Third District Court of Appeal

State of Florida

Opinion filed July 10, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-409
Lower Tribunal No. 16-93-A-P

John Lee Hayes,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Monroe County, Luis M. Garcia, Judge.

Carlos J. Martinez, Public Defender, and Robert Kalter, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Jonathan Tanoos, Assistant Attorney General, for appellee.

Before LOGUE, HENDON, and GORDO, JJ.

GORDO, J.

John Lee Hayes was convicted by a jury of his peers of sexual battery with physical force, kidnapping, aggravated battery and theft. The trial court sentenced him to a mandatory term of life imprisonment for sexual battery, a consecutive term of life for kidnapping, a concurrent term of fifteen years for aggravated battery and a concurrent term of 60 days for theft. Mr. Hayes appeals his conviction and sentence arguing he is entitled to a new trial because the State committed fundamental error when it introduced irrelevant, prejudicial testimony from the victim that during the sexual battery by force Mr. Hayes told her he had done this to six other women and he did not want to kill her. We affirm.

The Facts

On March 13, 2016, the victim, K.W., was walking to meet a friend at Dillon's Pub in Tavernier after work. As she walked down the sidewalk, she saw someone's eyeballs peering out at her from the bushes. She froze and asked, "What are you doing?"[1] The person responded, "You know what the f*** I'm doing."[2] Immediately thereafter, an unknown male jumped out of the bushes and violently attacked K.W. He repeatedly punched her in the head, face and body, dragged her when she tried to get away and continued beating her until she became unconscious. When K.W. awoke, her face was in the dirt and she felt shooting pain. The male

[1] Transcript of Jury Trial at 204, State v. Hayes, No. 16-93 (Fla. 16th Cir. Ct. Dec. 11, 2017).
[2] Transcript of Jury Trial at 204, Hayes, No. 16-93.

jumped on top of her and began striking her again. He then flipped her over and she tried to resist again. The male tried to take her pants off, but could not. As she resisted, he ordered her to help him take her pants off. He then raped her, took money from her purse and ordered her to wait fifteen minutes before getting up. He told her he would be watching to make sure she complied.

Battered and bruised, K.W. was able to get some of her clothes on and walk to Dillon's Pub where Deputy Luis Sanchez from the Monroe County Sheriff's Office saw her injuries. He immediately summoned police and an ambulance. K.W. was rushed to the hospital. She suffered a fractured jawbone and chin, broken orbital socket and multiple broken ribs. She sustained golf-ball-sized bruises behind her left and right ears and her eyes were swollen shut.

At the hospital, a vaginal rape kit was collected and turned over to police for testing. Ultimately, the laboratory was able to confirm that Mr. Hayes' DNA profile was a 1 out of 700 billion match to the foreign DNA profile found from the victim's rape kit swabs. Detectives found that license tag readers in the area captured his car's license plate going northbound and southbound along the highway near the scene of the crime at the time the crime occurred. Surveillance video from Dunkin Donuts next to the crime scene also depicted a car that looked like Mr. Hayes' car coming in and later going out of the parking lot.

Upon being read his constitutional rights, Mr. Hayes spoke to police and denied recognizing anyone in a photographic line-up, which included the victim. He denied ever attacking or raping any woman at a "shopping center." This was particularly significant to detectives because they had not yet told Mr. Hayes the crime he was being arrested for occurred at or near a shopping center. He denied ever being at that shopping center or knowing anyone from Key Largo, Tavernier, or Islamorada. Mr. Hayes was arrested and formally charged.

The Trial

The trial took place over the course of four business days. Twelve witnesses testified, including Mr. Hayes. The State introduced DNA evidence showing that Mr. Hayes' DNA profile was a match to the attacker, testimony of Mr. Hayes' pre-arrest and post-arrest statements, photos and documentation of K.W.'s injuries, video footage of Mr. Hayes' car coming in and out of the parking lot near the area where the crime occurred and proof that license tag readers had captured his actual license plate coming in and out of the area at the time of the crime.

During K.W.'s direct examination, the jury heard the following testimony without objection by the defense:

> Q: Let me ask you this: So you said he made you take your pants off. How is it that that happened?
>
> A: I mean, he just couldn't get them off. So he couldn't lift me, so we were like -- I had to help him take my pants off.

Q: And was he threatening you at that point?

A: Yes. He told me -- I mean, he told me he had done this to six other women, and he didn't want to kill me. And, I mean, I was going with it. I didn't want to die in the bushes walking to Dillon's that night.

Q: And prior to that, you had been physically resisting him?

A: Yes.[3]

After the State rested, the Defense called Mr. Hayes to testify. On direct examination, Mr. Hayes testified that he was living in Marathon on the date of the incident. The day before, he had gone to the doctor in Homestead and spent the night there. On the night K.W. was attacked, he was returning to the Keys in his Dodge truck, stopped at a park in Key Largo and then kept driving. Next, he stopped at a bar called Whiskey Stop or Last Chance Saloon and then stopped at a store called Made 2 Order. He later parked his truck parallel to the street to get some bait and fishing rods to fish off a nearby bridge.

Suddenly, a drunk woman came up behind him and asked for a beer. He gave her a beer and she asked for cocaine. The woman then gave him sixty dollars for him to purchase more cocaine. She let him pull her in close and touch her and she asked how long it would be before he came back. He testified he planned to take her money and not return, but after he drove away, he decided to return the money. He pulled back into the parking lot and waited for a long time, but did not see the

[3] Transcript of Jury Trial at 208-09, Hayes, No. 16-93.

woman. He headed home. Mr. Hayes confirmed that it was his truck on the surveillance video that night, but testified he did not get back out of the car once he returned.

On cross-examination, Mr. Hayes testified for the first time that the woman also gave him oral sex, but refused to have vaginal sex with him. He testified she kissed him and let him touch her backside while they both had their clothes on. The woman was not beaten up. He maintained his penis never penetrated her vagina and he never told any of this to the detective because he thought the detective was going to let him go.

During closing arguments, neither side ever mentioned the comment made during K.W.'s testimony regarding the attacker's threat that he had done this to six other women and didn't want to kill her. In fact, a careful review of the four-day trial transcript is devoid of any other mention of this evidence by either side.

Legal Analysis

An unpreserved challenge to evidence is reviewed on appeal for fundamental error. Wooten v. State, 904 So. 2d 590, 592 (Fla. 3d DCA 2005). Fundamental error "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." McDonald v. State, 743 So. 2d 501, 505 (Fla. 1999) (quoting Urbin v. State, 714 So. 2d 411, 418 n.8 (Fla. 1998)). Fundamental error "goes to the foundation of the case or the

merits of the cause of action and is equivalent to the denial of due process." J.B. v. State, 705 So. 2d 1376, 1378 (Fla. 1988). Typically, to raise a claim of error on appeal, defense counsel must contemporaneously object "to put the trial judge on notice of a possible error, to afford an opportunity to correct the error early in the proceedings, and to prevent a litigant from not challenging an error so that he or she may later use it as a tactical advantage." Wooten, 904 So. 2d at 592 (citing Crumbley v. State, 876 So. 2d 599 (Fla. 5th DCA 2004); Fincke v. Peeples, 476 So. 2d 1319, 1322 (Fla. 4th DCA 1985)). The fundamental error exception "should be applied only in rare cases where a jurisdictional error appears or where the interests of justice present a compelling case for its application." Ray v. State, 403 So. 2d 956, 960 (Fla. 1981).

Appellant argues that the testimony of the victim regarding possible uncharged crimes was irrelevant and so prejudicial that it is impossible to conclude that the jury did not rely upon the statement in reaching the verdict of guilty. Thus, the evidence destroyed the fundamental fairness of the trial and a new trial is warranted. Appellee, however, asserts the admission was relevant to prove material elements of the charged crimes. Specifically, the threat was relevant to prove coerced submission for the sexual battery and explain why the victim would have helped Mr. Hayes take her own pants off and stopped physically resisting his attack. As to the kidnapping, the statement was relevant to prove that Mr. Hayes used a

threat to confine, abduct, or imprison K.W. against her will. Appellee claims Appellant fails to demonstrate how this single, isolated statement created fundamental error, considering the substantial physical evidence and other admissions pointing to Mr. Hayes' guilt.

In light of the particular facts of this case, the victim's testimony that Mr. Hayes' threatened to kill her is clearly relevant to explain why she felt coerced into submission and complied with his commands. There was no contemporaneous objection to the testimony, so the trial court did not have an opportunity to correct possible error arising from the mention of uncharged crimes. If objected to, the court may have engaged in a balancing test to weigh the probative value against any potential prejudice triggered by the remainder of the statement. See § 90.403, Fla. Stat. (2018). Because the challenge was not preserved, we review for fundamental error.

For the victim's statement regarding Mr. Hayes' collateral crimes to be considered fundamental error, "the statement must be so prejudicial as to 'reach[ ] 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.' " Peterson v. State, 94 So. 3d 514, 524 (Fla. 2012) (quoting England v. State, 940 So. 2d 389, 398 (Fla. 2006)). While admission of irrelevant fact evidence showing bad character or

propensity may be "presumed harmful error,"[4] "[s]uch error is not harmful, i.e., reversible, where the proof of guilt is clear and convincing, without consideration of the collateral evidence introduced in violation of the Williams rule." Carr v. State, 578 So. 2d 398, 399 (Fla. 1st DCA 1991) (citing McKinney v. State, 462 So. 2d 46, 47 (Fla. 1st DCA 1984)). The evidence presented in this trial documented the victim's injuries, linked Mr. Hayes' DNA to that found on K.W.'s body and established that he was in the area at the time the crime occurred. Mr. Hayes himself even admitted having sexual contact with K.W. that night. The evidence of Mr. Hayes' guilt was overwhelming without consideration of the uncharged crimes, which were mentioned once in the course of a four-day trial and never objected to or argued about. Considering the clear and convincing proof of guilt, we do not find that the victim's statement was so prejudicial as to affect the ultimate verdict and inject this trial with fundamental error.

Conclusion

Based upon this record, we do not find that the testimony regarding possible uncharged crimes was error that went to the foundation of the case or that it was so

[4] "Admission of irrelevant similar fact evidence is 'presumed harmful error because of the danger that a jury will take the bad character or propensity to crime thus demonstrated as evidence of guilt of the crime charged.' " Carr v. State, 578 So. 2d 398, 399 (Fla. 1st DCA 1991) (quoting Keen v. State, 504 So. 2d 396, 401 (Fla. 1987)).

prejudicial as to vitiate the entire trial. Accordingly, we affirm the conviction and sentence.

Affirmed.