Third District Court of Appeal

State of Florida

Opinion filed December 26, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1431
Lower Tribunal No. 17-9924

Willie Sims,
Appellant,

vs.

The State of Florida,
Appellee.

An appeal from the Circuit Court for Miami-Dade County, Marisa Tinkler Mendez, Judge.

Carlos J. Martinez, Public Defender, and James Odell, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Brian H. Zack, Assistant Attorney General, for appellee.

Before EMAS, C.J., and FERNANDEZ, and MILLER, JJ.

MILLER, J.

Appellant, Willie Sims, challenges his conviction and sentence for burglary of an unoccupied conveyance, in violation of section 810.02(4)(b), Florida Statutes (2019). On appeal, Sims contends the lower tribunal reversibly erred in excluding testimony Sims was purportedly known to be homeless and restricting the scope of voir dire. For the reasons set forth below, we find no error and affirm.

BACKGROUND AND LOWER COURT PROCEEDINGS

On May 21, 2017, at approximately 3:30 a.m., while patrolling a residential neighborhood, Sergeant Paul Rodriguez of the South Miami Police Department observed an illuminated dome light in a pickup truck parked outside of a private residence. Rodriguez approached the vehicle and encountered Sims, partially concealed within the vehicle and dressed entirely in dark clothing. Sims was rifling through various papers located on the driver's seat.

The owner of the vehicle was alerted and confirmed that Sims did not have permission to enter his truck. He further attested his items had been ransacked. Sims was arrested and an ensuing search yielded a knife and cash. Sims confessed to burglarizing the vehicle, post-Miranda.[1]

On June 12, 2017, Sims was charged by information with one count of burglary of an unoccupied conveyance. The case was scheduled for trial before a

[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). The lower tribunal suppressed the statements.

jury. During voir dire, outside of the presence of the prospective jurors, the defense informed the court that Sims was known to the arresting officer as "a car burglar," and sought to exclude any reference to past arrests or the recovery of the knife or cash at trial. The court granted the motion.

The defense queried the potential jurors concerning their feelings regarding homelessness. The State objected, and the court convened a sidebar conference. The defense proffered Sims was seeking refuge within the vehicle. Therefore, he lacked the requisite state of mind to commit burglary and was guilty of only a trespass. The defense further apprised the court that law enforcement officers knew Sims to be homeless, from prior encounters.

The lower tribunal sustained the objection, as it determined the asserted defense was grounded upon a lack of intent, rather than financial status. Hence, it concluded that any minimally probative value derived from informing the factfinders that Sims was homeless was vastly outweighed by the highly prejudicial effect of such testimony.

A jury was empaneled. In opening statement, the defense asserted Sims had "fallen on hard times," thus, he was merely seeking shelter within the vehicle. Later, the defense highlighted Sims's unkempt appearance upon his arrest. In closing argument, the defense reminded the jury that, on the evening in question, as the result

of poverty, Sims was attired in tattered and dirty clothing. Accordingly, it argued, the State failed to establish criminal intent.

Following deliberations, the jury returned a verdict finding Sims guilty of burglary. Sims was convicted and sentenced, as a habitual offender, to seven years in prison. The instant appeal ensued.

STANDARD OF REVIEW

"[D]iscretion rests with the trial court in matters relating to the admissibility of relevant evidence, and that ruling will not be overturned absent a clear abuse of discretion." Grau v. Branham, 761 So. 2d 375, 378 (Fla. 4th DCA 2000) (citation omitted). Similarly, we apply "an abuse of discretion standard to a trial court's application of the unfair prejudice test of section 90.403," Florida Statutes. Johnson v. State, 969 So. 2d 938, 951 (Fla. 2007) (citation omitted). Therefore, reversal is only warranted "if no reasonable person would arrive at the same conclusion as that of the trial court." Calloway v. State, 210 So. 3d 1160, 1178 (Fla. 2017) (citation omitted).

LEGAL ANALYSIS

Sims claims error in the preclusion of testimony relating to homelessness and the limitation on the scope of voir dire. Although asserted as independent grounds for reversal, the two claims of error overlap and are intertwined, as both concern Sims's purported homelessness and the trial court rendered its rulings

contemporaneously. As a threshold matter, the State contends the proffer below of the officers' proposed testimony was deficient, presenting a technical barrier to our scrutiny. We find the issue was adequately raised and preserved, hence, capable of review.[2]

"Generally, all relevant evidence is admissible, unless precluded by law." Dorsett v. State, 944 So. 2d 1207, 1212 (Fla. 3d DCA 2006) (en banc) (citing § 90.402, Fla. Stat.). Relevant evidence is that which tends "to prove or disprove a material fact." Johnson v. State, 991 So. 2d 962, 966 (Fla. 4th DCA 2008) (quoting § 90.401, Fla. Stat.). "In determining relevance, we look to the elements of the crime charged and whether the evidence tends to prove or disprove a material fact." Id. "In Florida, all relevant evidence is admissible, unless its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." Miller v. State, 42 So. 3d 204, 224 (Fla. 2010); see also § 90.402-403, Fla. Stat. (2019). This

[2] Sims supplies, for the first time on appeal, the police report reflecting "[t]he officer recognized the defendant from past vehicle burglaries and also knows him as a homeless individual in the area." See Thornber v. City of Fort Walton Beach, 534 So. 2d 754, 755 (Fla. 1st DCA 1988) ("It is axiomatic that appellate review is confined to the record on appeal . . . An appellate court will not consider evidence that was not presented to the lower tribunal because the function of an appellate court is to determine whether the lower tribunal committed error based on the issues and evidence before it.") (citations omitted); Fla. R. App. P. 9.200(a)(1) ("[T]he record shall consist of all documents filed in the lower tribunal, all exhibits that are not physical evidence, and any transcript(s) of proceedings filed in the lower tribunal.").

limitation "is directed at evidence which inflames the jury or appeals improperly to the jury's emotions." Steverson v. State, 695 So. 2d 687, 688-89 (Fla.1997) (citation omitted).

In the instant case, the defense sought to adduce testimony that officers well-acquainted with Sims had previously observed him sleeping in the street. It is inescapable that this knowledge was garnered as the result of Sims's prior deviance. Further, the trial court excluded his criminal past at the behest of the defense, pretrial. As homelessness is not an innate or immutable characteristic, the fact that one is without a permanent residence on a particular date may or may not have any bearing on one's later living arrangements. Thus, the State would have been entitled to explore the location of his current living quarters and the basis of the officers' knowledge. Accordingly, had the trial judge allowed the officers to testify as Sims's homelessness, the ensuing cross-examination would have risked eviscerating the ruling in limine.[3] See Iowa Nat'l Mut. Ins. Co. v. Worthy, 447 So. 2d 998, 1000 (Fla. 5th DCA 1984) ("An order in limine should only be used as a shield and never to gag the truth and permit other evidence to mislead the jury."); see also Gonzalez v. State, 774 So. 2d 796, 798 (Fla. 3d DCA 2000) ("The . . . use of the privilege of

[3] The State contended below that the injection of a "homeless" defense into the proceedings warranted a reconsideration of the court's order excluding reference to the knife and monies recovered from Sims upon arrest, as possession of the items circumstantially evidenced criminal intent.

nondisclosure, first as a shield, then as a sword, [was] unfairly prejudic[ial]."); Miguel A. Mendez, Crawford v. Washington: A Critique, 57 Stan L. Rev. 569, 570 (2004) ("Since cross-examination of witnesses is essential in exposing flaws in the testimony given on direct examination, confidence in the accuracy of a jury verdict is necessarily undermined whenever a party is deprived of the opportunity to cross-examine the adversary's witnesses under oath in the presence of the jurors.").

Moreover, the admission of evidence of financial status, without more, has historically been heavily disfavored in our courts, as the practical result "would be to put a poor person under so much unfair suspicion and at such a relative disadvantage that for reasons of fairness this argument has seldom been countenanced." 2 J. Wigmore, Evidence § 392 (3d ed. 1940); see also 88 C.J.S. Trial § 317 (2019) ("Statements concerning the financial status of a party are [generally] improper because they have little or no probative value, are inflammatory, and may appeal to the sympathy of the jury."). Additionally, evidence of disparate financial status inevitably leads to "an undue tendency to suggest decision on an improper basis." Brown v. State, 719 So. 2d 882, 885 (Fla. 1998) (quoting Old Chief v. United States, 519 U.S. 172, 180, 117 S. Ct. 644, 650, 136 L. Ed. 2d 574 (1997)).

Regardless, here, the defense sought to introduce the fact of Sims's former homeless status in abject isolation, entirely devoid of any nexus to the facts of the

case.[4] The interrelationship between homelessness and intent was neither presented nor proffered. Thus, in order for homelessness to be relevant, jurors would be forced to embrace the assumption that members of the homeless population are more likely to enter a vehicle in search of refuge than for the purpose of committing a crime. Hence, any value derived from the evidence would necessarily implicate beliefs regarding the collective motivation of the homeless population in entering any closed vehicle in the early morning hours, rather than the individualized mens rea of Sims in entering the specific closed vehicle on the morning in question.

Accordingly, as astutely recognized by the lower tribunal, the absence of any evidentiary link between Sims's alleged homelessness and the element of intent required to either support or refute the charge of burglary of a conveyance rendered the proposed testimony wholly irrelevant, unduly prejudicial, and designed to cause jurors to engage in a prohibited exercise of abstract speculation. See Smith v. State, 101 Fla. 1066, 1069, 132 So. 840, 841 (1931) (reversing judgment where the evidence relied upon "left the jury to grope in the realm of guesswork and speculation to return a verdict"); Parts Depot Co., L.P. v. Fla. Auto Supply, Inc., 669 So. 2d 321, 324 (Fla. 4th DCA 1996) ("The jury's role as the finder of fact does not

[4] As borne out by the record below, the defense was permitted to present evidence of Sims's disheveled appearance and degraded, soiled garments in furtherance of its theory of defense. Thus, although specific reference to homelessness was prohibited, evidence of indigency was allowed.

entitle it to return a verdict based only on confusion, speculation or prejudice; its verdict must be reasonably based on evidence presented at trial.") (quoting H. L. Moore Drug Exch. v. Eli Lilly & Co., 662 F.2d 935, 941 (2d Cir. 1981)); see also Galloway v. United States, 319 U.S. 372, 395, 63 S. Ct. 1077, 1089, 87 L. Ed. 1458 (1943) ("[M]ere speculation [is] not allowed to do duty for probative facts.").

Sims further contends the limitation on the scope of voir dire warrants reversal. Because we find no error in the lower court's preclusion of testimony relating to homeless, any views harbored by the members of the venire were wholly irrelevant.

CONCLUSION

Abiding, as we are required to, by well-established jurisprudence, we "fully recognize the superior vantage point of the trial judge" in restricting evidence, Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980), "which inflames the jury or appeals improperly to the jury's emotions." Steverson v. State, 695 So. 2d at 688-89 (citation omitted). Hence, we conclude that although perhaps "reasonable men [or women] could differ as to the propriety of the action[s] taken by the trial court," the actions were not unreasonable and there was no abuse of discretion. Mercer v. Raine, 443 So. 2d 944, 946 (Fla. 1983) (quoting Canakaris, 382 So. 2d at 1203).

Accordingly, we affirm.

Affirmed.