FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Nos. 1D20-202
1D20-209

JAMES MICHAEL HATHAWAY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Calhoun County.
Shonna Young Gay, Judge.

January 28, 2021

PER CURIAM.

In these consolidated appeals, Appellant, James Michael Hathaway, challenges his convictions and sentences for second-degree murder, burglary with assault, kidnapping, and robbery, along with the revocation of his probation in a separate case involving aggravated assault. Appellant argues that because the State failed to present legally sufficient evidence that he committed or knowingly participated in the murder, burglary, kidnapping, and robbery of the victim, the trial court erred in denying his motion for judgment of acquittal. Concluding that the State presented competent, substantial evidence to support the jury's verdict, we affirm Appellant's convictions and sentences in both appeals.

According to the evidence presented by the State during Appellant's trial, the seventy-nine-year-old victim, who had known Appellant and had paid him to do various work, was beaten in his home, bound with metal strapping, zip-ties, and extension cords, and was found underneath books and a bookcase by his son more than a day after the crimes occurred. The victim later died from his injuries while in the hospital. The victim's son, who described his father as the "king of hoarders," testified that the victim did not loan out any of his equipment. Specifically, the victim's son testified, "He didn't trust people with his equipment or like his truck or something, no, it was not something that ever happened." The victim's son described his father's forklift as "irreplaceable" because there are "only three of them that exist on the planet."

The State showed, through both video evidence taken by a neighbor's surveillance cameras and the testimony of eyewitnesses, that several vehicles got stuck in mud on Appellant's property during New Year's weekend in December of 2018. The victim's truck was seen that weekend both on Appellant's property and being driven down the road in a manner that, according to a State witness, was uncharacteristic of the way in which the victim drove. Appellant was seen driving the victim's forklift, with no sign of the victim nearby. During his police interview, Appellant denied having seen any forklifts that weekend. While Appellant told law enforcement that the last time he had been to the victim's home was December 27th, a "selfie" found on Appellant's cell phone showed him in the victim's yard on December 30th, near the time when the crimes occurred. A girl's bicycle was also found on the victim's property. A State witness identified the bike as the one he saw Appellant riding that weekend. Another State witness testified that he saw a man, whom he had not seen before but whom he later identified as Appellant, walking a bicycle in the direction of the victim's home on Sunday morning that weekend. A crime lab analyst testified that Appellant was included as a possible contributor to the DNA profile found on the bike. Brigham Shuler, a man who was seen on Appellant's property attempting to get vehicles unstuck that weekend, was found to be a possible contributor of the DNA found on the gearshift of the victim's truck. The victim's son testified that two jars of coins were missing from his father's home. Another State witness testified that Appellant had a plastic container full of coins that weekend. That witness

and Appellant cashed $25 worth of those coins at a Walmart. The State corroborated the witness's testimony with a Walmart surveillance video. There were certain coins that were too dirty to use in the coin machine, and the witness testified that the coin jar "just stunk, it was nasty." An officer testified that the victim's home had a very strong animal odor from feces and urine. A different officer testified that Appellant "had some unusual marks on his hands," which included "some scabbing around the knuckle area, some redness, potential swelling." The same brand of metal strapping that was used to bind the victim was found not only in Appellant's home, but also in the area where his "selfie" was taken on the victim's property. Prior to the victim being found, Appellant went to the victim's son's shop, asking if his son had seen the victim.

During trial, Appellant unsuccessfully moved for a judgment of acquittal as to all four offenses, arguing that the State failed to present sufficient evidence to show that he participated in any of the crimes. After the jury found Appellant guilty, the trial court sentenced him to life imprisonment on the murder, burglary, and kidnapping offenses and to fifteen years' imprisonment on the robbery offense. In a separate case involving aggravated assault, the trial court revoked Appellant's probation based upon his new convictions and sentenced him to five years' imprisonment. These appeals followed.

We review the trial court's denial of Appellant's motion for judgment of acquittal de novo to determine whether the evidence is legally sufficient to sustain his convictions. *Kemp v. State*, 166 So. 3d 213, 216 (Fla. 1st DCA 2015). The Florida Supreme Court recently abandoned the special circumstantial evidence standard of review, finding that "this special standard is unwarranted, confusing, and out of sync with both the jury instructions currently used in this state and the approach to appellate review used by the vast majority of the courts in this country." *Bush v. State*, 295 So. 3d 179, 199 (Fla. 2020). The supreme court held that "in all cases where the sufficiency of the evidence is analyzed," the standard to be applied is "whether the State presented competent, substantial evidence to support the verdict." *Id.* at 200–01. We must view the evidence in the light most favorable to the State and ask whether a rational trier of fact could have found the existence of the

elements of the crimes beyond a reasonable doubt. *Id.* at 201; *see also Carter v. State*, 303 So. 3d 1271, 1273 (Fla. 1st DCA 2020).

In seeking relief on appeal and arguing that the State's evidence failed to show that he participated in the offenses at issue, Appellant improperly analyzes the State's evidence in the light most favorable to himself and asks that we do the same. However, analyzing the evidence in the light most favorable to the State, as we must, leads us to conclude that the trial court was correct in denying Appellant's motion for judgment of acquittal. The evidence showed that Appellant, contrary to what he claimed during his police interview, was not only on the victim's property near the time when the crimes occurred, but he was later seen with the victim's equipment. Moreover, the same brand of metal strapping used to bind the victim was found near where Appellant's "selfie" was taken on the victim's property and in Appellant's home. The State's additional evidence, as set forth herein, further connected Appellant to the crimes. *See Jackson v. State*, 296 So. 3d 549, 552 (Fla. 1st DCA 2020) (rejecting the argument that the trial court erred in denying the appellant's motion for judgment of acquittal because the State's evidence was of a conclusive nature and tendency that led to a reasonable and moral certainty that the appellant committed the charged offense); *Ford v. State*, 267 So. 3d 1070, 1074 (Fla. 1st DCA 2019) (affirming the denial of the appellant's motion for judgment of acquittal because the circumstantial evidence connected the appellant to the crime at issue through a firm timeline). Because the record contains competent, substantial evidence from which the jury could reasonably have found that Appellant committed the charged crimes, we affirm Appellant's convictions and sentences, along with the revocation of his probation. *See Junk v. State*, 230 So. 3d 984, 985–86 (Fla. 1st DCA 2017) (explaining that a trial court's finding of a substantial and willful violation of probation is reviewable on appeal for an abuse of discretion).

AFFIRMED.

LEWIS, MAKAR, and LONG, 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 Glen P. Gifford, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Daren L. Shippy, Assistant Attorney General, Tallahassee, for Appellee.