

IN THE SUPREME COURT OF FLORIDA

Gregory Valentine, :

Petitioner, :

v. :

CASE NO. 96,502

STATE OF FLORIDA, :

Respondent. :

INITIAL BRIEF OF PETITIONER ON THE MERITS

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TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
I. PRELIMINARY STATEMENT	1
II. STATEMENT OF THE FACTS	3
III. STATEMENT OF THE CASE	4
IV. SUMMARY OF THE ARGUMENT	6
V. ARGUMENT	7
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.	7
VI. CONCLUSION	36
CERTIFICATE OF SERVICE	36
APPENDIX	TAB

TABLE OF CITATIONS

<u>CASE</u>	<u>PAGE(S)</u>
<u>Alachua County v. Florida Petroleum Marketers</u> , 589 So.2d 240 (Fla. 1991)	10,23,25,26
<u>Boyer v. Black</u> , 154 Fla. 723, 724, 18 So.2d 886, 887 (Fla. 1944)	10
<u>Bunnell v. State</u> , 453 So.2d 808 (Fla. 1984)	9,13
<u>Burch v. State</u> , 558 So.2d 1 (Fla. 1990)	13
<u>Chenoweth v. Kemp</u> , 396 So.2d 1122 (Fla. 1981)	17,21,22
<u>City of Winter Haven v. A.M. Klemm & Son</u> , 132 Fla. 334, 335, 181 So. 153, 155 (Fla. 1938)	34
<u>Colonial Investment Co. V. Nolan</u> , 100 Fla. 1349, 1357, 131 So. 178, 181 (1930)	27
<u>Davis v. State</u> , 709 So.2d 641 (Fla. 2d DCA 1998)	12
<u>Ex Parte Knight</u> , 52 Fla. 144, 146, 41 So. 786, 788 (Fla. 1906)	10,35
<u>Johnson v. State</u> , 616 So.2d 1 (Fla. 1993)	7,8,13,18, 32

<u>Martinez v. Scanlan,</u> 582 So.2d 1167 (Fla. 1991)	10,23,32
<u>Sawyer v. State,</u> 100 Fla. 1603, 132 So. 188, 192 (Fla. 1931)	35
<u>Schmidt v. State,</u> 590 So.2d 404, 414-415 (Fla. 1991)	33,35

TABLE OF CITATIONS

<u>CASE</u>	<u>PAGE(S)</u>
<u>Smith v. Department of Insurance,</u> 507 So.2d 1080, 1087 (Fla. 1987)	11
<u>State v. Bunnell,</u> 447 So.2d 228 (Fla. 2d DCA 1983)	9,15
<u>State v. Canova,</u> 94 So.2d 181, 184 (Fla. 1957)	9,11
<u>State v. Leavins,</u> 599 So.2d 1326 (Fla. 1st DCA 1992)	10,23,26
<u>State v. Lee,</u> 356 So.2d 276, 282 (Fla. 1978)	9,17,20,22
<u>State v. Thompson,</u> 120 Fla. 860, 892-893, 163 So. 270, 283 (Fla. 1935)	11,32
<u>Taylor v. State,</u> 709 So.2d 641 (Fla. 2d DCA 1998)	12
<u>Thompson v. State,</u> 708 So.2d 315 (Fla. 2d DCA 1998)	6,11,12,13
<u>Thompson v. State,</u> 23 Fla. L. Weekly D713 (Fla. 2d DCA March 13, 1998)	34
<u>Trapp v. State,</u> 24 F.L.W. D1431a	1,2,7

(Fla. 1st DCA June 17, 1999)

Williams v. State, 9,14
459 So.2d 319 (Fla. 5th DCA 1984)

STATUTES

Section 23.150, Florida Statutes (1981) 13

-iii-

TABLE OF CITATIONS

<u>STATUTES</u>	<u>PAGE(S)</u>
Section 23.151, Florida Statutes (1981)	13
Section 23.152, Florida Statutes (1981)	13
Section 23.153, Florida Statutes (1981)	13
Section 23.154, Florida Statutes (1981)	13
Section 741.31, Florida Statutes (1994 Supp.)	29
Section 784.046, Florida Statutes (1993)	29
Section 843.035, Florida Statutes (1982)	13
 <u>CONSTITUTIONS AND AMENDMENTS</u>	
Art. III, § 6, Fla. Const.	6,7,8,11
 <u>OTHER AUTHORITIES</u>	
Chapter 90-201 § 1, Laws of Florida	23,24
Chapter 95-182, Laws of Florida	6,11,12,13
Chapter 95-184, Laws of Florida	6,7,27,28, 30,31,32,33
10 Fla. Jur. 2d, <u>Constitutional Law</u> §§ 73-74	8

IN THE SUPREME COURT OF FLORIDA

GREGORY VALENTINE :
Petitioner, :
v. : **CASE NO. 96,502**
STATE OF FLORIDA, :
Respondent. :

I. PRELIMINARY STATEMENT¹

Mr. Gregory Valentine was the defendant in the trial court, "appellant" before the District Court Of Appeal, First District, and will be referred to as "Petitioner," "Mr. Valentine," or "defendant" in this brief. Respondent will be referred to as

¹ This brief duplicates the substantive arguments contained in Petitioner's Initial Brief in Trapp v. State, 24 Fla. L. Weekly D1431 (Fla 1st DCA June 17, 1999), Supreme Court Case No. 96,074, pending before this court. This duplication is with the advance permission of the author, Carl S. McGinnes, Esquire, Assistant Public Defender, Second Circuit of Florida. Petitioner adopts the arguments contained there.

"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 such, followed by a comma, volumes number I-III, and the corresponding page number all within parentheses.

Attached to this brief, separated by a divider and a tab, is an appendix containing a copy of the district court's decision in Valentine v. State, 24 Fla.L.Weekly D1878 (Fla. 1st DCA August 10, 1999, and the dictrict court's decision in Trapp v. State, 24 Fla. L. Weekly D1431 (Fla. 1st DCA June 17, 1999).

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

II. STATEMENT OF THE FACTS

In the early hours of March 2, 1997, during a birthday party in rural Dixie County, a fight started. According to State witness/alleged victim Hubbel Herring, the fight started between two (2) men named Jamie Corbin and Danny Watson. (Trial transcript, Vol. I, page 120) Mr. Herring then involved himself in the fight. (Trial transcript, Vol. I, page 120-121) At that point, Defendant/Appellant Greg Valentine interjected himself between Herring and the others and said, "You're not double teaming my cousin." (Trial transcript, Vol. I, page 120-121) Valentine is alleged to have made physical contact with Herring at this point. Some time passed, the amount of time being in dispute. (Trial transcript, Vol. I, page 121; Trial Transcript, Vol. II, pages 247, 273-276) Fighting either continued or restarted, and state witnesses testified that Greg Valentine, wearing boots, kicked Hubbel Herring in the head.

III. STATEMENT OF THE CASE

Mr. Valentine was charged with aggravated battery with a deadly weapon, to wit: his boots. (Trial transcript, Vol. I, page 1) A jury trial was held. At trial, the state was permitted, over defense objection, to adduce testimony regarding the nature of Herring's injuries. (Trial transcript, Vol. I, pages 123-125)

The trial court refused to give two (2) jury instructions requested by the Defense. First, the trial court refused to give an instruction on self-defense or defense of others. (Trial transcript, Vol. II, pages 338-339) The trial court also refused to give an instruction, requested by the defense, that would have clarified for the jury that, in order to convict, they must conclude that the Defendant's boots were a deadly weapon. (Trial transcript, Vol. II, pages 340-342)

The Defendant was convicted and sentenced to fifty-four (54) months in the State of Florida Department of Corrections. (Record, Vol. I, page 76) His sentence was calculated based upon the sentencing guidelines, as amended by Laws of Florida, Chapter 95-184. (Record, Vol. I, page 61) An appeal followed. (Record, Vol. I, page 76) Mr. Valentine filed a timely Notice of Appeal. (R:Vol

I, 142, 203).

On appeal before the District Court of Appeal, First District, petitioner advanced four arguments: (1) whether the trial court erred when it denied the defense's requested standard jury instruction on self-defense/defense of other; (2) whether the trial court erred in refusing to give the requested instruction which made clear that in order to convict, the jury must determine that the defendant's footwear was a deadly weapon; (3) whether the trial court erred in permitting the state to introduce evidence of injuries in this matter, where the injuries did not constitute serious bodily harm; and (4) whether the 1995 version of the sentencing guidelines is unconstitutional for violation of the single subject rule of the Florida Constitution. The District Court rejected the first three issues without elaboration. As to the latter issue, the District Court certified the following question as one of great public importance:

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

Valentine v. State, 24 Fla. L. Weekly D1878 (Fla. 1st DCA August 10, 1999).

IV. SUMMARY OF THE ARGUMENT

Mr. Valentine 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. Valentine respectfully requests this Court remand his case for resentencing under the 1994 guidelines scoresheet.

V. ARGUMENT

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 the case below, Valentine v. State,
supra, as well as 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.Valentine's substantive crime was committed on March 2,
1997.² Mr.Valentine 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.Valentine's
incarceration range spanned from 52 months to 65 months. (R:Vol I,
62). He received a guidelines sentence of 54 months in the

²Chapter 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.").

Department of Corrections.

However, had the 1994 guidelines scoresheet been used, Mr. Valentine's incarceration range would have spanned from 38 months to 51 months. The difference in maximums (assuming the trial court would still impose the maximum) is almost a year incarceration.

Because Mr. Valentine 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. Valentine 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.³ 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

³Compare 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.

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 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.⁴ 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

⁴See 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).

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 false information.⁵ 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

⁵Codified at section 843.035, Florida Statutes (1982 Suppp.).

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. (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.⁶

The Court distinguished Bunnell:

In Bunnell, this Court addressed chapter

⁶These three cases will be discussed further below.

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 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'".⁷

⁷The 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

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.

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

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.

to that statute indicated it was "An act relating to the construction industry...."⁸

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 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

⁸Most 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.

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.Valentine 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.Valentine 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. Valentine respectfully requests this Court 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 L. Michael Billmeier, Assistant Attorney General, by delivery to The Capitol, Criminal Appeals Division, Plaza Level, Tallahassee, Florida, 32301, on this ___ day of October, 1999.

DAVID A. HALLMAN

