IN THE SUPREME COURT OF FLORIDA

CASE NO: 79,487

CHARLES HENRY WILLIAMS,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

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ON DISCRETIONARY REVIEW FROM THE
THIRD DISTRICT COURT OF APPEAL

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# PETITIONER'S BRIEF ON JURISDICTION

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IN THE SUPREME COURT OF FLORIDA

CASE NO: 91-867

CHARLES HENRY WILLIAMS,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

ON DISCRETIONARY REVIEW FROM THE THIRD DISTRICT COURT OF APPEAL

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## INTRODUCTION

This is a petition for discretionary review filed pursuant to Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure, on the basis that the decision of the Third District Court of Appeal is in direct and express conflict with decisions of other district courts of appeal.

The Petitioner, CHARLES HENRY WILLIAMS, was the Appellant in the Third District Court of Appeal and the defendant in the trial court, the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida. The Respondent herein, the State of Florida, was the appellee in the district court and the prosecution in the trial court.

Citations to the record are abbreviated as follows:

(App. 1-3) = January 14, 1992 opinion of the Third District Court of Appeal.

(App. 4) = February 18, 1992 order of the Third District Court of Appeal denying rehearing.

(T.___) = Court reporter's transcript.

(R.___) = Record on appeal.

## STATEMENT OF THE CASE AND FACTS

After a jury trial in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, the defendant, CHARLES HENRY WILLIAMS, was convicted of kidnapping, sexual battery, robbery (of cocaine) and possession of cocaine. (R. 256-260).

Prior to trial, the State filed two notices of intent to rely on evidence of other crimes, wrongs or acts at trial.(R. 36, 92-93). Included in these notices were case no. 89-12937, where the defendant was charged with sexual battery and kidnapping of a different alleged victim, and an alleged attempted murder and sexual battery of a third alleged victim.(R. 36, 92-93). The defense filed a motion in limine to prevent the prosecution from introducing "similar fact evidence" at trial (T. 103-112). The court denied the defendant's motion. (R. 203-207).

The alleged victim in the case at bar was referred to as "CC". (T. 653). She testified that she is 30 years old, 5'7" tall and weighed 110 pounds on March 18, 1989. (T. 653). After getting high on crack cocaine, she went out to purchase more. (T. 655-656). She completed the transaction and noticed the defendant wearing a uniform with a white shirt and i.d. badge. (T. 661). He followed her and asked her where he could go to smoke crack. (T. 664). Conversation ensued, at which time, CC testified that she was punched behind the ear, grabbed and choked. (T. 667-668). When she screamed the defendant allegedly told her he would kill her. (T. 669).

According to CC, the defendant knelt over her with one knee on her rib cage and the other around her neck. (T. 672). She felt a sharp metal object at her neck. (T. 672). According to CC, the defendant was straddled over her on his knees. (T. 677). She testified he pulled her pants off, masturbated himself with one hand and choked her with the other, got an erection and penetrated her. (T. 678-679). When he left, she ran into the street screaming, and flagged down a police car. (T. 681-685). Police called the defendant who was standing nearby, over to them. (T. 686). The defendant told police that he helped CC purchase cocaine and they had sex voluntarily. (T. 804). He told police he was willing to go to jail for the cocaine, but that he did not rape CC. (T. 804).

Over defense objection, the state called "LC", 28 years old, 5'5" tall and who weighed 140 pounds in March, 1989. (T. 888). She testified that in March of 1989, she used crack one night but was not high when she encountered the defendant wearing a blue work uniform. (T. 888-890). She stated that the defendant asked her if she smoked and she offered him sex for money and drugs. (T. 891). He offered her ten dollars, two cocaine rocks and a half bag of marijuana. (T. 891). They went to a rooming house, where when she turned her back, she testified that she felt something around her neck. (T. 896). The pressure prevented her from screaming. (T. 898). She lost control of herself, went "semi out" and fell to the ground. (T. 899). She was laying on her back on the ground and testified that the defendant straddled her and had his hands around

her neck. (T. 900). She testified that he choked her with one hand while masturbating himself with the other. (T. 901). He penetrated her, ejaculated and left, warning her not to say a word or he would kill her. (T. 902-903). She did not call police. (T. 904).

The state also called "BG" over defense objection. (T. 947). She is 31 years old, 5'1" tall and weighed 100 pounds in October, 1988. (T. 947). She testified that on October 21, 1988 she was walking through a park and met the defendant who was wearing a white shirt like a uniform, jeans and tennis shoes. (T. 951). He asked her if she knew where he could get drugs and she replied, "No". (T. 952). Once they arrived at a bar, she told the defendant where he could buy drugs, and she entered the bar. (T. 955). She left to go to another bar later that evening, and introduced the defendant to a woman who sold sex for drugs. (T. 958). She drank, smoked crack and saw the defendant as she walked. (T. 959). She testified that the defendant put his arms around her neck, choked her and picked her up off the ground. (T. 963). She does not remember anything after that until she awoke and saw a man asking her if she was all right. (T. 963-964). her pants and underwear were down. (T. 965). A witness testified that he observed a couple having sex in a vacant lot across from his house. (T. 981-983). When he confronted them and told them to leave, the man left the woman behind. (T. 983).

The defendant was convicted and sentenced to 40 years on Counts I and IV, 15 years on Count III, and five years on Count V concurrent.

On direct appeal to the Third District Court of Appeal, the convictions and sentences were affirmed.

Discretionary review in this Court is now sought based on a conflict between the lower court's instant decision and the cases cited in the argument portion hereof.

## ISSUE ON APPEAL

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL BELOW IS IN DIRECT AND EXPRESS CONFLICT WITH HODGES V. STATE, 403 So. 2d 1375 (Fla. 5th DCA 1981) Pet. For Rev. Den. 413 So. 2d 877 (Fla. 1982) AND HELTON V. STATE, 365 So. 2d 1101 (Fla. 1st DCA, 1979).

## SUMMARY OF THE ARGUMENT

The Third District Court of Appeal held that collateral crimes evidence of two other sexual batteries, was properly admitted to rebut the defense of consent and to show "modus operandi" and "common scheme or plan."

The First and Fifth District Courts of Appeal have held that where, as here, the only issue is consent, the admission of collateral crimes evidence requires reversal as it is not relevant to show "modus operandi" or "common scheme or plan" when the sole issue is consent, which is unique to the alleged victim. This conflicting reasoning creates inconsistencies in the application of the law, and justifies this Court's exercise of its discretionary jurisdiction in this cause.

## ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL BELOW IS IN DIRECT AND EXPRESS CONFLICT WITH HODGES V. STATE, 403 So. 2d 1375 (Fla. 5th DCA, 1981) PET. FOR REV. DEN. 413 So. 2d 877 (Fla. 1982) AND HELTON V. STATE, 365 So. 2d 1101 (Fla. 1st DCA, 1979).

The Third District Court of Appeal held that the collateral crimes evidence of other rapes, presented by the State in its case in chief, was proper "because the evidence established a common scheme or plan." The opinion also notes the State's assertion that the admission of the collateral crime evidence "was necessary to rebut the defense of consent." The Third District Court of Appeal relied upon Williams v. State, 110 So. 2d 654 (Fla. 1959) cert. den. 361 U.S. 847, 80 S. Ct. 102, 4 L. Ed. 2d 86 (1959) to support its holding that there was no error in the admission of the collateral crime evidence in the instant case.

The foregoing decision of the Third District Court of Appeal is in direct and express conflict with decisions from the First and Fifth districts. Although these cases were cited in the defendant's brief below, the Third District Court of Appeal did not address them.

In the case at bar, the Third District Court of Appeal noted, "After his arrest, appellant admitted having sex with the victim, but claimed that it had been consensual." There was no identity issue in the case at bar. The ultimate issue was whether or not

the prosecutrix consented.

In Helton v. State, 365 So. 2d 1101 (Fla. 1st DCA, 1979) the First District Court of Appeal in a decision which expressly and directly conflicts with the decision in the case at bar, held it to be error to permit evidence of another alleged attempted sexual battery and noted:

> The issue of consent is unique to an individual, and the lack of consent of one person is not proof of the lack of consent of another. Evidence of the previous crime committed by Helton does not fit within the parameter of admissibility under the Rule in Williams either as evidence of consent or identity because it was not relevant to either.

Likewise, Hodges v. State, 403 So. 2d 1375 (Fla. 5th DCA, 1981) Pet. for Rev. Den. 413 So. 2d 877 (Fla. 1982) is expressly and directly in conflict with the instant case. In Hodges as in the case at bar, the defendant admitted having sexual intercourse but claimed that the prosecutrix consented. The State claimed the evidence of another alleged sexual battery was admitted to show a "modus operandi" or a "common scheme or plan". id. at 1376. In Hodges, the Fifth District Court of Appeal noted that the acts defining sexual battery are only a crime if committed "without that person's consent." id. at 1377, noting that the acts are not illegal person, and in sexual battery the fact which makes one's acts criminal is the mental assent of the "victim." id. at 1378.

The Fifth District Court of Appeal found that there was no question that the accused participated in the acts described as "sexual battery" and therefore his identity was not at issue. The Court stated:

> Likewise, it does not appear that the accused's knowledge, designs, plans, motives or other mental intents or emotions are relevant in this case. Assuming the worst, that the accused was so vilely motivated that he fully intended to have sexual relations with the prosecutrix whether or not she consented, if she consented, he is not guilty of any crime which he planned or intended to commit, despite all of his evil intent and plans. The ultimate issue is the prosecutrix's consent. id. at 1378.

The Court additionally noted in a footnote, that the concepts of "modus operandi" or "common scheme or plan" relate to identification by recognition of unusual aspects of the method that a particular individual uses to accomplish a particular act. citing Helton, the Fifth District Court of Appeal, held that the issue of consent is "unique to an individual" and the lack of consent of one person is not proof of the lack of consent of another.

In the case at bar, the Third District Court of appeal reached exactly the opposite conclusion, directly and expressly conflicting with Hodges and Helton, which leads to confusion and inconsistent principles of law, justifying the exercise of this court's discretionary jurisdiction.

## CONCLUSION

Based on the foregoing, the Petitioner respectfully requests that this Court grant discretionary review in this cause.

Respectfully submitted,

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By: _____
MAY L. CAIN, ESQUIRE

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed to the Office of the Attorney General, 401 N.W. 2nd Avenue, Suite N921, Miami, Florida 33128 this 10 day of March, 1992.

_____
MAY L. CAIN, ESQUIRE

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JANUARY TERM, 1992

CHARLES HENRY WILLIAMS, **

Appellant, **

vs. ** CASE NO. 90-1393

THE STATE OF FLORIDA, **

Appellee. **

Opinion filed January 14, 1992.

An Appeal from the Circuit Court for Dade County, Sidney B. Shapiro, Judge.

Bennett H. Brummer, Public Defender, and May L. Cain, Special Assistant Public Defender, for appellant.

Robert A. Butterworth, Attorney General, and Paul Mendelson, Special Appointed Assistant Attorney General, for appellee.

Before BARKDULL, LEVY, and GERSTEN, JJ.

GERSTEN, Judge.

Appellant, Charles Henry Williams, appeals his convictions for sexual battery, kidnapping, robbery and possession of cocaine. We affirm.

After engaging the victim in conversation about where to purchase cocaine, appellant struck the victim in the head, choked her from behind, and put a sharp object to her neck. Appellant then dragged the victim to a secluded area where he threw her to the ground, took the victim's cocaine, and then raped her.

After his arrest, appellant admitted having sex with the victim, but claimed that it had been consensual. At trial, appellee, the State, introduced testimony of two other women who testified that they had also been raped by appellant in the same manner as the victim: engaging them in conversation about cocaine, grabbing them in a tight chokehold from behind, removing them to a secluded spot, taking their cocaine, and then raping them.

Appellant contends that the trial court erred in allowing the State to introduce collateral crimes evidence regarding the other rapes. The State asserts that admission of collateral crimes evidence was proper because the evidence established a common scheme or plan. The State also asserts that admission of the collateral crime evidence was necessary to rebut the defense of consent.

The landmark case of Williams v. State, 110 So.2d 654 (Fla.), cert. denied, 361 U.S. 847, 80 S.Ct. 102, 4 L.Ed.2d 86 (1959), established the rule regarding admissibility of collateral crime evidence:

> [T]he rule which we have applied in affirming this conviction simply is that evidence of any facts relevant to a material fact in issue except where the sole relevancy is character or propensity of the accused is admissible . . . This

> rule we hold applies to relevant similar fact evidence . . . even though it points to the commission of another crime.

In Williams, as here, the defendant claimed that sex with the victim had been consensual. A second victim's testimony was admitted to show plan, course of conduct, or common scheme. We find no error in the admission of the collateral crime evidence in this case. See Duckett v. State, 568 So.2d 891 (Fla. 1990; Eans v. State, 366 So.2d 540 (Fla. 3d DCA 1979).

Finally, we find appellant's other issues on appeal to be without merit, and deem any error in this case harmless, in light of the overwhelming evidence against appellant. See State v. DiGuilio, 491 So.2d 1129 (Fla. 1986). Accordingly, we affirm appellant's convictions in all respects.

Affirmed.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 1992

FEBRUARY 18, 1992

CHARLES HENRY WILLIAMS, **

Appellant, **

vs. ** CASE NO. 90-1393

THE STATE OF FLORIDA, **

Appellee. **

Upon consideration, appellant's motion for rehearing is hereby denied.

A True Copy

ATTEST:

LOUIS J. SPALLONE

Clerk District Court of
Appeal, Third District

By _____
Deputy Clerk

cc: Charles Henry Williams
Paul Mendelson
May L. Cain

/nbc