

Third District Court of Appeal

State of Florida

Opinion filed July 31, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-945
Lower Tribunal No. 11-3185

State of Florida,
Appellant,

vs.

Gregory Lamart Martin,
Appellee.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Eric W. Hendon, Judge.

Ashley Moody, Attorney General, and Rachel Kamoutsas, Assistant Attorney General, for appellant.

David S. Markus, for appellee.

Before FERNANDEZ, LOGUE and SCALES, JJ.

FERNANDEZ, J.

The State of Florida appeals the trial court's order granting defendant Gregory Martin's motion to exclude certain portions of Martin's videotaped, post-Miranda statement made to police (videotape labeled "Disc2Dclip1_track2_w.mp4; Disk2Dclip2_track2_w.mp4; and Disc2PTclip5_track2_w.mp4"). The trial court found that under Section 90.403, Florida Statutes (2010), the probative value of the proffered evidence was outweighed by the prejudice that would inure to the defendant should this statement be presented to the jury. However, we agree with the State that the trial court abused its discretion in making this finding because the admission of Martin's statement would not be unfairly prejudicial to him in Miami-Dade Circuit Court case number F11-3185 for the attempted murder, kidnapping, and sexual battery of O.R.F. We thus reverse the trial court's order excluding Martin's post-Miranda statement from the State's case-in-chief, the State's cross-examination of Martin should he choose to testify, and the State's rebuttal.

In August 2000, the deceased body of a fourteen-year-old African-American girl named C.P. was discovered behind Edison High School in Miami, Florida. The medical examiner completed a rape kit on C.P., which contained DNA from an unknown subject. This DNA was entered into the Combined DNA Index System ("CODIS"), and no match was found.

On July 17, 2009, a young Hispanic girl named O.R.F. was taken to Aswan Apartments in Opa Locka, Florida and raped. She was then taken to a second

location and raped again by the same man. The man beat and strangled O.R.F. until she lost consciousness. O.R.F. awoke behind an apartment complex in the area of 78th Street and 5th Avenue. She immediately reported the incident, and a rape kit was completed. The rape kit collected from O.R.F. contained DNA from an unknown subject. It was entered into the CODIS, and again no match was found.

On December 26, 2009, Martin beat and strangled G.B., the mother of his children. G.B. reported the attack and told officers the incident took place in Martin's car. Shortly thereafter, Martin was arrested. In Miami-Dade Circuit Court Case number F09-41439, Martin was convicted of felony domestic battery by strangulation and two counts of battery as a lesser included offense of attempted felony murder and sexual battery.

While the detectives were investigating the attack on G.B., the detectives took DNA evidence from Martin's car. They then asked Martin for a DNA sample, and he voluntarily submitted to DNA testing. The DNA sample Martin provided matched the DNA found in Martin's car. The DNA found in Martin's car was then entered into the CODIS, and it matched the DNA from the rape kit processed in the unsolved homicide case of C.P., as well as the DNA collected from O.R.F.'s rape kit in July 2009.

In November 2010, prior to Martin's arrest for the sexual battery of O.R.F. and the homicide of C.P., while Martin was in jail waiting for trial on his attack of

G.B., he provided a voluntary, post-Miranda videotaped statement to police officers. The police officers questioned Martin regarding C.P.'s murder. Portions of the video depict police officers questioning Martin regarding the crimes against O.R.F. When questioned by police, Martin denied knowing C.P. or anything about C.P.'s murder and denied knowing O.R.F. or anything about O.R.F.'s sexual battery. The unredacted video showed Martin wearing an orange jail jumpsuit. The video also shows that a picture of C.P.'s deceased body was placed on the table in the police interview room.

In preparation for trial and after consulting with defense counsel, the State edited the video to eliminate mention of any other victims and any references to Martin's current incarceration or Martin's past cases. The State further edited the video to black and white and changed the picture of C.P. to a blank piece of paper.

Thereafter, at a March 27, 2018, pre-trial conference, defense counsel explained to the trial court that both the State and defense counsel agreed on this redacted version of the video that would be used during the State's case in chief and during cross-examination of Martin if he testified, except for one portion of the video. Defense counsel objected to language in the redacted statements referring to a "girl that survived." The court agreed with defense counsel, and the State redacted several portions that contained the challenged words "that survived."

The weekend before trial, defense counsel filed two new motions to exclude the redacted videos. Defense counsel argued for the first time that the redacted video clips should be excluded because they showed Martin in an orange jail jumpsuit and because law enforcement questioned him about the two victims, C.P. and O.R.F., during the same interview. On the day of trial, the court excluded the video clips from being used in the State's case-in-chief and for impeachment purposes. The court also excluded any testimony regarding Martin's statements or the written transcript without the video, agreeing with Martin's unfair prejudice argument. The State objected, as defense counsel had stated that they would be presenting a consent defense in case number F11-3185 for the attempted murder, kidnapping, and sexual battery of O.R.F. However, the court adhered to its ruling. The State then appealed.

At issue in this case is whether the trial court abused its discretion in excluding the redacted video clips of Martin's post-Miranda statements from being used in the State's case-in-chief, cross-examination and rebuttal, where it may assist the jury in determining the credibility of Martin's consent defense in his trial for, among other things, sexual battery. The standard of review for a trial court's ruling on the admissibility of evidence is abuse of discretion. Morris v. State, 233 So. 3d 438, 446 (Fla. 2018). A court abuses its discretion when the judicial action is "arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused

only where no reasonable person would take the view adopted by the trial court.” White v. State, 817 So. 2d 799, 806 (Fla. 2002).

First, we agree with the State that the trial court’s ruling, excluding the video clips of Martin’s post-Miranda statement from the State’s case-in-chief, is contradicted by the record and unsupported by competent, substantial evidence. Evidence of a defendant’s statements “calculated to defeat or avoid his prosecution is admissible against him as showing consciousness of guilt.” Walker v. State, 495 So. 2d 1240, 1241 (Fla. 5th DCA 1986) (determining that the State was entitled to present evidence that the defendant had lied ... such false exculpatory statements are admissible in the state's case as substantive evidence tending to affirmatively show a consciousness of guilt on the part of the defendant).

In the case before us, the State wished to use evidence, consisting of the redacted video clips¹ and Martin’s transcripts, where he claimed not to know anything about O.R.F. or who she was, as being inconsistent with evidence of Martin’s DNA found in O.R.F.’s rape kit. Martin’s defense was that he had consensual sex with O.R.F., thereby explaining why his DNA was found in O.R.F.’s rape kit. However, in his videotaped statement, Martin denied having any knowledge about O.R.F. The transparent inconsistencies between Martin asserting a lack of

¹ Video clips labeled “Disc2Dclip1_track2_w.mp4; Disc2Dclip2_track2_w.mp4; and Disc2PTc.ip5_track2_w.mp4.”

knowledge relative to O.R.F. and the physical evidence to the contrary demonstrates Martin's consciousness of guilt.

In addition, defense counsel argues that Martin was confused by the detective's questioning because two different victims were being discussed during the interrogation. Martin claims that his confusion was caused by one of the detectives tapping on a picture of C.P.'s deceased body while questioning him about O.R.F. However, this is refuted by the record because a thorough review of the video shows that the detectives were conveying to Martin that they were finished questioning him about C.P., who had died and were now transitioning into questioning him about O.R.F., who had survived.

Throughout Martin's questioning, the detective made clear distinctions between the victims based on the different crime locations in which the victims were found: C.P. was found behind Edison High School, and O.R.F. was found behind an apartment complex in the area of 78th Street and 5th Avenue. Specifically, Martin picked up O.R.F. at a bus stop on 27th Avenue around 197th Street, took her to Aswan Apartments in Opa Locka and raped her. He then took her to a second location and raped her again, where he beat and strangled her until she lost consciousness. He then drove her to an apartment complex in the area of 78th Street and 5th Avenue and dumped her behind the apartment complex, where O.R.F. regained consciousness and reported the crime. Martin claiming to be confused

about who was being discussed during the interrogation when the distinctions between the victims are so crystalline is unsupported and therefore, the trial court's ruling to exclude the evidence was an abuse of discretion.

Second, we further hold that the evidence should not be excluded from being used in cross-examination or the State's rebuttal. It is not justifiable to allow a defendant to "affirmatively resort to perjurious testimony in reliance on the Government's disability to challenge his credibility." Harris v. New York, 401 U.S. 222, 224-26 (1971) (holding that the petitioner's credibility was properly impeached by evidence of a prior inconsistent statement ... petitioner was under an obligation to speak truthfully and accurately, and the prosecution was within their right to utilize the "traditional truth-testing devices of the adversary process").

Here, defense counsel asserts that Martin's post-Miranda statement was a result of confusion and was answered with C.P., not O.R.F., in mind. Therefore, if the trial court allows the post-Miranda statement during cross-examination and during the State's rebuttal, it would force Martin to choose between being cross-examined on an unrelated victim and being silent in asserting the defense of consent. However, this assertion is premised on speculation. There is no evidence in support of Martin being confused. The mere fact that a picture of C.P. was shown to him while transitioning into another subject of the interrogation is unconvincing of Martin's confusion. In withholding the post-Miranda statement from cross-

examination and from the State's rebuttal case, the court would be facilitating Martin's ability to perjurally testify.

Section 90.403, Florida Statutes (2018) provides for the exclusion of relevant evidence if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." Burton v. State, 237 So. 3d 1138, 1141 (Fla. 3d DCA 2018) (stating that in weighing the probative value against the unfair prejudice, the court should consider "the need for the evidence; the tendency of the evidence to suggest an improper basis to the jury for resolving the matter, e.g. an emotional basis; the chain of inference necessary to establish the material fact; and the effectiveness of a limiting instruction").

Here, Defense counsel argues that the redacted version of the video clips do not provide proper context for Martin's statement, and the unredacted version is prejudicial to Martin because it shows an additional victim. However, just because evidence is detrimental to a defendant's case does not mean that the defendant is unfairly prejudiced. State v. Andres, 552 So. 2d 1151, 1153 (Fla. 3d DCA 1989) (holding that the trial court abused its discretion in granting a pretrial motion to exclude a tape recording of an undercover drug deal because "although the statements were detrimental to the defendant's case, they did not prejudice him unfairly. Relevant evidence is inherently prejudicial; however it is only unfair

prejudice, substantially outweighing probative value, which permits exclusion of relevant matters”).

The video clips and Martin’s post-Miranda statement are highly probative to this case because they go directly to the credibility of the consent defense. The State redacted portions of the video clips that contained any mention of C.P. Further, C.P.’s photo was removed entirely and appeared as a blank piece of paper so that the jury would not be aware of a second victim. The State also changed the video to black and white so as to conceal the color of Martin’s jumpsuit. Defense counsel agreed to the redacted version of the video the day before trial, and there was no further manipulation of the evidence by the State. Therefore, the lower court abused its discretion in excluding the video clips and Martin’s post-Miranda statement where it could assist the jury in determining the credibility of Martin’s consent defense.

We therefore reverse the trial court’s order excluding the video clips of Martin and his post-Miranda statement from the State’s case-in-chief, cross-examination, and the State’s rebuttal.

Reversed and remanded for further proceedings.