IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. **CASE NO.: 94,832**

SHAWN SEAY,

Respondent.
_____/

ON NOTICE TO INVOKE DISCRETIONARY JURISDICTION TO REVIEW A DECISION OF THE SECOND DISTRICT COURT OF APPEAL

MR. SEAY'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

In this brief, the petitioner, State of Florida, will be referred to as "the state." The respondent, Shawn Seay, will be referred to as "Mr. Seay." The initial brief on the merits filed by the state in this case will be referred to as "IB."

The record on appeal below consisted of three volumes. References to the record will be to the roman numeral of the volume, followed by the appropriate page reference therein.

STATEMENT OF THE CASE AND FACTS

A. PROCEEDINGS BELOW

Although the state has the date as September 12, 1996 (IB 2), Mr. Seay was actually sentenced on September 5, 1996 (I/63-64, 66, 80, 110). At the sentencing hearing (I/80-113), the trial court determined that Mr. Seay was a violent career criminal (I/110). Despite a sentencing guidelines recommendation of 31.4 to 52.2 months (I/63-64), the trial court sentenced Mr. Seay as a violent career criminal to 12 years in the Department of Corrections (I/64, 66, 110). A pro se motion for sentencing reduction was denied (I/71-73).

It is important to note that the state agrees that Mr. Seay's case falls within the "window of unconstitutionality, if any" (IB/3-4). The sole issue in this appeal is therefore the constitutionality of chapter 95-182, Laws of Florida, presently before the

Court in State v. Thompson, F.S.Ct. Case #92,831.

B. SECOND DISTRICT'S OPINION

In his appeal to the Second District, Mr. Seay raised issues of 1) the sufficiency of the evidence, 2) the fine was illegal because it was not orally announced, and 3) that the violent career criminal sentence must be vacated due to the unconstitutionality of the statute.

On February 3, 1999, the Second District issued a brief opinion affirming Mr. Seay's conviction. His sentence was reversed based upon Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998), which held that chapter 95-182, Laws of Florida , was unconstitutional because it violated the single subject rule.

On or about February 4, 1999, the state filed a notice to invoke discretionary jurisdiction of this Court, and a motion to stay the mandate. The Second District granted the motion to stay the mandate. On or about February 12, 1999, Mr. Seay filed his motion for rehearing, rehearing en banc, or certification to the Florida Supreme Court. That motion was denied by order dated March 29, 1999.

By order dated April 23, 1999, this Court accepted jurisdiction, dispensed with oral argument, and set a briefing schedule.

SUMMARY OF THE ARGUMENT

The "violent career criminal" provision under which Mr. Seay was sentenced is

invalid because the session law that created it violates the state constitutional single subject requirement. The law at issue -- chapter 95-182, Laws of Florida -- addresses two distinct and unrelated subjects: career criminal sentencing and civil remedies for the protection of victims of domestic violence. Since these two subjects are not reasonably related, chapter 95-182 addresses more than one subject and thus is invalid.

ARGUMENT

SECOND DISTRICT'S DECISION MUST BE AFFIRMED WHERE VIOLENT CAREER CRIMINAL STATUTE WAS UNCONSTITUTIONAL

Chapter 95-182 violates the single subject provision because it addresses two distinct subjects: career criminal sentencing and civil remedies for victims of domestic violence.

A. THE SINGLE SUBJECT PROVISION

Article III, section 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.

This provision is designed "to prevent a single enactment from becoming a 'cloak' for dissimilar legislation having no necessary or appropriate connection with the subject matter." State v. Lee, 356 So.2d 276, 282 (Fla. 1978). In particular, the provision serves three purposes:

> (1) to prevent hodge podge or "log rolling" legislation, i.e., putting two unrelated matters in one act; (2) to prevent surprise or fraud by means of provisions in bills of which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and (3) to fairly apprise the people of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon.

State v. Canova, 94 So.2d 181, 184 (Fla. 1957).

It has been said that "the subject of a law is that which is expressed in the title, . . . and may be as broad as the Legislature chooses as long as the matters included in the act have a natural or logical connection." State v. Lee, supra, 356 So.2d at 282 (citation and internal quotes omitted). However, this statement cannot be read too literally. As will be discussed below, an enormously broad topic will not necessarily be considered a single subject merely because the legislature labels it so. Courts have some obligation to insure that legislative "subjects" do not become so abstract and amorphous that article III, section 6 is rendered nugatory. Thus, in recent cases (discussed below), such topics as "the criminal justice system" (Williams v. State, 459 So.2d 319 (Fla. 5th DCA 1984)); "comprehensive economic development" (Martinez v. Scanlan, 582 So.2d 1167 Fla. 1991)); and "environmental resources" (State v. Leavins, 599 So.2d 1326 (Fla. 1st DCA 1992)) have been held to be too broad to be considered as single subjects. This is only common sense. If it were otherwise, the legislature could simply assert that the subject of a particular session law is something like "the public health, safety, and welfare" and then combine a wide variety of topics under this broad "subject".

"The test for duplicity of subject is whether or not the provisions of the bill are designed to accomplish separate and disassociated objects of legislative effort." State v. Thompson, 163 So. 270, 283 (Fla. 1935). The test "is based on common sense [and it] requires examining the act to determine if the provisions are fairly and naturally germane

to the subject of the act, or are such as are necessary incidents to or tend to make effective or promote the objects and purposes of legislation included in the subject. . . ." Smith v. Department of Insurance, 507 So.2d 1080, 1087 (Fla. 1987) (citation and internal quotes omitted).

This Court has addressed the meaning of the single subject provision on several occasions in recent years. Three of those cases involved criminal laws: Bunnell v. State, 453 So.2d 808 (Fla. 1984); Burch v. State, 558 So.2d 1 (Fla. 1990); and Johnson v. State, 616 So.2d 1 (Fla. 1993). Bunnell and Johnson held that the laws at issue violated the single subject provision; Burch rejected that challenge. These cases establish the framework for analysis in the present case; under that framework, chapter 95-182 is invalid.

In Bunnell, the Court considered the validity of chapter 82-150, Laws of Florida. That chapter contained three substantive sections. Section one created a new offense of "obstruction by false information" (codified at section 843.035, Florida Statutes (1982 Supp.)). Sections two and three made several amendments to sections 23.15-.154, Florida Statutes (1981). Those sections concerned the membership of the "Florida Council on Criminal Justice", which, at the time, was an advisory board composed of various officials involved in the criminal justice system.

The Second District upheld chapter 82-150 against a single subject attack. State

v. Bunnell, 447 So.2d 228 (Fla. 2d DCA 1983), quashed, Bunnell, supra. That court found "the general subject of the act to be the `Criminal Justice System"'. Id. at 230. The court then concluded that chapter 82-150 did not violate the single subject requirement because the sections of the law "have a natural and logical connection to the general subject and to each other":

> The Florida Council on Criminal Justice is an executive branch advisory agency under the jurisdiction of the governor created to advise the governor, legislature, supreme court, and especially the Bureau of Criminal Justice Assistance in the performance of its Chapter 23 duties, as to the improvement of state law enforcement activities and the administration of criminal and juvenile justice systems....
>
> Upon examination, it is readily apparent that the council and laws relating to the council are embraced by the admittedly broad subject "Criminal Justice System"....
>
> Furthermore, it is clearly apparent that section 843.[035], the crime of obstruction of justice by giving false information, is also embraced within the same general subject impliedly set forth by the legislature....

Id. at 231 (citation and internal quotes omitted).

The Fifth District disagreed and held chapter 82-150 violated the single subject provision. Williams, supra. Although recognizing that that provision should be "interpreted . . . liberally", particularly when dealing with "very comprehensive law revisions", 459 So.2d at 320, the court nonetheless found chapter 82-150 to be invalid:

> The bill in question in this case is not a comprehensive law or code type of statute. It is very simply a law that

> contains two different subjects or matters. One section creates a new crime and the other section amends the operation and membership of the Florida Criminal Justice Council. The general object of both may be to improve the criminal justice system, but that does not make them both related to the same subject matter.
>
> The Bunnell court reasoned that although not expressed in the title, it could infer from the provisions of the bill, a general subject, the criminal justice system, which was germane to both sections. Even if that subject was expressed, for example, in a title reading "Bill to Improve Criminal Justice in Florida", we think this is the object and not the subject of the provisions. Further, approving such a general subject for a non-comprehensive law would write completely out of the constitution the anti-logrolling provision of article III, section 6.
>
> . . . [T]he general objective of the legislative act should not serve as an umbrella subject for different substantive matters.

Id. at 321 (emphasis added) (footnote omitted).

Taking jurisdiction in Bunnell, this Court had no trouble concluding that chapter 82-150 was invalid because it embraced more than one subject. The Court asserted "the subject of section 1 has no cogent relationship with the subject of sections 2 and 3 and . . . the object of section 1 is separate and disassociated from the object of sections 2 and 3." 453 So.2d at 809.

In Burch, the Court upheld the validity of chapter 87-243, Laws of Florida, against a single subject attack. The Court reasoned as follows:

> In the preamble to chapter 87-243, the legislature explained the reasons for this legislation:

WHEREAS, Florida is facing a crisis of dramatic proportions due to a rapidly increasing crime rate, which crisis demands urgent and creative remedial action, and

WHEREAS, Florida's crime rate crisis affects, and is affected by, numerous social, educational, economic, demographic, and geographic factors, and

WHEREAS, the crime rate crisis through out the state has ramifications which reach far beyond the confines of the traditional criminal justice system and cause deterioration and disintegration of businesses, schools, communities, and families, and

WHEREAS, the Joint Executive/Legislative Task Force on Drug Abuse and Prevention strongly recommends legislation to combat Florida's substance abuse and crime problems, and asserts that the crime rate
crisis must be the highest priority of every department of government within the state whose functions touch upon the issue, so that a comprehensive battle can be waged against this most insidious enemy, and

WHEREAS, this crucial battle requires a major commitment of resources and a nonpartisan, nonpolitical, cohesive, well-planned approach, and

WHEREAS, it is imperative to utilize a proactive stance in order to provide comprehensive and systematic legislation to address Florida's crime rate crisis, focusing on crime prevention, throughout the social strata of the state, and

WHEREAS, in striving to eliminate the fragmentation, duplication, and poor planning which would doom this fight against crime, it is necessary to coordinate all efforts toward a unified attack on the common enemy, crime . . . .

> To accomplish this purpose, chapter 87-243 deals with three basic areas: (1) comprehensive criminal regulations and procedures, (2) money laundering, and (3) safe neighborhoods. Each of these areas bear a logical relationship to the single subject of controlling crime, whether by providing for imprisonment or through taking away the profits of crime and promoting education and safe neighborhoods. The fact that several different statutes are amended does not mean that more than one subject is involved. There is nothing in this act to suggest the presence of log rolling, which is the evil that article III, section 6, is intended to prevent. In fact, it would have been awkward and unreasonable to attempt to enact many of the provisions of this act in separate legislation.

558 So.2d at 2-3.

The Court further noted that "the subject matter of chapter 87-243 is not as diverse as that contained in the legislation approved in State v. Lee, [supra,] Chenoweth v. Kemp, 396 So.2d 1122 (Fla. 1981)] and Smith, [supra]." Id. at 2. These three cases will be discussed further below. The Court distinguished Bunnell:

> 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 Florida Criminal Justice Council. The relationship between these two subjects was so tenuous that this Court concluded 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.

Id. at 3 (emphasis added).

Burch was a 4-3 decision. The three dissenters asserted:

> The challenged act's title embraces eight pages of description. It contains seventy-six sections, including three separate titles (Crime Prevention and Control Act; Money Laundering Control Act; Safe Neighborhoods Act), and provisions on the following unrelated subjects: drug-abuse crimes, drug education, vehicle registration, vessel-operation crimes, money laundering, hoax bombs, pawn brokers, entrapment, attempted burglary, witness tampering, appeal by the state, judgment costs, chop shops, crime-prevention studies, and safe-neighborhood programs. The common thread that permeates the fabric of the legislation is crime prevention. However, an act in violation of the single-subject provision of the constitution cannot be saved or pass constitutional muster by virtue of the fact that improvement of the criminal justice system is the general object of the law -- it is the subject matter which is our focus. [Citations omitted]. . . .
>
> * * *
>
> [T]he matters included in an act must bear a logical and natural connection, and must be germane to one another. In my view, it will not suffice to say all of the act's provisions deal with crime prevention or control. By upholding the constitutionality of the act before us, the single-subject requirement of the constitution is rendered meaningless.

Id. at 4 (Shaw, J., dissenting).

Finally, in Johnson, the Court held that chapter 89-280, Laws of Florida, violated the single subject requirement because it addressed two unrelated subjects: "the habitual offender statute, and . . . the licensing of private investigators and their authority to repossess personal property." 616 So.2d at 4. The Court adopted the district court's

description of chapter 89-280:

> The title of the act at issue designates it an act relating to criminal law and procedure. The first three sections of the act amend section 775.084, Florida Statutes, pertaining to habitual felony offenders; section 775.0842, Florida Statutes, pertaining to career criminal prosecutions; and section 775.0843, Florida Statutes, pertaining to policies for career criminal cases. Sections four through eleven of the act pertain to the Chapter 493 provisions governing private investigation and patrol services, specifically, repossession of motor vehicles and motorboats.

Id. (citation omitted).

The Court also agreed with the district court that "it is difficult to discern a logical or natural connection between career criminal sentencing and repossession of motor vehicles by private investigators." Id. (citation and internal quotes omitted). The Court found these to be "two very separate and distinct subjects" that had "absolutely no cogent connection [and were not] reasonably related to any crisis the legislature intended to address." Id. Noting "no reasonable explanation exists as to why the legislature chose to join these two subjects within the same legislative act", the Court "reject[ed] the State's contention that these two subjects relate to the single subject of controlling crime." Id.

Johnson -- like Bunnell -- was a unanimous decision. Concurring, Justice Grimes noted:

> In Jamison v. State, 583 So.2d 413 (Fla. 4th DCA), rev.denied, 591 So.2d 182 (Fla. 1991), and McCall v. State, 583 So.2d 411 (Fla. 4th DCA 1991), the court relied upon

> this Court's decision in Burch [citation omitted] in concluding that chapter 89-280 did not violate the single subject rule. As the author of the Burch opinion, I find that case to be substantially different. The Burch legislation was upheld because it was a comprehensive law in which all of the parts were at least arguably related to its overall objective of crime control. Here, however, chapter 89-280 is directed only to two subjects -- habitual offenders and repossession of motor vehicles and motor boats -- which have no relationship to each other whatsoever. Thus, I conclude that this case is controlled by the principle of Bunnell [citation omitted] rather than Burch.

Id. at 5 (Grimes, J., concurring) (emphasis added).

These cases establish the following principles: provisions in a session law will be considered as covering a single subject if they have a cogent, logical, or natural connection or relation to each other. The legislature will be given some latitude to enact a broad law, provided that law is intended to be a comprehensive approach to a complex and difficult problem that is currently troubling the citizenry. However, separate subjects cannot be artificially connected by the use of broad labels like "the criminal justice system" or "crime control".

These same principles are found in the recent case law addressing single subject challenges to non-criminal laws as well. The three cases relied upon in Burch illustrate how this Court is willing to give the legislature some latitude to tackle major, complex problems with broad measures, particularly in response to a crisis or emergency.

Thus, in State v. Lee, supra, the Court upheld chapter 77-468, Laws of Florida,

because it "dealt comprehensively with a broad subject": it was "an attempt by the legislature to deal comprehensively with tort claims and particularly with the problem of a substantial increase in automobile insurance rates and related insurance problems." 356 So.2d at 242. Three dissenters found that chapter 77-468 "relates to at least three distinct and separate subjects . . . : (i) insurance and matters related therein; (ii) tort law; and (iii) enhanced penalties for moving traffic violations." Id. at 287 (Sundberg, J., dissenting).

Lee was followed in Chenoweth, supra, in which the Court summarily rejected a single subject attack on chapter 76-260, Laws of Florida. The Court asserted:

> While chapter 76-260 covers a broad range of statutory provisions dealing with medical malpractice and insurance, these provisions do relate to tort litigation and insurance reform, which have a natural or logical connection.

396 So.2d at 1124.

There were two dissenters in Chenoweth. They distinguished State v. Lee and asserted "chapter 76-260 is a paradigm example of a law embracing more than one subject":

> [In Lee,] the Court took a rather permissive view of the one subject requirement of article III, section 6. The majority in Lee characterized the chapter there under attack as dealing comprehensively with "automobile insurance rates and related insurance problems." Id. at 282 (emphasis supplied). Here, chapter 76-260 ranges over almost the entire insurance field, incorporating wholly unrelated matters from medical malpractice insurance to life insurance to a policyholder's "bill of rights." Indeed, it strays from the insurance arena

> altogether in its inclusion of provisions on expert medical testimony and standards of tort recovery.

Id. at 1126-27 (Sundberg, J., dissenting).

Finally, in Smith, supra, the Court upheld chapter 86-160, Laws of Florida. Following Lee and Chenoweth, the Court said chapter 86-160 was enacted in "respon[se] to public pressure brought about by a liability insurance crisis, [and] each of the challenged sections is an integral part of the statutory scheme enacted by the legislature to advance one primary goal: The availability of affordable liability insurance." 507 So.2d at 1086.

Three justices dissented in Smith. They argued that Lee and Chenoweth were wrongly decided and should be overruled:

> [Lee and Chenoweth] confused the subject of the act with its object, "The subject is the matter to which an act relates; the object, the purpose to be accomplished." [Citations omitted]. The distinction between the subject of an act and its object is critical here.
>
> As recognized by the majority, the object of 86-160 is to increase the affordability and availability of liability insurance. However, by the Court's own reckoning, included in this one act are at least four different subjects. This is precisely the type of legislation prohibited by article III, section 6. In short, 86-106 is arguably the most gargantuan logroll in the history of Florida legislation. The majority has come up with a new constitutional test to determine whether legislation meets the single subject requirement: "common sense." However, the majority has exercised none of that seemingly rare and precious commodity by its interpretation of article III, section 6. Its confusion lies in applying an

> incorrect analysis to the single subject requirement. Inquiring into the "germanity" required for testing whether a statutes provisions are properly connected to the subject of the act only arises if, in fact, there is one subject. The threshold question is based on common sense: does the act itself contain a single subject? If it does then the act's elements are examined to see whether they are in fact properly connected with, i.e., germane to, that single subject. If the act contains more than one subject, it is unconstitutional.

Id. at 1097 (Ehrlich, J., concurring in part and dissenting in part)(footnote omitted)(emphasis in original).

The similarities between these three cases (Lee, Chenoweth, and Smith) and Burch are obvious. All are close decisions in which seemingly disparate topics are considered to be a single subject because they are arguably related to a broad and comprehensive topic that links them all together; and, even then, the law will be valid only if there is a perceived public crisis that requires the passing of such a broad and comprehensive law.

However, the mere labeling of a law with a broad title will not insulate it from a single subject attack. Three recent cases illustrate the point: Martinez, supra; Alachua County v. Florida Petroleum Marketers, 589 So.2d 240 (Fla. 1991); and State v. Leavins, supra.

In Martinez, the Court addressed the validity of chapter 90-201, Laws of Florida. The title to that law began "an act relating to economic development . . . ." The act

contained 120 sections, the first of which provided that chapter 90-201 "may be cited as the `Comprehensive Economic Development Act of 1990"'. Id., §1.

The act was prefaced with 29 legislative "Whereas" clauses. These clauses laid out broad legislative "findings" and "intent", the thrust of which was: 1) Florida's continuing economic health depends upon its ability to compete successfully in an international marketplace; 2) Florida's then-existing workers' compensation laws were outdated, inefficient, and expensive, thus putting Florida at a competitive disadvantage with respect to attracting new business; and 3) Florida needs "comprehensive governmental action to protect the state's economy." Sections 2 through 58 of the statute overhauled Florida's workers' compensation laws in a major way. Section 59 announced more "legislative findings and intent", the thrust of which was that Florida needs to "articulate a clear policy for international economic development. . . ." Section 60 through 119 aimed to accomplish this purpose through the formation of various advisory and planning agencies that included representatives from both the public and private sectors.

This Court (without dissent) had no trouble concluding that this law violated the single subject requirement:

> Chapter 90-201 essentially consists of two separate subjects, i.e., workers' compensation and international trade. While Martinez contends that these subjects are logically related to the topic of comprehensive economic development, we can find only a tangential relationship at best to exist. . . . [W]e have held that, despite the disparate subjects contained

> within a comprehensive act, the act did not violate the single subject requirement because the subjects were reasonably related to the crisis the legislature intended to address. [Citing Burch and Smith]. In the instant cast, however, the subjects of workers' compensation and international trade are simply too dissimilar and lack the necessary logical and rational relationship to the legislature's stated purpose of comprehensive economic development to pass constitutional muster. See Bunnell . . . .

582 So.2d at 1172.

Similarly, in Alachua County, the Court addressed the validity of chapter 88-156, Laws of Florida. The title to that law said it was "an act relating to the construction industry. . . ." Most of its 24 sections modified various statutes in chapter 489 of the Florida Statutes, including 1) expansion of the types of contractors covered by chapter 489 (ch. 88-156, §3); 2) modifications of the membership and procedures of the Construction Industry Licensing Board (id., §§4-6); 3) strengthening of the oversight and enforcement powers of this board (id., §§7-15); and 4) providing for other remedies (id., §§19-22).

Interwoven into these provisions were several provisions regarding storage tanks. The definitions of "pollutant storage systems specialty contractor", "pollutant storage tank", "tank", and "registered precision tank tester", and the licensing board's authority to promulgate rules and regulations regarding pollutant storage tanks, were moved from existing statutes to new section 489.133. Id., §§3, 7, and 16. The Department of

Environmental Regulation was given regulatory responsibilities regarding "pollutant storage tank[s], as defined in s. 489.133 . . . ." Id., §17. This section also directed the department to coordinate its efforts with local governments. Id. Finally, section 376.317, Florida Statutes (1987), was amended to allow county governments to adopt their own (more stringent than state law) regulations regarding underground petroleum storage tanks. Id., §18.

On direct appeal, the First District first noted that section 18 had been added to chapter 88-156 after an Alachua County ordinance regulating underground storage tanks had been declared unenforceable by the courts. Alachua County v. Florida Petroleum Marketers, 553 So.2d 327, 328 (Fla. 1st DCA 1989), affirmed, Alachua County, supra. The court then held that chapter 88-156 violated the single subject provision:

> In this case the pending bill containing some 16 sections amending Chapter 489, relating to the regulation of the construction industry, was amended by adding Section 18 to amend Chapter 376, relating to pollutant discharge prevention and removal, a subject totally distinct and different from the subject matter of the act before the amendment. The provisions of Section 18 are not germane to the construction industry, the subject of the pending act it amended, nor are its provisions such as are necessary incidents to, or which tend to make effective or promote, the objects and purposes of the pending construction industry legislation. . . .

Id. at 329.

In this Court, a five member majority adopted the opinion of the district court.

Alachua County, supra, 589 So.2d at 240. Two justices dissented:

> [C]hapter 489 and chapter 376 have sections other than the section at issue in this proceeding that are interrelated. I find that the provisions of chapter 88-156, Laws of Florida, amending chapter 489 . . . and the provisions amending chapter 376 . . . have a logical connection and that the legislation on its face shows that it is not "a `cloak' for dissimilar legislation having no necessary or appropriate connection with the subject matter." . . . The relationship is clear. Three sections of chapter 88-156 have provisions relating to both chapter 489 and chapter 376 . . . . First, section 16 of chapter 88-156 creates section 489.133 . . . entitled "pollutant storage systems specialty contractors; definitions; certification; restrictions." Section 489.133(1)(b) . . . expressly refers to a pollutant storage tank "as defined in s. 376.301." Second, section 17 of chapter 88-156 adds a new subsection (3) to section 376.303 . . . . Section 376.303(3)(a) . . . reads, in part: "Any person installing a pollutant storage tank, as defined in s. 489.133, shall certify that such installation is in accordance with the standards adopted pursuant to this section." Section 376.303(3)(c) also provides that "[t]he department may enjoin the installation or use of any pollutant storage tank that has been or is being installed in violation of this section or of s. 489.133." Third, section 376.317 . . . which is amended by section 18 of chapter 88-156, the section in issue, allows certain governmental entities to have more stringent regulations for these pollutant storage tanks. There is clearly a logical connection between chapters 489 and 376 . . . since each chapter refers to the other chapter in its respective sections.

Id. at 244-45 (Overton, J., dissenting).

Finally, in State v. Leavins, the court struck down chapter 89-175, Laws of Florida. The title of that law began "an act relating to environmental resources . . . ." In 48

sections, the law addressed a range of topics, including regulation of gas and oil exploration and development, littering, oil spills, protection of coastal reefs and fishing areas, dredging, and hunting. 599 So.2d at 1333-34. The court noted that, although this Court has "applied a somewhat relaxed rule in cases where it found that the subjects of an act were reasonably related to an identifiable crisis the legislature intended to address[, in chapter 89-175] the legislature has not ostensibly addressed any crisis, but has attempted to bundle together the various matters encompassed by chapter 89-175 under the rubric `an act relating to environmental resources.'" Id. at 1334. The court held chapter 89-175 was invalid:

> This phrase ["an act relating to environmental resources"] is so broad, and potentially encompasses so many topics, that it lends little support to the State's attempt to fend off a single subject challenge. . . .
>
> * * *
>
> Although each individual subject addressed [in chapter 89-175] might be said to bear some relationship to the general topic of environmental resources, such a finding would not, and should not, satisfy the test under Article III, Section 6. If a purpose of the constitutional prohibition [is] to insure, as nearly as possible, that a member of the legislature be able to consider the merit of each subject contained in the act independently of the political influence of the merit of each other topic, the reviewing court must examine each subject in light of the various other matters affected by the act, and not simply compare each isolated subject to the stated topic of the act.

Id. (footnote omitted).

As these cases make clear, Florida courts will not to strain to invent relationships and connections between different provisions in a law; rather, there must be a "natural, logical, or intrinsic connection" between the provisions before they will be considered as embracing a single subject. Colonial Investment Co. v. Nolan, 131 So. 178, 181 (Fla. 1930). Tangential connections, tenuous relationships, or coincidental overlap will not convert two subjects into one. Seemingly unrelated subjects may be tied together as part of a "comprehensive law" that attempts a major overhaul of a large topic, provided that connection or relation to the large topic can be found in all its parts and there is a genuine crisis that needs to be addressed; nevertheless, such "comprehensive laws", given their inherently sprawling nature, must be closely examined. The mere fact that the legislature declares a "crisis", or perceives some need to deal with a broad topic in a "comprehensive" manner, is not controlling; courts retain the oversight responsibility of insuring that legislative "subjects" do not become too broad or nebulous.

B. ANALYSIS OF CHAPTER 95-182

Chapter 95-182 is titled "Crimes - Career Criminals". It contains 12 sections.

Section one provides that "Sections 2 through 7 of this act may be cited as the `. . . Gort . . . Act . . . .'" Sections 8 through 10 address civil and procedural aspects of domestic violence. Section 11 contains a severability clause and section 12 contains the effective date (October 1, 1995).

Sections 2 through 7 may be summarized as follows:

Section 2 - This section creates and defines a sentencing category of "violent career criminal", and sets out procedures and penalties for such sentencings. A violent career criminal is defined as someone who has at least three prior convictions of certain enumerated violent felonies. The sentences mandated for violent career criminals are severe, and they vary according to the degree of the offense of conviction. Violent career criminals are eligible for only minimal gain-time credits.

Section 2 also 1) adds aggravated stalking to the list of predicate offenses for qualification as a habitual violent felony offender, and 2) provides that qualifying offenders may be sentenced as habitual offenders or habitual violent offenders when the offense of conviction is a life felony.

Section 3 through 6 - These sections amend various Florida statutes regarding other procedural matters concerning habitual offender sentencing (primarily to include the new violent career criminal category in those statutes).

Section 7 - This section creates and defines a new offense of "possession of a firearm by violent career criminal," and establishes procedures and penalties for this offense.

Sections 8 through 10 all address various aspects of domestic violence and the civil remedies available to its victims. These sections may be summarized as follows:

Section 8 - This amends section 741.31, Florida Statutes (1994 Supp.). Chapter 741 is found in Title XLIII of the Florida Statutes, which is titled "Domestic Relations"; chapter 741 is titled "Husband and Wife." Section 8 creates a civil cause of action for damages (including costs and attorney's fees) for injuries inflicted in violation of a domestic violence injunction, to be enforced by the court that issued the injunction.

Section 9 -This creates a new section in chapter 768 of the Florida Statutes: section 768.35, which lays out some substantive and procedural rules regulating private damages actions brought by victims of continuing domestic violence. Chapter 768 is titled "Negligence; General Provisions"; it is found in Title XLV, which is titled "Torts."

Section 10 - This amends section 784.046, Florida Statutes (1994 Supp.) by imposing certain procedural duties on court clerks and law enforcement officers regarding the filing and enforcement of domestic violence injunctions. The clerk is made "responsible for furnishing to the sheriff such information on the respondent's physical description and location as is required . . . ." The amendment further provides that only "law enforcement officer[s] as defined in chapter 943" may serve domestic violence injunctions, and imposes on such officers the duty to "make information relating to the service available to other law enforcement agencies" within 24 hours of the service of the injunction. Finally, this amendment authorizes courts to enforce such injunctions by criminal contempt. The legislative history of chapter 95-182 may be summarized as

follows:

"The Gort Act", as eventually enacted in sections 2 through 7 of chapter 95-182, began as two bills in the Florida Senate: 1) SB 118, which added lewd assault on a child and aggravated stalking to the list of felony offenses which may qualify a defendant for sentencing as a violent felony habitual offender; and 2) CS/SB 168, which was called "The Gort Act" and contained most of the basic provisions that were later enacted as sections 2 through 7 of chapter 95-182. It was CS/SB 168 (as amended) that was eventually passed as chapter 95-182.

Sections 8 through 10 of chapter 95-182 began as sections in two bills introduced in the House of Representatives: PCS/HB 1251 and HB 2513[1/]. The "Bill Analysis and Economic Impact Statement[s]" produced for both of these bills assert that the bills "Relat[e] to: Domestic Violence." House of Representatives Committee on the Judiciary, Final Bill Analysis and Economic Impact Statement for PCS/HB 1251, p. 1; House of Representatives Committee on Aging and Human Services, Final Bill Analysis and Economic Impact Statement for HB 2513, p.1. "PCS/HB 1251 . . . declares legislative intent with respect to services for victims of domestic violence." House of Representatives Committee on the Judiciary, Final Bill Analysis and Economic Impact Statement

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1/ Parts of sections 8 and 9 of chapter 95-182 can be found in sections 1 and 3 of HB 2513. Section 10 of chapter 95-182 originated in sections 3 and 5 of PCS/HB 1251.

for PCS/HB 1251, p. 1. The summaries of both of these House bills clearly show these bills were designed to provide greater protection for domestic violence victims. House of Representatives Committee on the Judiciary, Final Bill Analysis and Economic Impact Statement for PCS/HB 1251, p. 1-4; House of Representatives Committee on Aging and Human Services, Final Bill Analysis and Economic Impact Statement for HB 2513, p.1-4.

PCS/HB 1251 "was reported favorably as a proposed committee substitute to the full committee [,but] was never heard by the full committee and died there on May 11, 1995." House of Representatives Committee on the Judiciary, Final Bill Analysis and Economic Impact Statement for PCS/HB 1251, p. 1. HB 2513 passed the House, but died in committee in the Senate. House of Representatives Committee on Aging and Human Services, Final Bill Analysis and Economic Impact Statement for HB 2513, p.1.

Sections 8 through 10 of chapter 95-182 were added to CS\SB 168 by the House on May 4, 1995; the bill passed the Senate the next day. Journal of the House, May 4, 1995, p. 1207-12; Journal of the Senate, May 5, 1995, p. 1083.

C. THE THOMPSON DECISION

The district court relied on its previous decision in Thompson v State, 708 So.2d 315 (Fla. 2d DCA 1998), which held that chapter 95-182 violated the single subject provision. After discussing the legislative history, Thompson asserted as follows:

> It is in circumstances such as these that problems with the single subject rule are most likely to occur.

> Chapter 95-182 joins together criminal and civil subjects. Such a joinder has confronted our supreme court in Johnson, [supra] and Bunnell, [supra]. . . .
>
> [C]hapter 95-182 embraces criminal and civil provisions that have no "natural or logical connection." [Citations omitted] Nothing in sections 2 through 7 addresses any facet of domestic violence and, more particularly, any civil aspect of that subject. Nothing in sections 8 through 10 addresses the subject of career criminals or the sentences to be imposed upon them. It is fair to say that these two subjects "are designed to accomplish separate and dissociated objects of legislative effort." [Citation omitted]. Neither did the legislature state an intent to implement comprehensive legislation to solve a crisis. Cf. Burch, [supra] (upholding comprehensive legislation to combat stated crisis of increased crime rate). Harsh sentencing for violent career criminals and providing civil remedies for victims of domestic violence, however laudable, are nonetheless two distinct subjects.

Id. at 316-17. This Court has accepted Thompson for review, 717 So.2d 358 (Fla. 1998), and heard argument in that case on November 4, 1998.[2/] At least the Third District, in Higgs v. State, 695 So.2d 872 (Fla. 3d DCA 1997), and its progeny, has disagreed with the Thompson decision.[3/]

2/ The state recognizes that this Court's decision in Thompson will be controlling, and adopts by referrence its brief and arguments in that case (IB 3, 7). While the state has moved to consolidate Mr. Seay's case with Thompson, that motion has not yet been ruled on. The state has not attached its arguments (such as its briefs) in Thompson herein, so counsel is unaware of those specifics.

3/ At least one judge on the Third District agrees with Thompson. See Williams v. State, ___ So.2d ___ (Fla. 3d DCA 4/14/99)[24 Fla. L. Weekly D933] (Green, J., specially concurring).

D. CHAPTER 95-182 VIOLATES THE SINGLE SUBJECT PROVISION

Application of the principles discussed in section A above to chapter 95-182 is relatively straightforward and compels the conclusion that Thompson was correctly decided. Nothing in sections 2 through 7 of chapter 95-182 (or the existing statutes that it amends) addresses any facet of domestic violence. Nothing in sections 8 through 10 addresses the problem of career criminals, or the sentences to be imposed upon them. As the legislative history establishes, chapter 95-182 is a combination of unrelated provisions that have no logical or natural connection, and "no reasonable explanation exists as to why the legislature chose to join these two subjects within the same legislative act." Johnson, supra, 616 So.2d at 4. Rather, they are "separate and distinct subjects [which have] absolutely no cogent connection [, are not] reasonably related to any crisis the legislature intended to address", id., and "are designed to accomplish separate and dissociated objects of legislative effort." State v. Thompson, supra, 163 So. at 283.

This legislative history also shows that chapter 95-182 is not a "comprehensive law", as that term is used in this context. As discussed above, on four occasions this Court has rejected a single subject attack against an admittedly broad law because the law at issue "was a comprehensive law in which all of the parts were at least arguably related to its overall objective . . . ." Johnson, supra, 616 So.2d at 5 (Grimes, J., concurring). However, the laws at issue in those cases are distinguishable from chapter 95-182.

Thus, in State v. Lee, supra, the Court upheld the validity of chapter 77-468. In the preamble to that law, the legislature found that medical malpractice insurance rates were out of control, thus causing an "insurance crisis [that] threatens the quality of health care services in Florida as physicians become increasingly wary of high-risk procedures and are forced to downgrade their specialties to obtain relief from oppressive insurance rates . . . ." Ch. 77-468, preamble. Similarly, in Chenoweth, supra, the Court upheld chapter 76-260, which was a comprehensive attempt to deal with the similar problem of skyrocketing automobile insurance rates. In Smith v. Department of Insurance, supra, the Court upheld chapter 86-160, which addressed "a financial crisis in the liability insuring industry, causing a serious lack of availability of many lines of commercial liability insurance . . . ." Ch.86-160, preamble. Finally, in Burch, supra, the Court upheld chapter 87-243, which was a response to "a crisis of dramatic proportions due to a rapidly rising crime rate, which crisis demands urgent and creative remedial action [that] requires a major commitment of resources and a nonpartisan, nonpolitical, cohesive, well-planned approach . . . ." Ch. 87-243, preamble.

There are no such legislative findings of a crisis with respect to chapter 95-182.

These four comprehensive law cases mark the outer limits of legislative authority to enact complex and multi-faceted laws without violating the single subject provision. As discussed above, all four of these cases were close decisions with strong dissents. In

effect, these cases may be seen as an accommodation to the realities of the legislative process. There are some subjects that are so complex, so compelling, and so controversial that effective legislation on the subject is invariably going to be wide-ranging, and it will invariably include a certain degree of logrolling. The subject of insurance reform -- the subject of three of the four comprehensive law cases -- is a perfect example. To deal with the subject of, say, medical malpractice, is to deal with large and powerful special interests (e.g., trial lawyers, doctors, insurance companies, hospitals), interests that often sharply conflict. Given the inevitable legislative clash of such powerful interests, it is clear that significant legislation will not pass in this area unless and until each special interest is given some prize in return for the concessions it makes. The resulting legislative sausage is bound to look like chapter 76-260 (or 77-468, or 86-160).

Similarly, Burch dealt with a true comprehensive law that embraced a coordinated, multi-faceted approach to the then-alarming burgeoning crime rates (fueled in large part by the exploding crack cocaine epidemic). It is beyond question that this epidemic had many perceived causes, including the weakness of existing drug laws, the quick and easy high profits of the drug trade, the lack of effective methods of seizing those profits from the drug dealers, and the breakdown of local neighborhoods and parental control. Such a complex epidemic requires a comprehensive treatment plan, such as provided by

chapter 87-243.

Chapter 95-182 is not such a comprehensive law. Chapter 95-182 addresses no perceived crisis, and it was not designed to be a coordinated, multi-faceted approach to a complex problem. Rather, the substance of chapter 95-182 is exactly what its legislative history suggests it would be: a core subject (i.e., the Gort Act) with several unrelated provisions added on at the end. As Thompson so cogently noted, "it is in circumstance such as these that problems with the single subject rule are most likely to occur". 708 So.2d at 317. See also Alachua County, supra (chapter 88-156 violates single subject provision because a subsection regarding the regulation of petroleum storage tanks by local counties was added to a pending construction industry regulation bill after Alachua County ordinance regulating storage tanks was declared unenforceable by court).

Clearly, if chapter 95-182 embraces only a single subject, that subject would have to have something to do with protecting victims of domestic violence; after all, sections 8 to 10 are specifically designed to do precisely (and only) that. Thus, for chapter 95-182 to survive a single subject challenge, sections 2 to 7 must be "fairly and naturally germane to [that] subject . . . or are necessary incidents to or tend to make effective or promote the objects and purposes of [that subject]". Smith, supra, 507 So.2d at 1087.

Whatever "tangential relationship", Martinez, supra, 582 So.2d at 1172, sections 2 to 7 may have to the subject of protecting victims of domestic violence (i.e.,

presumably some persons who commit domestic violence would also qualify as violent career criminals), it is clear that sections 2 to 7 were not enacted with domestic violence victims in mind. As noted above, sections 2 to 7 began life as two bills in the Senate, SB 118 and CS/SB 168. The "Staff Analysis and Economic Impact Statement[s]" for both bills make it clear that the object of these bills is to protect the general public from career criminals, primarily by expanding the coverage of section 775.084 and imposing severe, long-term sentences on the new sentencing category of violent career criminals; neither of these Impact Statements refers to domestic violence at all. It is impossible to say that the legislature intended the Gort Act to be incident to the purpose of protecting domestic violence victims (furthered by sections 8 to 10). The purpose of the Gort Act is, and also was, to protect the general public by imposing harsh sentences on habitual criminals.

Turning the analysis around, it is equally impossible to say that sections 8 through 10 are incident to the subject of sections 2 through 7. Sections 2 through 7 are designed to protect the general public from the predations of violent criminals who have a long history of serious criminal behavior. Sections 8 through 10 serve more modest and limited goals. Section 8 authorizes private causes of action for violations of domestic violence injunctions, and section 10 imposes procedural duties on court clerks and law enforcement officers in the processing and serving of such injunctions. Viewed with "common sense", Smith, supra, 507 So.2d at 1087, how can it be maintained that these

sections are "fairly and naturally germane", id., to the goal of protecting the public from violent career criminals? While the word "violence" does appear in the phrase "domestic violence", "domestic violence" is defined to include several misdemeanors (i.e., assault, battery, and simple stalking) and it is limited to circumstances in which victim and offender "[are] or [were] residing in the same single dwelling unit." §741.28(1), Fla. Stat. (1995). Thus, while there may be some minor degree of coincidental overlap between the definitions of "violent career criminal" and "domestic violence", sections 8 and 10 of chapter 95-182 cannot be said to be "natural[ly] and logical[ly] connect[ed]", State v. Lee, supra, 356 So.2d at 242, to the provisions of the Gort Act.

Similarly, section 9 of chapter 95-182 -- which creates a private cause of action for injuries resulting from "continuing domestic violence" -- has no natural and logical connection to the Gort Act either. Allowing victims of domestic violence to sue their tormentors is, at best, only "tenuous[ly] relat[ed]", Burch, supra, 558 So.2d at 3, to the subject of long prison terms for violent career criminals.

Unlike the facts in Burch, in the present case it cannot be said that "there is nothing in this act to suggest the presence of logrolling", and it "would [not] have been awkward and unreasonable to attempt to enact many of the provisions of this act in separate legislation." Id. Chapter 95-182 is a classic example of the type of legislative logrolling the single subject provision prohibits: certain members of the House, recognizing the

inherent viability of a "get tough on crime" bill named after a police officer slain by a "career criminal" who had been "coddled" by the system after his prior brushes with the law, took advantage of the popular public furor to slip their pet bills (that could not, on their on, get out of committee) into the package. After all, what contemporary Florida legislator would risk his political future by voting against a bill that honors "All Fallen Officers" by locking up "career criminals", simply because that bill has a few unrelated provisions thrown in at the last minute?

Chapter 95-182 violates the single subject provision.

E. THE STATE'S ARGUMENTS

The arguments contained in the state's initial brief have, for the most part, already been discussed and thus need be only briefly addressed.

The state cites the one "comprehensive law" case: Burch (IB 6). However, as just discussed, chapter 95-182 is not such a comprehensive law as was upheld in that case.

The state never does quite expressly state what it believes is the single subject of chapter 95-182. It does assert that all sections of the act deal with measures to sanctions and deter repeat criminal offenders and the intent is protection of innocent persons victimized by these repeat offenders (IB 3). However, it is not accurate to say that all sections of the act concern repeat offenders, as sections 8 and 10 of chapter 95-182 are not directed at repeat offenders.

The state's reliance upon Higgs v. State, 695 So.2d 872 (Fla. 3d DCA 1997) (IB 3, 5) is misplaced. Higgs is a four sentence opinion in which the Third District, per curiam, summarily held that there was a reasoned and rational relationship between each of the sections of the act. There was no discussion whatsoever the specific provisions of the act, or relevant case law on this issue.

The Third District's more recent opinion on the subject cited by the state (IB 3, 5), Almanza v. State, 716 So.2d 351 (Fla. 3d DCA 1998), is similarly uninforming. There the court simply noted that it had decided this issue in Higgs, that the Second District had decided the same issue differently in Thompson, and certified conflict. There was no explanation of its analysis, or any attempt to refute the analysis in Thompson.

As stated above, the state recognizes that Mr. Seay's offense occurred within the "window of unconstitutionality, if any." The argument in the state's brief concerning the length of the window of unconstitutionality (IB 7-8) is therefore immaterial to Mr. Seay's appeal. His offense did not occur in the October 1, 1996 to May 24, 1997, time frame which the state complains about. Therefore, Salters v. State, ___ So.2d ___ (Fla. 4th DCA 5/5/99) [24 Fla. L. Weekly D1116], relied on by the state (IB 4, 7) has no bearing on Mr. Seay's case.

Thus, the state's arguments are fatally flawed.

F. SEVERABILITY

As noted earlier, chapter 95-182 contains a severability clause. Ch. 95-182, §11. However, this clause is irrelevant to the issue here; the doctrine of severability does not apply in this context. Sawyer v. State, 132 So. 188, 192 (Fla. 1931) (law that violates single subject rule "must be held unconstitutional and void, in toto"); Colonial Investment Co., supra, 131 So. at 183 ("The act deals with two separate and distinct subjects . . . , thus rendering the entire act unconstitutional and void"); Ex Parte Winn, 130 So. 621 (Fla. 1930) ("The act . . . dealt with more than one subject . . . , and for this reason the entire act must fall").

CONCLUSION

Based on the arguments and authorities set forth in this brief, this Court must affirm the decision of the Second District Court of Appeal.

Respectfully submitted this 26th of May, 1999, at Orlando, Orange County, Florida.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of May, 1999, a true copy of the foregoing, was furnished by United States Mail to **James W. Rogers, Assistant Attorney General**, The Capitol, Tallahassee, Florida 32399-1050, and the original and 7 copies have been sent by United States Mail to Debbie Casseaux, Acting Clerk of Court, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1927.

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