047

IN THE SUPREME COURT OF FLORIDA

LARRY ANTHONY CROSSLEY,

Petitioner,

v. CASE NO. 78,032

STATE OF FLORIDA,

Respondent.

_____/

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner, Larry Anthony Crossley, appellant below and defendant in the trial court, will be referred to herein as "petitioner." Respondent, the State of Florida, appellee below, will be referred to herein as "the State."

JURISDICTIONAL STATEMENT

Article V, Section 3(b)(3) of the Florida Constitution provides, in pertinent part, as follows:

> The Supreme Court . . . [m]ay review any decision of a district court of appeal . . . that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

The conflict between decisions "must appear within the four corners of the majority decision," and "[n]either a dissenting opinion nor the record itself can be used to establish jurisdiction." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Neither will a concurring opinion support jurisdiction under Section 3(b)(3). Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980). Further, it is the "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari." Id., at 1359.

STATEMENT OF THE CASE AND FACTS

The State accepts petitioner's statement of the case and facts as being generally supported by the First District's decision below.

SUMMARY OF ARGUMENT

Contrary to petitioner's assertion, there is no direct and express conflict between the decision in the case at bar and the decisions of the Third District and this Court on the same question of law. There are some factual similarities between the instant case and Jones v. State, infra, wherein the Third District held that the trial court there erred in denying the defendant's motion to sever the offenses with which he was charged. However, there are circumstance present here -- including the similarities between the offenses and the victims' descriptions of their assailant, and the close geographic proximity of the offenses -- that were not present in Jones. Further, because petitioner fails to establish any conflict between he decision here and this Court's decisions in State v. Williams, infra, and Paul v. State, infra, on the same question of law, this Court should decline to exercise its discretionary jurisdiction in this case.

ARGUMENT

ISSUE

THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN THIS CASE DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE THIRD DISTRICT'S DECISION IN JONES V. STATE, INFRA, OR WITH THIS COURT'S DECISIONS IN PAUL V. STATE, INFRA, AND STATE V. WILLIAMS, INFRA, ON THE SAME QUESTION OF LAW.

Petitioner first argues that the First District's decision in the instant case concerning the propriety of the trial court's denial of petitioner's motion to sever the charges against him directly and expressly conflicts with the Third District's decision in Jones v. State, 497 So.2d 1268 (Fla. 3d DCA 1986). The facts in Jones were as follows:

> On January 26, 1985, at approximately 6:00 p.m., two males kidnapped Franklin Morrison, robbed him, and fled in his car. At approximately 9:00 p.m., driving the same car, two males robbed, shot, and killed Marlene Dougherty. On January 28, 1985, police stopped Morrison's car and arrested its occupants for grand theft of the Morrison car. The car's occupants included defendant seventeen-year-old Keith Jones and a codefendant who is not a party to this appeal.

Id. at 1269. Finding that under the circumstances "the only connection between the two criminal episodes was the use of stolen car and the accused's alleged participation" in those episodes, the Third District held that severance of the offenses was mandated by this Court's decisions in State v.

Williams, 453 So.2d 824 (Fla. 1984) and Paul v. State, 385 So.2d 1371 (Fla. 1980). Jones, 497 So.2d at 1272.

It is true that, as was the case in Jones, the instant case involved the theft of the first victim's car and the later apprehension of the defendant in that same vehicle. However, the time span between the offenses in the instant case (only two hours and fifteen minutes elapsed between petitioner's release of Betty White, the first victim, and his robbery of Jacqueline Jones at the Banner Food Store) was shorter than that in Jones (three hours between crimes); and whereas petitioner in the instant case was captured only five and one-half hours after the entire criminal episode began, and only two hours and fifteen minutes after the food store robbery, the defendant in Jones was not captured until two days after the crimes were committed. Thus, while petitioner's actions in the case at bar, from initial crime to second crime to apprehension, comprised one complete criminal episode, the defendant's actions in Jones arguably did not. Moreover, in the instant case the victims' descriptions of their assailant were similar, and the offenses themselves were factually similar and occurred only two to three miles apart. By contrast, the Jones opinion is totally silent as to any factual similarities or geographic proximity between the offenses at issue there. The State therefore submits that the First District's determination that the trial court in this case did not abuse its discretion in denying petitioner's motion to sever does not

expressly and directly conflict with the Third District's decision in Jones.

Petitioner further asserts that the First District in its opinion below "misapprehended this Court's holdings in Paul v. State, [supra] and State v. Williams, [supra]." Petitioner's brief at 6. The State notes that such a "misapprehension" does not create conflict jurisdiction. Rather, it is the "conflict of decisions, not conflict of opinions or reasons that supply" conflict jurisdiction. Jenkins v. State, supra, at 1359.

Even assuming that petitioner's argument is that the First District's decision conflicts with the decisions in Williams and Paul, that argument is without merit. Williams, wherein this Court affirmed the district court's determination that the trial court there erred reversibly in granting the state's motion to consolidate where the defendant was "charged, in nine separate informations, with burglary and theft occurring on eight different days, involving nine different victims, and, in two additional informations, with thefts involving the same victim on the same day," Id. 453 So.2d at 824 (footnote omitted), is so factually dissimilar from the instant case that there can be no conflict between the decision here and the decision in Williams. Further, this Court in Willaims actually indicated that two of the offenses which occurred on the same day but involved different victims may have been

properly consolidated. Id. at 825. Thus, there is no conflict whatsoever between the instant decision and Williams.

Finally, petitioner argues that there is conflict between the instant decision and this Court's decision in Paul v. State, supra. To establish this conflict, however, petitioner relies on language contained in Judge Smith's dissent in Paul v. State, 365 So.2d 1063, 1066 (Fla. 1st DCA 1979), wherein Judge Smith discussed the admissibility of evidence of the (incorrectly) consolidated offenses under the Williams Rule. While this Court in Paul adopted Judge Smith's dissent "insofar as it relate[d] to Rule 3.151 and the consolidation of related offenses," the Court specifically stated that it "ma[de] no comment on that portion of Judge Smith's dissent which discusses the so-called 'Williams Rule' . . . of admissibility." Id., 385 So.2d at 1372 (citation omitted). Judge Smith's discussion of the Williams Rule therefore was not made a part of this Court's decision in Paul, and it cannot be the basis for conflict jurisdiction in this case. The State further notes that the First District in the instant case simply did not discuss the admissibility under the Williams Rule of evidence of the offenses consolidated here. Thus, petitioner has failed to establish any express and direct conflict between the First District's decision here and this Court's decision in Paul.

CONCLUSION

In light of the absence of any express and direct conflict with the decisions of other state courts referenced in petitioner's brief, the State respectfully requests that this Court decline to accept discretionary jurisdiction to review the First District's decision below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing answer brief has been furnished by U.S. Mail to J. Craig Willaims, 211 Liberty Street, Suite One, Jacksonville, Florida 32202, this 8th day of July, 1991.

Amelia L. Beisner
Assistant Attorney General