

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-4280

JOSHUA WHITFIELD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Marianne L. Aho, Judge.

August 7, 2020

PER CURIAM.

Joshua Whitfield was convicted of and sentenced for first degree murder. At trial, Whitfield conceded to the charge of manslaughter and proceeded on the theory that the victim died from accidental strangulation during consensual intercourse. He appeals the admission of numerous statements made by officers during their interviews of him while investigating the murder. We affirm.

The victim was found dead as a result of either manual or ligature strangulation. Whitfield was quickly developed as a suspect and was interviewed twice by Detective Barker of the

Jacksonville Sheriff's Office. Prior to trial, Whitfield moved to redact the interviews and argued the detectives provided improper opinion evidence of his guilt and credibility, the credibility of other testifying witnesses, and the victim's family's right to know what happened. Whitfield argued portions of the interview should be excluded for various grounds, including relevance, unfair prejudice, confrontation, hearsay, and others. Though the State and defense counsel agreed on certain redactions, the trial court conducted a hearing on the remaining portions and ultimately allowed many of the disputed statements. After reading a limiting instruction, both partially redacted interviews were published to the jury.

On appeal, Whitfield argues the trial court should have granted the motions for redaction in full and that the limiting instruction was insufficient to cure the error in admitting the detectives' statements. We have carefully reviewed each of the dozens of statements that Whitfield argues should have been excluded and find no reversible error. The vast majority of the statements show Whitfield's evolving story from complete denial of any involvement to consensual intercourse and striking the victim in the head. "A jury may hear an interrogating detective's statements about a crime when the statements provoke a relevant response from the defendant being questioned." *Gaines v. State*, 155 So. 3d 1264, 1271 (Fla. 4th DCA 2015). Further, prior to publishing each interview the trial court gave a limiting instruction advising the jury that statements by law enforcement were not evidence and could only be considered to establish the context of the defendant's reactions and responses.

If any statements were erroneously admitted, any error was harmless beyond a reasonable doubt. No reasonable probability exists that the statements contributed to the conviction. *See State v. DiGuilio*, 491 So. 2d 1129, 1135 (Fla. 1986). The detectives' opinions focused on Whitfield being responsible for the death and that Whitfield was not being truthful with his evolving version of events. As Whitfield conceded to manslaughter, the killer's identity was not at issue. While the ultimate question for the jury in this case was whether the death was an accident, the jury was tasked with deciding if the death resulted from an accidental strangulation or a premeditated strangulation. The detectives'

comments that the death did not sound like an accident were in response to Whitfield's story that the victim accidentally died after he hit her in the head because she was robbing him. Whitfield never told detectives he accidentally strangled the victim. Detectives never commented on the credibility of that version of events. And because Whitfield did not testify and his theory at trial differed from the first and second interview, the detectives' comments about the credibility of Whitfield's second version would have had no bearing on the believability of the version offered at trial. Therefore, we affirm his judgment and sentence.

AFFIRMED.

LEWIS, WINOKUR, and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

James A. Hernandez of the Law Office of James A. Hernandez, Jacksonville; Diana L. Johnson of Johnson and Lufrano, P.A., Jacksonville, for Appellant.

Ashley Moody, Attorney General, and Robert "Charlie" Lee, Assistant Attorney General, Tallahassee, for Appellee.