IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NO. 79,150

CECIL B. JOHNSON,

Respondent.
_____/

STATE OF FLORIDA,

Appellant,

v. CASE NO. 79,204

CECIL B. JOHNSON,

Appellee.
_____/

APPELLANT/PETITIONER'S REPLY BRIEF

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PRELIMINARY STATEMENT

The State notes Appellee's implicit agreement that this is an appeal of right.

SUMMARY OF ARGUMENT

Omitted due to brevity of argument.

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.

Appellee's argument is evasive, and does no more than state the maxim that fundamental error may be raised for the first time on appeal. He fails to address whether the alleged error - inclusion of two subjects in ch. 89-280, Laws of Florida - is fundamental. To the contrary, it cannot reasonably be maintained that the number of subjects in a legislative act rises to error that is "fundamental," under the extensive case law discussed in the State's initial brief.

The facial validity of a statute is not at issue for two obvious reasons. First the number of subjects in a legislative act has nothing to do with the facial validity, or substance, of a statute. Second, a legislative act is not a codified statute.

Appellee's brief quote from Trushin v. State, 425 So.2d 1126 (Fla. 1982), belies his position. The quoted language declares that "facial validity of a statute, including ... overbreadth, can be raised for the first time on appeal." Id. at 1129.

Nowhere does Appellee attempt to explain how the mere number of subjects in a legislative act rises to the same

level of concern as "overbreadth," with its First Amendment implications. Appellee simply cannot do so.

To claim that the number of subjects in a legislative act rises to error that is "fundamental," is to mock a long-standing body of case law; and to confound the well-established principle that a trial court must be apprised of alleged error. Appellee must not be allowed to do so.

Assuming ch. *89-280* violates the one-subject rule, that violation cannot be fundamental error. Consequently, Appellee waived any objection on that ground by failing to raise it in the trial court. The First District was without jurisdiction to reach the merits of the issue. Its decision must be vacated.

ISSUE II

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

Appellee has missed the issue. The dispositive question is whether the basic areas of ch. 89-280 relate to controlling crime; not whether every individual provision in the act is substantively related, or connected, to every other provision. The two basic areas of ch. 89-280 are habitual felons and repossession of motor vehicles. As described in the State's initial brief, these areas both **relate** to controlling crime. The act contains but one

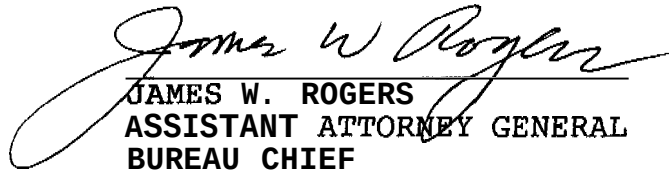
subject for purposes of Art. 111, §6 of the Florida Constitution.

CONCLUSION

The opinion below must be vacated for lack *of* jurisdiction to reach the merits of the one-subject issue. If the merits are reached, the opinion below law must be reversed, thereby affirming Appellee's sentence.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail *to* Steven A. Rothenburg, Assistant Public Defender, Leon County Courthouse, Fourth Floor, North, 301 South Monroe Street, Tallahassee, Florida 32301, this 13th day of February, 1992.

Charlie McCoy
Assistant Attorney General