

IN THE SUPREME COURT OF FLORIDA

ARTIS RYNARD LEWIS,

Petitioner ,

vs.

Case No. 74,364

STATE OF FLORIDA,

Respondent.

---

**FILED**  
SID J WHITE  
OCT 13 1989  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
Deputy Clerk

DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

INITIAL BRIEF OF PETITIONER ON THE MERITS

**JAMES MARION MOORMAN**  
PUBLIC DEFENDER  
TENTH JUDICIAL CIRCUIT  
FLORIDA BAR NO. 0143265

**ANDREA STEFFEN**  
ASSISTANT PUBLIC DEFENDER

Public Defender's Office  
Polk County Courthouse  
P. O. Box 9000 -- Drawer PD  
Bartow, FL 33830  
(813) 534-4200

ATTORNEYS FOR PETITIONER

TOPICAL INDEX TO BRIEF

	<u>PAGE NO.</u>
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	4
ARGUMENT	5
ISSUE I	
THE TRIAL COURT ERRED IN NOT DISMISSING THE CHARGES OF PURCHASE OF COCAINE WHEN THE ENACTING LEGISLATION FOR THAT CRIME VIOLATES THE "ONE SUBJECT RULE" OF FLORIDA'S CONSTITUTION.	5
CONCLUSION	18
CERTIFICATE OF SERVICE	18

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE NO.</u>
<u>Albritton v. State</u> , 89 So. 360 (Fla. 1921)	8
<u>Bunnell v. States</u> 453 So.2d 808 (Fla. 1984)	8, 9, 11, 12, 14-17
<u>Chenoweth v. Kemp</u> , 396 So.2d 396 (Fla. 1981)	8, 12-14
<u>Colonial Investments Co. v. Nolan</u> , 100 Fla. 1349, 131 So.178 (1930)	7, 8
<u>In re: Advisory Opinion to the Governor</u> , 509 So.2d 292 (Fla. 1987)	12
<u>Santos v. State</u> , 380 So.2d 1284 (Fla. 1980)	8
<u>Smith v. Department of Insurance</u> , 507 So.2d 1080 (Fla. 1987)	8, 12-15
<u>State v. Bunnell</u> , 447 So.2d 228 (Fla. 2d DCA 1983)	11
<u>State v. Burchs</u> 14 HW 382 (Fla. 4th DCA Feb. 8, 1989)	12
<u>State v. Lee</u> , 356 So.2d 276 (Fla. 1978)	7, 8, 12-15
<u>Williams v. States</u> 459 So.2d 319 (Fla. 5th DCA 1984)	8, 9, 11, 12, 15

OTHER AUTHORITIES

§ 893.13, Fla. Stat. (1987)	1, 3, 5, 17, 18
Article 111, Section 6	4-7, 17
Chapter 76-260, Laws of Florida	13
Chapter 77-467, Laws of Florida	13
Chapter 82-150, Laws of Florida	9, 11, 16
Chapter 86-160, Laws of Florida	13
Chapter 87-6, Laws of Florida	13
Chapter 87-243, Laws of Florida	4-6, 9, 11-18

STATEMENT OF THE CASE AND FACTS

On December 29, 1987, the State filed an information in the Circuit Court for Polk County charging Petitioner, ARTIS RYNARD LEWIS, with Count One, Possession of Cocaine in violation of section 893.13, Florida Statutes (1987); and Count Two, Purchase of Cocaine in violation of section 893.13, Florida Statutes (1987).

These offenses allegedly occurred on December 10, 1987 (R1-3).

Petitioner filed a Motion to Dismiss Counts One and Two of the information based on the unconstitutionality of Chapter 87-243, Laws of Florida (R5-25). After a hearing held February 15, 1988, (R203) the court denied the motion (R204-207).

On April 13 and 14, 1988, Appellant was tried by jury, the Honorable E. Randolph Bentley, Circuit Judge presiding (R208-400).

Sergeant Gary Hester testified he helped orchestrate a "reverse sting" operation in the Haines City area of Polk County on December 3, 1987 (R298). Over defense counsel's objection, he testified this particular area was chosen because it was a suspected drug sales area (R299-303). Hester remained in a van parked down the street (R308). He saw Mr. Lewis drive up in a white 280-Z (R309). Officer Hogan went to the car, and a few moments later motioned for Deputy Halman to come over (R309). Halman was wearing a recording device (R308). After Hester observed Halman give a pre-arranged signal indicating a drug sale

had occurred. Hester directed the other officers to close in (R310) . Hester reached Mr. Lewis first and removed him from his car (R310) . Hester stated the transaction was videotaped (R311) .

Deputy Halman testified he played the role of a drug dealer on December 3, 1988 (R316) . He approached Mr. Lewis' car (R318) . Mr. Lewis asked him for a dime piece, indicating he wanted to purchase \$10.00 worth of cocaine (R318) . Halman gave Mr. Lewis a piece of cocaine and told him "It's good for the head" (R320) . Mr. Lewis then gave Halman a ten dollar bill (R320) . Halman then signaled for the take-down (R320) . Special Agent Callahan removed a piece of cocaine from Mr. Lewis' car (R336) . This was the cocaine that had been sold to Mr. Lewis by Halman (R336) .

Mr. Lewis testified he went to that area to look for a friend (R371) . He was approached by someone who said "What do you need?" (R372) . Mr. Lewis told him he was looking for a friend (R372) . The man then pulled out a bag containing cocaine (R372) . Mr. Lewis took the bag and put it in the car (R372) . Mr. Lewis did not give the man any money, nor did he intend to (R372) .

Halman and Hogan testified in rebuttal that Mr. Lewis never mentioned a friend (R172, 178) . Both admitted to talking to the State about their testimony prior to being recalled, but denied being told what to say (R386-387) .

Counsel renewed his request for dismissal of the charges at the conclusion of the testimony on the same grounds raised in both his pretrial motion and his motion for judgment of acquittal (R362-367, 389) . Appellant was convicted of both counts (R431-

432).

On May 26, 1988, Mr. Lewis was sentenced as follows: Petitioner was adjudicated guilty on Count One and sentenced to three and one half years incarceration (R437, 443-444). Petitioner was adjudicated guilty on Count Two and sentenced to time served (R437, 441-442). The recommended guidelines disposition indicated a presumptive sentence of 2 1/2 to 3 1/2 years incarceration (R445).

On June 17, 1988, Mr. Lewis filed a timely notice of appeal (R449).

The Second District Court of Appeal issued an opinion on June 14, 1989, affirming Mr. Lewis' conviction, but finding that convictions on both counts was improper. The court further found section 893.13 to be constitutional.

Counsel filed a Notice to Invoke Discretionary Jurisdiction of this court on June 23, 1989, and a briefing schedule was issued by this court on September 26, 1989.

SUMMARY OF THE ARGUMENT

Mr. Lewis was convicted of purchase of cocaine, a criminal offense created by the passage of Chapter 87-243, Laws of Florida. Mr. Lewis moved to dismiss the charge because Chapter 87-243 violates the "one subject rule" of Article 111, Section 6, of the Constitution of the State of Florida. The 1987 act does violate the "one subject rule" and the trial court erred in denying the motions. The court's errors require reversal of the conviction for purchase of cocaine.

ARGUMENT

ISSUE I

THE TRIAL COURT ERRED IN NOT DISMISSING THE CHARGES OF PURCHASE OF COCAINE WHEN THE ENACTING LEGISLATION FOR THAT CRIME VIOLATES THE "ONE SUBJECT RULE" OF FLORIDA'S CONSTITUTION.

Among its many provisions, an enactment of Florida's 1987 legislative session, Chapter 87-243, Laws of Florida, created the new criminal offenses of purchase of a controlled substance and possession with intent to purchase a controlled substance. Petitioners were all charged with purchase of a controlled substance and some were also charged with possession of cocaine with intent to purchase. Petitioners challenged the constitutionality of the 1987 act by a motion to dismiss. Chapter 87-243 contravenes the hallowed "one subject rule" of Article III, Section 6, of the Constitution of the State of Florida. The motion to dismiss should have been granted.

Chapter 87-243, Laws of Florida, passed the Florida Legislature in the form of a committee substitute for House Bill 1467. The act was approved by the Governor on June 30, 1987, and took effect July 1, 1987. Chapter 87-243 violates Florida's "one subject rule" by encompassing a multitude of separate and disassociated subjects. The subject of creating and amending criminal offenses relating to drug abuse, which encompasses the "purchase" amendments to section 893.13, Florida Statutes (1987), is but one of many different subjects rolled up into the one act

that is Chapter 87-243.

### The One Subject Rule

Article III, Section 6, of the Constitution of the State of Florida was part of the 1885 Enabling Act, the state's original constitution. The section states:

Laws - Every law shall embrace but one subject and matter properly connected therewith and the subject shall be briefly expressed in the title. 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 paragraph of a subsection. The enacting clause of every law shall read: "Be it Enacted by the Legislature of the State of Florida."

The first sentence of Article 111, Section 6, is often referred to as the "one subject, one title rule" or simply as "the one subject rule." It imposes strict limitation on how the Florida Legislature is to conduct the business of making laws. Florida's founding fathers wanted to ensure that the state's legislative process could not adopt the practices of the United States Congress and many state legislatures where omnibus legislation, rider bills and logrolling are both commonplace and lawful. Such practices allow proposals to become law without majority support, merely because they are combined with legislation that is widely supported. Such practices also abridge the executive veto authority, as an undesirable provision cannot be stricken without "throwing the baby out with the bath water."

The Constitution places in the courts of this state the responsibility to be the watchdog of all legislation, to guarantee that the "one subject rule" is respected. The courts of Florida have performed this role on a number of occasions over time, including several times in recent years. In doing so, the courts have defined the purpose of the "one subject rule."

The purpose of the constitutional prohibition against a plurality of subjects in a single legislative act is to prevent a single enactment from becoming a "cloak" for dissimilar legislation having no necessary or appropriate connection with the subject matter. State v. Lee, 356 So.2d 276, 282 (Fla. 1978).

These provisions were designed to prevent various abuses commonly encountered in the way laws were passed by state legislatures. One was logrolling which resulted in hodgepodge or omnibus legislation. Colonial Investments Co. v. Nolan, 100 Fla. 1349, 131 So.178 (1930). As Justice Brown wrote in Nolan,

It had become quite common for legislative bodies to embrace in the same bill incongruous matters having no relationship to each other.. And frequently such distinct subjects, affecting diverse interests, were combined in order to unite the members who favored either in support of all.... 131 So. at 179 (quoting Lewis' Sutherland, Statutory Construction, Section 3).

The logrolling problem has also been alluded to by our supreme court in its interpretation of Article III, Section 6 of the 1968 constitution. If diverse and dissimilar matters were included within one law, the legislative process could be subverted by passing matters which really have not majority support in the legislative body, but which were passed because legislators were voting to approve other provisions included in the bill. It could also impair the Governor's veto power if he or she were forced to accept an unwanted

or undesirable provision in order to obtain the enactment of a desirable one. [footnotes omitted] Williams v. State, 459 So.2d 319 (Fla. 5th DCA 1984).

This Court has expressed that "wide latitude must be accorded the Legislature in the enactment of laws..." Lee, supra at 282. Legislation which has been approved under this standard includes the Florida Uniform Traffic Control Act, Santos v. State, 380 So.2d 1284 (Fla. 1980); the Insurance and Tort Reform Act of 1977, Lee, supra; the Medical Malpractice and Medical Liability Insurance Act, Chenoweth v. Kemp, 396 So.2d 396 (Fla. 1981); and the 1986 Tort Reform and Insurance Act, Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987).

The standard of "wide latitude" cannot shelter all legislation from judicial scrutiny, however, or there soon would no longer be a "one subject rule" in Florida. Examples of multi-subject legislation that have been invalidated include an act criminalizing both the trafficking of liquor and voluntary intoxication, Albritton v. State, 89 So. 360 (Fla. 1921); an act concerning both tax returns and land deed recording, Colonial Investments Co., supra; and an act that both defined a new criminal offense and restructured a criminal justice council. Bunnell v. State, 453 So.2d 808 (Fla. 1984); W————, supra.

While the State in its brief to the trial court and district court played heavily on case law approving civil-related legislation, Petitioners cite to the more relevant decisions on criminal legislation, and in particular to the recent decisions of

Bunnell and Williams. The act under review in both Bunnell and Williams, Chapter 82-150, Laws of Florida, created a new criminal offense of obstruction of justice by false information. It also mandated certain restructuring of the Florida Criminal Justice Council. Both the Florida Supreme Court and The District Court of Appeal, Fifth District, found that while these two matters shared the common, general object of improving criminal justice in Florida, they were nevertheless separate, distinct subjects. The concerns and immediate objects of each were distinct and disassociated.

#### Chapter 87-243

Chapter 87-243, Laws of Florida, shares the very same fault as the legislation struck down in Bunnell and Williams. It contains sections that create new criminal offenses. It has other sections that relate to the structure of councils and committees (including some at best marginally related to criminal justice).

Chapter 87-243 repeats the ills of Chapter 82-150, but it goes much further. Chapter 87-243 encompasses seventy-six (76) sections. The title alone contains no less than one thousand, four hundred and ten (1,410) words, somewhat stressing the constitutional requirement that the subject of a piece of legislation "shall be briefly expressed in the title." The act's various segments originated from so many separately filed bills and substitutes, it truly merits its popular title as the Omnibus Crime Prevention and Control Act of 1987.

An outline of the topics of each of the act's seventy-six (76) sections can be found in Exhibit A to the Memorandum in Support of Motion to Dismiss. Even affording wide latitude, Petitioners identify sixteen (16) separate subjects in Chapter 87-243, outlined below:

- 1) Drug abuse crimes: Sections 2-9, 12, 75
- 2) Education re: drug abuse: Sections 10-11, 13-19
- 3) Conveyances: forfeiture, title and registration Sections 20-23, 28-29
- 4) Vessel operation crimes: Sections 51-54
- 5) Money Laundering Control Act: Sections 30-38
- 6) Planting of a "hoax bomb": Section 39
- 7) Pawnbrokers and stolen property: Sections 40-41
- 8) Entrapment defense: Sections 42-43
- 9) Attempted burglary: Section 44
- 10) Witness tampering: Section 45
- 11) Appeals by the State: Section 46
- 12) Judgment costs at sentencing: Section 47
- 13) Bookmaking: Section 48
- 14) Operating chop shops: Section 49
- 15) Crime prevention studies and training: Sections 50-54
- 16) Safe Neighborhood Act: Sections 55-74

Without elaborating on all of the many distinctions among these sixteen (16) subjects, as done in more detail in Petitioners Memorandum in Support of Motion to Dismiss, a few examples are in order. The new crime of purchase of controlled substances (s.4)

is unrelated to the procedural appellate rights of the State of Florida (s.46). The changes and additions to vessel operation crimes (s.51-54) are unrelated to the changes the Legislature would make to the entrapment defense (s.42-43). All of the criminal offense sections are as unrelated to the crime prevention studies of Sections 50-54 as were the two subjects addressed in Chapter 82-150 by Bunne11 and Williams. Costs imposed at sentencing (s.47) are unrelated to substantive matters such as the "Money Laundering and Control Act" (s.30-38) or witness tampering (s.45). As coup de grace, the "Safe Neighborhood Act" (s.55-74) does not belong under even the largest umbrella with the various substantive and procedural criminal matters of the act.

#### Applying the Rule to the Act

In its Orders Denying Motions to Dismiss, the trial courts accepted the State's argument that all provisions of Chapter 87-243 relate to a single subject, to wit: crime prevention and control. This holding is contrary to Florida Supreme Court authority.

At the district court level of Bunnell, the District Court of Appeal, Second District, used the same reasoning applied here by the trial court, i.e., that criminal justice is a suitable umbrella to shroud different topics as a single subject. State v. Bunnell, 447 So.2d 228 (Fla. 2d DCA 1983). The Florida Supreme Court rejected that reasoning and overturned the Second District decision. Bunnell, supra at 809. In Williams, the District Court

of Appeal, Fifth District, highlighted the flaw in the Second District's holding:

The Bunnell court [referring to the Second District decision] 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 provisions of article III, section 6. [footnote omitted] Williams at 321.

In its opinion affirming the trial courts in these cases, the District Court of Appeal, Second District, simply stated agreement with the decision of the District Court of Appeal, Fourth District, in State v. Burch, 14 FLW 382 (Fla. 4th DCA Feb. 8, 1989). In Burch, the State conceded that Chapter 87-243 does not pass constitutional muster under the Bunnell standard. The Fourth District Court at 14 FLW 385 accepted the State's argument that Bunnell was inconsistent with Smith v. ~~Dept. of Insurance~~, supra, and that the dicta of the 1987 Smith opinion supercedes Bunnell. The flaw in this reasoning is that Bunnell and Smith are not inconsistent and Bunnell is good law.

In Smith at 1087 the Court rejected the argument that tort law, contract law and insurance regulation must be considered separate subjects. Very similar complaints against combined tort and insurance reform legislation had been rejected previously in Lee, supra, and Chenoweth, supra. The court reasoned that to

achieve its goals in each instance the Legislature was reasonable in passing comprehensive legislation that covered tort, insurance, and contractual law as related to claims for personal injury and property damage. The Court noted in Smith at 1087 that many such claims are brought under both a contract and a tort theory and that liability insurance concerns both. The areas of law were so interconnected that the Legislative object--to assure the general availability of affordable insurance--could not be met without legislation that involved all three aspects.

A reading of the bills at issue in Lee (Ch. 77-467), Chenoweth (Ch. 76-260) and Smith (Ch. 86-160) demonstrates that these are truly "comprehensive" acts that systematically cover a number of interrelated facets in order to achieve a specific objective.

The same is true for Chapter 87-6, Laws of Florida, which necessarily encompassed a number of different areas of law, budget and operation in order to attempt to create a tax on services in Florida. Such a new tax could not be reasonably and responsibly created without comprehensive consideration of the various, necessarily affected areas. The Court found in In re: Advisory Opinion to the Governor, 509 So.2d 292 (Fla. 1987), that this act was not a "cloak" for dissimilar legislation, nor was it hodgepodge or logrolling legislation, because all of its sections were necessarily interrelated.

The difference between these bills and Chapter 87-243, is that each of them truly were comprehensive, whereas Chapter 87-

243 is not. Chapter 87-243, rather, is a grab bag collections of various pieces of proposed legislation whose only commonality is that they arguably relate to "crime prevention and control." Even if they do each somehow serve "crime prevention and control," the sixteen (16) or subjects of this bill are not interrelated or interconnected to each other. They each have no bearing on the expected effectiveness of the others. For example, the effectiveness of the "Money Laundering Control Act" is in no way affected by changes to jurisdiction for state appeals, or vice versa. The effectiveness of the "Safe Neighborhoods Act" is in no way dependent on alteration of the entrapment defense, or vice versa. The advantage to "crime prevention and control" to be occasioned by each segment is not dependent on passage of the others. Each of the sixteen (16) areas are quite independent.

"Comprehensive" must mean more than "large" in order to excuse expensive legislation from the "one subject rule." Petitioners submit that legislation that includes a great number of matters titled under one broad topic is comprehensive if its various components bear an interrelatedness to each other that make it reasonable to have to include all in one bill in order to achieve the specified objective. Legislation that combines separate matters that are not interrelated with each other is hodgepodge rather than comprehensive if the only commonality they hold is a relationship to one broad topic title.

Bunnell is distinguished from Lee, Chenoweth, Smith and In re: Advisory Opinion because the act in question in Bunnell was

not comprehensive. Even if the separate provisions each related to a common topic such as "criminal justice," they were not interrelated with each other such as to justify their being combined in one legislation. Bunnell has not been overruled and is controlling law for legislation such as Chapter 87-243 where the single thread of commonality is to a general topic such as "crime prevention and control." As held in Bunnell and Williams, a general topic heading does not make separate subjects of a bill interrelated with each other and does not make an assortment bill comprehensive.

The Florida Supreme Court has said that the subject of a bill "may be as broad as the Legislature chooses provided the matters included in the law have a natural and logical connection." Lee at 282. This does not provide carte blanche to the Legislature, however, to place disassociate subjects under one general heading in one bill. For example, all provisions of a bill entitled, "For the common good of the citizens of Florida," would surely be related to this very general topic title, but they would not necessarily be interconnected or interdependent to each other.

Petitioners agree that it is a common sense test that must be applied to determine if a piece of legislation meets the single subject requirement, as stated in Smith at 1087. A common sense reading of some expansive bills can demonstrate that there was reason to tie together so many aspects of concern into one bill in order to effectively achieve one purpose. With other bills, common sense can demonstrate that separate pieces of proposed

legislation, each with no bearing on the effectiveness of the other, have been lumped together in one bill--linked together only by their individual tethers to a general title. Common sense tell the reader of Chapter 87-243 that this is hodgepodge legislation-- various proposals merged together by the use under one omnibus label, "crime prevention and control." It is common sense that exposes Chapter 87-243 as a myriad of unrelated pieces of legislation collected together under one omnibus umbrella. Bunnell has specifically prohibited using "criminal justice" as an umbrella to bring unrelated pieces of criminal legislation together in one bill.

The dangers to the Constitution are great. Consider the ramifications if all bills related to crime are each year tied into one act. What legislator dare vote "nay" to such an act? For example, is there any measure whether a majority of the Florida Legislature truly wished to abolish the time-honored, common law definition of the entrapment defense, honed by the United States and Florida Supreme Courts, and wished to put in its place a definition of its own? Or were legislators precluded from voting their conscience on the entrapment subject because forced to vote on the entire package, which included neighborhood improvement and drug education provisions?

In Chapter 82-150 the Florida Legislature tested the water of the "one subject rule" and its application to criminal legislation. Despite the fact that Chapter 82-150 was struck down, the Legislature has now dived in those same waters headfirst with

the omnibus Chapter 87-243.

Section 893.13, Florida Statutes, to the extent amended Chapter 87-243 is plagued with this violation of the "one subject rule." To the extent amended by this 1987 legislation, section 893.13 should be declared unconstitutional. The Motions to Dismiss charges brought under these amendments to section 893.13 should have been granted.

Only declaring Chapter 87-243 constitutionally invalid will adhere to the Florida Supreme Court's holding in Bunne11. Even more importantly, only in doing so can the "one subject rule" of Article 111, Section 6, of the Constitution of the State of Florida survive and maintain a meaningful function in our state's law making process. Approval of Chapter 87-243 would effectively ring the death knell for Florida's esteemed "one subject rule."

CONCLUSION

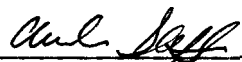
Petitioners respectfully request that this Honorable Court hold Chapter 87-243, Laws of Florida, and, thereby, section 893.13, Florida Statutes to be unconstitutional, in violation of the "one subject rule" of the Constitution of the State of Florida. Petitioners request that this Court reverse the judgment and sentences for the offenses of purchase of cocaine and possession of cocaine with intent to purchase.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Robert Butterworth, Room 804, 1313 Tampa St., Tampa, FL 33602, (813) 272-2670 on this 9th day of October, 1989.

Respectfully submitted,

JAMES MARION MOORMAN  
PUBLIC DEFENDER  
TENTH JUDICIAL CIRCUIT  
FLORIDA BAR NUMBER 0143265

  
\_\_\_\_\_  
ANDREA STEFFEN  
Assistant Public Defender  
P. O. Box 9000 - Drawer PD  
Bartow, FL 33830  
(813) 534-4200

AS/t11