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PRELIMINARY STATEMENT

This is a consolidated appeal from the judgment and sentence in twelve cases. This appeal is based exclusively on procedural issues which are not affected by factual distinctions between the various cases. In light of this observation and in the interest of avoiding cumbersome record cites to the record of each case, record cites are omitted. The petitioners' argument is based entirely on those aspects all cases hold in common, obviating the necessity of separate cites.

The Petitioners will be referred to as the Appellants, as they were below. They are all defendants convicted in the Circuit Court, Fifth Judicial Circuit, for Marion County. The Appellee is the State of Florida.

STATEMENT OF THE CASE AND FACTS

The state charged all Appellants with one count of purchasing cocaine and one count of possession of cocaine. The charges in each case were based on the purchase and possession of the same quantity of cocaine. Defense counsel moved to dismiss the purchasing charges, arguing that the law which criminalized the conduct was enacted in violation of Florida's one-subject rule. The motions to dismiss were denied. The Appellants were each convicted of purchase of cocaine and possession of cocaine, either on pleas of nolo contendere reserving the right to appeal the denial of the motion to dismiss, or following a jury trial. The Appellants were adjudicated guilty of the offenses. On appeal, the Fifth District Court of Appeal affirmed the convictions but certified to this Court the following question of great public importance:

IS SECTION 893.13(1)(e) FLORIDA STATUTES  
(1987) CONSTITUTIONAL?

## SUMMARY OF THE ARGUMENTS

I. The provision of Florida Statutes under which Appellant was convicted of purchasing cocaine was enacted in a bill violating Florida's one-subject rule. The one-subject rule, contained in Article 111, Section 6 of the Florida Constitution, requires that only one subject be embraced in a legislative bill. Chapter 87-243, Laws of Florida, includes legislation addressing a myriad of subjects. This omnibus bill is a blatant violation of the one-subject rule. The provision at issue here, as part of that bill, cannot constitutionally be used against Appellant.

11. The trial court erred in convicting and punishing the Appellants for the purchase and subsequent possession of the same quantity of cocaine where the offenses occurred as a result of a single underlying act. This issue is governed by Carawan v. State, in which this Court held that multiple punishments for one offense are precluded when the evil to be addressed by the offenses is the same and the legislature does not expressly provide for multiple punishment. Reversal of the convictions for possession of cocaine is required.

## ARGUMENTS

I. CHAPTER 87-243 IS AN UNCONSTITUTIONAL  
OMNIBUS BILL ENACTED IN VIOLATION OF THE  
SINGLE-SUBJECT RULE CONTAINED IN ARTICLE 111,  
SECTION 6 OF THE FLORIDA CONSTITUTION.

The trial court denied Appellant's motion to dismiss the charge of purchasing cocaine. Chapter 87-243, Laws of Florida, violates the "one subject rule" of Article 111, Section 6 of the Florida Constitution and thus is unconstitutional.<sup>1</sup> Accordingly, this court should reverse the order of the District Court of Appeal affirming the trial court's denial of the motion to dismiss.

Section 111, Article 6 was included in the 1885 Enabling Act of Florida's original constitution. Article 111, Section 6, decrees:

Laws - Every law shall embrace but one subject and matter properly connected therewith and the subject shall be briefly expressed in the titled. 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 commonly referred to as the "one subject, one title rule, "or simply the "one subject rule." It imposes a strict limitation on how the Florida Legislature is to conduct the business of making laws.

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<sup>1</sup> This issue is now before this Court in at least two other cases: Blankenship v. State, No. 74,176, and Burch v. State, No. 73,826.

Florida's founding fathers wanted to ensure, and to a great extent did ensure, that Florida's legislative process would not be spoiled and cheapened by the practices of other states and of the Congress of the United States, where multi-subject bills and amendments (riders) were and today still are common practice. There, bills having no coherent relation are joined routinely for the sole purpose of facilitating passage. Bills without majority support are attached as riders to the more popular bills, and they often succeed in passage notwithstanding deficiencies in individual merit or support base. Florida designed its system to guard against the ills of multi-subject legislation practice by requiring a separate bill and hence a separate vote on each different subject. Florida was to have no logrolling or hodge--podge legislation.

Florida courts have described the purpose of the constitutional "one subject rules" over the years in various appellate opinions, both in those approving legislation and in those striking down laws.

1935                   Where duplicity of subject-matter is contended for as violative of Section 16 of Article 3 of the Constitution relating to and requiring but one subject to be embraced in a single legislative bill, the test of duplicity of subject is whether or not the provisions of the bill are designed to accomplish separate and disassociated objections of legislative efforts. State ex res. Landis v. Thompson, 163 So.2d 270, 283 (Fla. 1983).

1978:                   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).

- 1980:           The purpose of the requirement that each law embrace only one subject and matter properly connected with it is to prevent subterfuge, surprise, "hodge-podge" and logrolling in legislation. Santos v. State, 380 So.2d 1284 (Fla. 1980).
- 1980:           Section 12 was intended as a corollary to Article 111, Section 6, which mandates that every law shall embrace but one subject and matter properly connected therewith ... Two major considerations underlie the "one subject" requirement of Article 111, Section 12. The first is the need to prevent "logrolling" in appropriations bills. The second reason behind the one subject requirement is to ensure the integrity of the legislative process in substantive lawmaking. The enactment of laws providing for general appropriation; involves different considerations and indeed different procedures than does the enactment of laws on other subjects. Our state constitution demands that each bill dealing with substantive matters be scrutinized separately through a comprehensive process which will ensure that all considerations prompting legislative action are fully aired. Brown v. Firestone, 382 So. 2d 654, 663 (Fla. 1980).
- 1984:           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 hodge-podge or omnibus legislation. Colonial Investments Co. v. Nolan, 100 Fla. 1349, 131 So.2d 178 (1930). The logrolling problem has also been alluded to by our Supreme Court in its interpretation of Article 111, Section 6 of the 1968 constitution. If diverse and dissimilar matters were included with 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 desirable one. [footnotes omitted]. Williams v. State, 459 So.2d 319 (Fla. 5th DCA 1984).

The Florida Legislature, then, has a constitutional responsibility to propose and to pass bills that contain only one subject. The courts of the state have a duty to serve as a watchdog over new legislation to ascertain that the integrity of the passage process was safeguarded according to the constitutional criteria. When legislation fails the "one subject **rule**," the courts must strike it down.

In the analysis of what constitutes "**one subject**," the Florida Supreme Court has agreed that "wide latitude must be accorded the legislature in the enactment of laws, and this court will strike down a statute only when there is a plain violation of the constitutional requirement that each enactment be limited to a single subject which is briefly expressed in the title." State v. Lee, 356 So.2d at 282. A bill's subject may be broad as long as there is a "natural and logical connection" among the matters contained within. Id. Chapter 87-242, Laws of Florida, clearly violates the "one subject rule" and cannot withstand constitutional attack.

The most recent legislation scrutinized for multiplicity of subjects is also the closest on point with the bill at issue herein. Chapter 82-150, Laws of Florida, contained just four (4) sections, which may be summarized as follows:

1. created the new crime of "prohibiting the obstruction of justice by false **information**."
2. changed membership rules for the Florida Council on Criminal Justice.
3. repealed certain sections of the Florida Criminal Justice Council Act.
4. provided an effective date for the bill.

This legislation was found violative of the "one subject rule." The court in Williams v. State, 459 So.2d 319 (Fla. 5th DCA 1984), reasoned:

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.

Id. at 320. The Florida Supreme Court also struck the bill down, overturning a Second District decision. In Bunnell v. State, 453 So.2d 808 (Fla. 1984), Justice Shaw wrote for a unanimous court:

We recognize the applicability of the rule that legislative acts are presumed to be constitutional that courts should resolve every reasonable doubt in favor of constitutionality. Nevertheless, it is our view that the subject of Section I has no congruent relationship with the subject of Section 2 and 3 and that the object of Section 1 is separate and disassociated from the object of Sections 2 and 3. We hold that Section I of 82-150 was enacted in violation of the one-subject provision of Article 111, Section 6, Florida Constitution. [citations omitted]

Id. at 809. Chapter 87-243, Laws of Florida, is similar in key respects to the stricken Chapter 82-150. Certain sections create new crimes (Section 4, 35, 39, 49 inter alia), similar to Section (1) of Chapter 82-150. Others create a study commission (Section 54), neighborhood improvement districts (Section 58-61),

and a coordinating council (Section 51), similar to Sections (2) and (3) of Chapter 82-150.

The only true difference in kind between Chapter 87-243 and Chapter 82-150 is that former encompasses such a multitude of different subjects and the latter only contained two (2) subjects. The result is that Chapter 82-150 provides a clear, concise example of separate subjects in one bill. Bunnell and Williams, supra, provide clear, concise decisions on the improper multiplicity of criminal justice subjects in a singular bill, the same nature of distinct subjects found in Chapter 87-243. That Chapter 87-243 contains so many more subjects which are of such greater diversity than did Chapter 82-150 serves only to compound the constitutional violation.

Bunnell and Williams also belie any contention that many separate matters may be included together in one bill if all relate somehow to a broad general subject area, such as "criminal justice" or "crime prevention and control." This had been the state's position in Bunnell and Williams and the position accepted by the Second District in that court's decision, State v. Bunnell, 447 So.2d 228 (Fla. 2d DCA 1983). The Supreme Court rejected that contention and reversed the Second District.

In combining a great number of bills that were originally filed separately, some in the Senate and some in the House, the Florida Legislature in Chapter 87-243 apparently did so under the broad subject area of crime prevention and control. However, "the general objective of the legislative act should not

serve as an umbrella subject for different substantive matters." Williams, 459 So.2d at 321. A review of case law suggests that Chapter 87-243 may be the grossest violation of the "one subject rule" of Article 111, Section 6, in Florida history. The Act has seventy-six (76) sections and at least three (3) short titles. The official title contains no less than one thousand, four hundred and ten (1,410) words. Article 111, Section 6, also requires that the subject of legislation "shall be briefly expressed in the title." (emphasis added) The word "omnibus" probably best describes this bill. Although "omnibus" legislation is permitted in the federal congress, it is forbidden in Florida.

There is no way to dissect Chapter 87-243 to determine which provisions were logrolled onto which. There is no way to dissect and analyze why each representative and why each senator voted for the omnibus act and which sections or subjects each might not have been approved individually. The nature of Chapter 87-243 as well as the manner of its passage through the legislature exhibit an egregious abuse of the "one subject rule." If this law survives its challenge in the courts, Article 111, Section 6 of the Florida Constitution will have been reduced to meaningless words on very old paper.

The proof of constitutional violation in Chapter 87-243 is evident. One, the Act addresses many different areas including substantive criminal law, appellate procedure, fiscal resources, criminal defenses, educational structure, local

neighborhood structuring, and others. The legislation also addresses different subjects within many of these broad categories.' Two, the only arguable connection among all sections of the bill is "crime prevention and control," but the courts have ruled such a broad, general area may not be considered a single subject or the constitutional mandate would become meaningless. Three, the most recent cases on point struck down Chapter 82-150 for the same flaw cited here as among the multi-subject flaws of Chapter 87-243. The chapter herein violates Article 111, Section 6, of the Constitution of the State of Florida and must be invalidated. Appellant's conviction for purchasing cocaine must be reversed.

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<sup>2</sup> As a purely anecdotal matter, one provision of the Crime Prevention and Control Act, Section 73, concerns the effect of installations of cul-de-sacs on road rights of way. This observation illustrates the incredible variety of the Act's myriad concerns.

11. THE TRIAL COURT ERRED IN ADJUDICATING THE APPELLANTS GUILTY OF BOTH THE PURCHASE POSSESSION OF COCAINE BASED ON A SINGLE ACT INVOLVING THE SAME COCAINE.

The Appellants were charged with the purchase and possession of the same quantity of cocaine. Although the amount differs from case to case, the cocaine purchased was the same as the cocaine possessed. The trial court erred in convicting and sentencing the Appellants for two charges which arose from a single underlying act, in violation of their double jeopardy rights. Carawan v. State, 515 So.2d 161 (Fla. 1987).

In Carawan, this Court considered the issue of whether and under what circumstances a defendant may be convicted of multiple criminal offenses based on a single act. The Court reviewed three primary rules of statutory construction applicable in this circumstance. \*\*The first is that absent a violation of constitutional right, specific, clear and precise statements of legislative intent control regarding intended penalties." Id. at 165. If there is no clearly discernible legislative intent, the Court next looks to the test established in Blockburaer v. United States, 284 U.S. 299, 525 Ct. 180, 76 L.Ed.2d 206 (1930), to attempt to determine the intent. This test is a comparison of the elements of the offenses in question. If each has one element that the other does not, the offenses are presumed separate.

If the Blockburaer test reveals that two offenses should be presumed the same (because both have the elements contained in

the other) then multiple punishments are improper "in the absence of express legislative authorization." Carawan, 515 So.2d at 167. However, where the Blockburaer analysis reveals separate elements in each offense, then "multiple punishments are presumed to be authorized in the absence of contrary legislative intent or any reasonable basis for concluding that a contrary intent existed." Id. at 168.

There is no clear indication of legislative intent as to the propriety of multiple punishments for the purchase of cocaine and subsequent immediate possession of the same cocaine. The Court must next look to the Blockburser test, a comparison of the elements, to attempt to determine intent. Clearly, the offenses of purchase and possession of cocaine both contain the element of possession. A defendant cannot be convicted of either crime unless he is deemed to have had some sort of legal possession of the contraband. Second, it appears that each offense is a general rather than a specific intent crime. Gordon v. State, 528 So.2d 910 (Fla. 2d DCA 1988), affirmed, 14 F.L.W. 308 (Fla. June 22, 1989). To this point, the elements of the two offenses are the same. Further analysis reveals that the offense of purchase of cocaine includes the additional element of the actual purchase. However, as noted by the Court in Lewis v. State, 545 So.2d 427 (Fla. 2d DCA 1989), the crime of possession contains no element not also contained within the crime of purchase. Appellant disagrees with the statement of the court in Psihogios v. State, 544 So.2d 283 (Fla. 4th DCA 1989), that

possession is not required to purchase. Inherent in the concept of purchase is an exchange. An exchange clearly contemplates relinquishing possession of one item to gain possession of another. Possession is thus an essential element of both offenses at issue here. Possession may be viewed as a lesser offense of purchase of cocaine when the two crimes are predicated upon a single underlying act.

In addition to a Blockburaer analysis of the offenses herein, the Court should also consider whether the legislature has provided some indication that it intended multiple punishments. An assumption that the legislative branch ordinarily does not intend to punish the same offense under two statutes leads to the third rule of statutory construction set forth in Carawan. The Courts must resolve all doubts in favor of lenity toward the accused. This is the so called "rule of lenity." S. 775.021(1), Fla. Stat. (1987). This Court stated in Carawan that there is a "reasonable basis" for concluding that multiple punishments were not intended (in spite of Blockburser), "where the accused is charged under two statutory provisions that manifestly address the same evil" or where one crime charged is essentially only an aggravated version of another crime charged. 515 So.2d at 168. As noted, there is a presumption that the legislative branch does not intend to punish the same offense twice. A strict application of the Blockburser analysis often leads to this very result, which is incompatible with common sense. The rule of lenity, on the other hand, will favor lenity

to the accused whenever it is possible to conclude that multiple punishments were not intended, no matter the elements of the crime.

The rule of lenity dictates that if both statutes address the same evil, it must be presumed, in the absence of express legislative intent to the contrary, that duplicitous punishments are not intended. Herein, the evil to be protected against by the crime of purchasing cocaine is the same as that for the crime of possession of cocaine, the evil of illegal drug use. The same evil lies at the heart of the offense of sale of cocaine. It has been held that the sale and possession of the same cocaine does not give rise to two offenses under Carawan. Gordon, 528 So.2d at 913, affirmed, 14 F.L.W. 308. See also, Blanca v. State, 532 So.2d 1327, 1328 (Fla. 3d DCA 1988); Taylor v. State, 531 So.2d 1066 (Fla. 4th DCA 1988); and Kocol v. State, 14 FLW 1777 (Fla. 5th DCA July 27, 1989. In Lewis v. State, 545 So.2d 427 (Fla. 2d DCA 1989), in which this precise issue was decided in the Appellants' favor, the court noted that "(j)ust as sale of cocaine includes all elements necessary to prove possession of cocaine, the same is true for purchase of cocaine." Id. at 427. As the same evil -- drug abuse -- is involved in sale and purchase of cocaine, dual punishments are not permissible under Carawan. See Gordon, 528 So.2d at 915.

Thus, the Appellants contend that a defendant may not be convicted of the purchase of cocaine and the simple possession of the same cocaine when predicated on a single act. To hold that

otherwise would violate Carawan. Although the legislature has recently amended Section 775.021(4) in an apparent attempt to repeal Carawan, this amendment became effective long after the dates of the instant offenses. Ch. 88-131, Laws of Florida. It is not retroactive. State v. Smith, 14 F.L.W. 308 (June 22, 1989). Moreover, legislation enacted in 1988 in response to an intervening court decision is a poor guide of the legislature's intent five years earlier, when Section 775.021(4) was last amended. Ch. 83-156, Laws of Florida.

If the purchase convictions are upheld against the Appellants' constitutional attack in Point I, the possession convictions should be reversed.

CONCLUSION

Based on the arguments contained herein and the authorities cited in support thereof, the Appellants request that this Honorable Court find Chapter 87-243, Laws of Florida to be unconstitutional and reverse the convictions for purchase of cocaine. In the alternative, the Appellants request that the convictions for possession of cocaine be reversed and these cases remanded to the lower court with appropriate directions.

Respectfully submitted,

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PUBLIC DEFENDER

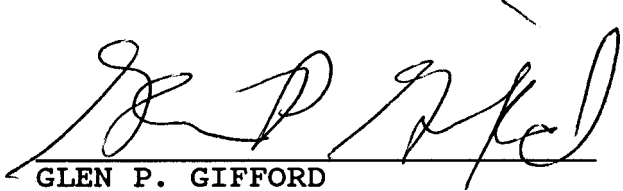
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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Robert A. Butterworth, Attorney General, 210 No. Palmetto Ave., Suite 447, Daytona Beach, Florida, 32114, in his basket at the Fifth District Court of Appeal: and mailed to Michael F. Morrow, 3744 S.W. 143rd Lane, Ocala, Florida 32673, Gary N. Jordan, Post Office Box 511, Meredith, New Hampshire 03253, Donald L. Smith, 14326 S.E. 91st Avenue, Summerfield, Florida 32691, Ronald O.

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