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**FILED**  
SID J. WHITE  
NOV 23 1992  
CLERK, SUPREME COURT.  
By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

ROBERT LEE COON,  
Petitioner,

vs.

Case No. 80,151

STATE OF FLORIDA,  
Respondent.

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

REPLY BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN  
PUBLIC DEFENDER  
TENTH JUDICIAL CIRCUIT

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ATTORNEYS FOR PETITIONER

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## ARGUMENT

### ISSUE I

#### WHETHER CHAPTER 89-280, LAWS OF FLORIDA VIOLATES THE ONE SUBJECT RULE OF THE FLORIDA CONSTITUTION, MAKING PETITIONER'S SENTENCE ILLE- GAL .

Respondent argues that the date of the trial rather than the date of the offense is **the date to be used in** considering imposition of the habitual felony offender statute. The habitual felony offender statute would violate **ex post facto** application **if it** applied to the time of the trial rather than the date of the offense. The statute must be effective **at the time of the** offense in order to avoid violating **ex post facto**. Carnegie v. State, 564 So. 2d 233 (Fla. 1st DCA 1990). Thus at the **time** of the commission of **the** offense there was not a valid habitual felony offender statute that allowed the use of out of state convictions **to be used** as requisite prior offenses.

The state argues that the two basic areas of Chapter **89-280**; (1) policies and penalties **as** to career criminals and habitual felons, and (2) repossession of motor vehicles, are both related to controlling crime. The court in Johnson v. State, **589** So.2d 1370 (Fla. 1st DCA 1991), supplied the appropriate response: "**We** find it somewhat difficult to discern **a** logical **or** natural connection between career criminal sentencing and repossession of motor vehicles by **private** investigators." Suffice it to **say** it is

stretching the realm of logic to **say** chapter 89-280 encompasses only one subject.

## ISSUE II

WHETHER THE TRIAL COURT ERRED BY  
ADMITTING EVIDENCE OF CHILD EROTICA  
THAT WAS IN PETITIONER'S POSSESSION.

Respondent argues that the child erotica evidence was properly admitted to show Petitioner's intent to possess the magazine depicting child pornography. This extraneous, prejudicial evidence was admitted to show Petitioner's bad character because intent was not really an issue in this case. The state only had to **show** knowledge, not intent, just **as** in a drug possession case. The jury instruction read that the following must be proved: "Robert Lee Coon possessed a photograph, a motion picture, exhibition show, representation or other presentation which, in whole or in part, he knew to include sexual conduct by a child." (R291)

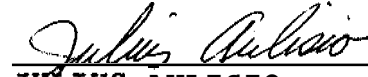
The state was not required to prove what Petitioner's intent was in possessing the magazine. The state merely had to prove knowing possession which was accomplished by the officer testifying to the conversation that occurred during the purchase of the magazine. The evidence of the **child** erotica was clearly prejudicial and **was** not admitted to prove a material element of the offense. The unduly prejudicial evidence of child erotica should have been excluded from the trial.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Sue R. Henderson, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 19 day of November, 1992.

Respectfully submitted,

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