IN THE SUPREME COURT OF THE STATE OF FLORIDA

MICHAEL HUTCHINSON,

Petitioner,

v.

CASE NO.: 95,951
(DCA No.: 97-2926)

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL, FIFTH DISTRICT
AND THE NINTH JUDICIAL CIRCUIT IN AND FOR
ORANGE COUNTY, FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF FACTS

The facts of this case relevant to jurisdiction come from footnote two of the Fifth District Court's opinion:

> Defendant also complains on appeal about the lack of a written order determining adult sanctions but this error was not brought to the attention of the lower court. We have already decided that this error cannot be raised for the first time on appeal in light of the Criminal Appeal Reform Act. *Carson v. State*, 707 So. 2d 898 (Fla. 5th DCA 1998)....

Hutchinson v. State, 24 Fla. L. Weekly D1052 (Fla. 5th DCA April 30, 1999).

CERTIFICATE OF TYPE SIZE AND STYLE

The type size and style used in this brief is 12 point Courier New.

SUMMARY OF ARGUMENT

This Court should decline to accept jurisdiction of this case. The case cited by the Petitioner does not expressly and directly conflict with the decision of the court below, and the district court did not cite any cases which are presently pending review in this Court.

ARGUMENT

THIS COURT SHOULD DECLINE TO ACCEPT JURISDICTION OF THIS CASE.

In Jollie v. State, 405 So. 2d 418 (Fla. 1981), this Court held that when a district court issues a decision where the controlling precedent is presently pending in this Court, there is "prima facie express conflict (which) allows this court to exercise its jurisdiction." Id. at 420. Such is not the situation in this case, and this Court should not accept jurisdiction of this case.

The facts of this case relevant to jurisdiction come from footnote two of the Fifth District Court's opinion:

> Defendant also complains on appeal about the lack of a written order determining adult sanctions but this error was not brought to the attention of the lower court. We have already decided that this error cannot be raised for the first time on appeal in light of the Criminal Appeal Reform Act. *Carson v. State*, 707 So. 2d 898 (Fla. 5th DCA 1998)....

Hutchinson v. State, 24 Fla. L. Weekly D1052 (Fla. 5th DCA April 30, 1999).

The Petitioner argues that jurisdiction is appropriate based on this Court's decision in Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981). There, this Court held that it had the authority to exercise jurisdiction in cases where the district court cites as controlling law a decision that is pending review in this Court. The problem is Carson v. State, 707 So. 2d 898 (Fla. 5th DCA 1998),

is not pending before this Court.

The Petitioner does correctly note that the case of Cargle v. State, 701 So. 2d 359 (Fla. 1st DCA 1997), rev. granted, 717 So. 2d 529 (Fla. 1998), is presently pending review in this Court. Cargle was cited by the Fifth in the **Carson** case - not in this case. Had the Fifth in the present case cited Cargle in its decision, this Court would have discretionary jurisdiction over this case as well. However, the mere fact that the Fifth *cited* a case (Carson) which *in turn* cites another case (Cargle) is not be a valid basis for jurisdiction under Jollie.

The Petitioner has not shown an "express" and "direct" conflict, and this is not the kind of decision which should be reviewed by this Court. See Stevens v. Jefferson, 436 So. 2d 33 (Fla. 1983), Dodi Publishing Co. v. Editorial America, 385 So. 2d 1369 (Fla. 1980), Jenkins v. State, 385 So. 2d 1356 (Fla. 1980).

CONCLUSION

Based on the arguments and authorities presented above, the State respectfully prays this Honorable Court does not accept jurisdiction in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Jurisdictional Brief has been furnished by hand delivery to the Public Defender's mail box at the Fifth District Court of Appeal, to M. A. Lucas, 112 Orange Ave. Ste A., Daytona Beach, 32114, this 28th day of July 1999.

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Appellant. Robert A. Butterworth, Attorney General, Tallahassee, and Robin Compton, Assistant Attorney General, Daytona Beach, for Appellee.

(ANTOON, J.) A.P. appeals from an adjudication of delinquency arguing that the trial court erred in denying his pretrial motion to withdraw his guilty plea. We agree and therefore reverse.

After a petition for delinquency was filed, A.P. appeared before the trial court without an attorney and pled guilty to the charge of burglary of a dwelling.[1] Prior to disposition, A.P. filed a motion to withdraw his plea, asserting that his decision to plead guilty without first conferring with counsel was not made knowingly and voluntarily because he had not been properly advised of his right to counsel. *See* Fla. R. Juv. P. 8.080(b)(2). The motion was denied and A.P. was sentenced to a level six commitment.

A.P. argues that he should have been permitted to withdraw his guilty plea because the trial court failed to advise him of his right to be represented by an attorney appointed by the court. We agree.

A juvenile defendant can waive his right to counsel and proceed to enter an uncounseled guilty plea; however, before accepting the plea, the trial court is obligated to determine whether such waiver was made voluntarily and intelligently. *See K.M. v. State*, 448 So. 2d 1124, 1125 (Fla. 2d DCA 1984). In making this determination, it is essential for the trial court to advise the juvenile that he "has the right to be represented by an attorney at every stage of the proceedings and, if necessary, one will be appointed." Fla. R. Juv. P. 8.080(b)(2). *See also* Fla. R. Juv. P. 8.165(a). Here, the trial court's failure to advise A.P. of his right to receive appointed counsel renders the guilty plea colloquy inadequate. *See G.L.D. v. State*, 442 So. 2d 401 (Fla. 2d DCA 1983); *R.V.P. v. State*, 395 So. 2d 291 (Fla. 5th DCA 1981). Accordingly, we must vacate the adjudication and disposition entered in this case and remand this matter to the trial court for further proceedings consistent with this opinion.

VACATED and REMANDED. (GRIFFIN, C.J., and SHARP, W., J., concur.)

[1] § 810.02(3), Fla. Stat. (1997).

* * *

Criminal law—Consolidation of charges—Crime spree—Trial court did not abuse discretion in consolidating for trial of charges of home invasion robbery, shooting into building, burglary, and attempted murder of law enforcement officer, where charges arose out of ten hour crime spree, defendant claimed that he was under influence of rohypnol when offenses were committed so that his actions during entire sequence of events were relevant to his claim of intoxication, proof of entire sequence of events was necessary to explain how events unfolded, and same guns were used in three of the offenses

MICHAEL HUTCHINSON, Appellant, v. STATE OF FLORIDA, Appellee. 5th District. Case No. 97-2926. Opinion Filed April 30, 1999. Appeal from the Circuit Court for Orange County, Richard F. Conrad, Judge. Counsel: James B. Gibson, Public Defender, and M. A. Lucas, Assistant Public Defender, Daytona Beach, for Appellant. Robert A. Butterworth, Attorney General, Tallahassee, and Robin A. Compton, Assistant Attorney General, Daytona Beach, for Appellee.

(GRIFFIN, C.J.) Michael J. Hutchinson ["defendant"] appeals his convictions and sentences in four separate cases.

From approximately 5 p.m. on January 9, 1996 until 3 a.m. on January 10, 1996, defendant, a juvenile, participated in a ten-hour crime spree. He was accompanied by four other juveniles. During the crime spree, defendant took part in a home-invasion robbery, fired a shot into a trailer with a pump shotgun, burglarized a Little Debbie's Market, and engaged in a high-speed chase with police during which he fired on and struck a police officer in pursuit. Based on these acts, defendant was charged by information in four different cases with numerous offenses.

The cases were ultimately consolidated for trial over defendant's objection. Testimony concerning defendant's participation in and commission of the offenses was provided both by the victims and all four of defendant's juvenile accomplices. Their testimony showed that on January 9, 1996, all four accomplices—Joey Kauffman, Misty Taylor, Katie Simmons, and Daywin Weeks—were driving around in a stolen Ford Explorer when Simmons received a page on his beeper from defendant. They went over to defendant's home and picked him up around 5:00 or 5:30 P.M. Then they went to the home of defendant's friend, Adam Mosely. Defendant went inside and came out fifteen minutes later carrying two shotguns. Defendant also had a handgun which he either brought with him or picked up at Mosely's. After retrieving the guns, they drove around for a while looking for a house to burglarize so they could get some money to buy the drug rohypnol or "roofies." They found a house without any lights on, and the three boys exited the vehicle. All three were armed. Weeks testified that only defendant and Kauffman went inside. Kauffman said that it was defendant and Weeks who went inside. Regardless, once inside, they encountered the victim, Maria Fortero, who was apparently lying in bed. Defendant grabbed her purse, and the three boys ran back to their vehicle. The victim testified that two men came into her room, one of whom put a gun to her head while the other grabbed her purse from the dresser. Upon their return to the vehicle, defendant told the girls that:

> there was an old lady in there that was speaking Spanish, and that he had took her purse, because she was, I guess, laying in the bed, yelling at him, I guess, and he grabbed the purse and ran out.

Defendant looked through the victim's purse and found approximately $25. After getting the money, they drove back to Mosely's house, where defendant went inside and purchased ten roofies. Everyone ingested one or two roofies, except for Taylor. Taylor said that after ingesting the roofies, everyone became very hyper.

After taking the pills, the juveniles rode around for while. Kauffman was driving and defendant was sitting in the passenger seat. They drove by a trailer where a girl named Sara Caldwell lived. The second time they drove by, defendant fired a shotgun at the trailer. Caldwell testified that the shot went from the living room window next to where she was sitting, through the refrigerator in the kitchen, to the back room of the house.

The next stop was a Little Debbie's Market off of Goldenrod and Pershing Road. It was approximately 8 P.M. Weeks testified that Kauffman and defendant got out and kicked in the top of the front door. The rest of the juveniles testified that defendant kicked in the door. Defendant then went inside, and handed out some lottery tickets and cigarettes. The victim, Ramnarine Mahabir, testified that the group stole a total of $5,778 worth of Lotto tickets and cigarettes. While they were still at the store, a police officer drove by and turned around. They heard sirens and took off. They hid behind a house for about ten minutes. While they were hiding, defendant told Kauffman that if any officers came behind the house where they were hiding, he would shoot them.

They next drove over to an apartment complex off of Semoran, where they began scratching off lottery tickets. Defendant knew someone at the apartments named Jason and went upstairs to visit him. In all, they were at the apartments maybe twenty minutes. When they pulled out of the apartments, a policeman was waiting and began to chase them. Defendant said that if a policeman got close enough, he was going to shoot at the car. They turned onto the Greenway, and a policeman was sitting there and saw them turn around in the median. He also turned around and began following the juveniles at speeds of up to 130 m.p.h. Defendant started kicking at the back window. Both he and Kauffman were saying they were not going to jail for anyone. Defendant kept yelling not to stop. The window popped open, and defendant fired at the officer once or twice. Weeks said that he thought that defendant was trying to shoot out the tires. However, the shotgun blast went through the windshield, hitting Officer Winters, and the officer turned off the road.[1] Defendant shouted something like "I got him" or "I think I got one." However, they were all saying, "Yeah, yeah, we got him." Defendant was still yelling at the driver to keep going, and not to stop. The juveniles kept going faster and faster, and exited the Greenway in Kissimmee. They then tried to get back to Narcoosee Road through Kissimmee and St. Cloud but they were chased by police cars with their lights flashing and sirens blaring. As they attempted to run through a road blocked by officers, the car hit some stop sticks set by the police and all the tires went flat. The occupants

then jumped out and ran for the woods. Taylor was apprehended first. Kauffman and Weeks were apprehended after just a few minutes. Simmons and defendant were apprehended after several hours.

Defendant was found guilty of the seven counts submitted to the jury. He was sentenced to life in prison for the home invasion. He was also sentenced to life in prison for the attempted first-degree murder of a law enforcement officer with a firearm, which offense also carried a three-year mandatory minimum sentence. Defendant received fifteen years in prison for shooting at or into a building and five years for armed trespass of an occupied conveyance, burglary of a structure, and grand theft. He was also sentenced to one year in the county jail for resisting an officer without violence. All sentences were to run concurrently.

Defendant has raised three issues on appeal but only one merits discussion.[2] He complains that the court's decision to consolidate these four cases for trial was erroneous because they involved different offenses, different victims, and separate and distinct factual circumstances. He further complains that the improper consolidation of these case was prejudicial in that it a finding of guilt as to one case had a cumulative effect with respect to the remaining charges.

In reviewing a trial court's decision to consolidate separate offenses, this court must apply an abuse of discretion standard. *Crossley v. State,* 596 So. 2d 447 (Fla. 1992). Florida Rule of Criminal Procedure 3.151(b) states that:

> Two or more indictments or informations charging related offenses shall be consolidated for trial on a timely motion by a defendant or by the state. The procedure thereafter shall be the same as if the prosecution were under a single indictment or information. Failure to timely move for consolidation constitutes a waiver of the right to consolidation.

Rule 3.151 also 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) (emphasis added).

The "connected acts or transactions" requirement of rule 3.151 means that the crimes joined for trial must be "linked" together in some significant way. *Ellis v. State,* 622 So. 2d 991 (Fla. 1993). The requisite "linkage":

> can include the fact that they occurred during a "spree" interrupted by no significant period of respite, *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)], or the fact that one crime is causally related to the other, even though there may have been a significant lapse of time. *Fotopoulos* [*v. State,* 608 So. 2d 784, 790 (Fla. 1992), *cert. denied,* __ U.S. __, 113 S. Ct. 2377, 124 L. Ed. 2d 282 (1993)].

Ellis, 622 So. 2d at 999. The factors to consider 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 v. State,* 455 So. 2d 330, 345 (Fla. 1984), *cert. denied,* 476 U.S. 1109, 106 S. Ct. 1958, 90 L. Ed. 2d 366 (1986). The mere fact of a general temporal and geographic proximity is not sufficient in itself to justify joinder but it may help prove a link between the crimes. *Ellis,* 622 So. 2d at 999, *citing Crossley v. State,* 596 So. 2d 447. The term "connected acts or transactions" is not meant to refer to "similar but separate episodes," which are separated in time and are connected only by the accused's alleged guilt in both or all instances. *Pittman v. State,* 693 So. 2d 1133 (Fla. 1st DCA 1997), *review dismissed,* 717 So. 2d 538 (Fla. 1998). Moreover, interests in practicality, efficiency, expense, convenience, and judicial economy, do not outweigh the defendant's right to a fair determination of guilt or innocence. *State v. Williams,* 453 So. 2d 824, 825 (Fla. 1984).

Application of these rules in crime spree cases is best seen by examination of several supreme court cases. For "crime spree" offenses to be tried together, they generally require both temporal and geographical proximity, as well as a similarity between the offenses. For example, in *Bundy,* the court found that the defenda was properly tried for both an attack on four women in a sorori house, which resulted in the death of two of those women, and t attack of a fifth woman roughly an hour later, which took pla several blocks away. The Florida Supreme Court held that the crimes were properly joined since they were "connected by tl close proximity in time and location, by their nature, and by tl manner in which they were perpetrated." *Bundy* 455 So. 2d at 34

Similarly, in *Gudinas v. State,* 693 So. 2d 953 (Fla.), *ce denied,* 118 S. Ct. 345, 139 L. Ed. 2d 267 (1997), the court four that the defendant had properly been tried for two separate attacl which occurred within hours on two different women. In the fir attack, the defendant made three separate, unsuccessful attempts t break into the victim's car upon her exit from a local bar. Ult mately, he attempted to smash his way through the driver's sid window. Although the first victim escaped, no more than thre hours later, in essentially the same location, the defendant brutall raped and murdered a second victim. The court found these offense were properly tried together, stating:

> Gudinas' failure to complete his attack against Rachelle Smith ma have provided a causal link to his completed attack on Michell McGrath, thus allowing joinder under *Fotopoulos.* Furthermore the State makes a persuasive argument that the attacks wer separated by less than one hour. Under the State's scenario or eve if approximately three hours elapsed, Gudinas' offenses constitut a crime spree as contemplated in Bundy. The attempted rape an accompanying violence of his aborted entry into Rachelle Smith' car, and the actual rape and extreme violence of his murder o Michelle McGrath demonstrate a "meaningful relationship" between the two attacks as required by *Crossley.*

Id. at 960. *See also Rolling v. State,* 695 So. 2d 278 (Fla.) (within 72 hour period defendant stabbed to death five college students in their apartments, sexually battering three victims before killing them; crimes demonstrated a "temporal continuity" sufficient to constitute a "spree" under *Bundy), cert. denied,* 118 S. Ct. 448, 139 L. Ed. 2d 383 (1997); *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 this case, it is a close question whether it was an abuse of the court's discretion to permit all four cases to be tried together. There are four separate offenses—a home invasion, shooting at or into a building, a burglary, and the attempted murder of a law enforcement officer. The offenses are dissimilar and were committed in separate geographical locations, and even in different cities. Nonetheless, the offenses were temporally connected, in that they occurred as part of a continuous "crime spree." Furthermore, defendant claims that he was under the influence of rohypnol when he committed all of the offenses (with the exception of the home invasion, which was allegedly committed to obtain the rohypnol), so that his 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.

AFFIRMED. (HARRIS and PETERSON, JJ., concur.)

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[1]Officer Winters does not appear to have been seriously injured, although one pellet struck him in his eyeglasses, shattering the eyeglasses, and another went through his winter jacket and deflected off his vest.

[2]Defendant also complains on appeal about the lack of a written order determining adult sanctions but this error was not brought to the attention of the lower court. We have already decided that this error cannot be raised for the first time on appeal in light of the Criminal Appeal Reform Act. *Carson v. State,* 707 So. 2d 898 (Fla. 5th DCA 1998). Appellant also complains of the lower court's exclusion of his proffered expert but the exclusion of this witness was well within the court's discretion.

* * *