

Third District Court of Appeal

State of Florida

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

No. 3D19-817
Lower Tribunal No. 07-26953D

Ramiro Rodriguez,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Miguel M. de la O, Judge.

Ramiro Rodriguez, in proper person.

Ashley Moody, Attorney General, for appellee.

Before HENDON, MILLER, and LOBREE, JJ.

HENDON, J.

Ramiro Rodriguez appeals from the trial court's denial of his 3.853 motion for DNA testing. We affirm.

Rodriguez was charged as a principal for his role in the shooting death of the victim, Erick Lopez, and the gunshot-wound injury to his wife, Olga Lopez. The jury found Rodriguez guilty of manslaughter, as a lesser included offense of second-degree murder, for the death of Mr. Lopez, and guilty of attempted manslaughter, as a lesser included offense of attempted second-degree murder, for the gunshot wound to Mrs. Lopez. The jury determined that the defendant possessed and threatened to use the firearm, but that he himself did not discharge that firearm or cause the death by his own hand. The jury further found Rodriguez guilty of burglary, conspiracy to commit burglary, and kidnapping. The only blood at the scene was from Rodriguez's co-defendant, who was shot during the commission of the offense.

Florida Rule of Criminal Procedure 3.853 provides the procedures for obtaining DNA testing under section 925.11(2), Florida Statutes (2019), and states that a petition for postconviction DNA testing must include, among other things, "a statement that the movant is innocent and how the DNA testing requested by the motion will exonerate the movant of the crime for which the movant was sentenced, or a statement how the DNA testing will mitigate the sentence received by the movant for that crime." Fla. R. Crim. P. 3.853(b)(3). "Rule 3.853 is not intended to be a fishing expedition." Hitchcock v. State, 866 So. 2d 23, 27 (Fla. 2004). Rather,

“[i]t is the defendant's burden to explain, with reference to specific facts about the crime and the items requested to be tested, how the DNA testing will exonerate the defendant of the crime or will mitigate the defendant's sentence.” Robinson v. State, 865 So. 2d 1259, 1265 (Fla. 2004) (citing Hitchcock). Additionally, the defendant's burden is to show a demonstrable nexus between the potential results of DNA testing on each piece of evidence and the issues in the case. Consalvo v. State, 3 So. 3d 1014, 1016 (Fla. 2009).

This is not a case where identification of the defendant was at issue. The record shows that everyone who was involved in, or was witness to the offense knew that the defendant was at the scene and positively identified him. His presence at the scene and participation in the offense was undisputed. Indeed, the surviving victim testified that the defendant pointed a gun at her. The defendant himself testified that he entered the victim's home with one of the two guns used in the offense. The State conceded to the jury that none of the defendant's DNA existed on any of the evidence collected. Renewed DNA testing of the defendant would reveal or yield nothing new that would be helpful to the defendant. Consequently, the defendant has failed to show a reasonable probability that he would have been acquitted or would have received a lesser sentence if the DNA evidence had been admitted at trial. The record supports the trial court's conclusion that there is no reasonable chance that DNA evidence would have exculpated the defendant or led to an acquittal. We

therefore affirm the trial court's order denying the defendant's post-conviction motion for DNA testing.

Affirmed.