IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 502015AP900010AXXXMB
L.T. NO.: 502013MM004521AXXXMB

MORRIS KENT THOMPSON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.
_____/

Opinion filed:

Appeal from the County Court in and for Palm Beach County,
Judge Debra Moses Stephens.

For Appellant: Nancy Jack, Esq.
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PER CURIAM.

Appellant Morris Kent Thompson was convicted of one count of Violation of an Injunction for Protection against Domestic Violence. On appeal, Appellant asserts, *inter alia*, that the trial court reversibly erred when it (1) allowed a State witness to testify regarding prior bad acts and failed to give a curative instruction, and (2) failed to conduct a hearing pursuant to *Nelson v. State*,

274 So. 2d 256 (Fla. 4th DCA 1973). We agree with Appellant that both grounds present reversible errors. We find no merit to Appellant's remaining arguments.

I.

We begin our analysis by noting that the State concedes that the trial court likely committed reversible error in allowing testimony regarding prior bad acts and failed to give a curative instruction. Generally, evidence of other prior bad acts is admissible "when relevant to prove a material fact in issue." § 90.404(2)(a), Fla. Stat. (2017). This type of evidence is frequently referred to as *Williams* Rule evidence. *See generally Williams v. State*, 110 So. 2d 654 (Fla. 1959). Such evidence, however, is inadmissible when it is "relevant solely to prove bad character or propensity." *Id.* Thus, evidence of any crime committed by a defendant, other than that for which the defendant is on trial, is inadmissible when its sole relevance is to attack the character of the defendant. *Cornatezer v. State*, 736 So. 2d 1217, 1218 (Fla. 5th DCA 1999).

When determining whether evidence of prior crimes is admissible, the Florida Supreme Court has instructed courts to evaluate "whether the fact of a prior conviction or incarceration was critical to any facts at issue during the trial." *Jackson v. State*, 213 So. 3d 754, 776 (Fla. 2017); *see, e.g.*, *Cox v. State*, 819 So. 2d 705, 713–14 (Fla. 2002) (finding no abuse of discretion by trial court's denial of motion for mistrial after witness stated that the defendant already had two sentences of life imprisonment because the jury was aware that the defendant was incarcerated at the time of the events in question); *Brooks v. State*, 868 So. 2d 643, 644 (Fla. 2d DCA 2004) (holding that witness's suggestion that the defendant "went back to prison" was harmful in part because it affected the defense's theory of self-defense, which would have been undermined in light of evidence of a prior conviction); *Henderson v. State*, 789 So. 2d 1016, 1017–18 (Fla. 2d

DCA 2000) (concluding that witness's statement that the defendant seemed familiar with criminal activity as though he had "done this before" was harmful because the character of the defendant was a central issue in that case).

The testimony at issue here was given by the holder of the injunction. Defense counsel asked the witness whether she printed out Appellant's e-mail, which was the communication that formed the basis for the charge below. She responded with the following statement:

> I immediately printed it and added it to the other violations that I was - - that were in my files, in my personal file at home. So this could be another copy that I printed out to give to the State Attorney's Office and to my lawyer.

We find this statement, which indicates that Appellant has previously violated the injunction in question, was not relevant to the charge at issue or any material fact; instead, its sole relevance was to Appellant's propensity to commit the charged crime. Because the witness who made the statement was the holder of the injunction, the jury could have concluded that such testimony was reliable evidence of the fact that Appellant has previously violated the injunction. This testimony also served to cast doubt on Appellant's main defense at trial—that any contact he had with the witness was accidental—by suggesting that Appellant has previously committed the same type of violation. Thus, we find that the trial court reversibly erred when it allowed such testimony and failed to give a curative instruction.

II.

We write also to explain that the trial court committed an additional reversible error when it failed to conduct a hearing upon Appellant's request to discharge counsel pursuant to *Nelson v. State*, 274 So. 2d 256 (Fla. 4th DCA 1973). In *Maxwell v. State*, 892 So. 2d 1100, 1102 (Fla. 2d DCA 2004), the Second District Court of Appeal summarized the procedure trial courts must

employ when faced with a request to discharge court-appointed counsel, such as the Office of the Public Defender.

> The first step in the procedure is the preliminary *Nelson* inquiry in which the court ascertains whether the defendant unequivocally requests court-appointed counsel's discharge and the court asks the reason for the request. The answer to the preliminary inquiry determines the next steps. If a reason for the request is court-appointed counsel's incompetence, then the court must further inquire of the defendant and his counsel to determine if there is reasonable cause to believe that court-appointed counsel is not rendering effective assistance and, if so, appoint substitute counsel. If the reasons for the request do not indicate ineffective assistance of counsel, then no further inquiry is required.

Id. (citations omitted). If there is no need for further inquiry, or if after such inquiry the court determines there is not reasonable cause to determine that counsel is ineffective, then the court must inform the defendant he or she is not entitled to substitute court-appointed counsel and will have to exercise his or her right to self-representation. *Id.* Before the court may allow a defendant to represent himself or herself, it must conduct a *Faretta*[1] inquiry to determine that the defendant's waiver of the right to court-appointed counsel is knowing and intelligent. *Id.*

In this case, Appellant filed a motion to discharge trial counsel due to alleged ineffective assistance and asked the trial court to appoint an independent defense attorney or allow him to proceed *pro se*. The record indicates that the court held a *Faretta* hearing on Appellant's motion during which the trial court sought to ascertain whether Appellant was qualified to provide his own defense and knew of the risks inherent in doing so. However, the record also shows that the trial court repeatedly refused to let Appellant testify regarding his specific grievances with trial counsel's failure to perform the tasks he raised in his motion. We find that this was error. The trial court should have first conducted a *Nelson* hearing to determine whether there was good cause

[1] *Faretta v. California*, 422 U.S. 806 (1975).

to find that trial counsel's representation was deficient, as Appellant alleged specific grounds of ineffectiveness and asked for the court to appoint different counsel. *See Maxwell*, 892 So. 2d at 1102. Because the failure to conduct a preliminary *Nelson* inquiry in response to a defendant's request to discharge court-appointed counsel is a defect that constitutes *per se* reversible error, *see Maxwell*, So. 2d at 1103, we find that this also requires the reversal of Appellant's conviction.

Accordingly, we REVERSE Appellant's conviction and REMAND the case for a new trial. CARACUZZO, JOHNSON, and SUSKAUER, JJ., concur.

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Opinion/Decision filed:

Appeal from County Court in and for
Palm Beach County, Florida;
Judge Debra Moses Stephens

Appealed: February 6, 2016

DATE OF PANEL: OCTOBER 22, 2018

PANEL JUDGES: CARACUZZO, JOHNSON, SUSKAUER

AFFIRMED/REVERSED/OTHER: REVERSED

DECISION BY: PER CURIAM

CONCURRING:	DISSENTING: With/Without Opinion	CONCURRING SPECIALLY: With/Without Opinion
Cheryl Caracuzzo		
DATE: 11/29/2018 J.	J.	J.
11/29/18		
DATE: J.	J.	J.
12/5/18		
DATE: J.	J.	J.