

015

FILED

SID J. WHITE

SEP 9 1991

CLERK SUPREME COURT.

By _____
Chief Deputy Clerk

IN THE
SUPREME COURT OF FLORIDA

DONALD MCCALL,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)

78,536
CASE NO.
(4TH DCA # 91-0134)

PETITIONER'S BRIEF ON JURISDICTION

RICHARD L. JORANDBY
Public Defender

15th Judicial Circuit
301 North Olive Avenue/9th Floor
West Palm Beach, Florida 33401
(407) 355-2150

DEBRA MOSES STEPHENS
Florida Bar No. 709890
Assistant Public Defender

Counsel for Petitioner

TABLE OF CONTENTS

| <u>CONTENTS</u> | <u>PAGES</u> |
|-----------------------------------|--------------|
| TABLE OF CONTENTS | i |
| AUTHORITIES | ii |
| PRELIMINARY STATEMENT | 1 |
| STATEMENT OF THE CASE | 2 |
| STATEMENT OF THE FACTS | 3 |
| SUMMARY OF THE ARGUMENT | 5 |

ARGUMENT

| | |
|---|---|
| THIS COURT HAS JURISDICTION TO REVIEW THE DECISION IN PETITIONER'S CASE BECAUSE THE DISTRICT COURT'S DECISION EXPRESSLY DECLARED VALID A STATE STATUTE | 6 |
| CONCLUSION | 9 |
| CERTIFICATE OF SERVICE | 9 |

AUTHORITIES

| <u>CASES CITED</u> | <u>PAGES</u> |
|---|--------------|
| <u>Bunnell v. State</u> , 453 So.2d 808 (Fla.1984) | 7 |
| <u>Burch v. State</u> , 558 So.2d 1 (Fla. 1990) | 7, 8 |
| <u>OTHER AUTHORITIES CITED</u> | |
| <u>FLORIDA STATUTES</u> | |
| Section 493.30(16) | 6 |
| Section 775.084 (1989) | 6, 8 |
| Section 775.0842 | 6 |
| Section 775.0843 | 6 |
| <u>FLORIDA RULE OF APPELLATE PROCEDURE</u> | |
| Rule 9.030(a)(2)(A)(i) | 6 |
| <u>FLORIDA CONSTITUTION</u> | |
| Article 111, Section 6 | 6 |
| Article V, Section 3(b)(3) | 6 |
| <u>LAWS OF FLORIDA</u> | |
| Chapter 89-280 | 6-8 |

PRELIMINARY STATEMENT

Petitioner, Donald McCall, was the Appellant and Respondent, State of Florida, was the Appellee in the Fourth District Court of Appeal.

In the brief, the parties will be referred to as they appear before this Court.

STATEMENT OF THE CASE

Petitioner was charged by information with Count I - possession of cocaine and Count II - carrying a concealed weapon for an incident that occurred on May 27, 1990 (R 173).

The case was brought to trial on November 15, 1990. **The** motions for judgment of acquittal and renewed judgment of acquittal were denied (R 89, 95-96). The jury returned a verdict as **charged** on Count I and not guilty on Count II (R 161-162, 177-178).

Petitioner was sentenced on December 13, 1990 as a habitual offender to eight years with credit for 208 days (R 171, 181).

Notice of Appeal was timely filed on January 8, 1991 (R 186). This appeal follows.

STATEMENT OF THE FACTS

Officer Penny testified that he was working the evening shift when he came in contact with Petitioner (R 15). Penny was working with Officer Bollinger (R 15). They saw Petitioner standing on the corner of N.W. 8th and 2nd Avenue (R 15, 62-63). He was suspicious because he was alone standing on the corner (R 16, 36, 39). The officers were one and one-half to two **blocks** away (R 17, 64). It was in the evening and the lighting was good (R 18).

Penny saw Petitioner looking around. As a car would drive up to the stop sign, Petitioner attempted to flag them (R 19, 64-65). Penny was using binoculars to get a closer view of the activity (R 20-21). According to Penny if the car stopped Petitioner would run over and Petitioner engage the occupants in conversation, reached into his pocket, get a piece of paper and displayed it (R 21-22, 41). He could not tell what the object was (R 45). The officers watched for a few minutes and then approached Petitioner (R 22, 65). Penny did not keep the binoculars on Petitioner as they approached (R 46).

Petitioner was asked to remove his hands from his pocket (R 23, 66). As Petitioner did, he removed a twenty dollar bill in his left hand (R 23). As Petitioner released the money, four pebble-like substances fell to the ground (R 23, 49-50).

Then Petitioner tried to reach his back with his right hand (R 23, 50). He was ordered to stop (R 50). Whereupon he was patted down and searched (R 23, 66). The search revealed an open knife (R 23, 68). Penny retrieved the money and four objects (R

28, 68).

Petitioner was arrested and left with the money (R 32, 52). Petitioner said the objects were "**Perp**" - fake cocaine while he was in the police car (R 55). However that comment was not mentioned in the police report (R 58-59).

Officer Bollinger testified as Officer Penny did except that Petitioner made his statement as soon as the rocks were being confiscated from the ground not at station or on way to station (R 70, 74). Bollinger also stated it was not normal for a person who had dropped drugs to then reach for a weapon (R 72). Bollinger admitted that he talked with Penny about this case before he testified (R 77-78).

Sandra Lamar testified as forensic chemist that **she** analyzed one object of the four objects and the results were positive for cocaine or mixture containing cocaine (R 79-83, 86).

SUMMARY OF THE ARGUMENT

The trial court erred in sentencing Petitioner as a habitual offender where the statute violates the one subject rule and is therefore unconstitutional.

ARGUMENT

**THIS COURT HAS JURISDICTION TO REVIEW THE
DECISION IN PETITIONER'S CASE BECAUSE THE
DISTRICT COURT'S DECISION EXPRESSLY DECLARED
VALID A STATE STATUTE**

Petitioner contended on appeal that section **775.084**, Florida Statutes (1989), Ch. **89-280**, Laws of Florida, violates the single-subject requirement of Article 111, Section 6 of the Florida Constitution. The Fourth District Court of Appeal held that the statute does not violate the single-subject rule (See Appendix). The district court of appeal therefore expressly declared valid a state statute. Consequently, this Court has jurisdiction to review the decision pursuant to Article V, Section 3(b)(3) of the Florida Constitution and Florida Rule of Appellate **Procedure 9.030(a)(2)(A)(i)**.

This Court should accept review to determine whether the single-subject rule of the Florida Constitution has any continued validity. If the decision in the instant case is left to stand the single-subject rule will be completely emasculated. This is so because Chapter 89-280 embraces two completely disparate subjects: habitual felony offenders and the repossession of motor vehicles.

The first three sections of Chapter **89-280 amended** Sections **775.084** (habitual offender statute), **775.0842** (career criminal statute), and **775.0843** (policies for career criminals), Florida Statutes. Section four of Chapter **89-280** created Section

493.30(16), Florida Statutes, defining "repossession." Section five adds license requirements for repossessors, Section six prohibits repossessors from failing to remit money or deliver negotiable instruments. Section seven regulates the sale of property by repossessors. Section eight requires repossessors to prepare and maintain inventory. Section nine provides for penalties, and section ten requires certain information be displayed on vehicles used by repossessors. As can be seen, half of Chapter 89-280 addresses the prosecution and sentencing of alleged recidivists, while the other half regulates those engaged in the occupation of repossessing cars and boats.

In *Burch v. State*, 558 So.2d 1 (Fla. 1990), cited by the district court in its decision, this Court upheld Chapter 87-243. In doing so, however, this Court distinguished *Bunnell v. State*, 453 So.2d 808 (Fla.1984):

In Bunnell this Court addressed chapter 82-150, Laws of Florida, which contained two separate topics: the creation of a statute prohibiting the obstruction of justice by false information and the reduction in the membership of the Florida Criminal Justice Council. The relationship between these two subjects was so tenuous that this court concluded that the single-subject provision of the constitution had been violated. Unlike *Bunnell*, chapter 87-243 is a comprehensive law in which all of its parts are directed toward meeting the crisis

¹ Section 493.30(16) states:

"Repossession" is the legal recovery of a motor vehicle or motorboat as authorized by the **legal** owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause. A repossession is complete when a licensed reposessor is in control, custody, and possession of such motor vehicle or motorboat.

of increased crime.

Burch, supra, at 3.

Like the law in Bunnell, Chapter 89-280 is a two-subject law; it is not a comprehensive one. The relationship between recidivists and repossessors of **cars** and boats is as tenuous as the relationship between the obstruction of justice by providing false information and reduction in the membership of the Florida Criminal Justice Council.

Given the wide-spread **use** of section **775.084**, Florida Statutes (1989), Ch. 89-280, Laws of Florida, and its apparent violation of the single-subject rule, this Court should accept review to determine its constitutionality.

For the reasons stated above, Petitioner requests this Court to accept jurisdiction and order briefs on the merits from both parties.

CONCLUSION

Because the district court of appeal expressly declared valid a state statute, this Court has jurisdiction to review the decision pursuant to Article V, Section 3(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(i).

Respectfully submitted,

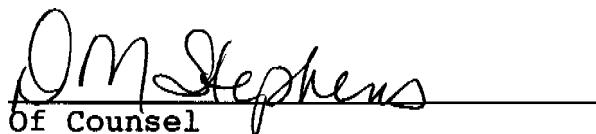
RICHARD JORANDBY
Public Defender
15th Judicial Circuit of Florida
301 North Olive Avenue/9th Floor
West Palm Beach, Florida 33401
(407) 355-2150



DEBRA MOSES STEPHENS
Florida Bar No. 709890
Assistant Public Defender

CERTIFICATE OF SERVICE

I **HEREBY** CERTIFY that a copy hereof has been furnished to Georgina Jimenez-Orosa, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida 33401 by courier this 5th day of September, 1991.


Of Counsel



RICHARD L. JORANDBY
Public Defender

STATE OF FLORIDA
Office of the Public Defender

FIFTEENTH JUDICIAL CIRCUIT

9th Floor Governmental Center
301 North Olive Avenue
West Palm Beach, Florida 33401

FILED

SID J. WHITE

SEP 9 1991

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

Telephone (407) 355-2100

September 5, 1991

Honorable Sid J. White, Clerk
Supreme Court of Florida
Supreme Court Building
Tallahassee, FL. 32399-1927

Re: Donald McCall v. State of Florida
Case No.
4th DCA No. 91-0134

Dear Mr. White:

Kindly find enclosed the original and five (5) copies of a
Petitioner's Brief on Jurisdiction in the above-styled cause to be
filed in this Honorable Court.

Thank you.

Sincerely,

for Vicki R. Moore
Debra Moses Stephens
Assistant Public Defender

DMS/vrm
enclosure

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
JULY TERM 1991

DONALD McCALL,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

CASE NO. 91-0134.

Opinion filed July 31, 1991

Appeal from the Circuit Court
for Broward County; Stanton S.
Kaplan, Judge.

Richard L. Jorandby, Public
Defender, and Nancy Perez,
Assistant Public Defender,
West Palm Beach, for appellant.

Robert A. Butterworth, Attorney
General, Tallahassee, and
Georgina Jkmenez-Orosa,
Assistant Attorney General,
West Palm Beach, for appellee.

PER CURIAM.

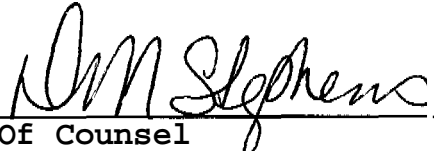
We affirm the appellant's conviction and sentence as a habitual offender. We reject appellant's contention that chapter 89-280, Laws of Florida, amending section 775.084, Florida Statutes, violates the single subject rule of article 111, section 6 of the Florida Constitution. E.g., Burch v. State, 558 So.2d 1 (Fla. 1990).

HERSEY, STONE and GARRETT, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to
GEORGINA JIMENEZ-OROSA, Assistant Attorney General, Elisha Newton
Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach,
Florida, 33401 by courier this 11th day of September, 1991.



Of Counsel