

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

JOHN MORRIS,

Respondent.

CASE NO. 92,937

PETITIONER'S REPLY BRIEF ON THE MERITS

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FLORIDA BAR NO. 325791

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STATEMENT OF THE CASE AND FACTS

The state will rely on the statement of the case and facts contained in the initial brief.

## ARGUMENT

### DOES CHAPTER 95-182 VIOLATE THE SINGLE SUBJECT REQUIREMENT OF FLORIDA'S CONSTITUTION?

Appellee asserts in his brief that Chapter 95-182 Laws of Florida has two subjects. Appellee is wrong and this Court should reverse the decision of the lower tribunal.

Appellee asserts in his brief that the state has failed to identify a single subject for this act of the legislature. Appellant respectfully disagrees. The act itself provides the proper single subject. The subject of the act is penalties to be imposed upon recidivists, those who repeat their criminal activity. The object is to reduce crime by imposing stiffer sanctions on those who do not learn from their first criminal episode.

Under the analysis of the single subject provision, the first step is to identify the subject. The state asserts that the case law requires an examining court to give broad leeway to the legislature in identifying the subject of the legislation. As this Court stated in Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (Fla. 1969):

The term 'subject of an act' within this provision means the matter which forms the groundwork of the act and it may be as broad as the Legislature chooses as long as the matters included in the act have a natural or logical connection. See cases cited in 22 F.L.P. Statutes, s 30. The fact that a statute embracing the matter of open meetings for certain boards and commissions also contains provisions for criminal penalties and an injunction by application of citizens does not make the act unconstitutional.

Id. at 699

Moreover, as this Court stated in State v. Kinner, 398 So.2d 1360 (Fla. 1981)

In addition, we are aware of the strong presumption in favor of the constitutionality of statutes. It is well established that all doubt will be resolved in favor of the constitutionality of a statute, Bonvento v. Board of Public Instruction of Palm Beach County, 194 So.2d 605 (Fla. 1967), and that an act will not be declared unconstitutional unless it is determined to be invalid beyond a reasonable doubt. Knight and Wall Co. v. Bryant, 178 So.2d 5 (Fla. 1965), cert. denied 383 U.S. 958, 86 S.Ct. 1223, 16 L.Ed.2d 301 (1966).

Id. at 1363

Thus, the state asserts that the presumption of constitutionality that is to be afforded statutes can only be accorded its proper weight by requiring courts to scrutinize the statute and if a single subject can be found, to determine that the first part of the analysis has been met.

The second part of the test is to determine whether the various part of the statute relate to this single subject. The test has been articulated in various ways. The generally used terms are natural and logical connection between the subject of the legislation and its various parts. Doran Here, the state maintains that the portions of the statute appropriately relate to the subject of the legislation.

To accomplish the subject of the legislation, punishing recidivists, the legislature modified certain statutes and created new penalty provisions. First, it made some minor modifications to the regular habitual offender statute which

requires two prior offenses before an individual may be habitualized. Next it modified the habitual violent offender statute. The major change was that the legislature added aggravated stalking to the list of enumerated offenses for which an individual can be declared a habitual violent offender. This section provides harsher punishment and is available if an individual has one prior offense as long as the offense is an enumerated felony. The third item was to create the violent career criminal classification which requires three prior convictions before classification and sentencing as a career criminal. This is the harshest sentencing classification. In creating this statute, the legislature included aggravated stalking as an enumerated offense for this classification.

One area of criminal activity that has been a particular problem for some time is the criminal activity constituting domestic violence. Various social and psychological dynamics make domestic violence difficult to ferret out, difficult to prosecute, and difficult to eradicate.

Many of the crimes constituting domestic violence, See § 741.28 Fla. Stat. (1995) such as aggravated battery, aggravated assault, kidnaping, were already part of the habitual offender statutes. The legislature added aggravated stalking to the existing legislation and included it in the newly created career criminal provisions. The legislature also decided to add additional penalties for repeated criminal behavior which occurs in the domestic context. It created sections which authorize the

victim of the crime to recover money from the offender, who having previously committed crimes of domestic violence, violates a domestic violence injunction. It also authorizes both compensatory and punitive damages for continuing criminal acts of domestic violence.

The fact that these section authorize civil actions does not alter the fact that they reasonably relate to penalties for repeated criminal activity. Domestic violence is criminal activity. See § 741.28 Fla. Stat. (1995). A person does not obtain an injunction until acts of domestic violence have occurred and continuing domestic violence is violence which has occurred repeatedly. Therefore, these section address repeated violations of the criminal law.

Furthermore, the criminal law has for a long time related penalties to the needs of both society and the victim. Restitutional provisions related to criminal offenses are designed to compensate the victim and punish the offender. The challenged provisions provide restitutional and punitive sanctions. The civil nature of these penalties do not make the provisions unrelated to the subject of punishing recidivist offenders. In Doran, this Court recognized that the fact that the legislature authorized both criminal sanctions and civil injunctive relief did not alter the fact that the provisions were related to the subject of open governmental meetings. Likewise, these provisions are related to the subject of punishing recidivists.



Thus, this Court should find the provisions of the statute reasonably related to the subject of imposing penalties upon recidivist offenders.

Appellant's reliance on Alachua County v. Florida Petroleum Marketers Ass'n, Inc., 589 So.2d 240 (Fla. 1991) is misplaced. The legislation found unconstitutional in that case was substantially different than the legislation currently under review. The critical difference is that in the Alachua case the legislature had gone far beyond the subject of regulating the construction industry. It delegated legislative authority to the counties and cities to make underground tank regulations more stringent than state standards and provided what counties had to do to create more stringent tank standards. If the legislature had limited itself to construction industry licensing and disciplinary functions, the statute would not have been in violation of the single subject limitation.

Appellant's parade of horribles does not present this Court with a reason to find the statute unconstitutional. This listing presents a series of Alachua County type scenarios inferring that if the Court approves this legislation then it would have to allow regulations of various types to be included in one act because career criminals sometimes do things that involve other statutory provisions. Appellant's claims miss the mark. The subject of the legislation under review was very narrow. Penalties for recidivists. Under its umbrella, the legislature was limited to including in the statute matters traditionally

included in criminal penalties. These matters include a punishment component, such as incarceration or other limitation on freedom; a rehabilitative component, penalties designed to improve the offender and make whole society; and a victim oriented component, which could include restitution, payment of monetary damages to make up for the injuries inflicted, or other protections such as notification of release and protection from future injury. The provisions at issue in this case were limited to these traditional penalties imposed on offenders for the violation of the criminal statutes. Thus, the provisions of the act were related to the subject of the legislation which was penalties for recidivists.

#### **Summary**

Chapter 95-182, Laws of Florida addresses a single subject. The subject is penalties for those individuals who are repetitive violators of the criminal laws of the state. The various sections of the law provide different types of penalties for different types of violations. However, the legislative enactment as a whole is rationally related to the subject of penalties for recidivist offenders.

Since, there exists a single subject and a rational relationship between the parts, this Court should reverse the determination of the lower tribunal and find the law constitutional.

CONCLUSION

Based on the foregoing discussion and the discussion in the Initial Brief, the State respectfully submits the decision of the District Court of Appeal reported as Morris v. State, 23 Fla. L. Weekly D1102 (Fla. 2d DCA, April 29, 1998) should be disapproved, and the judgement and sentence entered in the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S REPLY BRIEF ON THE MERITS has been furnished by U.S. Mail to U.S. Mail to Joanna B. Conner, Esquire, Assistant Public Defender, Post Office Box 9000-Drawer PD, Bartow, Florida 33831, this \_\_\_\_\_ day of September, 1998.

\_\_\_\_\_  
Edward C. Hill, Jr.  
Attorney for the State of Florida

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