FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-4526

REGINALD KEITH RICHARDSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Tatiana Salvador, Judge.

August 9, 2021

B.L. THOMAS, J.

Reginald Keith Richardson appeals his judgment of convictions and sentences on two counts of lewd and lascivious molestation, one count of sexual battery, and one count of kidnapping to facilitate the commission of a felony. We affirm.

Facts

The victim was fourteen years old when she met Appellant, while she was waiting for a bus to take her home from the youth center. Appellant called out to her from his van. She thought it was her stepfather and approached the van, where Appellant offered to drive her home. The victim testified that instead of driving her home, Appellant drove around for two hours. She asked Appellant to take her to his house because she thought if she entered a

neighborhood, she could find help. He refused and parked the van in a dark parking lot. The victim tried to leave but the doors were locked. Appellant kissed the victim and touched her. He also put his finger in her vagina. He eventually stopped, and the victim asked him to drive her to Walmart. Instead, he drove her to a car lot and touched her again. When Appellant finally let her leave the van, he gave her $11.

A nurse practitioner testified that the victim had injuries in her vaginal area. The laboratory analyst testified that a significant amount of saliva was found on the victim's breast. Male DNA was collected as part of the sexual assault kit, and Appellant was a likely match. In a recorded interview published before the jury, Appellant denied knowing the victim.

Two *Williams*[1] rule witnesses testified at trial that Appellant befriended them, offered them a ride, drove them to his house, and committed sexual acts on them.

Appellant waived counsel and represented himself at trial after a *Faretta*[2] hearing. He testified that his encounters with the *Williams*-rule witnesses were consensual. He also testified that the victim called out to him in his van, and he thought she was an adult at the time. Only after she sat in the van did he learn that she was fourteen. He testified that the entire encounter was staged and that the victim was an underage informant working with the Sheriff's Office. He asserted the victim used his DNA from a drink and straw she took from his car to frame him. He also admitted that he lied in the recorded interview.

On rebuttal, a sergeant of the special assault unit testified that the Sheriff's Office never uses children in undercover operations.

A jury found Appellant guilty as charged. Appellant moved for a new trial, which the trial court denied. He was sentenced as a prison releasee reoffender to life in prison for the kidnapping,

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[1] *Williams v. State*, 110 So. 2d 654 (Fla. 1959).

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

fifteen years for each of the lewd and lascivious molestation counts, and thirty years for the sexual battery count, to be served concurrently. He was also designated a sexual predator.

Analysis

Appellant argues the trial court committed fundamental error by failing to renew the offer of assistance of counsel at the *Williams*-rule hearing.

Fundamental error is error that reaches down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error. *Knight v. State*, 286 So. 3d 147, 151 (Fla. 2019). Florida Rule of Criminal Procedure 3.111(d)(5) states that "[i]f a waiver is accepted at any stage of the proceedings, the offer of assistance of counsel shall be renewed by the court at each subsequent stage of the proceedings at which the defendant appears without counsel." *See also Traylor v. State*, 596 So. 2d 957, 968 (Fla. 1992). "Where the right to counsel has been properly waived, the State may proceed with the stage in issue; but the waiver applies only to the present stage and must be renewed at each subsequent crucial stage where the defendant is unrepresented." *Traylor*, 596 So. 2d at 968. But the trial court need not renew the offer of assistance of counsel at every "stage" or component of a trial. *Brown v. State*, 113 So. 3d 134, 142 (Fla. 1st DCA 2013). The renewal must occur at a critical stage of the proceedings that is separate and distinct from the other parts of the trial. *Id.* at 141.

The trial court did not commit fundamental error when it failed to renew the offer of assistance of counsel during the *Williams*-rule hearing, because the hearing did not constitute a "subsequent stage" that required renewal. Fla. R. Crim. P. 3.111(d)(5); *Traylor*, 596 So. 2d at 968. Here, after a sufficient *Faretta* hearing, the trial court renewed the offer of assistance of counsel at a pretrial hearing on October 9, 2019, and Appellant again stated he wished to represent himself. The *Williams*-rule hearing was conducted the next day, and the trial court did not renew the offer of assistance of counsel. Appellant's waiver from the day before applied to the *Williams*-rule hearing, and the trial court was not required to renew the offer of assistance of counsel because the two pretrial hearings were not separate and distinct

and constituted the same "stage" of the proceedings. *See Brown*, 113 So. 3d at 141–42; *see Richardson v. State*, 310 So. 3d 1096, 1099 (Fla. 1st DCA 2020), *reh'g denied* (Feb. 1, 2021), *review denied*, SC21-349, 2021 WL 2067944 (Fla. May 21, 2021) (holding trial court did not commit fundamental error by not conducting a full *Faretta* inquiry before a sentencing hearing when a full *Faretta* inquiry was conducted at a hearing on Monday, shorter forms of the *Faretta* inquiry were conducted on the following Tuesday and Wednesday, and the three-minute sentencing hearing started on that Thursday); *see Allen v. State*, 46 Fla. L. Weekly S158 (Fla. June 3, 2021) (holding trial court cured its error in failing to renew, before the penalty phase, an offer of counsel when it conducted a third *Faretta* inquiry and defendant consistently represented that he would have waived penalty-phase counsel if the trial court had properly renewed the offer of counsel before commencing the penalty phase).

Appellant also argues the trial court committed reversible error by limiting Appellant's cross-examination of the victim. The court ruled that Appellant could impeach by relying on a prior inconsistent statement only if Appellant had a written transcript of the prior statement.

The standard of review is abuse of discretion. *Smith v. State*, 7 So. 3d 473, 500 (Fla. 2009). "Errors in limiting or restricting the scope of cross-examination are subject to harmless error analysis." *Gosciminski v. State*, 132 So. 3d 678, 706 (Fla. 2013). Under section 90.608(1)(a) of the Florida Evidence Code, any party may attack the credibility of a witness by "[i]ntroducting statements of the witness which are inconsistent with the witness's present testimony," or by offering "[p]roof by other witnesses that material facts are not as testified to by the witness being impeached." "To be inconsistent, a prior statement must either directly contradict or be materially different from the expected testimony at trial. The inconsistency must involve a material, significant fact rather than mere details." *Pearce v. State*, 880 So. 2d 561, 569 (Fla. 2004).

Appellant is correct that the evidence code does not require the witness's prior inconsistent statement to be in writing. *See id.* But we reject Appellant's arguments because the trial court did not abuse its discretion. During cross-examination, Appellant asked

the victim three questions, and the victim's answers did not involve any material, significant facts. *See id.* Appellant asked the victim what time she left the youth center, whether she walked to the Taco Bell, and how long it took her to walk there. He then tried to impeach the victim with prior inconsistent statements. The trial court sustained the State's objection for improper impeachment, because Appellant could not identify any inconsistent statements from the victim's three answers on cross-examination, did not have the transcript of the alleged inconsistent statement, and did not have another witness to testify on the prior inconsistent statement. Thus, the trial court did not abuse its discretion by precluding Appellant from impeaching the victim with prior inconsistent statements.

Lastly, Appellant argues the evidence is insufficient to support his conviction of kidnapping to facilitate the commission of a felony because any confinement was incidental to the crimes of sexual battery and lewd and lascivious molestation. This issue was not preserved for appeal, because Appellant failed to move for judgment of acquittal and his bare bones motion for a new trial was insufficient to preserve this argument. *See Stephens v. State*, 787 So. 2d 747, 754 (Fla. 2001) (holding bare bones motion for a new trial was insufficient to preserve any specific argument for appellate review). As a result, we review this issue for fundamental error. *See Knight*, 286 So. 3d at 151.

Appellant was charged with kidnapping with the intent to commit felonies under section 787.01(1)(a), Florida Statutes (2019). In *Faison v. State*, the Florida Supreme Court established the standard for analyzing a kidnapping done to facilitate the commission of another crime. 426 So. 2d 963 (Fla. 1983). Under *Faison*, kidnapping occurs when the movement or confinement employed by the defendant is 1) not slight, inconsequential, or merely incidental to the other crime; 2) not inherent in the nature of the other crime; and 3) has some significance independent of the other crime charged so as to lessen the risk of detection or make the other crime easier to commit. *Browning v. State*, 60 So. 3d 471, 473 (Fla. 1st DCA 2011) (citing *Faison v. State*, 426 So. 2d 963, 965 (Fla. 1983)); *see also Gloston v. State*, 273 So. 3d 1108, 1111 (Fla. 1st DCA 2019).

Here all three *Faison* factors were met. The confinement was not merely incidental to the underlying crimes because it continued even after the underlying felonies had ceased. *See Berry v. State*, 668 So. 2d 967, 969 (Fla. 1996) (noting that the kidnapping would have been merely incidental if the confinement would have ceased naturally with the underlying crime); *see Gloston*, 273 So. 3d at 1111 (holding forceful movement of victim from hotel gym to pool deck was not slight, inconsequential, nor incidental to defendant's intent to sexually batter the victim). Appellant confined the victim to his van, committed the underlying felonies, and continued the confinement when he drove the victim to the second location, where he committed further felonies. *See Berry*, 668 So. 2d at 969.

Second, the confinement was not inherent in the nature of the other crimes, because it was not necessary to confine the victim to commit the underlying acts, and was inherent to Appellant's intent to forcibly move the victim to facilitate the underlying crimes. *See Berry*, 668 So. 2d at 969–70; *see Gloston*, 273 So. 3d at 1111 (holding defendant's asportation of the victim was not inherent to an attempted sexual battery but was inherent to his intent to forcibly move the victim to facilitate a sexual battery).

Third, the confinement of the victim in the van made the commission of the underlying crimes substantially easier to commit and lessened the risk of detection, as Appellant secluded the victim from public view and moved the victim to darker areas. *See Berry*, 668 So. 2d at 970; *see Gloston*, 273 So. 3d at 1111 (holding defendant's actions of moving the victim were significant and independent of an attempted sexual battery and were committed to lower the risk of detection). Therefore, all three *Faison* factors were met, and no error occurred, much less fundamental error.

AFFIRMED.

KELSEY and TANENBAUM, JJ., concur.

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

Jessica J. Yeary, Public Defender, and Maria Ines Suber, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Sharon Traxler, Assistant Attorney General, Tallahassee, for Appellee.