

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-3265

NELSON ARIEL ARMAS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Alachua County.
Phillip A. Pena, Judge.

March 11, 2021

PER CURIAM.

The appellant was convicted of the first-degree murder of Hannah Brim; grand theft of Brim's automobile; and tampering with physical evidence. He raises three unsuccessful issues on appeal: (1) the trial court abused its discretion in denying his request to represent himself at trial; (2) the trial court abused its discretion in permitting the medical examiner to provide testimony as to the manner of death; and (3) the trial court erred in denying his motion for judgment of acquittal. We affirm for the following reasons.

Facts

The appellant admitted he and Brim were involved in a sexual relationship. He admitted they fought shortly before her disappearance, but he denied any involvement in her murder. The State refuted this claim by introducing evidence that the appellant's phone was in the same area as Brim's phone on the last day she was seen alive. Witnesses who were in jail with the appellant testified he confessed to stabbing Brim and putting her body in the trunk of her car. Another witness testified the appellant contacted him to help dispose of Brim's car. The jail witnesses testified the appellant destroyed Brim's body by burning part of it and disposing of the rest in water near the property where the appellant lived with his mother. A knife and several cutting tools were recovered from the appellant's property. Burn pits on the appellant's property contained car mats and scraps of clothing. Human remains were recovered from an area near the appellant's residence. DNA testing of the remains showed a high probability that the remains were Brim's.

Motion for Judgment of Acquittal

In his third issue on appeal, the appellant argues the trial court erred in denying his motion for judgment of acquittal because the evidence against him was wholly circumstantial and the State failed to rebut his reasonable hypothesis of innocence. We review the denial of a motion for judgment of acquittal *de novo*. *Williams v. State*, 261 So. 3d 1248, 1252 (Fla. 2019). First, the appellant would not be entitled to a special standard of review as the State presented both direct and circumstantial evidence of guilt. Second, the supreme court has receded from the special standard that applied in circumstantial evidence cases. *Bush v. State*, 295 So. 3d 179, 200–01 (Fla. 2020). Now, in cases where the sufficiency of the evidence to support a verdict is challenged, the standard is whether the State presented competent, substantial evidence to support the verdict. *Id.* Here, competent, substantial evidence, both direct and circumstantial, supported first-degree murder. Multiple witnesses and the appellant's own account identified the appellant as the last person to see the victim; several witnesses testified to the appellant's jailhouse confessions, which were corroborated by the evidence found on and around the appellant's property. This issue is without merit.

Medical Examiner Testimony

In his second issue on appeal, the appellant argues the trial court abused its discretion in allowing the medical examiner to opine that Brim's death was by homicidal violence of undetermined type. We review the trial court's ruling on the admissibility of evidence for an abuse of discretion as limited by the evidence code and applicable law, the interpretation of which is reviewed *de novo*. *McCray v. State*, 919 So. 2d 647, 649 (Fla. 1st DCA 2006). The trial court did not abuse its discretion in allowing the medical examiner's opinion testimony. "[M]edical examiners, whether they personally performed the autopsy or not, may testify to their opinions based upon objective evidence." *Williams v. State*, 209 So. 3d 543, 558 (Fla. 2017). The medical examiner explained that he was not able to perform an autopsy because of the condition of the remains and referenced all the objective sources upon which he relied to form his opinion. This issue is without merit.

Self-Representation

In his first issue on appeal, the appellant argues the trial court abused its discretion by denying his request to represent himself as untimely without conducting a proper inquiry into whether the prejudice and legitimacy of his request outweighed any disruption to the proceedings. A trial court's ruling on a request for self-representation is reviewed for an abuse of discretion. *Damas v. State*, 260 So. 3d 200, 212 (Fla. 2018).

The record shows the appellant initially raised concerns about his defense counsel, but then decided to proceed to trial with counsel. Well into the trial, the appellant again asked to represent himself. While the trial court did initially find this request untimely, it went on to conduct an abbreviated inquiry pursuant to *Faretta v. California*, 422 U.S. 806 (1976). Based on the totality of the circumstances, including the severity of the charges that the appellant faced and the court's concern about the appellant's ability to adequately represent himself in a trial of this magnitude, the court denied the request. The court took time to understand the appellant's concerns about defense counsel and arranged to have those concerns addressed going forward. The trial court further explained its denial, which was based on the totality of

circumstances, in addition to the fact that the request was made two-thirds through the trial.

The trial court has discretion to determine whether to allow a defendant to proceed *pro se* mid-trial. *Lyons v. State*, 437 So. 2d 711, 712 (Fla. 1st DCA 1983). The trial court did not abuse its discretion in denying the appellant's request on the basis he faced very serious charges. The appellant is incorrect that the trial court solely relied on the untimeliness of his request. While it was not the entire reason for denying the appellant's request, the fact that it was made two-thirds into trial was further reason to deny the request as there was clear potential for disruption of the proceedings. See *Davis v. State*, 162 So. 3d 326 (Fla. 3d DCA 2015) (finding no abuse of discretion in denial of defendant's untimely request to represent himself); *Lambert v. State*, 864 So. 2d 17 (Fla. 2d DCA 2003) (affirming denial of mid-trial request to proceed *pro se* because there was a clear potential for disruption of the proceedings). This issue is without merit.

The appellant has not raised any meritorious issue on appeal. The judgment and sentence are AFFIRMED.

ROBERTS, ROWE, and KELSEY, JJ., concur.

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

Sean William Landers of the Baez Law Firm, Orlando, for Appellant.

Ashley Moody, Attorney General, and Virginia Chester Harris, Assistant Attorney General, Tallahassee, for Appellee.