IN THE SUPREME COURT OF FLORIDA

RONALD WATSON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. SC00-404
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
	)	
_____	)	

PETITIONER'S BRIEF ON THE MERITS

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
Criminal Justice Building
421 Third Street/6th Floor
West Palm Beach, Florida 33401
(561) 355-7600

PAUL E. PETILLO
Assistant Public Defender
Florida Bar No. 508438
Attorney for Ronald Watson

TABLE OF CONTENTS

AUTHORITIES CITED

CASES PAGE

PRELIMINARY STATEMENT

Petitioner, Ronald Watson, was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida. Before the Fourth District Court of Appeals, Respondent was Appellee, and Petitioner was Appellant. In the brief, the respective parties will be identified as they appear before this Court.

The following symbols will be used:

"R"	Record on Appeal
"T"	Transcript
"SR"	Supplemental Record (sentencing transcript)

CERTIFICATE OF TYPE AND SIZE

In accordance with the Floria Supreme Court Administrative Order, issued on July 13, 1998, and modeled after Rule 28-2 (d), Rules of the United States Court of Appeals for the Eleventh Circuit, Counsel for Respondent hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that has 10 characters per inch.

STATEMENT OF THE CASE

This case is before this Court pursuant to conflict certified by the Fourth District with Thompson v. State, 708 So. 2d 315 (Fla. 2d DCA 1998).

Thompson has now been decided by this Court. State v. Thompson, 25 Fla. L. Weekly S1 (Fla. Dec. 22, 1999).

Petitioner was convicted of burglary of a dwelling and resisting an officer without violence (R 3-4). The crime occurred on October 14, 1996.

Petitioner was sentenced to thirty-five years in state prison (with a thirty year mandatory minimum) as an habitual violent career criminal pursuant to § 775.084(1)(c), Fla. Stat. (1995) on count I[1] (SR 12-13; R 31-33). Appellant was sentenced to time served on count II (SR12).

Petitioner appealed to the Fourth District, arguing that the violent career criminal statute violated the "single subject" requirement of the Florida Constitution, as held by the Second District in Thompson. He also argued that the trial court erred in denying the motion for judgment of acquittal.

The Fourth District affirmed, but certified conflict with Thompson.

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[1] Petitioner had three prior burglary convictions (SR 12).

STATEMENT OF THE FACTS

At trial, Patricia Franklin testified that on the night of October 14, 1996, she went into her bedroom and saw the figure of a man who was about halfway inside her window reaching over toward her bed (T 136). Ms. Franklin said, "who is that" and the man ran away(T 136). Ms. Franklin could not identify the man other than he appeared to be African-American (T 137). Ms. Franklin yelled to her adult son (Damian) and nephew (Maurice) that there was someone in her room and to catch him (T 138). Damian and Maurice ran out the front door of the apartment(T 139, 146). Ms. Franklin testified that they started to chase someone, but she did not see who they were chasing, and she could not say whether the person they were chasing was the person she had seen in her bedroom (T 152). However, Maurice and Damian ran in the same direction as the intruder (T 153).

About forty minutes later, petitioner was found hiding underneath a trailer in a nearby trailer park (T 142). Ms. Franklin could not identify him as the intruder (T 140, 146). Maurice and Damian identified petitioner as the person they chased into the trailer park (T 153). Later, Ms. Franklin found that her window screen had been cut with a razor (T 138).

Maurice Henderson testified that he and Damian ran outside the apartment and when they got to the end of the street they saw a man running from behind the apartment building (T 157). Maurice and

Damian ran after him, but lost him in the trailer park (T 157). Later, the police dog found petitioner hiding underneath a trailer (T 160). Mr. Henderson positively identified him as the person he and Damian had been chasing (T 160-161, 167-168, 170).

Officer Mario Cichatello testified that he arrived at the scene about 10:00 p.m. (T 178). He got a description from Maurice and Damian and set up a perimeter around the trailer park (T 181). A police dog found petitioner underneath a trailer (T 183). Petitioner matched the description given by Maurice and Damian, and both identified him as the person they had been chasing (T 184). Petitioner appeared nervous and he was sweating as if he had recently been exerting himself (T 186). Petitioner gave the officer the false name of Mike Wilson[2] (T 187). A search of petitioner revealed a butter knife and a screw driver, admitted into evidence as state's exhibit 1 (T 187, 190).

After the state rested its case, the petitioner rested without putting on any evidence (T 226). Petitioner's motions for judgment of acquittal were denied, and he was found guilty as charged (T 225,228,295).

SUMMARY OF THE ARGUMENTS

[2] This is the resisting an officer without violence charge.

POINT I

Petitioner was sentenced under the violent career criminal statute, which this Court, in State v. Thompson, 25 Fla. L. Weekly S1 (Fla. Dec. 22, 1999), recently decided violated the single subject rule of the Florida Constitution. This Court, however, declined to decide the "window" period during which the statute remained unconstitutional before reenactment. In the instant case this Court must decide this issue, and reconsider the arguments which were presented to it on the window in Thompson.

The Second District has made the correct holding, that the window extended until the next biennial reenactment of the statutes as a whole. This holding includes petitioner's crime within the window. Recently, the Third District also held that the window period did not close until the biennial reenactment. Diaz v. State, 25 Fla. L. Weekly D518 (Fla. 3d DCA March 1, 2000).

The Fourth District has incorrectly stated, with no reasoning, that the window closed earlier, when some amendments, not including the violent career criminal law, were made to the "Gort Act." The shortened window would not include petitioner's crime.

The interim amendments did not reenact the entire Gort Act, and therefore did not reenact the violent career criminal statute.

In any event, the interim amendments themselves, like the original enactment, also violate the single subject rule. For this reason as well, they did not close the window.

POINT II

Petitioner was not identified as the burglar. The state's only evidence was that he was seen running from the location of the crime. Evidence that a suspect is present at the scene of a crime and flees after it has been committed is insufficient to exclude a reasonable hypothesis of innocence. The Fourth District Court of Appeal should have reversed on the authority of Owen v. State, 432 So. 2d 579 (Fla. 2d DCA 1983), a case very similar to the instant case.

ARGUMENT

POINT I

PETITIONER'S CRIME FELL WITHIN THE "WINDOW" PERIOD DURING WHICH THE VIOLENT CAREER CRIMINAL STATUTE WAS IN VIOLATION OF THE "SINGLE SUBJECT" RULE OF THE FLORIDA CONSTITUTION.

In State v. Thompson, 25 Fla. L. Weekly S1 (Fla. Dec. 22, 1999), this Court decided, as contended by petitioner below, that the violent career criminal statute, enacted in Chapter 95-182, Laws of Florida (the "Gort Act") was unconstitutionally enacted in violation of the "single subject" requirement of Article III, Section 6 of the Florida Constitution.

This Court in Thompson explicitly left open the question of when the "window" period closed for persons challenging a violent career criminal sentence. This Court found that Thompson herself had standing to challenge the law; her crime was committed on November 16, 1995. This Court stated that the date of the offense determined the law to be applied.

As certified by the Fourth District in this case, there is conflict over when the window period closed. Petitioner urges this Court to adopt the position of the Second District, which would place Petitioner's case within the window, while the Fourth District's position would not. Petitioner's crime occurred on October 14, 1996.

The Second District, in its decision in Thompson, defined the window period as October 1, 1995, through May 24, 1997. Thompson v. State, 708 So. 2d 315, 317, fn. 1 (Fla. 2d DCA 1998). The court chose May 24, 1997, because this was when Chapter 97-97, Laws of Florida, reenacted the 1995 amendments contained in Chapter 95-182 as part of the Florida Statutes' biennial adoption. Id. This Court in its Thompson decision, while declining to decide when the window closed, did agree with the Second District that it opened on October 1, 1997; as stated by this Court, that was when the violent career criminal amendments to Section 775.084, Fla. Stat., became effective. Recently, the Third District also held that the window period did not close until the biennial reenactment. Diaz v. State, 25 Fla. L. Weekly D518 (Fla. 3d DCA March 1, 2000).

As stated by the Second District, the reenactment of the statute in the biennial adoption of the statutes determines when the window closes. The reenactment has the effect of adopting as the official statutory law of the state those portions of statues that are carried forward from the preceding adopted statutes. 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 rule. Id.

In contrast to the reasoning presented by the Second District, no reasoning is presented by the Fourth District in its decisions

stating its position that the window closed on October 1, 1966. In Scott v. State, 721 So. 2d 1245 (Fla. 4th DCA 1998), the court noted in a footnote the state's argument that the 1966 enactment of Chapter 96-388, Laws of Florida, effective October 1, 1996, cured the single subject violation, but the court explicitly declined to express an opinion on the question, and it offered none of the state's reasoning nor any of its own. In Salters v. State, 731 So. 2d 826 (Fla. 4th DCA 1999), the court cited Scott, without more, to hold that the window closed October 1, 1996. In Bortel v. State, 743 So. 2d 595 (Fla. 4th DCA 1999), and in Williams v. State, 24 Fla. L. Weekly D2455 (Fla. 4th DCA Oct. 27, 1999), the court again cited Scott, without more, as defining the window.

An analysis of Chapter 96-388, which the Fourth District neglected to undertake, shows that court to be wrong. Chapter 96-388 did not reenact the violent career criminal statute. Moreover, even if it did, Chapter 96-388 itself still violates the single subject rule.[3]

A. Chapter 96-388 Did Not Reenact The Entire Gort Act.

[3]The arguments in the remainder of this brief are essentially those presented to this Court in Thompson's supplemental brief on the window period.

The passage of Chapter 96-388 did not close the window period for all Gort Act challenges because Chapter 96-388 did not reenact the entire Gort Act.[4] Rather, that chapter reenacts only one section of the Gort Act: the section that enacted Section 790.235, which defined and provided penalties for the offenses of "possession of a firearm by a violent career criminal." Thus, at best, the shorter window period applies only to defendants convicted of that offense; the longer window period applies to defendants affected by the other Gort Act provisions.

The provisions that were contained in the Gort Act are mentioned twice in Chapter 96-388, in Section 44 and 45.

Section 44 begins:

> Effective October 1, 1996, paragraphs (a), (b), and (c) of subsection (1), and subsections (2), (3), and (4) of section 775.084, Florida Statutes, are amended, and subsection (6) of said section is reenacted, to read:

(Emphasis added).

The changes wrought by Section 44 are as follows, with the emphasized language being added to the existing statute:

> 1. Paragraphs (a)2, (b)2, and (c)3 of section 775.084(1) were all amended to add a

[4] The Gort Act is not mentioned by name in Chapter 96-388. When this brief refers to the Gort Act being mentioned in Chapter 96-388, it is referring to those sections of Chapter 96-388 that amended or reenacted those sections of the Florida Statutes that were affected by the passage of the Gort Act in Chapter 95-182, Laws of Florida.

> new subsection a, which provides that a defendant qualifies for sentencing as a habitual offender, a habitual violent offender, or a violent career criminal if his current offense was committed "[w]hile the defendant was serving a prison sentence or other commitment imposed as a result of a prior conviction of [a qualifying] felony."
>
> 2. Section 775.084(2) was amended to change the word "he" to "the person."
>
> 3. Sections 775.084(3) and (4), which deals with the procedures for imposing the enhanced sentences, were amended in minor ways, primarily to clear up ambiguous language.
>
> 4. Section 775.084(6) – the only provision to be specifically "reenacted" – was unchanged; it still provides: "The purpose of this section is to provide uniform punishment or those crimes made punishable under this section, and to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference."

(Emphasis added).

Section 45 of Chapter 96-388 begins:

> Effective October 1, 1996, for the purpose of incorporating the amendments to s. 775.084, Florida Statutes, in references thereto, the sections or subdivisions of Florida Statutes set forth below are reenacted to read:

(Emphasis added).

The only section or subdivision reenacted in Section 45 is Section 790.235, which is the part of the Gort Act that defines and provides penalties for the offense of "possession of a firearm by a violent career criminal."

These two sections were not intended to, and did not, reenact the whole Gort Act. Rather, these two sections amended several sections of the Gort Act in minor ways, and reenacted one section of it.[5] Sections 44 and 45 of Chapter 96-388 do not contain all of the provisions of the Gort Act originally contained in Chapter 95-182. The following statutory sections included in the Gort Act were not mentioned in Chapter 96-388: Sections 775.084(5), 775.08401, 775.0841, 775.0842, and 775.0843. Cf. Ch. 95-182, secs. 2-6 with Ch. 96-388 secs. 44-45. Thus, if Chapter 96-388 intended to reenact the Gort Act, it either 1) decided to eliminate several sections of the Act, or 2) did a very poor job of copying the original.

Article III, Section 6 of the Florida Constitution provides in pertinent part:

> . . . No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection, or subparagraph of a subsection. The enacting clause of every law shall read: "Be It Enacted by the Legislature of the State of Florida."

[5] The provision that was reenacted in Section 44 of Chapter 96-388 – Section 775.084(6) –- was not part of the original Gort Act. That section was already in existence when the Gort Act was enacted, and the Gort Act made no changes to it. See Ch. 95-182, Sec. 2. Thus, the only part of the Gort Act that was reenacted in Chapter 96-388 is Section 790.235, which was reenacted in Section 45.

The purpose of the first two sentences here – the "set out in full" requirement – is as follows:

> [This] requirement . . . regulates the form in which the body of the amendatory act is to be put. The effect is that when the new act as amended is a revision of the entire original act or is an amendment [to part of it], that the new act [or the amended part of it] shall be set forth at length, so that the provisions as amended may be seen and understood in their entirety by the Legislature. . . .
>
> . . . The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the laws. . . .

Lipe v. City of Miami, 141 So. 2d 738, 741-42 (Fla. 1962) (emphasis in original) (citation omitted).

The "set out in full" provision is essentially a notice provision, designed to insure that significant changes in statutes are not slipped past unsuspecting legislators or the public in the guise of some minor amendatory bill. It is inherent in the very notion of a "revised or amended" statute that the entire statute is not being reenacted; rather, the existing statute is only being revised or amended. The purpose behind the "set out in full" requirement could also be accomplished by a constitutional provision that did not allow for revised or amended statutes, but instead required that all revisions or amendments be accomplished

by reenacting the entire revised or amended statute. Article III, Section 6 does not contain such a requirement; it allows for the separate enactment of amendments and revisions to existing statutes.

And that is what was accomplished in Chapter 96-388: That chapter did not reenact the entire Gort Act, but rather only amended parts of it and reenacted one section of it. As noted earlier, Chapter 96-388 did not even "set out in full" the entire Gort Act, but rather "set out" only part of it. What the legislature intended is exactly what it stated at the beginning of Sections 44 and 45: It intended to amend Sections 775.084(1), (2), (3), and (4), and to reenact Sections 775.084(6) and 790.235.

The "Be It Enacted" constitutional language does not support complete reenactment either. In an amendatory law, what is being enacted are the amendments, not the entire statute that is being amended. If not, all the language in Chapter 96-388 (and many other chapter laws) about "revising", and "amending" the various existing statutes would be unnecessary; the legislature would simply assert it is enacting(or reenacting) the revised or amended versions of the statutes at issue. Also, Section 775.084(5) and several other sections of the original Gort Act would have been repealed sub silentio by Chapter 96-388.

Further, it is a

> [W]ell established [principle] that, where the Constitution expressly provides for the manner of doing a thing, it impliedly forbids it being done in a substantially different manner. Even though the Constitution does not in terms prohibit the doing of a thing in another manner, the fact that it has prescribed the manner in which the thing shall be done is itself a prohibition against a different manner of doing it . . . therefore, when the Constitution prescribes the manner of doing an act, the manner prescribed is exclusive, and it is beyond the power of the Legislature to enact a statute that would defeat the purpose of the constitutional provision.

Weinberger v. Board of Public Instruction, 112 So. 2d 253, 265 (Fla. 1927).

Thus, the "set out in full" and "Be It Enacted" provisions of Article III, Section 6 do not support the conclusion that Chapter 96-388 reenacted the entire Gort Act.

B. Chapter 96-388 Also Violates Article III, Section 6.

Even if we assume that Chapter 96-388 reenacted the entire Gort Act, the longer window period still applies because Chapter 96-388 also violates the provisions of Article III, Section 6.[6]

Chapter 96-388 begins by asserting it is "[a]n act relating to public safety"; it then continues on for approximately four full pages, to include a summary of all of its contents. Chapter 96-388 contains 74 sections, which may be briefly summarized as follows:

[6] This same argument applies even if we conclude that Chapter 96-388 only reenacted Section 790.235 of the Gort Act: Defendants convicted of that offense must be given the benefit of the longer window period as well.

Section 1 –- creates a new Section 775.0121, which requires the legislature to revise and update the Florida criminal statutes on a regular basis.

Section 2 –- amends Section 187.201, which deals with the "State Comprehensive Plan" for the criminal justice system.

Section 3 –- amends Section 943.06 regarding the membership of the "Criminal and Juvenile Justice Information Systems Council."

Sections 4-16 –- amends and creates several statutes dealing with the membership and the duties of the "Criminal and Juvenile Justice Information Systems Council" and its relation to other government organizations.

Section 17-21 –- amends several statutes regarding juvenile criminal history records.

Section 22 –- amends the statutory provisions regarding the preparation of sentencing guidelines scoresheets.

Section 23 –- repeals Section 6 of Chapter 94-209, Laws of Florida, which had imposed duties on the Juvenile Justice Advisory Board.

Section 24 –- requires the "Justice Administrative Commission [to] report to the Legislature no later than January 1, 1997, itemizing and explaining each of its duties and functions."

Section 25 –- amends Section 27.34(4) by eliminating the provision that allowed the Insurance Commissioner to contract with the "Justice Administrative Commission for the prosecution of criminal violations of the Workers' Compensation Law . . . ."

Section 26 – requires Section 27.37, which had created the "Council on Organized Crime" and detailed its membership and duties.

Section 27 –- repeals Sections 282.501 and .502, which had directed the Department of Education to establish the “Risk Assessment Coordinating Council”, which was to “develop a population-at-risk profile for purposes of identifying at an early age, and tracking for statistical purposes, persons who are probable candidates for entering into the criminal justice system so as to develop education and human resources to direct such persons away from criminal activities”, and providing for membership and duties of this counsel.

Section 28 –- repeals Sections 648.25(2), .265, and .266, which had established the “Bail Bond Advisory Council”, which was to monitor and make recommendations regarding pre-trial release procedures.

Section 29 –- amends Sections 648.25(1) and (54) to eliminate the Bail Bond Advisory Council from the regulatory process over bail bond agents.

Section 30 –- repeals the “Florida Drug Punishment Act of 1990", which had attempted to identify offenders whose criminal activity was the result of drug problems and divert those offenders into treatment programs.

Section 31 –- repeals Section 827.05, which had created the offense of “negligent treatment of children.”

Section 32 –- repeals Section 943.031(6), which had provided for automatic repeal of Section 943.031, which in turn created, provided for membership, and imposed duties upon, the “Florida Violent Crime Council.”

Sections 33-43 –- amends Sections 39.053, 893.138, 895.02, and Chapter 874 regarding the prosecution of offenders who are members of a “Criminal Street Gang”, including new definitions, the creation of new offenses, and provisions for punishment and forfeiture.

Sections 44-46 –- amends the habitualization sentencing statutes in minor ways.

Sections 47-48 –- amends the definitions of burglary and trespass.

Section 49 –- amends the definition of theft.

Sections 50-53 –- amends the sentencing guidelines in minor ways.

Section 54 –- significantly amends Section 893.135(1), regarding the offense of trafficking in controlled substances.

Sections 55-59 –- amends various statutes regarding enhanced offenses and a defendant's eligibility for gain-time or early release.

Sections 60-67 –- creates the "Jimmy Ryce Act", which significantly amends the Florida Sexual Predators Act and establishes provisions regarding the release of public records regarding missing children.

Section 68 –- creates Section 943.15(3), which requires "the Florida Sheriffs Association and the Florida Police Chiefs Association [to] develop protocols establishing when injured apprehendees will be placed under arrest and how security will be provided during any hospitalization [and] address[ing] the cost to hospitals of providing unreimbursed medical services . . . ."

Section 69 –- amends Section 16.56 to give the statewide prosecutor jurisdiction over violations of "s. 847.0135, relating to computer pornography and child exploitation prevention . . . ."

Sections 70-71 –- amends definitions and creates new offenses regarding computer pornography.

> Section 72 –- amends Section 776.085 regarding the provision of a civil damages action against perpetrators of forcible felonies.
>
> Sections 73-74 –- provides for an effective date.

Article III, Section 6 provides in pertinent part: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." These provisions are interrelated, and are designed to serve three purposes:

> (1) to prevent hodge podge or "log rolling" legislation, i.e., putting two unrelated matters in one act; (2) to prevent surprise or fraud by means of provisions in bills of which the titles have 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 ex. rel. Flink v. Canova, 94 So. 2d 181, 184 (Fla. 1957).

The single subject case law, discussed by this Court in Thompson, may be summarized as follows: Provisions in a chapter law will be considered as covering a single subject if they have a cogent, logical, natural, or intrinsic relation to each other; a tenuous relationship is insufficient. The legislature will be given some latitude to enact a broad law, provided that law is intended to be a comprehensive approach to a complex and difficult problem that is currently troubling the public. However, separate

subjects cannot be artificially connected by the use of broad and vague labels like “the criminal justice system” or “crime control”.

The title requirement is primarily a notice provision. It is designed to “prevent the evil of matters being inserted in a body of an act whose title does not properly put the people on notice of such content.” State ex. rel. Flink, supra, 94 So. 2d at 184. The title “define[s] the scope of the act.” County of Hillsborough v. Price, 149 So. 2d 912, 914 (Fla. 2d DCA 1963). The title cannot be an “inartificial expression of the subject matter to be dealt with therein . . . .” City of Ocoee v. Bowness, 65 So. 2d 7, 11 (Fla. 1953):

> The title need not be an index to the body of an act, nor need it embrace every detail of the subject matter. All that is required is that the propositions embraced in the act shall be fairly and naturally germane to that recited in the title. But if the title is deceptive or misleading, or if by recourse thereto a reader of normal intelligence is not reasonably apprised of the contents of the act, the title is defective. . . .

Boyer v. Black, 18 So. 2d 886, 887 (Fla. 1944).

Two questions need to be answered at this point: What is the subject of Chapter 96-388 and what is its title? Since the subject must be contained in the title, it appears there are two ways to begin to answer these questions.

The first is to assume that the title is the first six words in the chapter: “[a]n act relating to public safety.” The second

is to assume that the entire four pages of summary is the title. Under either assumption, Chapter 96-388 violates the provisions of Article III, Section 6.

If we assume the title is "[a]n act relating to public safety", it is clear that such a broad and vague title cannot qualify as a single subject; if it could, the single subject requirement would be meaningless. Basic principles of due process inform us that the legislature has no authority to enact a statute unless it can reasonably be said that the statute promotes the public health, safety, or welfare. In Re Forfeiture of 1969 Piper Navajo, 592 So. 2d 233, 235 (Fla. 1992). Thus, if promotion of the public health, safety, or welfare is a valid single subject, then any combination of statutory provisions the legislature has the authority to enact would satisfy the single subject requirement. This would effectively eliminate that requirement, leaving as the only limitation on legislative power the substantive limitation that the legislation must promote the public health, safety, or welfare.

Approving a title like "[a]n act relating to public safety" would also render the constitutional title requirement meaningless. If the title is to define the scope of the act and provide some reasonable notice about the act's contents, "the public safety" tells us nothing except that the legislature is intending to enact

some statute that is within the limits of its substantive constitutional authority.

We run into the opposite problem if we consider the title of Chapter 96-388 to be the four pages of summary. Does a four page title satisfy the constitutional requirement of brevity? And, since the title must contain the subject, what is the "single" subject of an act whose title requires four pages to summarize its contents?

Chapter 96-388 violates Article III, Section 6 because it contains a variety of provisions that can be related to each other only by the use of a broad and vague "subject" like "the public safety", "crime control", or "the criminal justice system." Chapter 96-388 is not a "comprehensive law" for single subject purposes, as that term is understood in cases such as Burch v. State, 558 So. 1 (Fla. 1990). Chapter 96-388 contains no legislative findings of fact regarding any crisis and its various sections are not designed to be a "comprehensive[,] systematic [and] coordinated] . . . effort[] toward a unified attack on a common enemy, crime . . . ." Id. at 2-3 (citation omitted). Rather, Chapter 96-388 is a much bloated version of the laws found invalid in State v. Johnson, supra and Bunnell v. State,453 So. 2d 808 (Fla. 1984).

In Johnson, this Court held that "the habitual offender statute, and . . . the licensing of private investigators and their

authority to repossess personal property" do not comprise a single subject because "it is difficult to discern a logical or natural connection between [the two]." 616 So. 2d at 4 (citation and internal quotes omitted). The Court said these were "two very separate and distinct subjects" that had "absolutely no cogent connection [and were not] reasonably related to any crisis the legislature intended to address." Id. Noting "no reasonable explanation exists as to why the legislature chose to join these two subjects within the same legislative act", the Court "reject[ed] the State's contention that these two subjects relate to the single subject of controlling crime." Id.

In Bunnell, this Court voided a chapter law that created a new offense of "obstruction by false information" and amended statutes that detailed the membership of the "Florida Council on Criminal Justice" (which was an advisory board composed of various officials in the criminal justice system). Rejecting the district court's conclusion that the law was valid because "the general subject of the act [is] the `Criminal Justice System'"[7], this Court asserted the two sections "ha[d] no cogent relationship" because they addressed "separate and disassociated . . . object[s] . . . ." 453 So. 2d at 809. Bunnell implicitly accepted the logic of Williams v. State, 459 So. 2d 319 (Fla. 5th DCA 1984), which had disagreed with

[7] State v. Bunnell, 447 So. 2d 228, 230 (Fla. 2d DCA 1983), quashed, Bunnell, supra.

the district court Bunnell decision because "such a general subject [as the `Criminal Justice System'] for a non-comprehensive law would write completely out of the constitution the anti-logrolling provision of article III, section 6." Id. at 321.

Like the chapter law in Bunnell, Chapter 96-388 contains both provisions relating to administrative bureaucracies and provisions that create, amend, and repeal substantive criminal statutes that bear no logical relation to the affected bureaucracies. Like the chapter law in Johnson, Chapter 96-388 contains both sentencing provisions and civil regulatory provisions. There simply is no cogent and inherent relation among such things as juvenile criminal history records, the prosecution of criminal violations of the Workers' Compensation Law, the development and tracking of a "population-at-risk" profile, the regulation of pretrial release procedures, treatment for drug offenders, the prosecution of criminal street gangs, the definition of "curtilage" in the burglary statute, drug trafficking, the civil commitment of sexual predators, the costs of hospitalizing injured apprehendees, and civil damages action for victims of violent crimes; and this, of course, only covers maybe half of the provisions in Chapter 96-388.

Chapter 96-388 violates the provisions of Article III, Section 6, which in turn means that all defendants affected by Chapter 95-182 get the benefit of the longer window period.

POINT II

THE FOURTH DISTRICT COURT OF APPEAL INCORRECTLY HELD THAT THE EVIDENCE WAS SUFFICIENT TO ESTABLISH THAT PETITIONER WAS THE BURGLAR

In his appeal to the Fourth District Court of Appeal, petitioner argued that the evidence was insufficient to sustain his conviction for burglary. Petitioner cited Owen v. State, 432 So. 2d 579 (Fla. 2d DCA 1983), a case with very similar facts. The Fourth District Court of Appeal affirmed petitioner's conviction and thirty-five year state prison sentence with no discussion or analysis of the issue. Although this court rarely considers issues besides the one which forms the basis for jurisdiction, it certainly has the power to do so. Fla. R. App. P. 9.040(a). See e.g., Doctor v. State, 596 So.2d 442 (Fla. 1992). In the interest of fairness and uniformity of treatment, this court should consider this issue. Had petitioner's appeal been heard by the Second District Court of Appeal, he probably would have received a discharge on count I on the authority of Owen.

In the instant case, Patricia Franklin could not identify the intruder (T 137). Maurice Henderson could only testify that he and Damian chased a man (later identified as petitioner) who was coming from the back of the apartment building into a trailer park (T 157). Petitioner was later found underneath a trailer (T 183). He had a butter knife and a screwdriver in his possession, and he gave

false name when arrested (T 187). Maurice and Damian identified petitioner as the person they chased from the building into the trailer park. This evidence is insufficient to sustain Petitioner's burglary conviction.

In Owen, supra, a fifteen-year old victim was sexually assaulted in her home late at night while her parents were out. Because the room was dark, she could not identify her attacker, except that he was tall and had wavy hair. The victim managed to escape and run outside the house from where she could see the assailant walking around her mother's bedroom. She then ran to the neighbor two house away. The neighbor sent her adult son and his friend to check out the victim's home. When the two men approached the victim's house one of them saw an unknown male "flash out from the side of the garage." The other testified that when they reached the front lawn, they saw a man "running from the side of the house down the street." The two chased the suspect through a vacant wooded lot. The suspect reached his car, jumped in, and locked both doors. The men banged on the windows, but the suspect just looked straight ahead, started the car, and drove off. On the basis of this information, the police arrested Owen two nights later. Both men positively identified Owen as the person they chased from the house to the car. The Second District Court of Appeal held that this evidence was insufficient to sustain

Owen's convictions. The Court began by noting that this was a circumstantial evidence case, as is the instant case:

> The evidence introduced by the state in its attempt to implicate Owen was entirely circumstantial. It is well established that when the state relies oncircumstantial evidence, the circumstances, when taken together, must be of a conclusive nature and tendency, leading on the whole to a reasonable and moral certainty that the accused and no one else committed the offense charged. Hall v. State, 90 Fla. 719, 107 So. 246 (1925); Harrison v. State, 104 So.2d 391 (Fla. 1st DCA 1958). It is not sufficient that the facts create a strong probability of, and beconsistent with, guilt. They must also eliminate all reasonable hypotheses of innocence. Hall v. State; Terzado v. State, 232 So.2d 232 (Fla. 4th DCA 1970). Evidence that a suspect is present at the scene of a crime and flees after it has been committed is insufficient to exclude a reasonable hypothesis of innocence. Chaudoin v. State, 362 So.2d 398 (Fla. 2d DCA 1978); J.H. v. State, 370 So.2d 1219 (Fla. 3d DCA 1979), cert.denied, 379 So.2d 209 (Fla. 1980).

Owen, 432 So. 2d at 581.

In ruling that the evidence in the case did not meet these standards the district court in Owen engaged in an analysis of the facts which is entirely applicable to the instant case:

> Here, the defendant was never identified as the person who committed or attempted to commit the sexual battery, or as the person who committed the burglary. A fundamental principle of our criminal law is that the prosecutor must establish beyond a reasonable doubt the identity of the accused as perpetrator of the charged offense. When the state fails to meet its burden of proving each and every necessary element of the offense

> charged beyond a reasonable doubt, the case should not be submitted to the jury, and a judgment of acquittal should be granted. Ponsell v. State, 393 So.2d 635 (Fla. 4th DCA 1981). Furthermore, the offense of burglary requires an "entering or remaining in a structure or a conveyance with the intent to commit an offense therein." § 810.02(1), Fla. Stat. (1979). No one saw the defendant enter the victim's home, remain in the house, or leave the house. The state did not offer any evidence of fingerprints, palmprints, or footprints in or about the house. The evidence did establish that he was in the yard, but no one offered testimony to indicate any more than that he was a prowler.
>
> We hold that there was insufficient evidence produced by the state for the jury to infer that the defendant committed the offenses charged.

Owen, supra (emphasis added).

The evidence in the instant case is even less compelling than the evidence in Owen. Here petitioner was seen running from an apartment building, rather than a house, and it was not as late at night as it was in Owen (10:00 p.m. versus 11:30 p.m.). Here as in Owen, “no one offered testimony to indicate any more than that he was a prowler.”

Although the facts in the instant case may create a "strong probability” or “strong suspicion” that petitioner was the intruder, that is clearly insufficient to sustain a criminal conviction. Terzado v. State, 232 So.2d 232 (Fla. 4th DCA 1970), Owen, supra. This Court should reverse with directions to discharge petitioner as to count I.

CONCLUSION

Based on the foregoing arguments and the authorities cited therein, Petitioner respectfully requests this Court to quash the decision of the Fourth District and to remand this cause with proper directions.

Respectfully submitted,

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
Criminal Justice Building
421 Third Street/6th Floor
West Palm Beach, Florida 33401
(561) 355-7600

PAUL E. PETILLO
Assistant Public Defender
Florida Bar No. 508438

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Georgina Jimenez-Orosa, Assistant Attorney General, 1655 Palm Beach Lakes Blvd., Suite 300, West Palm Beach, Florida 33401, by courier this _____ day of March, 2000.

_____
Attorney for Ronald Watson