

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

DAVID LURAY STEPHENS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D20-3256

December 2, 2022

Appeal from the Circuit Court for Sarasota County; Debra Johnes Riva, Judge.

Howard L. Dimmig, II, Public Defender, Benedict P. Kuehne, Special Assistant Public Defender, Michael T. Davis, Special Assistant Public Defender, and Susan Dmitrovsky, Special Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Jonathan P. Hurley, Assistant Attorney General, Tampa, for Appellee.

STARGEL, Judge.

David Luray Stephens challenges his conviction and sentence for sexual battery with great force on a victim over twelve years of age. Stephens raises seven issues on appeal, only one of which warrants discussion.¹ Stephens argues that he is entitled to a judgment of acquittal because the State's evidence was insufficient to prove that he was the perpetrator of the sexual battery. We disagree and conclude that the State presented sufficient evidence to sustain Stephens' conviction. Therefore, we affirm Stephens' judgment and sentence.

Background

On July 31, 1988, the body of a young woman was found lying near her abandoned vehicle in an open field in the Newtown neighborhood of Sarasota. The victim was nude from the waist down, and there was evidence that she had been sexually assaulted. The cause of death was manual strangulation. Some of the victim's personal items were scattered next to her body, and a crack pipe was found inside the vehicle. Latent fingerprints were lifted from the exterior passenger window of the vehicle, and

¹ We reject the arguments raised in Stephens' remaining six issues without further discussion.

fingernail clippings were collected from the victim during her autopsy. Police spoke with numerous suspects and persons of interest during their initial investigation, but they were unable to identify the attacker.

Twenty-one years later, in 2009, Stephens was identified after police resubmitted forensic evidence from the crime scene to the Florida Department of Law Enforcement (FDLE) for analysis with newer DNA technology. The report from FDLE advised that DNA obtained from fingernail clippings from the victim's right hand matched Stephens. The latent fingerprint lifted from the passenger window of the victim's vehicle was also reexamined and matched to Stephens. In 2013, police interviewed Stephens, who was incarcerated in an unrelated case, and collected a DNA sample. Stephens admitted that he was living in the neighborhood where the attack occurred in 1988, but he denied knowing or recognizing the victim from the photographs he was shown.

Stephens was eventually arrested and charged with second-degree murder and sexual battery with great force. At trial, the State argued that the DNA evidence, the latent fingerprint from the victim's vehicle, and Stephens' admission that he lived in the area

pointed to him as the attacker. The defense raised a theory of incidental contact during a drug transaction during which Stephens' DNA transferred to the victim's fingernails and his fingerprint was left on her vehicle. The defense also sought a judgment of acquittal, which was denied.

At the close of evidence, but prior to closing arguments, the defense filed a motion to dismiss on the grounds that the charges against Stephens were barred by the statute of limitations. The court deferred ruling, proceeded to closing arguments, and sent the case to the jury, which found Stephens guilty on both counts. The State ultimately conceded that the statute of limitations had expired on the second-degree murder charge, and the trial court dismissed that count, adjudicated Stephens on the sexual battery count only, and sentenced him to life in prison.

Analysis

This court "review[s] a ruling on a motion for judgment of acquittal under a de novo standard and must determine whether the conviction was supported by competent substantial evidence." *Romo v. State*, 330 So. 3d 133, 134 (Fla. 2d DCA 2021) (citing *Pagan v. State*, 830 So. 2d 792, 803 (Fla. 2002)). "If, after viewing

the evidence in the light most favorable to the State, a rational trier of fact could find the existence of the elements of the crime beyond a reasonable doubt, sufficient evidence exists to sustain a conviction." *Pagan*, 830 So. 2d at 803.

In arguing that the DNA and fingerprint evidence was insufficient to support his conviction, Stephens relies heavily upon the supreme court's decision in *Hodgkins v. State*, 175 So. 3d 741 (Fla. 2015). In *Hodgkins*, the defendant was convicted of murder where the only evidence linking him to the crime was DNA material found underneath the victim's fingernails. When interviewed by police, Hodgkins denied killing the victim and claimed that his DNA was under her fingernails because she scratched his back during a sexual encounter three days prior to her death. *Id.* at 744-45. In addition to the DNA evidence, the State offered several pieces of circumstantial evidence, including Hodgkins' inconsistent stories to police; medical testimony describing the manner of death; testimony about the victim's meticulous handwashing habits; and expert testimony that, based on the victim's frequent handwashing, the foreign DNA underneath her fingernails would not have remained for two or three days. *Id.* at 747.

Despite the circumstantial evidence rebutting Hodgkins' defense theory, the supreme court held that the DNA evidence was insufficient to sustain Hodgkins' conviction under the then-applicable heightened standard of review for purely circumstantial cases as well as under the traditional test of whether the State presented competent substantial evidence to prove each element of the offense.² *Id.* at 751. In reaching this conclusion, the court noted the lack of direct evidence as to how the DNA came to be under the victim's fingernails, the fact that none of the eighteen unidentified fingerprints lifted from the scene matched Hodgkins, the fact that no murder weapon was recovered, the lack of eyewitness testimony placing Hodgkins near the crime scene, the

² Prior to the Florida Supreme Court's decision in *Bush v. State*, 295 So. 3d 179 (Fla. 2020), Florida law required that "[w]here the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt, a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence." *State v. Law*, 559 So. 2d 187, 188 (Fla. 1989). In *Bush*, the supreme court receded from this standard, holding that the traditional standard of whether the State presented competent substantial evidence to support the verdict "should now be used in all cases where the sufficiency of the evidence is analyzed." 295 So. 3d at 200-01.

fact that Hodgkins made no admissions concerning the murder, and the lack of motive. *Id.* at 748-49.

Stephens also relies on the Third District's recent decision in *Rodriguez v. State*, 335 So. 3d 168 (Fla. 3d DCA 2021). In *Rodriguez*, the victim was found deceased in her apartment, in a pool of blood, with a kitchen knife stuck in her throat. A broken drinking glass was found next to the victim's body, and a fish tail was found on the kitchen counter. *Id.* at 169. The victim's purse, wallet, and cell phone were missing from her apartment. *Id.*

Three years later, a criminal database matched Rodriguez's DNA to one of the contributors on a shard of the broken drinking glass and on the victim's fingernail clippings. *Id.* at 169-70. Police also learned that, in the eight hours following the victim's death, her missing cell phone had pinged off a cell tower located within a half mile of Rodriguez's residence. *Id.* at 170. When interviewed by police, Rodriguez denied killing the victim and posited that his DNA was found because he had hugged the victim the last time he visited her prior to her death. *Id.*

During Rodriguez's murder trial, the State relied on the DNA from the drinking glass and fingernail clippings along with myriad

other circumstantial evidence. *Id.* at 170-71. The trial court denied Rodriguez's motion for judgment of acquittal, and he was convicted of second-degree murder. *Id.* at 171.

On appeal, the Third District, concluding that it was bound by the portion of *Hodgkins* determining that the evidence in that case was legally insufficient to prove Hodgkins' guilt beyond a reasonable doubt, reversed Rodriguez's conviction and remanded for entry of a judgment of acquittal.³ *Id.* at 174-77. Applying the facts in *Hodgkins* to the situation in *Rodriguez*, the court explained:

³ In its decision, the Third District specifically addressed whether *Hodgkins* remained good law in light of *Bush*. See *Rodriguez*, 335 So. 3d at 173-74. The court answered that question in the affirmative, concluding that *Bush* "overruled only that portion of *Hodgkins* relating to whether the State's evidence was sufficient to overcome Hodgkins' reasonable hypothesis of innocence, while leaving intact *Hodgkins*' conclusion that the evidence in that case was legally insufficient to prove Hodgkins' guilt beyond a reasonable doubt." *Id.* at 174. The Third District also certified the following question to the Florida Supreme Court as one of great public importance:

Does *Hodgkins*' determination that the State failed to present competent, substantial evidence on which a jury could find, beyond a reasonable doubt, that Hodgkins killed the victim remain valid, notwithstanding the Florida Supreme Court's abandonment, in *Bush*, of the special standard of appellate review applied in purely circumstantial evidence cases?

Id.

It is inescapable that the quantum and quality of the evidence presented by the State that Rodriguez killed the victim is strikingly similar to the evidence[] presented by the State in *Hodgkins*. Among other things, these similarities include: the victims' manner of death, the meticulous hygiene habits of the victims, each case's dearth of physical evidence, and each case's lack of motive. The most important similarity in the two cases is that the only evidence connecting the defendants to the murders is DNA detected at the scene. Indeed, the only evidence in this case that Rodriguez killed the victim consisted of Rodriguez's DNA on the victim's fingernails and on a broken shard of the drinking glass found next to the victim's body.

Id. at 175.

Unlike in *Hodgkins* and *Rodriguez*, in addition to the DNA evidence, the State in this case presented fingerprint evidence linking Stephens to the vehicle found at the crime scene. Stephens also admitted that he was living in the area where the crime occurred in 1988. Moreover, Stephens' claim that he did not know the victim and did not recall having contact with her is arguably inconsistent with the presence of his DNA under her fingernails and the presence of his fingerprint on her vehicle. *See Simpson v. State*, 562 So. 2d 742, 745 (Fla. 1st DCA 1990) (stating that a defendant's false statement, if voluntarily made, can be used as substantive

evidence of consciousness of guilt).⁴ We conclude that this evidence, taken together and viewed in the light most favorable to the State, was sufficient to sustain Stephens' sexual battery conviction. Accordingly, the trial court correctly denied the motion for judgment of acquittal.

Affirmed.

MORRIS, C.J., and ROTHSTEIN-YOUAKIM, J., Concur.

Opinion subject to revision prior to official publication.

⁴ Although the State was not legally obligated to conclusively refute Stephens' hypothesis of innocence in order to obtain a conviction in this case, we note that the State also introduced Stephens' interview with police in which he claimed that he "didn't deal with white people, 'cause white people are the police" and later stated, "I don't know any white women," both of which appear to conflict with the defense theory that Stephens' DNA and fingerprints were left behind during a drug transaction with the victim, who was white.