money or deliver negotiable instruments. Section seven created section 493.3175, regarding the sale of property by repossessors. Section eight amended Section 493.318(2), requiring repossessors to prepare and maintain inventory. Section nine amended Section 493.3176, requiring certain information to be displayed on vehicles used by repossessors.

In State v. Burch, 558 So.2d 1 (Fla. 1990), the Florida Supreme Court quoted the following from State v. Thompson, 120 Fla, 860, 163 So, 270 (1935):

Where duplicity of subject matter is contended for as violative of Section 16 of Article III of the Constitution relating to and requiring but one subject to be embraced in a single legislative bill, the test of duplicity of subject is whether or

not the provisions of the bill are designed to accomplish separate and disassociated objects of legislative effort.

Burch, supra, at 2.

The Burch Court also quoted from Chenowith v. Kemp, 396 So.2d 1122 (Fla. 1981):

The subject of an act "may be as broad as the Legislature chooses as long as the matters included in the act have a natural or logical connection,"

Burch, supra, at 2.

The different targets of the act must be naturally and logically connected Blankenship v. State, 545 So.2d 908 (2d DCA 1990). There is no natural or logical connection between recidivist and repossessors of cars and boats. Half of Chapter **89-280** addresses the prosecution and sentencing of recidivists, while the other half addresses the regulation of a lawful occupation. It is, therefore, clear that the law is "designed to accomplish separate and disassociated objects of legislative effort."

In Burch, the Florida Supreme Court upheld Chapter 87-243. In doing so, however, the Burch Court distinguished Bunnell v. State, 453 So.2d 808 (Fla. 1984):

In Bunnell this court addressed chapter 82-150, Laws of Florida, which contained two separate topics: the creation of a statute prohibiting the obstruction of justice by false information and the reduction in the membership of the Florida Criminal Justice Council. The relationship between these two subjects was so tenuous that this court included that the single-subject provision of the constitution had been violated. Unlike Bunnell, chapter 87-243 is a comprehensive

law in which all of its parts are directed toward meeting the crisis of increased crime.

Burch, supra, at 3.

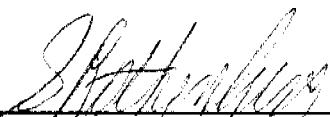
Like the law in Bunnell, Chapter **89-280** is a two-subject law; it is not a comprehensive one. The relationship between recidivists and repossessors of cars and boats is even more tenuous than the relationship between the obstruction of justice by providing **false** information and reduction in the membership of the Florida Criminal Justice Council. Accordingly, the inescapable conclusion is that Chapter **89-280** violates the one-subject rule and is unconstitutional. To hold otherwise would ignore the single subject requirement under the Florida Constitution. If Article III, Section 6 of the Florida Constitution is to have any meaning, whatsoever, then this court should come to the logical conclusion that Chapter **89-280** violates the single subject requirement. The single subject requirement has a valuable and necessary purpose, and it should be enforced by declaring that Chapter 89-280 violates the single subject rule and is unconstitutional.

V CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, respondent requests that the Florida Supreme Court affirm the District Court of Appeals ruling in the respondent's case.

Respectfully submitted,

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\_\_\_\_\_  
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ATTORNEY FOR RESPONDENT/APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to Charlie McCoy, Assistant Attorney General, The Capitol, Tallahassee, Florida, and a copy has been mailed to Respondent/Appellee, CECIL B. JOHNSON, #A-286597, Madison Correctional Institution, Post Office Box 692, Madison, Florida 32340, on this 5<sup>th</sup> day of February, 1992.

  
\_\_\_\_\_  
**STEVEN ALVAH ROTHENBURG**