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SUPREME COURT OF FLORIDA

FRANK VALDES,

Appellant,

CASE NO. 76,569

vs.

STATE OF FLORIDA,

Appellee.
-----/

REPLY BRIEF OF APPELLANT

(On Appeal from the Circuit Court of the
Fifteenth Judicial Circuit, In and For
Palm Beach County, Florida)

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ISSUE PRESENTED FOR REVIEW

ISSUE XI. WHETHER APPELLANT'S CONVICTION UNDER COUNTS V-X, SIX COUNTS OF ATTEMPTED FIRST DEGREE MURDER, IS ERROR BECAUSE THE EVIDENCE SUPPORTING THE CONVICTIONS IS INSUFFICIENT

SUMMARY OF ARGUMENT

The State is in error by relying on Hall v. State to establish Appellant's guilt based upon the acts of a co-defendant.

ARGUMENT

ISSUE XI

APPELLANT'S CONVICTION UNDER COUNTS V-X, SIX COUNTS OF ATTEMPTED FIRST DEGREE MURDER, IS ERROR BECAUSE THE EVIDENCE SUPPORTING THE CONVICTIONS IS INSUFFICIENT.

The State is in error by relying on Hall v. State, 403 So.2d 1321 (Fla. 1981) in trying to establish the guilt of a defendant based upon the acts of a co-defendant. Where the defendant can be guilty, if at all, as an aider and abettor, the State is required to prove that a crime was committed, that the defendant aided in the commission of the crime and that the defendant had the intent to participate in the crime. Beasley v. State, 360 So.2d 1275 (1978). And in the case of a crime requiring specific intent or knowledge (such as the applicable statute for armed robbery (Florida Statutes §812.13 [1975]), the State has the affirmative burden to prove requisite intent or knowledge and, where it relies on aiding and abetting theory, it must do so by either showing that defendant (aider and abettor) had the requisite himself or that he knew that co-defendant (principal) had the intent. Stark v. State, 316 So.2d 586 (Fla. 1975), cert. denied, 328 So.2d 845.

The dictum in Hall, supra, cannot be allowed to be misconstrued to mean that whenever it appears that there might have been a common criminal scene in a criminal episode, where more than one person/defendant was present, that automatically each is responsible for any offense committed, regardless of the lack of proof of the essential elements against the individual whom the State seeks to show as being a principal for an offense within that episode.

Further, it is clearly evident from the singular since language approved by the legislature in speaking of the "offense", that their intent was for Florida Statutes §777.011

(1977) to be applied to one offense at a time, no matter how many offenses may have been committed during a criminal episode or whether there seems to have been a common "scene"; and guilt, or innocence, was not intended to be inferred by the presence or lack thereof of defendant, but upon proof that the defendant (1) knew what was going to happen, (2) intended to participate actively or by sharing in an expected benefit, and (3) actually did something by which he intended to help (commit) (attempt to commit) the crime.

CONCLUSION

Based on the foregoing argument and authorities cited therein, Appellant respectfully requests this Court vacate the judgments and sentences of the trial court, or reverse the convictions and sentences and grant a new trial and preclude the State from seeking the death penalty against him. Alternatively, Appellant requests this Court reduce his sentence of death to life imprisonment without the possibility of parole for twenty-five (25) years, or grant a new sentencing hearing.

Respectfully submitted,

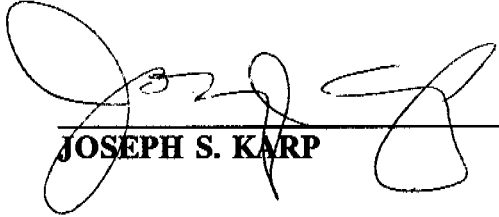
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to Celia A. Terenzio, Assistant Attorney General, 111 Georgia Avenue, Suite 204, West Palm Beach, Florida 33401, by mail, this 22nd day of December, 1992.


A handwritten signature in black ink, consisting of several loops and flourishes, is written over a horizontal line. The signature is positioned above the printed name 'JOSEPH S. KARP'.

JOSEPH S. KARP