IN THE SUPREME COURT OF FLORIDA

XZAVIER TRAPP, :

Petitioner, :

v. : **CASE NO. 96,074**

STATE OF FLORIDA, :

Respondent. :

INITIAL BRIEF OF PETITIONER ON THE MERITS

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I. PRELIMINARY STATEMENT

Mr. Xzavier Trapp was the defendant in the trial court, "appellant" before the District Court Of Appeal, First District, and will be referred to as "Petitioner," "Mr. Trapp," or "defendant" in this brief. Respondent will be referred to as "State". The record on appeal will be referred to as "R" followed by a colon, volume number I, and the corresponding page number all within parentheses. The transcript of court proceedings will be referred to as "T" followed by a colon, volumes number I-III, and the corresponding page number all within parentheses.

Filed with this brief is an appendix containing documents pertinent to the issues raised on appeal, as well as a copy of the district court's decision in Trapp v. State, 24 F.L.W. D1431a (Fla. 1st DCA June 17, 1999)(A: 1-2). Reference to the appendix

will be by use of the symbol "A" followed by a colon, then followed by the appropriate page number in parentheses.

The undersigned certifies this brief is using Courier New, 12 point, a non-proportional font.

II. STATEMENT OF THE FACTS

On April 16, 1992, Xzavier Trapp pled no contest to a charge of Aggravated Battery without a Firearm in case number 91-3640-CFA. As a result, Mr. Trapp was adjudicated guilty of the second degree felony and placed on three years probation. (R:Vol I, 21-29).

Because of several intervening violation reports, Mr. Trapp was still on probation in 1997.[1] In January of 1997, another Affidavit of Violation Report was filed alleging that he had been arrested for Attempted First Degree Murder. (R:Vol I, 118-122).

On the afternoon of January 10, 1997, Willie Dunn was hanging around Lake Terrace Apartments with friends. As he and five or so other guys talked, Xzavier Trapp pulled up in a white car. Dunn knew Mr. Trapp from around the neighborhood. (T:Vol I, 42).

Mr. Trapp walked up to the group with his puppy. He wanted the other guys to find another puppy to fight his. Mr. Trapp thought his puppy could beat any they produced. This discussion escalated into an argument between Mr. Trapp and Dunn. Eventually, Mr. Trapp left in his car. (T:Vol I, 43-44).

Mr. Dunn walked to the local convenience store. While he was there, a guy walked up to him and stated that Mr. Trapp

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[1]*See generally* (R:Vol I, 30-36, 57-61, 63-65, 75-79, 80-85, 90-94).

wanted to fight him "one-on-one". Dunn replied that he didn't want to fight and walked back to the park area near the apartments. (T:Vol I, 44-45).

Dunn was shooting baskets with his friends back at Lake Terrace Apartments when another person came up to him. This person stated that Mr. Trapp did not want to fight him in the park. Although Mr. Dunn had previously replied that he did not want to fight, he left the park and started walking down the sidewalk. (T:Vol I, 46-47).

A white car pulled along side Mr. Dunn as he walked. Mr. Dunn later testified that Mr. Trapp was the driver. Dunn remembered the driver asking him, "What's up?" Still, Dunn kept walking. The person in the car then pulled a gun from between his legs, pointed it at Mr. Dunn, and questioned, "What's up now?"[2] (T:Vol I, 47-48).

Mr. Dunn put his jacket in front of him as a shield. Still, he was shot once in the abdomen. He took off running as shots continued to ring out. (T:Vol I, 51-52).

Mr. Dunn was taken to the emergency room. Dr. Orvin Jenkins was the surgeon on duty. He did emergency surgery to save Dunn's life. The bullet had pierced the stomach and liver requiring

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[2]Eye witnesses to the shooting (Gamelle Davis, Shanika Banister, and Aaron Hamilton) later remembered the two men arguing, the driver pulling out a gun, the driver hesitating for a moment, and then the drive shooting the gun multiple times. (T:Vol I, 74-79, 92, 105-106, 108).

sutures. The bullet was not removed at the time. However after several complications, the bullet was eventually removed. (T:Vol I, 122-124).

Detective Drayton McDaniel of the Gainesville Police Department arrived at the scene and spoke with several of the witnesses. Because of his investigation, he came to the conclusion that Xzavier Trapp was a suspect. (T:Vol I, 128).

Detective McDaniel and Detective Brett Starr drove to Mr. Trapp's home. Mr. Trapp's girlfriend, Marva Wade, was there. She allowed the officers to search her home and her white Toyota Camry. Still, the officers recovered no physical evidence. (T:Vol I, 36-37, 164-166).

Mr. Trapp turned himself in to the police department that evening.

Detective McDaniel advised Mr. Trapp of his rights. Mr. Trapp explained that he did not want to be interviewed without a lawyer. However, he explained that he wanted to tell his side of the story. He told the detective that five guys wanted to beat him up and had been harassing his wife. He explained that his fingerprints would obviously be in the white car because it was his wife's and he was allowed to drive it. (T:Vol I, 132-134).

III. STATEMENT OF THE CASE

The State charged Mr. Trapp by Information with Attempted First Degree Premeditated Murder. (R:Vol I, 147).

Mr. Trapp proceeded to jury trial[3] stipulating that the trial court would hear and consider the violation of probation at the same time.

Prior to trial, the State showed Mr. Trapp a demonstrative aid it intended to use. This aid was a diagram of the scene where the shooting occurred. Mr. Trapp objected on grounds that it was not to scale. He argued that there was testimony that cars were lined up along the road, yet the aid showed only one car (presumably the shooter's car). He also argued that the aid did not accurately show the number of apartment houses that lined the streets.

The State agreed that the diagram was not to scale. However, it argued that it was just to give the jury a general idea of the surroundings. The trial court overruled Mr. Trapp's objection. (T:Vol I, 8-11).

Prior to testimony beginning, Mr. Trapp requested that the trial court recognize his continuing objection to the diagram. The trial court agreed. (T:Vol I, 35).

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[3]The defense theory at trial was that the witnesses had identified the wrong person. Marva Wade testified that she was using her car on the afternoon of January 10, 1997, so Mr. Trapp could not have been over at Lake Terrace Apartments. (T:Vol I, 36-37, 39-41).

As Mr. Dunn began to explain the circumstances surrounding the shooting, the State pulled out the diagram. It asked Mr. Dunn to step down and describe the events using the diagram as a reference. (T:Vol I, 46-48).

On cross-examination, Dunn explained that there were cars lining the street that were not depicted in the diagram. He spoke of a hundred or so eye witnesses standing around who were also not on the diagram. He admitted further that there were approximately 15-20 houses on the three blocks that had been omitted from the diagram. (T:Vol I, 61-63).

The State called Gamelle Davis as an eyewitness to the shooting. As Ms. Davis testified as to where she stood during the shooting, she used the diagram as a reference. Her initials were placed where she testified that she was standing. (T:Vol I, 75-77).

On cross-examination, Ms. Davis admitted that the diagram lacked the eight to ten apartments that were actually between her mother's house (where she had come from) and University Avenue. She also noted that the diagram lacked the cars and people that were in the area. (T:Vol I, 82-83).

Shanika Banister used the diagram during her testimony for the State. She explained that she was walking some distance behind Mr. Dunn right before he got shot. Her initials were placed on the diagram to show her location during the shooting.

She explained that she was only a couple feet away. (T:Vol I, 91-93).

During Ms. Banister's cross-examination, however, it became apparent that she did not really know how far away she had been from the shooting. During an earlier deposition, she had estimated the distance as 50 meters. (T:Vol I, 97).

Ms. Banister also noted that apartments were missing from the diagram. (T:Vol I, 101).

The State next called Aaron Hamilton to the stand. When asked if the diagram accurately represented the area where the shooting occurred, Mr. Hamilton honestly stated, "Sort of." (T:Vol I, 106).

It became clear during the trial that Mr. Trapp's defense was that he was not the shooter. During closing arguments, he argued that the State tried to make the evidence appear neat and tidy. Using the diagram, he pointed out that all the cars that were supposed to be lining the road that day were absent from the drawing. He also argued to the jury that the diagram did not show the apartment buildings that surrounded the area. (T:Vol II, 215).

The jury returned a verdict of guilty as charged. Separately, the jury found that Mr. Trapp personally carried a firearm during the course of the attempted murder. (R:Vol I, 194)(T:Vol II, 257).

The trial court revoked Mr. Trapp's probation in case number 91-3640-CFA and sentenced him within the recommended range to 4½ years Department of Corrections with credit for 199 days. (R:Vol I, 138-141)(T:Vol III, 265, 276-277).

The trial court adjudicated Mr. Trapp guilty of Attempted First Degree Premeditated Murder. Using the 1995 sentencing guidelines scoresheet, the trial court sentenced him to the top of the guidelines range of 155.75 months (12.81 years) Department of Corrections with credit for 292 days. No objection was made to the use of these guidelines. The trial court announced that the first three years would be minimum mandatory. The trial court also ran the two sentences concurrent. (R:Vol I, 196-202)(T:Vol, 275, 277).

On November 18, 1997, Mr. Trapp filed a timely Notice of Appeal. (R:Vol I, 142, 203).

On appeal before the District Court of Appeal, First District, petitioner advanced two arguments: (1) whether the trial court erred in allowing the state to present demonstrative evidence in the form of a diagram; and, (2) whether the 1995 criminal guidelines score sheet provisions of chapter 95-184 are unconstitutional in violation of the single-subject rule.

The Court rejected the first issue without elaboration. As to the second, while ruling that Chapter 95-184 did not violate the single-subject rule, the following issue was certified to the

Court as involving a question of great public importance:

> WHETHER CHAPTER 95-184 VIOLATES ARTICLE III, SECTION 6 OF THE FLORIDA CONSTITUTION.

Trapp v. State, supra (A:1-2).

IV. SUMMARY OF THE ARGUMENT

ISSUE I: Visual aids are one of the best ways to focus in on key evidence. These aids are allowed as long as they accurately depict or replicate the original scene. However, where the aids are inaccurate, they may mislead or confuse the jury. Therefore, in such instances the aids should be excluded from trial.

The trial court allowed the State to continually show the jury a diagram of the scene where Mr. Dunn was shot. However, it became clear that the diagram was not accurate, nor anywhere near a replication of the way the scene actually looked that January afternoon.

The trial court abused it discretion in allowing the diagram to be shown to the jury. Moreover, because Mr. Trapp's defense at trial was misidentification, allowing the confusing diagram constituted harmful error. Mr. Trapp respectfully requests this Court grant him a new trial.

ISSUE II: Mr. Trapp was improperly sentenced using the 1995 sentencing guidelines scoresheet.

The 1995 scoresheet was created by Chapter 95-184, Laws of Florida. This law violates the constitutional prohibition against multiple subject laws. Art. III, § 6, Fla. Const.

The law contains 35 sections dealing with the subject of criminal sentencing and penalties. The law then turns to the

completely separate subject of civil remedies for domestic violence injunction violations in sections 36-38.

A similar statute, Chapter 95-182, has been held unconstitutional [for violating the single subject requirement] by the Second District. Thompson v. State, 708 So.2d 315 (Fla. 2d DCA 1998).

As this Court should find Chapter 95-184 to also be unconstitutional, Mr. Trapp respectfully requests this Court remand his case for resentencing under the 1994 guidelines scoresheet.

V. ARGUMENT

I: THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING THE STATE TO PRESENT DEMONSTRATIVE EVIDENCE IN THE FORM OF A DIAGRAM WHICH DID NOT ACCURATELY DEPICT THE CRIME SCENE.

Strategic trial advocacy often includes the use of visual aids. In this electronic age, a picture is certainly worth a thousand words. Visual aids bring focus and emphasis to the auditory evidence. See Alston v. Shiver, 105 So.2d 785 (Fla. 1958)(noting that "[s]uch evidence is generally more effective than a description given by a witness ...). See also 23 Fla. Jur. 2d Evidence and Witnesses § 365 (1995); Milton Hirsch, Florida Criminal Trial Procedure 291 (2d ed. 1995).

Demonstrative exhibits (such as diagrams) which aid the jury in understanding a relevant issue of the trial are clearly proper. Conversely, exhibits which are inaccurate, thus misleading to the jury, should never be allowed. Taylor v. State, 640 So.2d 1127, 1134 (Fla. 1st DCA 1994); Brown v. State, 550 So.2d 527, 528 (Fla. 1st DCA 1989); Alston at 791. Charles W. Ehrhardt, Florida Evidence § 401.1 (1997 ed.).

If the demonstrative evidence offered to the jury does not show the jury a reasonably exact reproduction, then it should be excluded from the trial. See, e.g., Detroit Marine Engineering, Inc. v. Maloy, 419 So.2d 687, 692 (Fla. 1st DCA 1982); Alston at 791.

This Court must review the trial court's error to determined whether the court abused its discretion in allowing Mr. Trapp's jury to view the State's diagram. Brown at 528.

Admittedly, the State's diagram was never entered into evidence. However, the jury was allowed to view the diagram (as if it was in evidence) repeatedly with the testimony of each State witness. The only thing the jury did not do was take the diagram back into the jury room. Therefore, as found in the above cited case law, it was necessary for the diagram to be an accurate depiction of the scene.

Clearly, it was not. This was evidenced by the State's own witnesses who repeatedly testified that the diagram lacked markers for the hundred or so witnesses who were milling about that day. These same witnesses agreed that the cars that lined the street that January afternoon were also not depicted in the diagram. More importantly, the witnesses testified that the diagram failed to show all the apartment buildings that were actually located on the block where the shooting occurred.

At first this may seem like nit-picking on Mr. Trapp's part. However, an overview of the trial shows how crucial this diagram was to the State's case.

Mr. Trapp's defense was that he had been misidentified as the man who shot Willie Dunn. The State's witnesses who identified Mr. Trapp gave varying accounts of their distances

from the shooting. Also, they could not physically describe the shooter except to say that it was Mr. Trapp.

The jurors looking at the State's diagram saw a clear, tidy scene without any obstacles to block the eyewitnesses' views of the shooter. Although the jury was told of the obstacles, the jurors were never visually oriented to them.

A proper drawing would have shown the jury that the witnesses' views were quite obstructed. Showing the actual, numerous obstructions would have brought into question what the witnesses could have actually seen that afternoon. Further, it would have lent more credence to Mr. Trapp's defense that he was misidentified.

This visual aid was used to enhance the State's case against Mr. Trapp. It served the State well. Unfortunately, the State relied on an inaccurate, incomplete diagram that it showed the jury again and again. The trial court erred in allowing the State to so rely.

The State's intentions in using the diagram were that it definitely be considered by the jury in returning a guilty verdict. Therefore, it can not be said beyond a reasonable doubt that this error was not considered by the jury in reaching its verdict. The error is harmful. State v. DiGuilio, 491 So.2d 1129 (Fla. 1986). Mr. Trapp is entitled to a new trial.

Petitioner lastly notes that the Court has discretion to rule on the above issue. Trushin v. State, 425 So.2d 1126 (Fla. 1983).

II: THE 1995 CRIMINAL GUIDELINES SCORESHEET PROVISIONS OF CHAPTER 95-184 ARE UNCONSTITUTIONAL BECAUSE THE STATUTE THAT CREATED THEM VIOLATED THE STATE CONSTITUTIONAL SINGLE SUBJECT PROVISION

The district court, in Trapp v. State, supra, certified the following issue to the Court:

> WHETHER CHAPTER 95-184 VIOLATES ARTICLE III, SECTION 6 OF THE FLORIDA CONSTITUTION.

(A:2). Petitioner requests the Court to answer this question "yes."

A. STANDING.

Mr. Trapp's substantive crime was committed on January 10, 1997.[4] Mr. Trapp was convicted and sentenced using the guidelines scoresheet which went into effect October 1, 1995 as a result of significant changes enacted by Chapter 95-184, Laws of Florida. Under the 1995 guidelines scoresheet, Mr. Trapp's incarceration range spanned from 93.45 months to 155.75 months.

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[4]Chapter 95-184, Laws of Florida became effective on October 1, 1995. Chapter 97-97 reenacted the 1995 amendments contained in 95-184 effective May 24, 1997. See State v. Johnson, 616 So.2d 1, 2 (Fla. 1993)("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 requirement of Article III, Section 6, of the Florida Constitution.").

(R:Vol I, 201-202). He received a guidelines sentence of 155.75 months Department of Corrections.

However, had the 1994 guidelines scoresheet been used, Mr. Trapp's incarceration range would have spanned from 86.4 months to 144 months. The difference in maximums (assuming the trial court would still impose the maximum) is almost a year incarceration.

Because Mr. Trapp was specifically and adversely affected as a result of the amendments made in Chapter 95-184, Laws of Florida, he has standing to challenge the statute. See generally 10 Fla. Jur. 2d, Constitutional Law §§ 73-74 (courts will go no farther than they have to in declaring a legislative act invalid, and litigants can challenge the constitutionality of statutes only to the extent they are adversely affected by them).

B. PRESERVATION.

No objection was raised at the trial level. Further, Mr. Trapp is raising a facial challenge to Chapter 95-184, Laws of Florida. Still, this issue is one of fundamental error. Johnson v. State, 616 So.2d 1 (Fla. 1993)(holding the error to be fundamental where the defendant's punishment was enhanced as a result of the unconstitutional chapter law).

Chapter 95-184 violates the single subject requirement because it addresses two distinct subjects: career criminal sentencing and civil remedies for domestic violence injunctions.

C. MERITS.

I. The Single Subject Requirement

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 serves three purposes:

> (1) to prevent hodge podge or "log rolling" legislation, i.e., putting to 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)(emphasis added).

It has oft been said that "[t]he subject of a law is that which is expressed in the title, ... and it may be as broad as the legislature chooses provided the matters included in the law have a natural or logical connection." State v. Lee, 356 So.2d 276, 282 (Fla. 1978)(citation and internal quotes omitted).

However, this statement should not 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 endows it with a consuming title. Instead, courts have an obligation to insure that legislative "subjects" do not

expand to such abstract and amorphous levels that Article III, section 6 is rendered ineffectual. See, e.g.'s, Bunnell v. State, 453 So.2d 808 (Fla. 1984), quashing, State v. Bunnell, 447 So.2d 228 (Fla. 2d DCA 1983); Williams v. State, 459 So.2d 319 (Fla. 5th DCA 1984).

Thus, in recent cases (discussed below), such titles as "the criminal justice system", "comprehensive economic development", and "environmental resources" have been held to be too broad as to be considered a single subject. See, e.g.'s, Martinez v. Scanlan, 582 So.2d 1167 (Fla. 1991); Alachua County v. Florida Petroleum Marketers, 589 So.2d 240 (Fla. 1991); State v. Leavins, 599 So.2d 1326 (Fla. 1st DCA 1992).

This, of course, is only common sense. If it were otherwise, the legislature could simply assert that the "subject" of a particular statute is something like "the public health, safety, and welfare". By titling the act as such, the legislature could then combine a wide range of topics under this broad "subject". However, this is exactly the evil guarded against by the single subject provision of the Florida Constitution.

Further, "[w]hen the subject expressed in the title is restricted, only those provisions that are fairly included in such restricted subject and matter properly connected therewith can legally be incorporated in the body of the act, even though

other provisions besides those contained in the act could have been included in one act having a single broader subject expressed in its title." Ex Parte Knight, 52 Fla. 144, 146, 41 So. 786, 788 (Fla. 1906). Thus, although the title "need [not] embrace every detail of the subject matter ... the propositions embraced in the act shall be fairly and naturally germane to that recited in the title." Boyer v. Black, 154 Fla. 723, 724, 18 So.2d 886, 887 (Fla. 1944).

"[T]he test of 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, 120 Fla. 860, 892-893, 163 So. 270, 283 (Fla. 1935). This 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)(citing State v. Canova, supra).

A case very close on point comes from the Second District Court of Appeal. Thompson v. State, supra. In Thompson, the defendant was sentenced as a violent career criminal for crimes that occurred on November 16, 1995. She challenged her sentence on grounds that Chapter 95-182, Laws of Florida violated the

single subject requirement found in Article III, section 6 of the Florida Constitution. Id.

Reversing her sentence, the court agreed that Chapter 95-182 encompassed more than one subject. The court found that sections 1 through 7 of the chapter dealt with violent career criminal sentencing and penalties. The court further found that sections 8 through 10 dealt with civil aspects of domestic violence.[5] Id.

The court then analyzed the legislative history:

> The legislative history shows that sections 8 through 10 of chapter 95-182 began as three bills in the House of Representatives. Proposed committee substitute for House Bill 1251 dealt principally with the duties of the clerk and the sheriff in the processing and execution of injunctions for protection. Proposed committee substitute for House Bill 1789, filed on behalf of the Governor's Task Force on Domestic Violence, encompassed a laundry list of recommendations found in the January 19 report of the Task Force, including matters relating to the duty of the clerk. House Bill 2513 provided for civil remedies to victims of domestic violence. Each of these bills died in committee. ... The substance of these failed bills was engrafted on several Senate bills, including committee substitute for Senate Bill 168 (the Gort Act), and thereby became law. It is in circumstances such as these that problems with the single subject rule are most likely to occur.

Id. (emphasis added).

The Thompson, court found that criminal sentencing and

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[5]Compare Chapter 95-182 §§ 8-10 with Chapter 95-184 §§ 36-38. Both groups of sections incorporate the same language dealing with civil remedies for domestic violence.

domestic violence civil remedies had no "natural or logical connection." Id. In holding the statute unconstitutional for violating the single subject requirement, the court stated that the two subjects were completely separate and were not intended to accomplish a greater single objective.[6] Id.

This Court has addressed the meaning of the single subject provision on several occasions in recent years. Three of those cases involved criminal statutes: 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 statutes at issue violated the single subject provision while Burch rejected that challenge. These cases were relied upon by the Second District in reaching its holding in Thompson, supra. They establish the framework for analysis in the present case. Further, under that framework, Chapter 95-184 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

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[6]See also Taylor v. State, 709 So.2d 641 (Fla. 2d DCA 1998); Davis v. State, 709 So.2d 641 (Fla. 2d DCA 1998). Contra Higgs v. State, 695 So.2d 872 (Fla. 3d DCA 1997)(summary conclusion that a "reasonable and rational relationship" existed between all sections of Chapter 95-182).

false information.[7] 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 231. The court then concluded that Chapter 82-150 did not violate the single subject requirement because the sections of the statute "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

[7]Codified at section 843.035, Florida Statutes (1982 Suppp.).

impliedly set forth by the legislature....

Id. (citation and internal quotes omitted).

The Fifth District disagreed and held Chapter 82-150 violated the single subject provision. Williams v. State, 459 So.2d 319 (Fla. 5th DCA 1984). Although recognizing that the provision should be "interpreted ... liberally", particularly when dealing with "very comprehensive law revisions", id. at 320, the court nonetheless found 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 (footnote and citations omitted)(emphasis added).

Taking jurisdiction in Bunnell, this Court had no trouble concluding that this statute 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 objects 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 the legislation:
>
> > WHEREAS, Florida is facing a crisis of dramatic proportions due to a rapidly increasing crime rate, which crises 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 throughout 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 more diverse subject matter had been approved in spite of similar constitutional challenges. See, e.g.'s, State v. Lee, supra; Chenoweth v. Kemp, 396 So.2d 1122 (Fla. 1981); Smith, supra.[8]

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 the 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.

Burch was a 4-3 decision. Justice Shaw wrote the dissenting opinion in which Justices Barkett and Kogan concurred. The gist of their dissent was the logic furthered in Justice Shaw's Bunnell decision, supra. Justice Shaw reminded that a statute can not be constitutionally firm simply because all of its

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[8]These three cases will be discussed further below.

subjects fall within the broad title of crime prevention or the broad objective of public safeguarding. 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" which had "absolutely no cogent connections [and were not] reasonably related to any crisis the legislature

intended to address." Id. Like the dissent in Burch, supra, 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 said:

> 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 in Bunnell [citation omitted] rather than by Burch.

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

These cases establish the following principles: provisions in a statute 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 statute, provided that statute is intended to be a comprehensive approach to a complex and difficult problem that is currently troubling a large portion of 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 statutes as well. The three cases relied upon in Burch illustrate how the Supreme 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, the Court upheld the Tort Reform Act of 1977 because it was "an attempt by the legislature to deal comprehensively with tort claims and particularly with the problem of substantial increase in automobile insurance rates and related insurance problems." 356 So.2d at 282. Still, the three dissenters found that the statute "relates to at least three different 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, 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.

Again, however, Justice Sundberg dissented noting that the Supreme Court seemed intent upon gutting any viability Article III, section 6 still retained. Id. at 1126 (Sundberg, J., dissenting).

Finally, in Smith, the Court upheld the Tort Reform and Insurance Act of 1986. Following Lee and Chenoweth, the Court said that statute was enacted in "respon[se] to public pressure brought about by a liability insurance crisis ... [e]ach 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 1086-1087.

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 the 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 the 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? 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).

In a separate dissent, Justice Adkins asserted:

> Torn between "good to the public" and applying the law, I voted with the majority in State v. Lee [citations omitted], influenced by an alleged crisis in the insurance business. This was a mistake.
>
> In Chenoweth [citation omitted], we went a "wee bit" further in construing the single subject rule. I felt bound to concur because of my vote in Lee and, once more, there was an alleged crisis. Now, I am faced again with an alleged crisis on one side and the one-subject constitutional provision on the other. WHERE WILL It END? As we continue to expand our interpretation of the one-subject rule, it becomes more nebulous with each interpretation. We will become a court of men instead of a court of law, guided by

> alleged crisis instead of the wording of the Constitution. The legislature interpreted our prior decisions as saying "Do whatever you want to do, as long as your decision is buttressed by a crisis."

Id. at 1099 (Adkins, J., concurring in part and dissenting in part) (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 as a single subject because they are arguably related to a broad and comprehensive objective that links them all together. Yet, even then, the statute will be valid only if there is a perceived public crisis that requires the passing of such a broad and comprehensive statute.

However, the mere labeling of a statute with a broad title will not insulate it from a single subject attack. Three recent cases illustrate the point: Martinez v. Scanlan, 582 So.2d 1167 (Fla. 1991); Alachua County v. Florida Petroleum Marketers, 589 So.2d 240 (Fla. 1991); and State v. Leavins, 599 So.2d 1326 (Fla. 1st DCA 1992).

In Martinez, the Court addressed the validity of Chapter 90-201, Laws of Florida. The title to that statute began "An act relating to economic development ...." The act contained 121 sections, the first of which provided that Chapter 90-201 "may be

cited as the 'Comprehensive Economic Development Act of 1990'".[9] Chapter 90-201 § 1, Laws of Florida.

This Court (without dissent)concluded that this statute 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 case, however, the subjects of worker's 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.

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[9]The act was prefaced with 29 legislative "Whereas" clauses. These clauses laid out broad legislative "findings" and "intent", the thrust of which were: 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 ...." Sections 60 through 119 aimed to accomplish this purpose through the formation of various advisory and planning agencies that included representatives from both the private and public sectors. Id.

582 So.2d at 1172.

Similarly, in Alachua County, the Court addressed the validity of Chapter 88-156, Laws of Florida. 589 So.2d at 240. The title to that statute indicated it was "An act relating to the construction industry...."[10]

On direct appeal, the First District upheld the trial court's ruling that Chapter 86-156 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 addition 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

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[10]Most of its 25 sections modified various statutes in Chapter 489 of Florida Statutes, including 1) expansion of the types of contractors covered by Chapter 489 (Ch. 88-156, §3); 2) modifications of the membership procedures of the Construction Industry Licensing Board (id. at §§4-6); 3) strengthening of the oversight and enforcement powers of this board (id. at §§7-15); and 4) providing for other remedies (id. at §§19-22 .

Interwoven into these provisions were several provisions regarding storage tanks. The definition of "pollutant storage systems speciality contractor", "pollutant storage tank", "tank", and "registered precision tank testes", 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. at §§3, 7, and 16. The state Department of Environmental Regulation was given certain regulatory responsibilities regarding "pollutant storage tank[s], as defined in s. 489.133 ...." Id. at §17. This section also directed the department to coordinate its efforts with local governments. Id. Finally, Section 376.317, Florida Statutes 91987) was amended to allow county governments to adopt their own (more stringent than state law) regulations regarding underground petroleum storage tanks. Id. at §18.

> 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.

Alachua County v. Florida Petroleum Marketers, 553 So.2d 327, 329 (Fla. 1989), aff'd, Alachua County, supra.

Finally, in State v. Leavins, the first district struck down Chapter 89-175, Laws of Florida. 599 So.2d at 1331. The title of that statute began "An act relating to environmental resources ...." In 48 sections, the statute 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. Id. at 1333-34. The court noted that, although the Florida Supreme 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 the statute at issue "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 the statute was invalid, as follows:

> 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 the statute] 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 this act, and not simply compare each isolated subject to the stated topic of the act.

Id. at 1334-35 (footnote omitted).

As these cases make clear, Florida courts will not to strain to invent relationships and connections between different provisions in a statute. 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, 100 Fla. 1349, 1357, 131 So. 178, 181 (1930).

Tangential connections, tenuous relationships, or coincidental overlap will not convert two subjects into one. 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 to achieve an objective is not controlling. Courts retain the oversight

responsibility of insuring that legislative "subjects" do not become too broad or nebulous.

II. Analysis of Chapter 95-184

Chapter 95-184, is entitled the "Crime Control Act of 1995". Its preamble summarizes that the Act deals largely with sentencing guidelines, criminal penalties, criminal penalty enhancement, and gaintime. However, near the end of the preamble is a summary of amendments relating to civil remedies.

Chapter 95-184 contains 40 sections. Section one provides that "Sections 2 through 36 of this act may be cited as the 'Crime Control Act of 1995'". Sections 36 through 38 address civil and procedural aspects of domestic violence. Section 39 contains a severability clause. Section 40 states that the act shall take effect upon becoming law unless otherwise noted.

Sections 2 through 35 may be summarized as follows:

Section 2 -- This section describes the legislative intent to design guidelines to emphasize the need to incarcerate repeat criminal offenders.

Section 3 -- This section further explains the 1983 and 1994 guidelines sentencing schemes.

Sections 4-7 -- These sections revamp the 1994 guidelines to create a new guidelines scoresheet effective October 1, 1995.

Of particular interest, section 6 changes the scoring of prior offenses above a level 5. Offenses at level 6 through 10

were doubled if not tripled in points from the 1994 guidelines scoresheet.

Section 8 -- This section amends the penalties for burglary in Florida Statutes section 810.02.

Sections 9-11 -- These sections amend the penalties for theft.

Section 12 -- This section provides for procedures to follow in convicting a minor.

Sections 13-15 -- These sections provide for sentencing procedures and penalties for defendants charged with accessory, an inchoate crime, and certain drug offenses.

Section 16 -- This section sets forth the different meanings of life sentences.

Section 17 -- This section creates the enhancement for murder of a law enforcement official.

Section 18 -- This section repeals a prior penalty section.

Sections 19-24 -- These sections amend Florida Statutes to allow for further enhancement of penalties.

Section 25 -- This section reiterates the trial court's discretion in imposing penalties other than incarceration.

Sections 26-27 -- These sections amend the opportunities for gain-time and controlled release.

Sections 28-35 -- These sections discuss the monies the defendant will be liable for after a criminal conviction. These

monies include restitution to the state for incarceration costs and restitution to the victims of the crimes.

Moving away from criminal penalties, sections 36-38 may be summarized as follows:

Section 36 -- This is an amendment to 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 36 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 37 -- 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 domestic abuse. Chapter 768 is titled "Negligence; General Provisions"; it is found in Title XLV, which is titled "Torts."

Section 38 -- This amends Section 784.046, Florida Statutes (1993), by imposing certain procedural duties on the court clerk and the sheriff regarding the filing and enforcement of domestic violence injunctions.

The pertinent legislative history is reprinted in the appendix. It may be summarized as follows:

The "Crime Control Act," as eventually enacted in Sections 2 through 35 of Chapter 95-184, began as Senate Bill 172 (CS/SB 172) entertained in the Judiciary Committee and the Criminal Justice Committee. (A:3-12). The summary from the Senate Staff Analysis and Economic Impact Statement states that "172 substantially amends, creates, or repeals the following sections of the Florida Statutes: 921.0012, 921.0014." (A:3). Everything listed in the analysis of this bill had to do with criminal sentencing and penalties.

Sections 36 through 38 of Chapter 95-184 began life as three bills introduced in the House of Representatives: PCS/HB 1251, PCS/HB 1789, and HB 2513. (A:13-32). House Bill 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." (A:13). This bill dealt with the roll of the judiciary in processing victims of domestic violence injunctions. (A:13-19).

House Bill 1789 met a similar fate as 1251. (A:20). This bill was filed on behalf of the Governor's Task Force on Domestic Violence. (A:20-26).

House Bill 2513 passed the House, but died in committee in the Senate. This bill provided for civil remedies for victims of domestic violence injunction violations. (A:27-32).

III. Chapter 95-184 Violates the Single Subject Provision

Application of the principles discussed in Section I to Chapter 95-184 is relatively straightforward. Nothing in Sections 2 through 35 of Chapter 95-184 (or the existing statutes that it amends) addresses any facet of domestic violence and its civil remedies. Nothing in Sections 36 through 38 addresses the problem of repeat offenders and their sentences or sentence enhancements. As the legislative history establishes, Chapter 95-184 is a hodge-podge of unrelated provisions that appear to have been joined in a single statute as a classic "I'll vote for yours if you'll vote for mine" maneuver.

Chapter 95-184 clearly embraces two subjects -- criminal sentencing and the protection of domestic violence -- that have no "logical or natural connection." Johnson, 616 So.2d at 4. Rather, they are two completely different subjects with no connection and no "saving grace" crisis to keep them from being declared unconstitutional. Id.

Instead, the two, separate subjects were born of two distinct legislative efforts. State v. Thompson, supra, 163 So. at 283. See Thompson v. State, supra at 317.

Nor is Chapter 95-184 a "comprehensive law in which all of its parts were at least arguably related to its overall objective of crime control." Johnson, 616 So.2d at 5 (Grimes, J., concurring). Rather, there is "only a tangential relationship at

best" between these two subjects. Martinez, 582 So.2d at 1172.

Mr. Trapp urges this court to follow the reasoning in Thompson v. State, supra, as set forth by the Second District.

Chapter 95-184 violates the single subject provision. The trial court erred in sentencing Mr. Trapp under the 1995 guidelines scoresheet.

IV. Severability

As noted earlier, 95-184 contains a severability clause:

> If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Ch. 95-184, §39.

This Court has adopted a four part test in determining whether one section's invalidity affects the entire statute:

> When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provision can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

Schmidt v. State, 590 So.2d 404, 414-415 (Fla.

1991)(citation omitted).

The mere existence of a severability clause does not guarantee that severance can properly occur. "[T]he inclusion of a severability clause will not save a statute if the unconstitutional portions clearly cannot be severed." Id. at fn. 12.

It is questionable whether the doctrine of severability applies in this context at all. Challenges to statutes alleged to be violative of the single subject requirement are not challenges to an "illegal provision" or "a part of a statute". Instead, they are challenges the method by which the whole statute was enacted. See, e.g., Thompson v. State, 23 Fla. L. Weekly D713 (Fla. 2d DCA March 13, 1998).

Severability is generally applied to statutes that violate some substantive limitation on legislative authority, such as substantive due process, equal protection, or the first amendment. In that context, there is no question that the statute under attack is procedurally valid; that is, the statute was enacted with due regard to the applicable procedural requirements. Rather, the statute is invalid (at least partially) because the substance of it is beyond (at least partially) the legislature's reach. In this context, it makes sense to talk of severance: the tree may be saved by clipping its rotten limbs, provided the trunk and roots are healthy.

This logic does not apply to procedural attacks on statutes, such as a single subject attack. In this context, there is no question that the legislature has the substantive authority to enact the statute at issue. It is just that they failed to follow proper procedure. See City of Winter Haven v. A.M. Klemm & Son, 132 Fla. 334, 335, 181 So. 153, 155 (Fla. 1938) (recognizing distinction between statutes that are invalid because they violate "a prohibition of the Constitution which relates ... to the form of the exercise of the legislative power in enacting statutes, as does [the single subject provision]", and statutes that are invalid due to "the nature of character of the subject matter").

Failure to follow proper procedure invalidates the whole statute because the statute itself never properly came into existence. To extend the analogy, we are no longer dealing with a healthy tree with a rotten limb, but a tree whose very roots are rotten. In such an instance, severing a few branches makes no difference. Instead, the whole tree must be uprooted.

In terms of the four-part test in Schmidt, "the unconstitutional provisions can[not] be separated from [any] remaining valid provisions", 590 So.2d at 415, because there are no "remaining valid portions".

It appears the Court has recognized this. See, e.g., Sawyer v. State, 100 Fla. 1603, 132 So. 188, 192 (Fla. 1931)(statute

that violates single subject rule "must be held unconstitutional and void, in toto"); Colonial Investment Co. v. Nolan, 100 Fla. 1349, 131 So. 178, 183 (1930)("The act deals with two separate and distinct subjects ..., thus rendering the entire act unconstitutional and void"); Ex Parte Winn, 100 Fla. 1050, 130 So. 621 (Fla. 1930)("The act ... dealt with more than one subject ..., and for this reason the entire act must fall").

VI. CONCLUSION

In light of the foregoing, and on the strength of authority cited, Mr. Trapp respectfully requests this Court grant him a new trial or alternatively grant him a resentencing.

Respectfully submitted,

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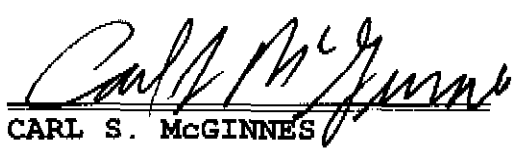
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Giselle L. Rivera, Assistant Attorney General, by delivery to The Capitol, Criminal Appeals Division, Plaza Level, Tallahassee, Florida, 32301, and a copy has been mailed to Xzavier Trapp, DOC# 875462, Taylor Corr. Institution, P. O. Box 1728, Perry, FL 32347, on this 26th day of August, 1999.



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