045 w/app

IN THE SUPREME COURT OF FLORIDA

LARRY ANTHONY CROSSLEY,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

78,032

SUPREME COURT CASE NO:
DCA CASE NO. 90-1559

PETITIONER'S BRIEF ON JURISDICTION

J. CRAIG WILLIAMS, ESQUIRE
FLORIDA BAR NO. 0166091
211 LIBERTY STREET, SUITE ONE
JACKSONVILLE, FLORIDA 32202
(904) 353-3631
ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CITATIONS

IN THE SUPREME COURT OF FLORIDA

LARRY ANTHONY CROSSLEY,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

SUPREME COURT CASE NO:
DCA CASE NO: 90-1559

PETITIONER'S BRIEF ON JURISDICTION

PRELIMINARY STATEMENT

Petitioner was the Appellant below and the Defendant at trial. Respondent was the Appellee below and the Prosecuting authority at trial. The authorities will be referred to as they appear before this Court.

STATEMENT OF THE CASE

The Petitioner was arrested on July 22, 1989, and charged with armed robbery and kidnapping of Betty White in Counts One and Two and robbery of Jacqueline Jones in Count Three. The Petitioner moved to sever Count Three from Counts One and Two. The motion was denied. The case was tried on March 5, 1990. The jury returned a verdict of guilty as to all three counts. The Petitioner was sentenced to life with credit for 290 days jail time and a fifteen year minimum mandatory sentence as to Count One. As to Count Two he was sentenced to life with credit for 290 days jail time with a three year minimum mandatory, pursuant to

Statute 775.087; and a fifteen year minimum mandatory to run concurrently with Count One. As to Count Three, he was sentenced to life with credit for 290 days jail time with a three year minimum mandatory, pursuant to Florida Statute 775.087, with a fifteen year minimum mandatory to run concurrent with Counts One and Two and he was adjudged an Habitual Violent Felony Offender. The First District Court of Appeals entered an Opinion affirming the conviction on March 26, 1991, a timely Motion for Rehearing was filed and a Revised Opinion and an Order denying the Motion for Rehearing was entered on May 9, 1991. On June 6, 1991, the Petitioner filed a Notice to Invoke Discretionary Jurisdiction with the First District Court of Appeals.

STATEMENT OF THE FACTS

The District Court, at pages 4-5 of their Opinion summarized the facts as follows: On July 22, 1989, at approximately 3:00 p.m., Betty White, a waitress at the Clock Restaurant finished work and went to the car that her brother had lent her. As she was counting her tips in the car before she left the parking lot, a black man she described as dressed in a blue short-sleeve shirt, gray shorts, a cap and sunglasses appeared at her car window with a gun. He told her to slide over and kidnapped her in the vehicle. About 4:00 p.m., he pulled behind Moncrief Liquor Store and told her to get out. He then fled with the car and her purse.

About 6:15 p.m., on the same day Jacqueline Jones was

working as a cashier at Banner Food Store. She saw a black man, whom she described as wearing a blue short-sleeve jacket, gray shorts, a cap, sunglasses and sneakers, bring a six-pack of beer to the cash register. She testified that after she rang up the beer, the robber pulled a gun from his shirt and held it next to her stomach. She stepped back and let the robber take the money from the register.

At 8:30 p.m., an officer spotted a vehicle fitting the description of the car reported taken in the first robbery. A chase ensued which ended with the suspect crashing the car into a fence. The suspect was taken to the police station where he was identified by Ms. Jones. Two or three days later, Ms. White identified him by a photo identification as the man who kidnapped and robbed her.

Officer Senterfitt, one of the investigating officers in the case, testified that the liquor store where the kidnapper dropped off Ms. White was approximately 3.4 miles from the Clock Restaurant and 1.8 miles from the Banner Food Store. He indicated that all three points were within a five square mile area.

SUMMARY OF ARGUMENT

The failure to grant the Petitioner's Motion to Sever was error. The District court noted that there were "factual similarities" with Jones v. State, 497 So.2d 1268 (Fla. 3rd DCA 1986), yet did not find the decision "conclusive." The District Court's decision conflicts with Jones.

The District Court's decision is in conflict with the rationale of Paul v. State, 385 So.2d 1371 (Fla. 1980) and State v. Williams, 453 So.2d 824 (Fla. 1984). The offenses were dissimilar and would not have been admissible in separate trials under the Williams Rule rationale. The joint trial of offenses which were not "unique" and which were connected only by similar circumstances and the Petitioner's alleged guilt in both violates the tenets of Paul and Williams.

ARGUMENT
ISSUE

WHETHER THE DISTRICT COURT ERRED IN REFUSING TO VACATE THE PETITIONER'S CONVICTION BASED UPON THE TRIAL COURT'S FAILURE TO GRANT THE MOTION TO SEVER CONFLICTING WITH THE THIRD DISTRICT COURT OF APPEALS OPINION IN JONES V. STATE AND THE SUPREME COURT OPINION IN PAUL V. STATE AND WILLIAMS V. STATE.

The District Court below noted on page 6 of their Opinion "although we recognize the factual similarities in the Jones case, we do not find the Decision conclusive on the question of whether the trial court in the present case abused its discretion." In Jones v. State, 497 So.2d 1268 (Fla. 3rd DCA 1986) two males kidnapped Franklin Morrison on January 26, 1985, at 6:00 o'clock p.m. They robbed Mr. Morrison and fled in his car. Three hours later, driving the same car, two males shot and killed Merlene Daugherty. Two days later the police stopped Morrison's car and arrested it's occupants for grand theft. There was a contention in Jones that the trial court had erred in

failing to sever the robbery and kidnapping counts from the robbery and homicide counts, whereas in the instant case it is the Petitioner's contention that the trial court erred in denying his motion to sever the armed kidnapping and armed robbery of Betty White from the armed robbery of the cashier Jacqueline Jones at the Banner Food Store. The similarities between Jones and the instant case at bar are the time between the offenses, 3 hours in Jones, and 2 hours and 15 minutes between the time Ms. White got out of the car and three hours and 15 minutes between the initial encounter in the case below. Jones involved a robbery and kidnapping and a robbery and homicide. The case at bar involved a robbery and kidnapping and a robbery. Both cases involved a theft of the car of the original victim and apprehension of the accused in each instance in the same vehicle. Jones involved a photographic identification and Betty White made a photographic identification in the instant case. In Jones the 3rd DCA quoting from this Court's Opinion in State v. Williams, 453 So.2d 824-825 (Fla. 1984) (citing Paul v. State, 365 So.2d 1063, 1065, (Fla. 1st DCA 1979) held "that consolidation of offenses is improper when based on similar but separate episodes, separated in time which are `connected' only by similar circumstances and the accused alleged guilt in both or all instances." Id. 1066 Betty White alluded to her assailant initially as being a light skinned black male and the record reflected the Defendant was dark skinned and was so described by Jacqueline Jones.

(T-90) Betty White indicated that she could not describe the type of cap that her assailant wore and indicated she had problems with cross-racial identifications. (T-31,35,36,42) The District Court below acknowledged there may have been a suggestive show-up as to Jacqueline Jones and the Respondent at oral argument made a concession to that effect. Opinion at page 3.

The District Court below misapprehended this Court's holdings in Paul v. State, 385 So.2d 1371 (Fla. 1980) and State v. Williams, 453 So.2d 824 (Fla. 1984) The Court further held "[e]ven if consolidation is the "most practical and efficient method of processing a case, practicality and efficiency should not outweigh a Defendant's right to a fair trial." "The objective of fairly determining a defendant's innocence or guilt should have priority over the relevant considerations such as expense, efficiency, and convenience." Williams at 825. The District Court in Williams was concerned that "strict adherence to Paul necessarily results in further imposition on our already overburdened trial courts." Id. at 1015-16. The Court reaffirmed the vitality of Paul. It is the argument of the Petitioner below that had the Petitioner been charged separately on either offense evidence of the other would not have been admissible in separate trials. Judge Smith's dissenting Opinion in Paul v. State, 365 So.2d 1065-1067 (Fla. 1st DCA 1979) was adopted as the opinion of this Court in Paul v. State, 385 So.2d 1371 (Fla. 1980). Judge Smith

noted that for Williams rule purposes those similarities did not place a hallmark upon the offenses, independently proclaiming them as of the same design and so likely committed by the same person. The Court went on to note that the results of the joint trial of the two unconnected charges assured that each charge was featured in the trial of the other-a prejudicial result which we strive to avoid in a pure Williams-type trial. Id. 1066 The Court noted that the important purpose of requiring separate trials on unconnected charges is to assure that evidence adduced on one charge will not be misused to dispel doubts on the other, and so effect a mutual contamination of the jury's consideration of each distinct charge. The argument by the Petitioner below was that the offenses were not similar and would not have been admissible as collateral offenses under the Williams rule. This was an issue addressed in Paul and this Court noted "we made no comment on that portion of Judge Smith's dissent which discussed the so called "Williams Rule." Williams v. State, 110 So.2d 654 (Fla. 1959) The Petitioner argued that the only connection was similar circumstances and the accused's alleged guilt which both Williams and Paul condemned. Proper application of the tenets of these decisions would have mandated severance.

CONCLUSION

This Court should exercise its discretion and entertain the case on the merits as the failure to do so would require the Petitioner to serve a life sentence without having received a fair trial as to his guilt or innocence based upon the failure to grant the Motion to Sever.

Respectfully submitted,

J. CRAIG WILLIAMS, ESQUIRE
FLORIDA BAR NO. 0166091
211 LIBERTY STREET, SUITE ONE
JACKSONVILLE, FLORIDA 32202
(904) 353-3631
ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished, by mail, to the Office of the Attorney General, The Capitol, Tallahassee, Florida 32399, this 13th day of June, 1991.

ATTORNEY