STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 29, 1997
v	No. 176793 Recorder's Court & Wayne Circuit Court
BENJAMIN ATKINS, Defendant-Appellant.	LC Nos. 92-012375-7 92-013111-7 92-012314-5

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

Defendant appeals by right his convictions of 11 counts of first degree murder and 1 count of first degree criminal sexual conduct. Defendant asserts that the trial court erred in granting the prosecutor's motion to join these 12 separate files for a single trial before two separate juries.

Unchallenged by defendant is the trial court's underlying ruling that, even if the cases were to be tried separately, evidence concerning each of the other crimes would be admissible under MRE 404(b) as similar acts evidence. In making this ruling, the trial court appears to have been satisfied that the evidence links these crimes by virtue of a criminal signature, the modus operandi of the killer. Additionally, the evidence against defendant, other than as to the contested issue of sanity or diminished capacity, was overwhelming -- defendant confessed to each of the 12 crimes. Defendant's palm print was found at one crime scene, and semen and blood stains from a second were DNA cross-matched to defendant with a differentiation of 1 in 38,000,000. The surviving victim provided an eyewitness identification.

MCR 6.120(B) grants the defendant the right to sever unrelated offenses for separate trials. However, offenses are related if they involve "a series of connected acts or acts constituting part of a single scheme or plan." MCR 6.120(B)(2). This subrule recognizes that where, as here, a series of crimes reflects a signature modus operandi, joint trial is appropriate. Joint trial in signature crime cases

* Circuit judge, sitting on the Court of Appeals by assignment.

is clearly consistent with due process considerations. *United States v Adams*, 156 US App DC 415; 481 F2d 1099, 1100 (1973).

In *People v Tobey*, 401 Mich 141; 257 NW2d 537 (1977), the two crimes bore no such criminal signature. Likewise, in *People v Daughenbaugh*, 193 Mich App 506, 514; 484 NW2d 690, modified 441 Mich 867; 490 NW2d 886 (1992), the series of four robberies similarly did not bear an identifying criminal signature. However, even if the trial court erred in finding a sufficient criminal signature to warrant joinder, any error in applying MCR 6.120 would be nonconstitutional and therefore subject to a harmless error analysis. *People v Grant*, 445 Mich 535, 547-548; 520 NW2d 123 (1994). Where, as here, the same evidence would be admissible in 12 individual trials as well as one joint trial, and, given the overwhelming evidence, the only serious factual issue concerned defendant's mental capacity (aside from his actual intent with respect to the surviving victim, the jury having acquitted defendant of assault with intent to murder and attempted murder in that case), any error in joining these offenses for trial was harmless. *People v James Smith*, 119 Mich App 431, 434; 326 NW2d 533 (1982). The trial court therefore did not reversibly err in granting the prosecutor's motion for joinder. *People v Miller*, 165 Mich App 32; 418 NW2d 668 (1987).

Affirmed.

/s/ Kathleen Jansen
/s/ Myron H. Wahls
/s/ Patrick R. Joslyn