IN THE SUPREME COURT OF FLORIDA

GARRETT STATLER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.
_____/

CASE NO. SC21-119
DCA CASE 1D19-0264
LT NO. 01-2016-CF-1306

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

APPENDIX TO JURISDICTIONAL BRIEF OF PETITIONER

JESSICA J. YEARY
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

M. J. LORD
ASSISTANT PUBLIC DEFENDER
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ATTORNEY FOR PETITIONER

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished, via the Florida Courts E-Filing Portal, to Steven Woods, Assistant Attorney General, at crimapptlh@myfloridalegal.com, on this date, January 29, 2021.

JESSICA J. YEARY
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

/s/ M. J. Lord
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ATTORNEY FOR PETITIONER

GARRETT STATLER, Appellant,

v.

STATE OF FLORIDA, Appellee.

No. 1D19-264.

District Court of Appeal of Florida, First District.

December 28, 2020.

On appeal from the Circuit Court for Alachua County, Mark W. Moseley, Judge.

Andy Thomas, Public Defender, and M. J. Lord, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, Steven E. Woods, Assistant Attorney General, and Robert "Charlie" Lee, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Garrett Statler appeals his conviction for sexual battery. We affirm, but write to address his argument that Florida's sexual battery statute is facially unconstitutional or must be read to include a requirement that the State prove that a criminal defendant knew or should have known the victim did not consent to sexual intercourse.

Appellant argues that where the crime charged is sexual battery under section 794.011(5)(b), "upon a person 18 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury," the statute must be interpreted to require that a defendant knew or should have known the victim did not consent. Appellant acknowledges that this Court in *Watson v. State*, 504 So. 2d 1267, 1269 (Fla. 1st DCA 1986), held that "whether a defendant knew or should have known that the victim was refusing sexual intercourse is not an element of the crime of [sexual battery] as defined in Section 794.011(3), Florida Statutes (1983)." And the plain text of the statute supports that interpretation, which the trial court correctly ruled. Nevertheless, Appellant argues that this Court's interpretation of the sexual-battery statute is facially unconstitutional as it does not contain an element of mens rea and violates a criminal defendant's right to due process under the Fifth Amendment to the United States Constitution.

Appellant relies on the Florida Supreme Court's decision in *State v. Giorgetti,* which held that absent explicit statutory language, criminal statutes must be read to include a mens rea element. 868 So. 2d 512, 515 (Fla. 2004) (citing *U.S. v. Balint,* 258 U.S. 250, 251 (1922); *U.S. v. U.S. Gypsum Co.,* 438 U.S. 422, 436 (1978)). He also relies on cases from other jurisdictions that have imposed a requirement that sexual-crime statutes must be read to include a criminal defendant's mens rea. *See State v. Smith,* 554 A.2d 713, 717 (Conn. 1989) (holding that consent "cannot be viewed as a wholly subjective concept"); *People v. Mayberry,* 542 P.2d 1337, 1345 (Cal. 1975) (holding that sexual-crime statutes must be read to assume legislature did not intend to create strict criminal liability given severe penalties imposed).

However, the Florida Supreme Court limited its holding in *Giorgetti* to statutes punishing otherwise "innocent conduct," such as failing to register as a sexual offender after relocating residences or, as in *Schmitt v. State,* 590 So. 2d 404, 413 (Fla. 1991), where a felony statute applied to "family photographs of innocent caretaker-child conduct." *State v. Adkins,* 96 So. 3d 412, 420 (Fla. 2012).[*] The crime of sexual battery under section 794.011(5)(b), is distinguishable from such "innocent conduct," as referenced in *Giorgetti. See id.* Therefore, based on our prior precedent in *Watson* and the inapplicability of *Giorgetti,* we disagree with Appellant that section 794.011(5)(b) is unconstitutional because it does not require the State to prove a defendant's mens rea.

In addition, Appellant requests we certify this issue as a question of great public importance. We disagree with the suggestion that the issue merits the certification of a question of great public importance, as *Watson* is well-established law in this district that has not been questioned for decades.

AFFIRMED.

B.L. THOMAS, WINOKUR, and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

[*] Although the Court in *Adkins* noted that a defendant could raise an affirmative defense of lack of knowledge, we recognize that under this Court's holding in *Watson,* Appellant was not permitted to argue that he did not know or should not have known the victim did not consent to sexual intercourse.