IN THE SUPREME COURT OF FLORIDA

MICHAEL HUTCHINSON,

Petitioner,

v. CASE NO. 95,951

STATE OF FLORIDA,

Respondent.
_____/

RESPONDENT'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

PAGES:

TABLE OF AUTHORITIES

CASES:

OTHER AUTHORITIES:

STATEMENT OF THE CASE AND FACTS:

Respondent presents the following facts in support of Respondent's Brief on the Merits:

Testimony at trial showed that five people, including Petitioner Michael Hutchinson, were riding in what they knew to be a stolen white Ford Explorer. (Supp. Vol. I, Tr 45). The five first went to a house owned by one of Hutchinson's friends and picked up two shotguns. (Supp. Vol. I, Tr 45-46, 221). Hutchinson stated that he needed money in order to purchase some rohypnols at the same house where he had picked up the guns. (Supp. Vol. I, Tr 47, 222).

The five then drove around in the Explorer, looking for a house to burglarize. (Supp. Vol. I, Tr 47-48, 222). They stopped at a house which appeared vacant, and committed the home invasion robbery using the shotguns they had obtained. (Supp. Vol. I, Tr 47-48, 223). Hutchinson returned to the Explorer with a purse which contained approximately $25. (Supp. Vol I, Tr 47-49, 223-24).

Next, the group proceeded to the original house, where they bought ten rohypnols. (Supp. Vol. I, Tr 49, 225). Everyone except Misty Taylor ingested the drugs. They then went to a mobile home park where Hutchinson fired a shot at a trailer, which apparently

belonged to a girl he did not like. (Supp. Vol. I, Tr 50-51, 226). They went around the corner and robbed the Little Debbie Market, because they needed more money to buy more drugs. (Supp. Vol. I, Tr 52-53, 227). It was after this robbery that the police spotted the five and began a one to two hour chase, during which Petitioner fired shots at Commander Winters of the Orange County Sheriff's Office. (Supp. Vol. I, Tr 58, 229-230). Hutchinson stated to his accomplices that he would shoot the police officers if they followed him, that he thought he "got him" after shooting at the police car, and that he was not going to go to jail for anyone. (Supp. Vol. I, Tr 57, 184-86; Supp. Vol. II, 231, 235, 293-94).

Defense counsel proffered the testimony of Rob Beaudreau and sought to have Beaudreau qualified as an expert on the effects that Rohypnol has on an individual. (Supp. Vol. II, Tr 362, 364). Mr. Beaudreau testified that he had no scientific training, did not know what effect rohypnols had on brain functioning, had no pharmacology training and had never been previously qualified as an expert in that particular area. (Supp. Vol. II, Tr 364-365, 367). His training on the effects of rohypnols on individuals consisted of four hours of attending a speech on the effects of rohypnols. (Supp. Vol. II, Tr 365-367). Mr. Beaudreau's primary job was determining the severity of a person's drug addiction problem.

(Supp. Vol. II, Tr 367). The trial court excluded Beaudreau as an expert witness. (Supp. Vol. II, Tr 370).

Defense counsel did not object to the imposition of adult sanctions, and did not file a Motion to Correct Sentence pursuant to Florida Rule of Criminal Procedure 3.800(b).

On direct appeal, the Fifth District Court of Appeal affirmed the judgment and sentence. Hutchinson v. State, 731 So. 2d 812, 816 (Fla. 5th DCA 1999). The district court held that the Criminal Appeal Reform Act prevented Hutchinson from arguing, for the first time on direct appeal, that there was no written order determining adult sanctions. Id. at 814 n. 2 (Fla. 5th DCA 1999). The court further held that the exclusion of the defense's proffered expert was well within the trial court's discretion. Id.

The district court then addressed the issue of whether the trial court properly consolidated four of Hutchinson's offenses for trial. The district court noted that Hutchinson claimed he was under the influence of rohypnol when he committed all of the offenses except the home invasion, which was allegedly committed to obtain the rohypnol. The court held:

> ...his [Hutchinson's] actions during the entire sequence of events is relevant to his claim of intoxication, as well as lack of intent. Proof of the entire sequence of events is also necessary to explain how events unfolded, such as to explain where defendant got the rohypnol and why defendant and his companions were being chased by

> police. Finally, the same guns were used in the home invasion, the drive-by shooting, and the attempted murder. Given these links, and the continuous nature of the crime spree, we conclude that the trial court did not abuse its discretion in permitting all four cases to be consolidated for trial.

Hutchinson, 731 So. 2d at 816.

SUMMARY OF ARGUMENT

POINT ONE: The Fifth District Court of Appeal properly held that the Criminal Appeal Reform Act prevented Hutchinson from raising this issue for the first time on appeal. The imposition of adult sanctions on a child prosecuted as an adult is not strictly a juvenile procedure, but is in the nature of a hybrid procedure. Juveniles prosecuted and sentenced as adults have certain rights and obligations attendant to an adult proceeding, including the right to file a Motion to Correct Sentence pursuant to Florida Rule of Criminal Procedure 3.800(b). The Criminal Appeal Reform Act applies to juveniles who are prosecuted and sentenced as adults.

POINT TWO: the trial court did not abuse its discretion in consolidating the four cases, as the offenses occurred during a continuous crime spree. The crimes occurred within a few hours of each other, and all involved the same five individuals, the same stolen vehicle and the same guns. Further, petitioner claims he was under the influence of rohypnol when he committed all of the offenses except the home invasion, which was allegedly committed to obtain the rohypnol. Petitioner's actions during the entire sequence of events are relevant to his claim of intoxication, as well as lack of intent. Proof of the entire sequence of events is

necessary to explain how events unfolded, such as to explain where defendant got the rohypnol and why Petitioner and his companions were being chased by police. The Fifth District Court of Appeal properly concluded that, given these links and the continuous nature of the crime spree, the trial court did not abuse its discretion in permitting the four offenses to be consolidated for trial.

POINT THREE: The trial court did not abuse its discretion in refusing to permit Robert Beaudreau to testify as a defense expert witness on the effect of Rohypnols. Mr. Beaudreau admitted that he had no scientific training, did not know what effect rohypnols had on brain functioning, had no pharmacology training and had never been previously qualified as an expert in that particular area. His training on the effects of rohypnols on individuals consisted of four hours of attending a speech on the effects of rohypnols. Mr. Beaudreau's primary job was determining the severity of a person's drug addiction problem. This type of skill and training did not qualify him to give an expert opinion on the effect of rohypnols.

STATEMENT CERTIFYING FONT

Respondent certifies that this brief is printed in 12 point

Courier New, a font that is not proportionately spaced.

ARGUMENT

POINT ONE

THE FIFTH DISTRICT COURT OF APPEAL PROPERLY HELD THAT THE CRIMINAL APPEAL REFORM ACT PREVENTED HUTCHINSON FROM RAISING THIS ISSUE FOR THE FIRST TIME ON APPEAL.

Petitioner Michael Hutchinson argues that the trial court failed to consider certain statutorily enumerated criteria before sentencing him as an adult, and failed to enter a written order containing findings to support the adult sentence. He argues that the Criminal Appeal Reform Act[1] does not apply to juveniles being sentenced as adults, and that he was not required to preserve this issue for appeal.

The Fifth District Court of Appeal held that the Criminal Appeal Reform Act prevented Hutchinson from raising this issue for the first time on appeal. Hutchinson v. State, 731 So. 2d 812, 814 n. 2 (Fla. 5th DCA 1999). In so holding, the district court relied upon its previous holding in Carson v. State, 707 So. 2d 898, 900 (Fla. 5th DCA 1998), rev. granted, 740 So. 2d 527 (Fla. 1999), and on the decision of the First District Court of Appeal in Cargle v. State, 701 So. 2d 359, 360 (Fla. 1st DCA 1997), rev. granted, 717 So. 2d 529 (Fla. 1998). Carson and Cargle held that the Criminal

[1] §924.051, Fla. Stat. (Supp. 1996).

Appeal Reform Act applies to the sentencing process when juveniles are prosecuted and sentenced as adults, and that such defendants may not argue that the trial court failed to enter a written order for the first time on appeal. The Third and Fourth District Courts of Appeal have held likewise. See Tisdol v State, 24 Fla. L. Weekly D2797 (Fla. 3d DCA December 15, 1999); Wright v. State, 721 So. 2d 1253 (Fla. 4th DCA 1998). Thus, all of the district courts which have considered this issue are in agreement.

The decision of the district court below was correct. As noted by the First District Court of Appeal in Cargle, the imposition of adult sanctions on a child prosecuted as an adult is not strictly a juvenile procedure, but is in the nature of a hybrid procedure. Cargle, 701 So. 2d at 361. There are important procedural differences between juvenile proceedings and the procedures in adult criminal proceedings. Juveniles sentenced in delinquency proceedings do not have the opportunity to correct sentencing errors in a procedure comparable to Florida Rule of Criminal Procedure 3.800(b), nor do they have the right to a collateral review procedure similar to Florida Rule of Criminal Procedure 3.850. Id.

Hutchinson, however, was charged and prosecuted as an adult, giving him certain rights and obligations attendant to an adult

proceeding. He was given the right to a jury trial which he exercised. See, McKeiver v. Penn., 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971)(juveniles are not constitutionally entitled to a jury trial); Fla.R.Juv.P. 8.110(c); §39.052(1)(b), Fla. Stat. (1995). He also had the right to, and was subject to, adult rather than juvenile speedy trial provisions. See, State v. Wesley, 522 So.2d 1007 (Fla. 2d DCA 1988)(juvenile speedy trial rule is inapplicable to a child against whom an information has been properly filed); Bell v. State, 479 So.2d 308 (Fla. 2d DCA 1985)(nothing in statute or court rules that indicates the time limitations relating to juvenile proceedings were intended to apply to adult court proceedings initiated by information or indictment). Further, he had the right to file a Motion to Correct Sentence pursuant to Florida Rule of Criminal Procedure 3.800(b).

Hutchinson failed to object or file a motion to correct sentence, and now attempts to seek protection from section 924.051's preservation requirements via the juvenile provision of chapter 39. A child who is subject to adult proceedings and sanctions cannot rely on special treatment established for juvenile proceedings. Parr v. State, 415 So.2d 1353 (Fla. 4th DCA 1982), rev. denied, 424 So.2d 763 (Fla. 1982). The legislature intended for section 924.051 to apply to Hutchinson’s adult proceedings,

including his appeal, and the facts of this case illustrate why the preservation requirements should apply to juveniles lawfully charged and sentenced as adults.

Hutchinson was convicted of attempted first degree murder of a law enforcement officer, possession of a firearm by a convicted delinquent, armed trespass in an occupied conveyance, resisting without violence, home invasion robbery, shooting into a building, burglary of a structure and grand theft. He committed several serious crimes, was charged as an adult, was treated like an adult, was afforded the opportunity of a jury trial, and was given the benefit of adult speedy trial provisions. Clearly, he was given many benefits in being prosecuted as an adult that he would not have had if he had been processed as a juvenile. He should likewise be bound to follow the obligations attendant to adult proceedings, one of which is the obligation to object or file a 3.800(b) motion in order to provide the trial court with the opportunity to correct a purported error rather than raising it for the first time on appeal. Hutchinson should have brought this claim to the attention of the trial court, where it could have been easily and effectively handled, resulting in the efficient use of scarce judicial resources. See, Amendments to the Florida Rules of Appellate Procedure, 685 So.2d 773 (Fla. 1996)(conserving "scarce

resources" as a rationale for Rule 3.800..., "requir[ing] that sentencing issues first be raised in the trial court").

In any event, there is no evidence that the trial court failed to consider juvenile sanctions rather than adult sanctions. It is true that the record on appeal does not contain a written order by the trial court regarding its decision to impose adult sanctions. However, the record does contain a sealed presentence investigation report. (Vol. III, R 399). The record also contains a recommendation from the Department of Juvenile Justice for adult sentencing. (Vol. III, Tr 349-351). There is no evidence that the trial court failed to consider juvenile sanctions rather than adult sanctions, given the fact that the record on appeal contains a PSI and the trial judge specifically stated that he had received it and read it. (Vol. I, R 2).

The Criminal Appeal Reform Act applies to juveniles who are prosecuted and sentenced as adults. The decision of the Fifth District Court of Appeal below was correct and should be affirmed.

POINT TWO

THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN CONSOLIDATING THE FOUR CASES FOR TRIAL.

Petitioner argues that the trial court erred in consolidating his four cases for trial because the cases involved different offenses, different victims, and separate and distinct factual circumstances. He argues that he was prejudiced by the consolidation because a finding of guilt in one case had a cumulative effect on the remaining charges.

An appellate court must apply an abuse of discretion standard when reviewing a trial court's decision to consolidate separate offenses. Crossley v. State, 596 So.2d 447 (Fla. 1992). In the instant case, the trial court did not abuse its discretion in consolidating the offenses, which occurred during a continuous crime spree.

Florida Rule of Criminal Procedure 3.151(b) provides that two or more "related offenses" shall be consolidated for trial by a timely motion filed by the defense or state. Rule 3.151 further provides:

> For purposes of these rules, 2 or more offenses are related offenses if they are triable in the same court and are based on the same act or transaction or on 2 or more connected acts or transactions.

Fla. R.Crim. P. 3.151(a).

In order to satisfy the "connected acts or transactions" requirement, the crimes may be linked together in a significant way. For instance, the crimes may occur during a crime spree which is not interrupted by a significant period of respite, or one crime may be causally linked to another even if there was a significant lapse of time between the crimes. Ellis v. State, 622 So.2d 991, 999 (Fla.1993); Fotopoulos v. State, 608 So.2d 784, 790 (Fla.1992), cert. denied, 508 U.S. 924, 113 S.Ct. 2377, 124 L.Ed.2d 282 (1993); Bundy v. State, 455 So.2d 330 (Fla.1984), cert. denied, 476 U.S. 1109, 106 S.Ct. 1958, 90 L.Ed.2d 366 (1986).

Factors which should be considered in determining whether joinder is permissible include "the temporal and geographical association, the nature of the crimes, and the manner in which they were committed." Bundy, 455 So.2d at 345; See Gudinas v. State, 693 So.2d 953, 960 (Fla.), cert. denied, --- U.S. ----, 118 S.Ct. 345, 139 L.Ed.2d 267 (1997) (two "crime spree" offenses properly consolidated where defendant's failure to complete attack on earlier victim may have provided a causal link or "meaningful relationship" to his completed attack on later victim). General temporal and geographic proximity, while not sufficient in itself to justify joinder, may help prove a link between the crimes. Ellis, 622 So.2d at 999 (citing Crossley v. State, 596 So.2d at

447; See also Rolling v. State, 695 So.2d 278 (Fla.), cert. denied, --- U.S. ----, 118 S.Ct. 448, 139 L.Ed.2d 383 (1997)(stabbing, sexually battering and killing of five college students in their apartments within 72 hours demonstrated a "temporal continuity" sufficient to constitute a "spree" under Bundy); Rohan v. State, 696 So.2d 901 (Fla. 4th DCA 1997) ("crime spree" cases require a showing of a similarity between types of crimes or the manner of their commission, as if the criminal conduct erupted from a "common motivational source.").

In the instant case, the trial court properly consolidated the offenses of home invasion robbery, shooting at or into a building, burglary and attempted murder of a law enforcement officer. While the offenses were committed in separate locations, they were temporally connected because they occurred as part of a continuous "crime spree." Five people, including Hutchinson, were all riding in what they knew to be a stolen white Ford Explorer. (Supp. Vol. I, Tr 45). They first went to a house owned by one of Hutchinson's friends and picked up two shotguns. (Supp. Vol. I, Tr 45-46, 221). Hutchinson stated that he needed money in order to purchase some rohypnols from the same location where he picked up the guns. (Supp. Vol. I, Tr 47, 222).

The five then drove around in the Explorer, looking for a

house to burglarize. (Supp. Vol. I, Tr 47-48, 222). They stopped at a house which appeared vacant, and committed the home invasion robbery using the shotguns they had obtained. (Supp. Vol. I, Tr 47-48, 223). Hutchinson returned to the Explorer with a purse which contained approximately $25.

Next, the group proceeded to the original house, where they bought ten rohypnols. (Supp. Vol. I, Tr 49, 225). Everyone except Misty Taylor ingested the drugs. They then went to a mobile home park where Hutchinson fired a shot at a trailer, which apparently belonged to a girl he did not like. (Supp. Vol. I, Tr 50-51, 226). They went around the corner and robbed the Little Debbie Market, because they needed more money to buy more drugs. (Supp. Vol. I, Tr 52-53, 227). It was after this robbery that the police spotted the five and began a one to two hour chase, during which Petitioner fired shots at Commander Winters of the Orange County Sheriff's Office. (Supp. Vol. I, Tr 58, 229-230). It is clear that all of the above crimes occurred within a few hours of each other, and all involved the same five individuals, the same stolen vehicle and the same guns.

Further, petitioner claims he was under the influence of rohypnol when he committed all of the offenses except the home invasion, which was allegedly committed to obtain the rohypnol. As

noted by the Fifth District Court of Appeal, petitioner's

> ...actions during the entire sequence of events is relevant to his claim of intoxication, as well as lack of intent. Proof of the entire sequence of events is also necessary to explain how events unfolded, such as to explain where defendant got the rohypnol and why defendant and his companions were being chased by police. Finally, the same guns were used in the home invasion, the drive-by shooting, and the attempted murder.

Hutchinson, 731 So. 2d at 816.

The Fifth District Court of Appeal properly concluded that, given these links and the continuous nature of the crime spree, the trial court did not abuse its discretion in permitting the four cases to be consolidated for trial.

POINT THREE

THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN REFUSING TO ALLOW ROB BEAUDREAU TO TESTIFY AS A DEFENSE EXPERT.

During trial, defense counsel proffered the testimony of Rob Beaudreau and sought to have Beaudreau qualified as an expert on the effects that Rohypnol has on an individual. (Supp. Vol. II, Tr 362, 364). Hutchinson argues that the trial court erred in refusing to qualify Mr. Beaudreau as an expert in that area.

Section 90.702, Florida Statutes (1997), provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.

The intent of the provision of the Rules of Evidence governing expert testimony is to admit the testimony when it will assist the trier of fact in understanding the evidence or in determining factual issues. Angrand v. Key, 657 So.2d 1146 (Fla. 1995). To qualify as an expert witness, a witness must have such skill, knowledge or experience so as to make it appear that his or her opinion will aid the trier of fact in the search for truth. Pettry v. Pettry, 706 So.2d 107 (Fla. 5th DCA 1998). The range of

subjects about which an expert may testify in a particular trial is a matter within the trial court's discretion. McBean v. State, 688 So.2d 383 (Fla. 4th DCA 1997).

In the instant case, defense witness Rob Beaudreau did not possess the requisite skill, knowledge or experience to render an opinion on the effects of rohypnols on individuals. Mr. Beaudreau admitted that he had no scientific training, did not know what effect rohypnols had on brain functioning, had no pharmacology training and had never been previously qualified as an expert in that particular area. (Supp. Vol. II, Tr 364-365, 367). His training on the effects of rohypnols on individuals consisted of four hours of attending a speech on the effects of rohypnols. (Supp. Vol. II, Tr 365-367). Mr. Beaudreau's primary job was determining the severity of a person's drug addiction problem. (Supp. Vol. II, Tr 367). This type of skill and training did not qualify him to give an expert opinion on the effects of rohypnols.

Whether a witness is qualified as an expert is a determination within the sound discretion of the trial court, whose decision will not be reversed on appeal without a clear showing of error or clear abuse of discretion. Geralds v. State, 674 So.2d 96 (Fla. 1996), cert. denied, ___ U.S. ___, 117 S.Ct. 230, 136 L.Ed.2d 161 (1996); Dean Witter Reynolds, Inc. v. Cichon, 692 So.2d 313 (Fla. 5th DCA

1997). The trial court did not abuse its discretion in refusing to permit Beaudreau to testify as an expert witness on the effect of Rohypnols.

Even if it was error to exclude the testimony of Rob Beaudreau, such error was harmless. See State v. Diguilio, 491 So. 2d 1129, 1139 (Fla. 1986). There was testimony at trial that Hutchinson had ingested the drug Rohypnol and had become "hyper." (Supp. Vol. I, Tr 49-50). However, given Hutchinson's statement to accomplices that he would shoot the police officers if they followed him, his statement that he thought he "got one" after shooting at the police car, his statement that he was not going to go to jail for anyone, and his shotgun blast which hit Commander Winters between the eyes, there is no evidence that he was so intoxicated that his motor skills were impaired or that he lacked the mental state necessary to commit the crimes. (Supp. Vol. I, Tr 57, 184-86; Supp. Vol. II, 231, 235, 293-94). Any error in refusing to permit Mr. Beaudreau to testify as an expert on the effect of Rohypnols was harmless.

CONCLUSION

Based on the arguments and authorities presented herein, appellee respectfully prays that this honorable Court affirm the decision of the Fifth District Court of Appeal in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Respondent's Brief on the Merits has been furnished by delivery to M.A. Lucas, Assistant Public Defender, this _____ day of _____, 1999.

Lori E. Nelson
Of Counsel