

IN THE SUPREME COURT OF FLORIDA

FILED

APR 24 1987

DONALD ROBERT KRITZMAN,
APPELLANT,

CLERK OF THE COURT
By *[Signature]*
Deputy Clerk

-VS-

CASE NO. 69,058

STATE OF FLORIDA

APPELLEE.

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

Donald Robert Kritzman, the criminal defendant below, will be referred to as "Appellant." The State of Florida, the prosecuting authority below, will be referred as "Appellee."

References to the record on appeal containing the legal documents filed in this cause and the transcript of testimony and proceedings at the sentencing hearing will be designated "(R)."

STATEMENT OF THE CASE AND FACTS

The State submits the following additions and clarifications to the statement of case and facts submitted by Appellant.

Prior to the trial in this case, trial counsel filed numerous pretrial motions. Pertinent to this Court on appeal are motions for severance of co-defendants Johnny David Davis (R 4), and Timothy Patrick Griffin, a/k/a Kent Alphonse Mailhes (R 49).

On December 31, 1985, a hearing was held on both severance motions. In regards to co-defendant Davis, Appellant's trial counsel could offer no case authority for his motion to sever, and in fact, made no argument in support thereof (R 761-762). As to co-defendant Mailhes, Appellant argued that he was entitled to severance if Mailhes was going to plead not guilty and proceed to trial. However, at the time, the State was negotiating with Mailhes for a possible plea in return for his testimony (R 762). Both motions for severance were then denied (R 773). Co-defendant Mailhes subsequently pled guilty to first-degree murder and robbery with a firearm with the understanding that in return for his testimony, the State would recommend that the jury return a life recommendation as an advisory sentence (R 980-999). Mailhes' case was ordered tried with Appellant's only for purposes of sentencing (R 989). As a result, Mailhes was allowed to participate in voir dire with the two co-defendants. (R 1014). During voir dire, counsel for Mailhes consistently inquired of each potential juror whether they could recommend

a life sentence for someone convicted of first degree murder after considering all of the evidence (R 1185,1195,1207,1220, 1262,1272,1273).

Prior to trial, the court heard arguments regarding the State's Williams Rule Notice (R 75,1691). The court found the evidence of escape from prison, the robbery of an elderly man of money, a gun, and his car, and subsequent plans to rob a motel and a laundromat were relevant to explain the entire context of the crimes charged and to establish the motives for committing the crimes (R 1693).

Frederick McFaul, special agent with the Federal Bureau of Investigation, testified that he participated in the investigation of the instant murder which occurred on the Naval Live Oaks Reservation (R 2064). He determined that the State of Florida had exclusive jurisdiction in the enforcement of laws on the Reservation and that the United States Government had only a proprietary interest in the property as it was part of the National Seashore (R 2065,2079).

After the State rested, co-defendant Davis testified in his own defense. During cross-examination the prosecutor, attempting to impeach Davis, asked him why he initially gave a false statement to the police. Davis' response was "I was under the impression that Tim and all of them and Don had all remained silent . . ." (R 2310. Appellant objected and moved for a mistrial (R 2311) on the ground that there was a comment on his constitutional right to remain silent (R 2313). The

court denied the motion finding that the comment was not in reference to Appellant's right to remain silent but rather that he was referring to the defendants' plan to deny knowledge of any murder or robbery (R 2314,2317).

Co-defendant Davis and Appellant rested their cases at the conclusion of Davis' testimony (R 2376-2377). Out of an abundance of caution, the trial judge inquired of both defendants' counsel as to when Appellant was informed that Davis would be testifying in his own defense (R 2379). Appellant's counsel informed the court that his theory of defense would not have changed given Davis' decision to testify (R 2391).

The State would finally make reference to the fact that appellate counsel has elected not to challenge the imposition of the sentence of death in this case which is based on the trial court's findings of three aggravating and two mitigating circumstances (R 122-131). By so doing, counsel obviously agrees that the aggravating circumstances outweigh the mitigating circumstances and are supported by sufficient competent evidence and it is not the function of this Court to reweigh or reevaluate the evidence adduced to establish aggravating and mitigating circumstances. **Brown v. Wainwright**, 392 So.2d 1327 (Fla.1981).

SUMMARY OF ARGUMENT

The trial court did not abuse its discretion in refusing to sever Appellant's trial from that of co-defendant Mailhes where Mailhes plead guilty to the charges and agreed to testify as a State witness against Appellant, thereby having only a determination of an advisory sentence by a qualified jury. There has been no demonstration of prejudice to Appellant by allowing Mailhes to participate in the selection of a jury that would decide the guilt or innocence of Appellant but would only consider a penalty recommendation for Mailhes.

The evidence of collateral acts committed prior to the instant was properly admitted in order to establish the entire context out of which the criminal episode occurred and was relevant to prove Appellant's need for money as a motive for committing the charged offenses.

As Appellant was not prejudiced in any way by co-defendant Davis' testimony or theory of defense, the trial court properly denied his motion for severance therefrom.

Appellant has failed to establish that the United States Government accepted exclusive jurisdiction over the Naval Live Oaks Reservation and, therefore, the trial court properly denied Appellant's motion for lack of jurisdiction.

ARGUMENT

ISSUE I

THE TRIAL COURT DID NOT ABUSE ITS
DISCRETION IN DENYING APPELLANT'S
MOTION TO SEVER KENT MAILHES
CASE FROM APPELLANT.

As acknowledged by Appellant, the circumstances in the instant case come to this Court cloaked in a veil of first impression. One of the co-defendants, Kent Mailhes, entered a guilty plea to first degree murder and robbery with a firearm and agreed to testify as a state witness against Appellant in return for the State's agreement not to seek the death penalty for Mailhes (R 898). The unique aspect of this case is that the plea was accepted by the court with Mailhes' understanding that his case would be submitted to the same jury as co-defendant Davis' and Appellant's for the sole purpose of a recommendation of punishment (R 989). As a result, Mailhes was allowed to participate in the selection of a jury that would decide the guilt or innocence of Davis and Appellant, (and penalty recommendation if guilty) but would only consider a penalty recommendation of Mailhes. Because the trial court refused to sever the two cases (R 773), Appellant contends that he was deprived of his right to due process of law and was denied a fair trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. The State disagrees in that Appellant has failed to demonstrate, in any way whatsoever, how he was

prejudiced by Mailhes' participation in the selection of the jury, or how any Florida statute, rule of procedure or constitutional provision has been violated.

In 1976, the United States Supreme Court in **Proffitt v. Florida**, 428 U.S. 242, 49 L.Ed.2d 913, 96 S.Ct. 2960 (1976), approved Florida's adoption of a new capital sentencing procedure:

Under the new statute, if a defendant is found guilty of a capital offense, a separate evidentiary hearing is held before the trial judge and jury to determine his sentence. Evidence may be presented on any matter the judge deems relevant to sentencing and must include matters relating to certain legislatively specified aggravating and mitigating circumstances. Both the prosecution and the defense may present argument on whether the death penalty shall be imposed.

At the conclusion of the hearing the jury is directed to consider "[w]hether sufficient mitigating circumstances exist . . . which outweigh the aggravating circumstances found to exist; and . . . [b]ased on these considerations, whether the defendant should be sentenced to life [imprisonment] or death."
§§921.141(2)(b).

428 U.S. at 248.

The State submits that co-defendant Mailhes, having plead guilty to first degree murder, was entitled to a separate sentencing proceeding for a determination of punishment.

In fact, such action is mandated by Section 921.141, Fla.Stat.:

(1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—
Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined

the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant.

Here, the sentencing proceeding was not waived by co-defendant Mailhes and, therefore, the trial court properly allowed him to participate in the selection of a jury which was to render an advisory sentence to the court.

Although Appellant makes the assertion that he was denied a fair trial due to Mailhes' participation in voir dire, he is unable to demonstrate how he was prejudiced by such action. He claims that the State was allowed to bolster the credibility of the witness. However, Appellant, as well as co-defendant Davis, was given every opportunity to impeach the witness on cross-examination in front of the same jury. He claims that the State was allowed to comment "indirectly" on Appellant's right to remain silent. That's ridiculous. Appellant himself chose to exercise his right to remain silent and not to take the stand and give testimony against himself just as Mailhes chose to give up that right. Merely because each potential juror was informed that Mailhes had plead guilty and would be testifying against Appellant hardly amounts, even indirectly, to a comment on Appellant's right to remain silent. Appellant also claims that Mailhes, through participation in voir dire, was able to emphasize the State's opinion that Appellant was the most culpable. This claim is totally without

support. A cursory review of the voir dire in this case reveals that at no time did the State or counsel for Mailhes make such a suggestion to any juror. It was not until a jury was impaneled that such information was revealed. Finally, Appellant claims that the State was allowed a de facto increase in peremptory challenges by having Mailhes excuse those jurors who do not favor plea bargaining. This contention is without merit as there is no demonstration that such action prejudiced or hindered Appellant in his voir dire of the jurors. Moreover, the record is devoid of any indication that the State also challenged any juror who does not favor plea bargaining. Such a concern was more likely that of Mailhes, and rightfully so. The State would further submit that Mailhes' participation in voir dire was logically more beneficial to Appellant as he, like Appellant, favored a juror who was more likely to recommend life as opposed to death and, therefore, his use of challenges in no way acted to increase those of the State. The State's agreement with Mailhes was merely that it would not seek the death penalty (R 898).

Fla.R.Crim.P. 3.152(b)(1) directs the trial court to order severance whenever necessary "to promote a fair determination of the guilt or innocence of one or more defendants. . . ." Here, Mailhes' guilt was already determined by his plea and the court's acceptance thereof, leaving only a determination of punishment. The circumstances sub judice are no different than if Mailhes had plead not guilty, proceeded

to jury trial with Appellant, and then decided to take the stand and confess to all the charges, but inculcating Appellant as the triggerman. Mailhes would still be entitled to a separate sentencing proceeding for an advisory recommendation by the same jury.

As there was no prejudice demonstrated from the record and no violation of any Florida statute, rule of procedure or constitutional provision, the trial judge properly exercised his discretion in denying Appellant's motion for severance and allowing Mailhes to participate in the selection of a jury solely for the purpose of a sentence recommendation.

ISSUE II

THE TRIAL COURT DID NOT REVERSIBLY
ERR IN ADMITTING RELEVANT COLLATERAL
CRIME EVIDENCE TO ESTABLISH THE
ENTIRE CONTEXT OF THE CRIMINAL
EPISODE.

ARGUMENT

Appellant asserts as error the trial court's admission of collateral crime evidence of his escape from a Louisiana prison, the robbery of Mr. Jones of a gun and automobile, and subsequent plans to rob a motel and laundromat. He contends that such admission violated the rule as determined by the Florida Supreme Court in **Williams v. State**, 110 So.2d 654 (Fla.1959), in that the evidence was not relevant to any fact in issue and merely served to show his bad character or propensity to commit crime. The State contends, as does the trial court, that the disputed evidence was properly admitted to show the entire context out of which the criminal episode occurred.

In **Smith v. State**, 365 So.2d 704,707 (Fla.1978), **cert. den.**, 444 U.S. 885, 100 S.Ct. 177, 62 L.Ed.2d 115 (1979), this Court stated that "[a]mong the other purposes for which a collateral crime may be admitted under **Williams** is establishment of the entire context out of which the criminal conduct arose." The **Smith** opinion also reiterated that relevancy is the crucial factor in determining admissibility of evidence. Briefly, the facts in **Smith** were as follows. The defendant and two

friends picked up a man for purposes of robbing him, which they did. They also murdered the man. After the murder, a disagreement broke out between the three men over how to divide the proceeds of the robbery. This resulted in the death of one of the men. The defendant's car was used throughout the criminal episode and the same ice pick used in both murders. This Court held that evidence of the second murder was properly admitted to illustrate the criminal context of the first murder and was relevant to place the defendant at the scene of the first murder.

Another case on point is *Hall v. State*, 403 So.2d 1321 (Fla.1981), wherein this Court held that collateral crime evidence with respect to another murder committed on the same evening by the defendant was admissible to prove identity because the weapon used in that murder was found underneath the body of the victim in the case at trial; and the collateral crime showed the general context in which the criminal action occurred. Similarly, in *Heiney v. State*, 447 So.2d 210 (Fla.1984), *cert.den.*, ___ U.S. ___, 83 L.Ed.2d 237 (1984), this Court held that evidence of a prior shooting committed by the defendant in another state was admissible because it was relevant to show the defendant's desire to avoid apprehension which motivated him to commit robbery and murder in Florida so that he could obtain money and a car in order to continue his flight from justice.

Most recently, a case dealing with this issue was handed down by the First District. **Austin v. State**, 12 F.L.W. 106 (Fla.1st DCA Dec. 18, 1986). In **Austin**, the defendant was convicted of attempted first degree murder, armed robbery, and possession of a firearm during the commission of a felony. During the State's case, the prosecutor was allowed to introduce evidence that the defendant had fired a shot at another person (Lovelace) not far from the scene of the charged offenses. The First District held that the collateral crime evidence was "so inextricably intertwined with the crimes charged that an intelligent account of this criminal episode could not have been given by Lovelace without reference to the gas station shooting." 12 F.L.W. at 107. In so holding, the Court found the collateral evidence was relevant to cast light on the character of the crimes for which the defendant was prosecuted and to show his need for money as a motive for committing the crimes. The same reasoning is applicable sub judice.

Here, evidence that Appellant and the co-defendants had just escaped from a Louisiana prison, robbed an elderly man of a gun, money and an automobile, and had discussed plans to rob a motel and laundromat was clearly admissible as such acts were substantially close in time with the murder and robbery of Mark McKeen so as to form a part of the charged offenses and to illustrate the character thereof. Appellant was stopped while driving the automobile which was stolen from Louisiana which gave rise to the initial stop and subsequent

arrest (R 1850-1852). Thereafter, a search of the vehicle resulted in the discovery of the stolen gun (R 1860-1861). Obviously, the foregoing testimony was necessary and relevant to give an intelligent account of the criminal episode. **Austin, supra.** It established the entire context out of which the criminal conduct arose. **Heiney, supra; Hall, supra; Smith, supra; Ruffin v. State,** 397 So.2d 277 (Fla.1981). See also **Jackson v. State,** 403 So.2d 1063 (Fla.4th DCA 1981), **cert.den.,** 412 So.2d 466 (Fla.1982) (evidence of earlier robbery within hours of second robbery on same day was admissible in prosecution for second robbery and murder of grocery store clerk during second robbery); **Holland v. State,** 432 So.2d 60 (Fla.1st DCA 1983) (trial court, in prosecution for armed robbery, did not err in admitting testimony as to defendant's participation in prior bank robbery in same geographical location); **Thomas v. State,** 12 So.2d 148 (Fla.1943) (in first degree murder prosecution, admission of evidence regarding an encounter between defendant and another was not error where it was about matter closely enough connected with the main transaction to show mental attitude of defendant at time of the crime, and it could be considered a part of the "res gestae").

Moreover, as anticipated by Appellant, the State submits that evidence of the collateral acts was relevant to show Appellant's need for money as a motive for committing the charged offenses. He had just escaped from prison and therefore needed money for basic necessities. Robbery and murder, unfortunately, were his only avenues.

Should this Court disagree with the foregoing argument, the State contends that the admission into evidence of the collateral acts was clearly harmless given the eyewitness testimony of co-defendant Mailhes which established Appellant's guilt beyond a reasonable doubt.

Consequently, this Court should affirm the trial court's decision to allow introduction of the collateral crime evidence.

ISSUE III

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANT'S MOTION TO SEVER HIS CASE FROM THE CASE OF CO-DEFENDANT DAVIS.

ARGUMENT

Appellant next contends that the trial court reversibly erred in denying his motion for severance from co-defendant Davis where Davis' defense was antagonistic, implicated Appellant, and included a comment on Appellant's right to remain silent. Such a contention is without merit under the circumstances of this case.

Although counsel for Appellant has thoroughly cited the proper authority regarding severance of co-defendants, the undersigned finds it necessary to bring to this Court's attention certain additional rules which have been established to determine whether severance should be granted.

This Honorable Court in **McCray v. State**, 416 So.2d 804 (Fla.1982), provided a full discussion of the severance issue finding consistency between Florida's rule and the American Bar Association standards relating to joinder and severance in criminal trials. The Court stated:

Rule 3.152(b)(1) directs the trial court to order severance whenever necessary "to promote a fair determination of the guilt or innocence of one or more defendants...." As we stated in **Menendez v. State**, 368 So.2d 1278 (Fla.1979), and in **Crum v. State**, 398 So.2d 810 (Fla. 1981), this rule is consistent with the American Bar Association standards relating to joinder and severance

in criminal trials. The object of the rule is not to provide defendants with an absolute right, upon request, to separate trials when they blame each other for the crime. Rather, the rule is designed to assure a fair determination of each defendant's guilt or innocence. This fair determination may be achieved when all the relevant evidence regarding the criminal offense is presented in such a manner that the jury can distinguish the evidence relating to each defendant's acts, conduct, and statements, and can then apply the law intelligently and without confusion to determine the individual defendant's guilt or innocence. The rule allows the trial court, in its discretion, to grant severance when the jury could be confused or improperly influenced by evidence which applies to only one of several defendants. A type of evidence that can cause confusion is the confession of a defendant which, by implication, affects a codefendant, but which the jury is supposed to consider only as to the confessing defendant and not as to the others. A severance is always required in this circumstance. **Bruton v. United States**, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968).
(footnotes omitted)

McCray at 806.

A review of the record sub judice establishes that Appellant was in no way prejudiced by the trial court's refusal to sever his case from co-defendant Davis. Although Davis chose to testify in his own behalf, his testimony was entirely consistent with that of state witness Mailhes except for the allegation that Mailhes, and not Davis, hit the victim with the tire tool (R 2244-2290), and therefore no hostility existed between Appellant and Davis. Appellant offered no defense whatsoever but simply chose to require the State to carry its burden of proof (R 2390). Thus, it is illogical to assert that Davis presented a conflicting defensive theory that was antagonistic in any way with Appellant's defense. Moreover, Appellant's trial counsel specifically stated to

the court that Davis' decision to testify had no effect whatsoever on his decision not to present any evidence (R 2391).

Regarding the allegation that Davis commented on Appellant's right to remain silent, the record, when read in total context, demonstrates that such is not the case under the instant circumstances.

The testimony in question was elicited during the State's attempt to impeach co-defendant Davis. The prosecution questioned Davis as follows:

PROSECUTION: You were the only one in control.

DAVIS: Not the whole trip.

Q. But you knew the smart, intelligent thing to do, was to drive safely, especially when you are being followed by a police officer?

A Well, anybody would if they had escaped from a prison.

Q. Right. And you knew that.

Also, when the police stopped you, you lied to the officer, didn't you?

A. When he asked me my name, I lied about my name, yeah.

Q. You lied about your name. You gave a false name.

A. Yes, I did.

Q. And then later you gave a false story, "I don't know nothing about no murder."

A. Exactly, because I was under the impression that Tim and all of them and Don had all remained silent and everything else as I --

Q. Let me ask you something. Do you remember back at the old man's --

MR. LOCKLIN: Your Honor, I want to interrupt. Objection, right now.

(R 2310-2311).

Obviously, as the trial court concluded, Davis was making reference to all three defendants' plans to deny knowledge of the murder and that they were all abiding by their so-called "conspiracy of silence." (R 2314). Nevertheless, the trial judge cautioned the witness not to make any further reference to Appellant's decision to remain silent and denied the motion for mistrial (R 2314-2315). Clearly, said testimony was not a comment on Appellant's right to remain silent under the traditional intent of the protection of the Fifth Amendment to the United States Constitution.

From the foregoing, it is clear that the trial judge did not abuse his discretion in refusing to sever Appellant's trial from that of co-defendant Davis.

ISSUE IV

THE TRIAL COURT PROPERLY DENIED
APPELLANT'S MOTION TO DISMISS FOR
LACK OF JURISDICTON OVER CRIMES
OCCURRING ON FEDERAL PROPERTY.

ARGUMENT

Appellant contends that the State of Florida did not have jurisdiction to prosecute him as the crimes charged occurred on the Naval Live Oaks Reservation, the title of which vests with the United States Government. This argument, the ultimate in technicality, is fortunately without merit for the following reasons.

The general rule is that a state has complete jurisdiction over the land within its exterior boundaries. **Arizona v. Manypenny**, 445 F.Supp. (D. Ariz.1977); **United States v. McBratney**, 104 U.S. 621 (1881); **People v. Martin**, 326 U.S. 496 (1946). There are three exceptions. One is where the state affirms retention of jurisdiction by the United States at the time the state is admitted to the union. This clearly does not apply here. Another exception is cession of jurisdiction by an individual state after statehood. Appellant has not argued this theory and as the record indicates, cession of jurisdiction by Florida has not been demonstrated. The third, as provided by Article I, Section 8, Clause 17 of the United States Constitution, is where the federal government obtains exclusive jurisdiction over land "purchased by the consent

of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

Appellant has not demonstrated, much less even alleged, that the United States has acquired exclusive jurisdiction over the property in question.

This issue was addressed by the Third District Court of appeal in **Ross v. State**, 411 So.2d 247 (Fla.3rd DCA 1982) in which the court held that even though jurisdiction is an essential element of an offense, it is the burden of the defendant to show that a geographic area within Florida is outside the jurisdiction of the state by reason of cession, and that the acceptance of exclusive jurisdiction by the United States has occurred. See 40 U.S.C. §255.

In **Hobbs v. Cochran**, 143 So.2d 481 (Fla.1962), the Florida Supreme Court addressed factual circumstances similar to those presented here. Hobbs was charged with rape and kidnapping which began in a civilian area near the boundary of Eglin military reservation and continued in a boat on Choctawhatchee Bay, and all within Walton County, Florida. The Florida Supreme Court ruled the defense had failed to introduce evidence demonstrating the civilian authority over the state had been ceded; therefore jurisdiction properly rested with the state.

In the instant case, Appellant offered only a "certified copy of the final judgment perfecting title of the United

States of America to the Naval Live Oak Reservation," to support his argument that the trial court was without jurisdiction to try him (R 2237). The transfer of fee simple title does not, and Appellant has failed to demonstrate otherwise, automatically transfer exclusive jurisdiction to the transferee.

It is clear that the United States may acquire land within a state by donation, purchase or condemnation and thereafter may devote the land to public use without withdrawing it from the jurisdiction of the state. **Johnson v. Morrill**, 126 P.2d 873 (Calif. 1942); **Surplus Tranding v. Cooke**, 281 U.S. 647 (1929). This is because the federal government does not need the consent of a state to acquire fee simple title. **United States v. Gliatta**, 580 F.2d 156,158-159, n. 6 (5th Cir.1978); **Kohl v. United States**, 91 U.S. 367 (1876).

The procedure applicable after land is acquired in such a manner is that the state may cede its jurisdiction and the United States may accept cession of jurisdiction upon any express terms or reservations. **Johnson v. Morrill**, 126 P.2d 873,877; **United States v. Gliatta**, 580 F.2d 156,158, 40 U.S.C. §255. In order for the federal government to acquire exclusive jurisdiction over land within a state, it is necessary to have both the consent of the state and acceptance by Congress. **Bilderback v. United States**, 558 F.Supp. 903,905 (D. Ore 1982). This procedure is set forth in Florida Attorney General Opinion, No. 44-210, July 21,1944, pages 91-2. See also Florida Attorney General Opinion, No. 42-260, May 27, 1942, page 2.

The document submitted by Appellant is not a deed of cession. Moreover, Appellant has failed to disclose any language in the document interpretable as construing exclusive jurisdiction to the United States. In **Mayer v. Holly**, 200 F.2d 123,124 (5th Cir.1952) "exclusive jurisdiction" was formally ceded to the United States by the State of Georgia. See also **Lord v. Local Union No. 2088**, D.C., 481 F.Supp. 419,425-426 (M.D. Fla.1979), **aff'd in part, rev. in part**, 646 F.2d 1057 (5th Cir.1981), **reh.den.**, 654 F.2d 723, **cert.den.**, 458 U.S. 1106 (1982). Therefore, **Mayer v. Holly** is readily distinguishable and cannot control here where such a transfer has not been established. The law is clear that where the federal government does not have exclusive jurisdiction over a particular area of federal land, the State is free to enforce its civil and criminal law. **Bilderback v. United States**, 558 F.Supp. 903,905.

Having failed to establish that the United States had by separate act accepted exclusive jurisdiction over the acquired property, Appellant's argument should be rejected.

ISSUE V

AS NO ERRORS WERE COMMITTED IN THE
LOWER TRIBUNAL, APPELLANT'S RIGHT
TO A FAIR TRIAL WAS NOT VIOLATED.

ARGUMENT

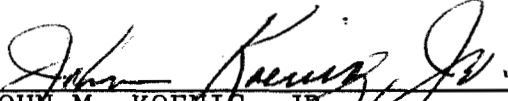
As a final issue, Appellant attempts to apply the proverbial "catch-all" in seeking a new trial. He contends that the cumulative effect of the errors discussed in Issues I, II, and III deprived him of his right to a fair trial as guaranteed by the Constitution. However, as the State has adequately demonstrated that, in fact, no error was committed as alleged by Appellant, a response to this argument is logically unnecessary.

CONCLUSION

Based on the foregoing, the judgment and sentence should be affirmed.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General

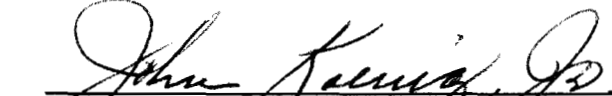


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Appellee has been forwarded to Ms. Ann Cocheu, Assistant Public Defender, Post Office Box 671, Tallahassee, FL 32302, via U. S. Mail, this 24th day of April 1987.



John M. Koenig, Jr.
Assistant Attorney General