IN THE SUPREME COURT OF FLORIDA

CONNIE FAYE LINCOLN,

Defendant,Petitioner,

vs.

STATE OF FLORIDA,

Plaintiff,Respondent.

CASE NO. 64,816

DISCRETIONARY REVIEW OF DECISION
OF FIFTH DISTRICT COURT OF APPEAL
BASED UPON CERTIFIED CONFLICT WITH
DECISIONS OF OTHER DISTRICT COURTS
OF APPEAL.

PETITIONER'S BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

LARRY B. HENDERSON
ASSISTANT PUBLIC DEFENDER
1012 South Ridgewood Avenue
Daytona Beach, Florida 32014-6183
(904) 252-3367

ATTORNEY FOR DEFENDANT,PETITIONER

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STATEMENT OF THE CASE

Mrs. Connie Faye Lincoln (hereafter Petitioner) was charged by Information with violation of Sections 812.13(1) and 812.13(2)(c), Florida Statutes (1981)[Robbery](R314).[1/] The Office of the Public Defender was appointed to represent Mrs. Lincoln (R306), and the matter proceeded to a jury trial in the Circuit Court for Seminole County, the Honorable Kenneth M. Leffler presiding.

At the conclusion of the State's case, defense counsel moved for a Judgment of Acquittal, which motion asserted that the State failed to show the requisite specific intent to commit robbery (R224). The Motion For Judgment of Acquittal was denied (R225), and again denied when renewed upon the same grounds after Petitioner testified in her own behalf (R269).

The jury thereafter returned a verdict of guilty of robbery (R296-297,331). Petitioner was adjudicated[2/] guilty of robbery (R354,370) and sentenced on June 15, 1982, to a ten (10) year term of imprisonment, with credit to be received for 193 days time served (R372-374).

The Office of the Public Defender was appointed to represent Mrs. Lincoln for the purpose of an appeal (R384), which appeal concluded with the affirmance of her conviction by decision of the

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[1/] (R) refers to the Record on Appeal of the instant cause, Supreme Court Case No. 64,816.

[2/] The Record on Appeal inexplicably contains two different Judgments for the same offense (R354,370).

Fifth District Court of Appeal rendered on December 8, 1983. In affirming Petitioner's conviction, the Fifth District Court of Appeal certified express and direct conflict with decisions of other District Courts of Appeal pursuant to Rule 9.030(a)(2)(A)(vi), Fla.R.App.P. Petitioner invoked this Honorable Court's jurisdiction by filing a timely Notice To Invoke Discretionary Jurisdiction on January 27, 1984. This brief on the merits follows.

STATEMENT OF THE FACTS

Petitioner's husband (Lincoln) was heavily addicted to heroin (R229,235). Petitioner left him in Tennessee when he would not reform and, taking her life savings, Petitioner came to Taft, Florida, to seek employment with friends (R230-233). Unfortunately, Lincoln followed and Petitioner allowed Lincoln to stay in her motel room on the night of December 3, 1982, because Lincoln had no money and no place else to go (R236).

The next morning Lincoln demanded money from Petitioner in order to buy drugs, but Petitioner denied having any (R236). Lincoln required that Petitioner drive him around in her rented automobile, and Petitioner assumed that Lincoln, though he did not say so, was looking for locations to rob (R236-237,248-253).

Lincoln complained of a headache and requested that Petitioner stop near a drug store (R237,253,262). Petitioner parked the automobile in a parking lot (R239), shut off the ignition (R254) and began looking at a map (R239) while Lincoln walked routinely toward the store (R209).

Shortly thereafter Lincoln, again walking casually (R239, 254), returned and entered the car (R100,254). Petitioner observed for the first time that Lincoln had a firearm (R240,255, 261-262) as Lincoln crouched near the floorboard and commanded that she drive him out of there (R240,244).

Almost immediately police appeared in the parking lot and shot the car as Petitioner drove off (R86-88). The police apprehended Petitioner and Lincoln following a high-speed chase that lasted approximately four miles through "moderate traffic"

(R138,140), during which chase Lincoln clambered into the back seat after more shots were fired at the vehicle by the police (R126,139,240).

Petitioner ultimately stopped the car and layed down crying on the front seat (R140-141,144). Petitioner told the police that Lincoln had "made her do it." (R93), and was described by various police officers as being extremely scared and upset when arrested (R93,124,141,145), whereas Lincoln's demeanor was described as being "arrogant" (R95-96,134). A loaded .38 caliber revolver was taken from Lincoln (R132-133,143-144). Petitioner was not present when Lincoln robbed the Dollar Discount Pharmacy (R223), and she testified that she was unaware of her husband's intent to rob the store (R259-262).

ISSUE

WHETHER A DEFENDANT WHO IS NOT PRESENT DURING A ROBBERY, BUT WHO IMMEDIATELY THEREAFTER KNOWINGLY DRIVES THE PERPETRATOR AWAY FROM THE SCENE OF THE CRIME IN AN EFFORT TO ELUDE PURSUING POLICE OFFICERS, CAN BE CONVICTED OF THE ROBBERY AS A PRINCIPAL?

The Fifth District Court of Appeal affirmed Mrs. Lincoln's robbery conviction because, contrary to the views of the First and Third District Courts of Appeal, "the more logical and persuasive view is that driving a getaway car in an elusive manner in an attempt to avoid the police creates a prima facie case from which the finder of fact at trial may properly infer complicity in intent to commit the crime." Lincoln v. State, ___ So.2d ___ (Fla. 5th DCA 1983)[8 FLW 2861,2862]. Petitioner cannot understand the foregoing logic of the Fifth District Court of Appeal.

The long established rule of law here at issue states that where the only proof of guilt is circumstantial, a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence. Jaramillo v. State, 417 So.2d 257 (Fla. 1982); McArthur v. State, 351 So.2d 972 (Fla. 1977); Mayo v. State, 71 So.2d 899 (Fla. 1954); Head v. State, 62 So.2d 481 (Fla. 1952). Simply said, the Fifth District Court of Appeal is here holding that it is wholly inconsistent with any reasonable hypothesis of innocence for a person to run when he/she learns that his/her passenger has just committed a robbery.

Assuming, arguendo, that a defendant parks an automobile and the passenger thereafter exits the car, walks routinely into a

store, robs the store while out of sight of the driver with a previously concealed firearm, and thereafter returns normally to the parked vehicle, the fact that the driver upon learning of the robbery attempts to elude the police is clearly not inconsistent with several reasonable hypotheses of innocence.

To name but a few, the driver simply but understandably becomes frightened and panics after learning of the robbery, not wanting to become involved whatsoever; a driver is forced by the robber to attempt to elude the police; the driver was himself attempting to elude apprehension for a reason other than participation in the robbery; the driver is just plain stupid, or; the driver is in fact trying to assist the perpetrator in escaping the police, notwithstanding that he knew nothing of the robbery.

It bears mentioning that the Florida Legislature has, in most cases, specifically criminalized the act of knowingly aiding a person to escape apprehension or detection after the commission of the felony, notwithstanding that person's nonparticipation in the commission of the felony itself.

> Whoever, not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity to the offender, maintains or assists the principal or accessory before the fact or gives the offender any other aid, knowing that he had committed a felony or had been accessory thereto before the fact, with intent that he shall avoid or escape detection, arrest, trial or punishment, shall be deemed an accessory after the fact, and shall be guilty of a felony of the third degree...

Section 777.03, Florida Statutes (1981).

In the case sub judice, Mrs. Lincoln asserted that she was forced by her husband to try to elude the police after learning that

he had just committed the robbery. Pursuant to the express language of the statute Mrs. Lincoln could not be convicted for helping her husband try to get away, even had she done so voluntarily.[3/] It is evident from the specific language of the statute that it is reasonable to assume that people will endeavor to assist their spouse or close relatives in eluding apprehension, and it is in fact also apparent that the Florida Legislature, in passing the aforementioned statute, has recognized that a person will endeavor to assist their spouse in eluding apprehension notwithstanding that they in no way intended to assist the person in the commission of the felony.

In holding that a prima facie case of robbery is established when a spouse endeavors to assist her husband in eluding police after commission of the crime, the Fifth District Court of Appeal is overlooking the fact that the offense of robbery requires that the specific intent to steal be formulated prior to the commission of the offense itself. Cf. Bell v. State, 394 So.2d 979 (Fla. 1981). The court is holding that the specific intent to assist a person in eluding apprehension after the commission of the crime equates with the intent to commit the crime in the first instance. Petitioner respectfully submits that such a holding is incorrect.

In that the time honored rule concerning circumstantial evidence is no longer given the jury during normal jury instructions, it is all the more necessary for the trial judge to apply this standard in ruling on timely and specific motions for judgment of

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[3/] Assuming that a friend had robbed the store as opposed to her husband, it would have been incumbent upon Mrs. Lincoln to prove that she was forced by the robber/friend, as an affirmative defense to an accessory after the fact charge, to try to elude the police.

acquittal at the conclusion of the State's case and at the conclusion of all the evidence. Where the evidence of an intent to commit a crime consists solely of circumstantial evidence yet fails to exclude reasonable hypotheses of innocence, the trial judge is required to grant a judgment of acquittal, the scrutiny being whether the jury could reasonably conclude that no reasonable hypothesis of innocence exists. Although the particular facts of each respective case are necessarily different, certain patterns do emerge.

The First and the Third District Courts of Appeal have held that it is not inconsistent with a hypothesis of innocence for a person to assist the perpetrator of a felony in attempting to elude police where the evidence of the person's intent to participate in the crime is otherwise wholly circumstantial and susceptible of the finding that the awareness of the commission of the robbery did not occur until after the crime was committed.

It is respectfully submitted that the Fifth District Court of Appeal erred in holding that the assistance given her husband in attempting to elude the police after the commission of the robbery may be viewed as prima facia evidence of an intent to commit the robbery in the first place. Accordingly, this Court is respectfully asked to quash the opinion of the Fifth District Court of Appeal in the instant cause, in that it expressly and directly conflicts with the correct holdings of Gaines v. State, 417 So.2d 719 (Fla. 1st DCA 1982), rev. den. 426 So.2d 26 (Fla. 1983), and A.Y.G. v. State, 414 So.2d 1158 (Fla. 3d DCA 1982), and this Court is asked to reverse Petitioner's conviction of robbery and to remand for the discharge of Petitioner.

CONCLUSION

BASED UPON the foregoing authorities and argument, Petitioner respectfully asks this Honorable Court to quash the opinion of the Fifth District Court of Appeal in the instant cause and to reverse Petitioner's conviction of robbery and remand for discharge of Petitioner.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

LARRY B. HENDERSON
ASSISTANT PUBLIC DEFENDER
1012 South Ridgewood Avenue
Daytona Beach, Florida 32014-6183
(904) 252-3367

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to: The Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, 4th Floor, Daytona Beach, Florida 32014 and Ms. Connie F. Lincoln, #100782, Annex Rt. 3, Stewart's Lane, Nashville, Tenn. 37218 this 22nd day of February, 1984.

LARRY B. HENDERSON
ASSISTANT PUBLIC DEFENDER