

IN THE SUPREME COURT OF FLORIDA

CASE NO. 93,526

**MICHAEL DUPREE,**

Petitioner,

-vs-

**STATE OF FLORIDA,**

Respondent.

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**FILED**

SID J. WHITE

SEP 14 1998

CLERK, SUPREME COURT

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ON PETITION FOR DISCRETIONARY REVIEW

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BRIEF OF RESPONDENT ON THE MERITS

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TABLE OF CONTENTS

	PAGE (S)
TABLE OF CONTENTS . . . . .	ii
TABLE OF CITATIONS . . . . .	iii
PRELIMINARY STATEMENT . . . . .	1
STATEMENT OF THE CASE AND FACTS . . . . .	2
SUMMARY OF ARGUMENT . . . . .	4
ARGUMENT . . . . .	5

CHAPTER 95-182 OF THE LAWS OF FLORIDA DOES NOT VIOLATE  
THE SINGLE SUBJECT REQUIREMENT OF THE FLORIDA  
CONSTITUTION

CONCLUSION . . . . .	25
CERTIFICATE OF SERVICE . . . . .	26

TABLE OF CITATIONS

CASES	PAGE(S)
<u>Advisory Opinion to the Attorney General re Fish and Wildlife Conservation Com'n, 705 So. 2d 1351 (Fla. 1998)</u>	20
<u>Alterman Transport Lines, Inc. v. State, 405 So. 2d 456 (Fla. 1st DCA 1981)</u>	6
<u>Board of Public Instruction v. Doran, 224 So. 2d 693 (Fla. 1969)</u>	9
<u>Bunnell v. State, 453 So. 2d 808 (Fla. 1984)</u>	13,21,22
<u>Burch v. State, 558 So. 2d 1 (Fla. 1990)</u>	10,23
<u>Chenoweth v. Kemp, 396 So. 2d 1122 (Fla. 1981)</u>	9,10
<u>Florida League of Cities, Inc. v. Administration Com'n, 586 So. 2d 397 (Fla. 1st DCA 1991)</u>	7
<u>Glaubius v. State, 688 So. 2d 913 (Fla. 1997)</u>	14,15
<u>Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997)</u>	12
<u>Holloway v. State 23 Fla. L. Weekly D1413 (Fla. 3d DCA June 10, 1998)</u>	12
<u>Honchell v. State, 257 So. 2d 889 (Fla. 1972)</u>	6
<u>In re Advisory Opinion to the Attorney General-- Save Our Everglades, 636 So. 2d 1336 (Fla. 1994)</u>	9
<u>In re Advisory Opinion to the Governor, 509 So. 2d 292 (Fla. 1987)</u>	10
<u>Kern v. State, 706 So. 2d 1366 (Fla. 5th DCA 1998)</u>	23
<u>Linder v. State, 23 Fla. L. Weekly D1391 (Fla. 3d DCA June 10, 1998)</u>	12
<u>Martinez v. Scanlan, 582 So. 2d 1167, 1172 (Fla. 1991)</u>	9

<u>Smith v. Department of Insurance</u> , 507 So. 2d 1080 (Fla. 1987)	9,10
<u>State v. Carswell</u> , 557 So. 2d 183 (Fla. 3d DCA 1990)	6
<u>State v. Combs</u> , 388 So. 2d 1029 (Fla. 1980)	5,6
<u>State v. Johnson</u> , 616 So. 2d 1 (Fla. 1993)	6,13,21,22
<u>State v. Kinner</u> , 398 So. 2d 1360 (Fla. 1981)	7
<u>State v. Leavins</u> , 599 So. 2d 1326 (Fla. 1st DCA 1992)	10
<u>State v. Lee</u> , 356 So. 2d 276 (Fla. 1978)	9,10
<u>State v. McDonald</u> , 357 So. 2d 405 (Fla. 1978)	10
<u>State v. Physical Therapy Rehabilitation Center of Coral Springs, Inc.</u> , 665 So. 2d 1127 (Fla. 1st DCA 1996)	7
<u>Strickland v. State</u> , 681 So. 2d 929 (Fla. 3d DCA 1996)	14
<u>Thompson v. State</u> , 708 So. 2d 315 (Fla. 2d DCA 1998)	passim
<u>Todd v. State</u> , 643 So. 2d 625 (Fla. 1st DCA 1994)	7
<u>United States v. Bailey</u> , 115 F.3d 1222 (5th Cir. 1997)	8
<u>United States v. Cardoza</u> , 129 F.3d 6 (1st Cir. 1997)	8
<u>United States v. Crawford</u> , 115 F.3d 1397 (8th Cir. 1997)	8
<u>United States v. Michael R.</u> , 90 F.3d 340 (9th Cir. 1996)	8
<u>United States v. Quinn</u> , 123 F.3d 1415 (11th Cir. 1997)	8
<u>United States v. Wilson</u> , 73 F.3d 675 (7th Cir.1995)	8

FLORIDA STATUTES

§ 924.051(1)(b), Fla. Stat. (1997)	7
§ 741.28(1), Fla. Stat. (1997)	14
§ 741.2901(2), Fla. Stat. (1997)	14

§ 741.31(1), Fla. Stat. (Supp. 1994)	15
§ 741.31(2), Fla. Stat. (1995)	15
§ 784.048(4), Fla. Stat. (1997)	19
§ 776.08, Fla. Stat. (1997)	19
§ 932.704(2), Fla. Stat. (1997)	23

ADDITIONAL AUTHORITY

Art. III, § 6, Fla. Const.	passim
Art. V, § 3(b)(3), Fla. Const.	5
Fla.R.App.P. 9.140(d)	7
<u>Florida Appellate Practice</u> § 9.4 (2d ed. 1997)	8
Crime Control Act of 1995, Ch. 95-184, Laws of Fla.	14,15,20
Gort Act, Ch. 95-182, Laws of Fla.	passim
House Bill 1251	16
House Bill 1789	18,19
Senate Bill 168	16,18,20
Senate Bill 118	18
Senate Bill 172	20
<u>Statutory Interpretation: Lord Coke Revisited</u> 48 U. Pitt. L. Rev. 733 (1987)	17

PRELIMINARY STATEMENT

Petitioner, Michael Dupree, the Appellant in the Third District Court of Appeal and the Defendant in the trial court, will be referenced in this brief as Petitioner or by his proper name. Respondent, the State of Florida, the Appellee in the Third District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, prosecution, or the State.

The record on appeal consists of one volume. Pursuant to Rule 9.210(b), Fla. R. App. P., this brief will refer to this volume as "R." A citation to this volume will be followed by the appropriate page number(s) within the volume.

All emphasis through bold lettering is supplied unless the contrary is indicated.

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12.

STATEMENT OF THE CASE AND FACTS

In 1995, the legislature passed Chapter 95-182 Laws of Florida, the "Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995" (The Gort Act). The act applied to all offenses committed after October 1, 1995. Chapter 95-182 was subsequently reenacted on May 24, 1997 as part of the biennial reenactment of Florida Statutes. See Ch. 97-97, at 622, Laws of Fla.

On October 31, 1996, the State filed an Information charging Mr. Dupree with Burglary of a Unoccupied Conveyance and Resisting an Officer without Violence. (R 1-4) The Information indicated that Dupree committing these offenses on October 10, 1996. (R 1-4)

On November 8, 1996, the State filed a notice of its intent to seek an enhanced penalty against Dupree pursuant to section 775.084 of the Florida Statutes. (R 10) Dupree entered a plea of not guilty, and the cause proceeded to trial. (R 5-6,9.17) On July 30, 1997, the jury found Dupree guilty as charged. (R 56-57)

Prior to sentencing, Dupree filed a motion to declare unconstitutional Chapter 95-182 Laws of Florida, the "Officer Evelyn Gort and All Fallen Officers Career Criminal Act of 1995" (The Gort Act). (R 140-142) The trial court denied Dupree's motion to declare the statute unconstitutional. (R 159-160)

Subsequently, the court sentenced Dupree as a violent career criminal, to serve fifteen (15) years in prison on the burglary

offense, with a minimum term of ten (10) years to be served prior to release. The court split Dupree's sentence by suspending the final two (2) years of incarceration and placing Dupree on probation in a drug offender program for those years. (R 149-151,192-193) The court suspended entry of sentence on the second count. (R 149,193)

On appeal the District Court affirmed the final judgment of conviction and sentence but certified conflict with the Second District's opinion in Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998) which found Chapter 95-182 unconstitutional as a violation of the single subject provision of the Florida Constitution, Article III Section 6. From this decision, Petitioner seeks review.



## SUMMARY OF ARGUMENT

A natural and logical connection exists among the numerous sections of the Gort Act, Chapter 95-182 of the Laws of Florida. The first sections of the Gort Act concern sentencing for the offense of aggravated stalking and other forms of violent conduct. The second part of the Act provides a remedy for the victims of this proscribed conduct when the conduct occurs in a relationship. These provisions have a cogent relationship with each other. Thus, Chapter 95-182 does not violate the single subject provision of the Florida Constitution.

## ARGUMENT

CHAPTER 95-182 OF THE LAWS OF FLORIDA DOES NOT VIOLATE THE SINGLE SUBJECT REQUIREMENT OF THE FLORIDA CONSTITUTION

The issue before this Court is whether the legislature violated the single subject provision of Article III, § 6 of the Florida Constitution when it passed Chapter 95-182, Laws of Florida.

### **Jurisdiction**

This Court has jurisdiction over this issue pursuant to Article V, § 3(b)(3) of the Florida Constitution as an express and direct conflict exists between the decision of the lower tribunal and the decision of Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998).

### **General Principles Applicable to the Case**

#### Standing

Only a defendant who committed his offense prior to May 24, 1997 has standing to challenge the constitutionality of the Gort Act. The single subject provision applies only to chapter laws; Florida Statutes are not required to conform to the provision. State v.

Combs, 388 So. 2d 1029 (Fla. 1980). Once reenacted as a portion of the Florida Statutes, a chapter law is no longer subject to challenge on the grounds that it violates the single subject provision of Article III, § 6, of the Florida Constitution. State v. Johnson, 616 So. 2d 1, 2 (Fla. 1993). The reenactment of a statute cures any infirmity or defect. State v. Carswell, 557 So. 2d 183, 184 (Fla. 3d DCA 1990); Honchell v. State, 257 So. 2d 889 (Fla. 1972); Alterman Transport Lines, Inc. v. State, 405 So. 2d 456 (Fla. 1st DCA 1981).

The "window" period for challenging the Gort Act, chapter 95-182, Laws of Florida, on the basis that it violates the single subject provision of the Florida Constitution is from the effective date of the law, which was October 1, 1995 until May 24, 1997, which was the date the Gort Act was reenacted. Thompson v. State, 708 So. 2d 315, n.1 (Fla. 2d DCA 1998). The Gort Act was reenacted as part of the biennial adoption of the Florida Statutes. See Ch. 97-97, at 622, Laws of Fla. Only those defendants who committed their offenses prior to May 24, 1997 have standing to challenge the constitutionality of the Gort Act on the basis that it violates the single subject provision. Petitioner committed his offense within the window period and has standing to challenge the act.

### Preservation

Petitioner preserved the issue by filing a motion in the trial court challenging the statute. § 924.051(1)(b), Fla. Stat. (1997); Fla. R. App. P. 9.140(d). (R 140-143) The issue was also preserved and ruled on in the District Court.

### The Presumption of Constitutionality

Legislative acts are presumed constitutional. See State v. Kinner, 398 So. 2d 1360, 1363 (Fla. 1981). Courts should resolve every reasonable doubt in favor of the constitutionality of a statute. Florida League of Cities, Inc. v. Administration Com'n, 586 So. 2d 397, 412 (Fla. 1st DCA 1991). An act should not be declared unconstitutional unless it is determined to be invalid beyond a reasonable doubt. Todd v. State, 643 So. 2d 625, 627 (Fla. 1st DCA 1994). Single subject challenges like all constitutional challenges are governed by these principles. State v. Physical Therapy Rehabilitation Center of Coral Springs, Inc., 665 So. 2d 1127, 1130 (Fla. 1st DCA 1996) (noting, in the context of a constitutional challenge to a statute alleging a defective title, a presumption exists in favor of the validity of the statute).

## The Standard of Review

The constitutionality of statute is a question of law that an appellate court reviews *de novo*. See United States v. Cardoza, 129 F.3d 6, 10 (1st Cir. 1997); United States v. Bailey, 115 F.3d 1222, 1225 (5th Cir. 1997); United States v. Wilson, 73 F.3d 675, 678 (7th Cir. 1995); United States v. Crawford, 115 F.3d 1397, 1400 (8th Cir. 1997); United States v. Michael R., 90 F.3d 340, 343 (9th Cir. 1996). An appellate court reviews the constitutionality of all statutes, including sentencing statutes, *de novo*. United States v. Quinn, 123 F.3d 1415, 1425 (11th Cir. 1997). Thus, the standard of review is *de novo*. P. Padovano, Florida Appellate Practice § 9.4 (2d ed. 1997).

### Merits

The single subject provision, Article III, § 6 of the Florida Constitution provides:

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

The purpose of this constitutional prohibition against a plurality of subjects in a single legislative act is to prevent "logrolling," Martinez v. Scanlan, 582 So. 2d 1167, 1172 (Fla. 1991); State v. Lee, 356 So. 2d 276, 282 (Fla. 1978). Logrolling is a practice wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue. In re Advisory Opinion to the Attorney General--Save Our Everglades, 636 So. 2d 1336, 1339 (Fla. 1994).

While logrolling is improper, an act may be as broad as the legislature chooses provided the matters included in the act have a natural or logical connection. Chenoweth v. Kemp, 396 So. 2d 1122 (Fla. 1981); Board of Pub. Instruction v. Doran, 224 So. 2d 693, 699 (Fla. 1969). Broad and comprehensive legislative enactments do not violate the single subject provision. See Smith v. Department of Ins., 507 So. 2d 1080 (Fla. 1987). The test to

determine whether legislation meets the single subject provision is based on common sense. Smith, 507 So. 2d at 1087.

The Florida Supreme Court has accorded great deference to the legislature in the single subject area and this Court has held that the legislature has wide latitude in the enactment of acts. State v. Lee, 356 So. 2d 276 (Fla. 1978); State v. Leavins, 599 So. 2d 1326, 1334 (Fla. 1st DCA 1992). Examples abound where this Court has held that Acts covering a broad range of topics do not violate the single subject provision. The single subject provision is not violated when an Act provides for the decriminalization of traffic infractions and also creates a criminal penalty for willful refusal to sign a traffic citation, State v. McDonald, 357 So. 2d 405 (Fla. 1978); the provision is not violated where an Act covers both automobile insurance and tort law, State v. Lee, 356 So. 2d 276 (Fla. 1978); nor is the provision violated where an Act covers a broad range of topics dealing with medical malpractice and insurance because tort litigation and insurance reform have a natural or logical connection, Chenoweth v. Kemp, 396 So. 2d 1122 (Fla. 1981), Smith v. Department of Insurance, 507 So. 2d 1080 (Fla. 1987); nor is the provision violated where an Act establishes a tax on services and includes an allocation scheme for the use of the tax revenues. In re Advisory Opinion to the Governor, 509 So. 2d 292 (Fla. 1987). Finally, this Court has found that an act which deals with (1) comprehensive criminal regulations, (2) money

laundering, and (3) safe neighborhoods is valid since each of these areas bears a logical relationship to the single subject of controlling crime. Burch v. State, 558 So. 2d 1 (Fla. 1990).

#### **THE SECTIONS OF THE GORT ACT**

The Gort act contains ten sections. Section one is the title. Section two created and defined a new category of offender for sentencing purposes, *i.e.*, the violent career criminal. Section two also added aggravated stalking to the list of qualifying offenses for habitual violent felony offenders and the newly created list of qualifying offenses for violent career criminals.

Sections three through seven deals with the sentencing of, legislative findings regarding, enforcement policies concerning and prohibitions against the possession of firearms of the newly created classification of violent career criminals.

Section eight amended the husband and wife statute providing for restitution for the misdemeanor offense of violating a domestic violence injunction.

Section nine amended the negligence statute providing for a private cause of action for domestic violence.

Section ten amended the assault and battery statute, providing for clerk's duties; that only a law enforcement officer may serve a domestic violence injunction; requiring the reporting of the



injunction to law enforcement agencies and restoring criminal contempt for a violation of a domestic violence injunction.

#### Caselaw Interpreting the Gort Act

In Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997), the Third District rejected a contention that the Gort Act violated the single subject provision of the Florida Constitution and affirmed the defendant's sentence. The Higgs Court held that there is a reasonable and rational relationship among each of the sections of the Gort Act. See Holloway v. State, 23 Fla. L. Weekly D1413 (Fla. 3d DCA June 10, 1998) (affirmed sentence under controlling authority of Higgs but certified conflict with Second District's decision in Thompson); Linder v. State, 23 Fla. L. Weekly D1391 (Fla. 3d DCA June 10, 1998) (on motion for rehearing, certified conflict with Second District's decision in Thompson).

In the instant case, the lower tribunal affirmed the sentence based on Higgs v. State, 695 So. 2d 872 (Fla. 3d DCA 1997) but certified conflict with the Second District's opinion in Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998).

Petitioner notes that sections one through seven of Chapter 95-182 create and define violent career criminal sentencing whereas sections eight through ten deal with civil remedies for domestic violence. Petitioner recites a brief legislative history of the

Gort Act noting that sections eight through ten began as three house bills which died in committee. When the three house bills were engrafted on the original Senate bill which created violent career criminal sentencing, the three house bills became law. Petitioner contends that the two parts have no natural or logical connection because the Gort Act embraces both criminal and civil provisions.

Petitioner analogizes the Gort Act to the cases of State v. Johnson, 616 So. 2d 1 (Fla. 1993) and Bunnell v. State, 453 So. 2d 808 (Fla. 1984).

#### **ANALYSIS OF PETITIONER'S ARGUMENT**

##### Civil and Criminal Matters

Petitioner contends that the two parts of Chapter 95-182 have no natural or logical connection. Sections one through seven of the chapter create and define violent career criminal sentencing whereas section eight through ten deal with civil remedies for domestic violence. Petitioner asserts that the first part of the Act is criminal and the second part is civil and therefore, no natural or logical connection exists between the criminal and civil matters. This is not an accurate depiction of the two parts of Chapter 95-182.

Sections eight through ten address both civil and criminal matters. They deal with civil remedies for repeated criminal behavior. The domestic violence statute, § 741.28(1), Florida Statutes (1997), defines domestic violence as:

'Domestic violence' means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnaping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.

It is clear from the definition of domestic violence that it is a crime. The legislature has expressly declared its intention that "domestic violence be treated as a criminal act." § 741.2901(2), Fla. Stat. (1997). Thus, it is incorrect to suggest that the measures dealing with domestic violence are purely civil.

Both section eight and nine are more properly viewed as restitutional in nature. Restitution is viewed as part of the criminal law process. Strickland v. State, 681 So. 2d 929 (Fla. 3d DCA 1996) (holding that a trial court's imposition of additional restitution after sentencing was an increased sentence and therefore, violated double jeopardy). The purpose of restitution is to compensate the victim and to serve the rehabilitative, deterrent, and retributive goals of the criminal justice system. Glaubius v. State, 688 So. 2d 913, 915 (Fla. 1997).

Moreover, the Crime Control Act of 1995, Chapter 95-184 Laws of Florida, placed the same language that is in sections eight through

ten of the final Gort Act as part of numerous restitution measures. Ch. 95-184, §§ 28-38, Laws of Fla. The legislature clearly viewed sections eight through ten of the Gort Act as restitution measures.

Section eight of the Gort Act amended § 741.31(1), Fla. Stat. (Supp 1994),<sup>1</sup> by creating subsection (2). The already existing subsection (1) provides that a violation of an injunction for protection against domestic violence is a misdemeanor. The new subsection allows a victim of domestic violence to recover damages and attorneys fees for that misdemeanor. § 741.31(2), Fla. Stat. (1995). This new section is clearly a prototypical restitution provision.

Section nine of the Gort Act amended the negligence statute and created a private cause of action for repeated instances of domestic violence. Given that domestic violence is a crime, this measure should be viewed as both civil and criminal. The purpose is to compensate the victim and to punish the offender because it includes both compensatory and punitive damages. Therefore, this section is also a type of restitution. Glaubius v. State, 688 So. 2d 913, 915 (Fla. 1997).

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The current version of the statute is significantly modified but the version at the time of the amendment had only a short paragraph in subsection (1) declaring the violation to be a misdemeanor.

Section ten, while dealing with clerk's and law enforcement duties, amended the assault and battery statute. Section ten also restored the power of trial courts to enforce domestic violence injunctions with criminal contempt. This is clearly a criminal matter. Thus, contrary to Petitioner's position, even the "civil" parts of the final Gort Act are criminal in nature.

### Legislative History

Petitioner's analysis of the legislative history of the Gort Act is overly simplified. While the three original House bills that comprise sections eight, nine and ten of the Gort Act died in committee, the substance of one of these bills was not in fact engrafted in Senate Bill 168. Only minor, limited portions of the original House bill actually became part of the final Gort Act.

HB 1251, which became section ten of the final Gort Act, originally provided that a trial court must consider requiring a perpetrator to participate in a certified batterers program, and provided a statement of legislative intent that every victim of domestic violence shall have access to shelter and counseling, and also expanded the conduct that constituted a violation of an injunction. None of these measure were engrafted in the final Gort Act. Only the measures relating to the duties of the clerk and law enforcement officers were engrafted in the final Gort Act. These

items constitute the most minor component of the original House Bill.

While significant portions of the other two house bills were engrafted in the final Gort Act, as discussed below, this engrafting was natural and logical.

The legislative history provides no evidence of logrolling in the instant case; rather, it demonstrates the normal legislative process. Bills that die in one form are resurrected in another form and thereafter become law. The legislative process is complex and the average statute is the product of compromise. L. H. LaRue, STATUTORY INTERPRETATION: LORD COKE REVISITED, Special Issue on Legislation: Statutory and Constitutional Interpretation, 48 U. Pitt. L. Rev. 733 (1987). Thus, the fact that relevant measures from other bills were included in the Gort Act does not prove that logrolling occurred.

#### Analysis of Sections of the Act

Petitioner contends that Chapter 95-182 combines two distinct subjects, inferring that sections two through seven fail to address domestic violence issues and that sections eight through ten fail to address career criminals. The Petitioner is mistaken.

Section two of Chapter 95-182 addresses a form of domestic violence, i.e., aggravated stalking. Section two added aggravated

stalking to the list of qualifying offenses for habitual violent felony offenders and to the newly created list of qualifying offenses for violent career criminals.

The legislative history of the House bill reveals the natural and logical connection among the sections of the Gort Act. The major connection is the offense of aggravated stalking. One of the House bills that died in committee contained a measure that added aggravated stalking to the list of qualifying offenses for habitual violent offender sentencing. HB 1789. The original Senate bill, SB 168, did not provide for the addition of aggravated stalking as a qualifying offense for habitual violent offender sentencing. However, a separate Senate bill, SB 118, did provide for the addition of aggravated stalking to the list of qualifying offense for habitual violent offender sentencing. Thus, in both houses the issue of whether aggravated stalking should be a qualifying offense for habitual violent offender sentencing was being considered.

Naturally and logically, once the new sentencing category of violent career criminal was proposed, the issue of whether aggravated stalking should constitute a qualifying offense for the new category arose also. It was natural and logical for the legislature to combine the addition of aggravated stalking to both sentencing categories in the same bill.

The Staff Analysis of this house bill also notes that the current definition of domestic violence did not include aggravated

stalking. HB 1789. The house bill was designed to address this situation by adding aggravated stalking to the definition of domestic violence. HB 1789. Thus, both the House bill and the final Gort Act were concerned with controlling the criminal offense of aggravated stalking.

Aggravated stalking is a form of domestic violence. Aggravated stalking<sup>2</sup> is defined as repeatedly following or harassing another person in violation of an injunction for protection against domestic violence entered pursuant to § 741.30 of the Florida Statutes. § 784.048(4), Fla. Stat.(1997). Thus, contrary to Petitioner's position, sections two through seven address domestic violence in its most virulent form.

Additionally, Petitioner overlooks another connection among the sections. Several of the crimes that constitute domestic violence are also qualifying forcible felonies for the career criminal classification. These offenses include aggravated assault, aggravated battery, sexual battery, kidnaping. See § 776.08, Fla. Stat. (1997). Thus, numerous connections exist between the career criminal sections and the domestic violence sections of Chapter 95-182.

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There are additional court orders that a person may violate and then violate the aggravated stalking statute but this is the crucial definition for this analysis.



Finally, another connection between all sections of the final Gort Act concerns controlling and punishing the criminal behavior of recidivist offenders. The first part deals with sentencing of domestic violence in its most virulent form and the second part deals with additional sanctions for this conduct. Thus, the sections have a cogent relationship to each other.

### LOGROLLING

Petitioner asserts that the legislature engaged in "logrolling" by incorporating sections eight, nine and ten in the final Gort Act. Logrolling is the joining of separate issues into a single proposal which results in the passage of an unpopular measure simply because it is paired with a widely supported one. Advisory Opinion to the Atty. Gen. re Fish and Wildlife Conservation Com'n, 705 So. 2d 1351, 1353 (Fla. 1998). Petitioner fails to recognize that sections eight, nine and ten of the final Gort Act were passed twice by the same legislature. Once as part of the final Gort Act and again as part of the Criminal Control Act of 1995. Ch. 95-182, Laws of Fla.; Ch. 95-184, Laws of Fla. The exact language was used in both bills. CS/SB 168; CS/SB 172. Measures that the legislature passes into law twice can hardly be viewed as unpopular riders.

Moreover, while the Gort Act may be viewed as widely popular given the incident that provoked the Act and the mandatory lengthy

sentencing, the Crime Control Act of 1995 was the prototypical crime control measure. The Crime Control Act of 1995 was an ordinary, routine measure that merely adjusted existing statutes. There was nothing in Crime Control Act of 1995 to arouse passions or to make the Act widely popular. Therefore, the amendments at issue here could not have passed based on the popularity of the other parts of the Crime Control Act of 1995.

Given that the same legislature voted twice for the exact same amendments, logrolling is not a viable concern. The harm sought to be prevented by the single subject provision did not occur in light of the fact that sections eight through ten passed the legislature twice as part of two separate Acts.

#### **ANALYSIS OF "SINGLE SUBJECT" CASES**

##### Johnson and Bunnell

Petitioner and the Thompson court rely on the authority of State v. Johnson, 616 So. 2d 1 (Fla. 1993) and Bunnell v. State, 453 So. 2d 808 (Fla. 1984). Their reliance is misplaced.

In Johnson, 616 So. 2d 1 (Fla. 1993), this Court held that a chapter law violated the single subject provision because it addressed two subjects: "the first being the habitual offender statute, and the second being the licensing of private

investigators and their authority to repossess personal property." 616 So. 2d at 4. This Court stated that the two matters had absolutely no cogent connection. Sentencing repeat offenders and licensing private investigators have no common core.

Similarly, in Bunnell v. State, 453 So. 2d 808 (Fla. 1984), this Court held that a session law violated the single subject provision when the law created the criminal offense of obstruction of justice by false information and made amendments concerning membership of the Florida Council on Criminal Justice. The Thompson Court characterized these amendments as noncriminal and dealing with an executive branch function.

In contrast to Johnson, the instant amendments share a common core. They concern repeated criminal offenders and the various remedies for dealing with such offenders. Moreover, in contrast to Bunnell, which dealt with amendments involving both legislative and executive functions, these amendments concern traditionally legislative matters. Setting punishment for recidivist offenders and compensating victims are both legislative branch matters. Additionally, as shown above, all sections of the Gort Act address aspects of recidivist criminal behavior. Thus, the legislative enactment at issue in this case is significantly different from the acts at issue in Johnson and Bunnell.

Burch

In Burch v. State, 558 So. 2d 1 (Fla. 1990), this Court held that the Crime Prevention and Control Act did not violate the single subject provision of the Florida Constitution. The Act dealt with (1) comprehensive criminal regulations, (2) money laundering, (3) drug abuse education, (4) forfeiture of conveyances, (5) crime prevention studies, and (6) safe neighborhoods. This Court held that there was a logical and natural connection among these subject because all of the parts were related to its overall objective of crime control. The Court noted that the sections were intended to control crime, whether by providing for imprisonment or through taking away the profits of crime. The "taking away profits" language refers to the forfeiture section of the Act. A forfeiture proceeding is civil and independent of any criminal action. Kern v. State, 706 So. 2d 1366 (Fla. 5th DCA 1998). All civil forfeiture cases are heard before a circuit judge of the civil division and the rules of civil procedure govern. § 932.704(2), Fla. Stat. (1997). Thus, the legislature may combine criminal sentencing and civil remedies for crimes without violating the single subject provision.

Here, as in Burch, the legislature has combined criminal sentencing and civil remedies for criminal conduct in one Act. In Burch, the legislature controlled crime both by incarceration and

by taking away the profits of crime. Here, the legislature provided for a private cause of action to control crime. The legislature may control crime by providing for imprisonment and civil remedies. When the legislature does so, the sections have a natural and logical connection and do not violate the single subject provision.

CONCLUSION

Based on the foregoing, the State respectfully submits that the decision of the District Court of Appeal reported as Dupree v. State, 23 Fla. L. Weekly D1519 (Fla. 3d DCA June 24, 1998) should be affirmed.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

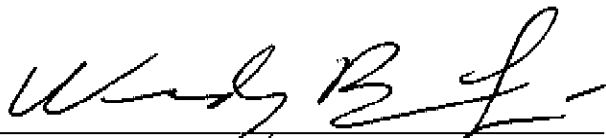


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S BRIEF ON THE MERITS has been furnished by U.S. Mail to Marisa Tinkler Mendez, Esq., Marisa Tinkler Mendez, P.A., 901 Ponce DeLeon Blvd., Suite 304, Coral Gables, Florida 33134, on this 11<sup>th</sup> day of September, 1998.



WENDY BENNER-LEÓN  
Assistant Attorney General