

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT**

JULY TERM 2002

JOSEPH CARLSON,

Appellant,

v.

CASE NO. 5D01-3089

STATE OF FLORIDA,

Appellee.

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Opinion filed July 26, 2002

**Appeal from the Circuit
Court for Volusia County,
R. Michael Hutcheson, Judge.**

C. Michael Barnette, Daytona Beach, for Appellant.

**Robert A. Butterworth, Attorney General, Tallahassee, and
Anthony J. Golden, Assistant Attorney General,
Daytona Beach, for Appellee.**

HARRIS, J.

Carlson pled nolo contendere reserving his right to appeal the court's refusal to dismiss the trafficking in cannabis charge based on possession of more than 25 pounds of cannabis because the cannabis in his possession consisted of both processed and growing plants. Since neither the growing plants nor the processed cannabis separately weighed the requisite 25 pounds, and since he contends a proper construction of the statute prohibits weighing them

together, Carlson contends a trafficking charge cannot be made. Without ruling on this issue, we reverse for another reason.

Even adding the processed cannabis and the growing plants together the weight does not exceed the 50 pounds required before the enactment of chapter 99-188, Laws of Florida, the Three Strikes Violent Felony Offender Act, amended section 893.135, Florida Statutes, by reducing the amount to 25 pounds for trafficking. We agree with the logic of *Taylor v. State*, 27 Fla. L. Weekly D250 (Fla. 2d DCA 2002), that chapter 99-188 is unconstitutional because it violates the single subject rule.

Therefore, we agree the court erred, although it was unaware of *Taylor* at the time of its ruling, in not dismissing the trafficking charge. We remand to the court for further action consistent with this opinion.

As did the court in *Taylor*, we certify the issue of the constitutionality of the amendment to the supreme court.

REVERSED and REMANDED.

PETERSON and GRIFFIN, JJ., concur.