IN THE SUPREME COURT OF FLORIDA

GARRETT STATLER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC21-119

Lower Tribunal No:1D19-264

2016-CF-1306

ON DISCRETIONARY REVIEW FROM THE
THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT OF FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Garrett Statler, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

"PJB" will designate Petitioner's Jurisdictional Brief followed by the appropriate page number.

STATEMENT OF THE ISSUES

Whether this Honorable Court has jurisdiction under Florida Rule of Appellate Procedure 9.030(a)(2)(A)(i).

STATEMENT OF THE CASE AND FACTS

The issue in Statler v. State, ---- So. 3d ----, 2020 WL 7690347 (Fla. 1st DCA Dec. 28, 2020), was whether a lack of a mens rea requirement rendered Section 794.011(5)(b), Florida Statutes, unconstitutional.

The opinion in Statler is below.

*1 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, 42 S.Ct. 301, 66 L.Ed. 604 (1922); *U.S. v. U.S. Gypsum Co.*, 438 U.S. 422, 436, 98 S.Ct. 2864, 57 L.Ed.2d 854 (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*, 210 Conn. 132, 554 A.2d 713, 717 (1989) (holding that consent "cannot be viewed as a wholly subjective concept"); *People v. Mayberry*, 15 Cal.3d 143, 125 Cal.Rptr. 745, 542 P.2d 1337, 1345 (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.

*2 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.

ARGUMENT

A. Standard of Review.

The applicable standard of review for a claim that a decision of a district court of appeal has expressly declared a state statute valid is de novo, subject to the following criteria.

B. Jurisdictional Criteria.

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(i), which parallels Article V, §3(b)(3), Fla. Const. The Florida Constitution provides: "The supreme court . . . . May review any decision of a district court of appeal that expressly declares valid a state statute . . . ." The language of article V, section 3(b)(1) requires that the district court of appeal make a declaration. Jackson v. State, 926 So. 2d 1262, 1266 (Fla. 2006).

C. MERITS

The First District rejected Petitioner's contention that under Giorgetti, section 794.011(5)(b) is facially unconstitutional for lack of a mens rea requirement. Even if this Honorable Court considers the opinion of the First District to be an express declaration of statutory validity, jurisdiction is discretionary. ("The supreme court

. . . [*m*]*ay* review any decision of a district court of appeal that expressly declares valid a state statute" See Art. V, § 3(b)(3) (emphasis added)). Discretion in this area makes sense: District courts routinely declare state statutes valid, and most of those decisions will not call for the Court's review. Indeed, statutes are presumed constitutional. Jackson v. State, 191 So. 3d 423, 426 (Fla. 2016). Review is not warranted here for three reasons.

First, Petitioner identifies no conflict between the districts that might require this Court's intervention. To date, the First District is the only one to have considered the question. Because Florida's appellate courts do not disagree on section 794.011(5)(b)'s legality, the decision below does not threaten disuniform results based on where in Florida a defendant is prosecuted. On a related note, the lack of developed caselaw suggests that this Court should await further percolation on the issue. Percolation is a sound component of judicial decision making: It "allows a period of exploratory consideration and experimentation by lower courts" before a court of last resort "ends the process with a [] binding rule." *California v. Carney*, 471 U.S. 386, 400 n.11 (1985). Currently, however, there is

not even a dissenting opinion in Florida to guide this Court as to the scope of potential arguments against the law's validity or the relative merits of those claims.

Should a different district court conclude that section 794.011(5)(b) is unconstitutional, this Court will have mandatory appellate jurisdiction. See Art. V, § 3(b)(1). In the interim, the development of additional views can only aid the Court in any eventual resolution.

Second, the First District explained that this issue lacks statewide importance and declined to certify the issue as a question of great public importance, concluding that such was not merited given the caselaw that has been in place for nearly half a century: Watson v. State, 504 So. 2d 1267, 1269 (Fla. 1st DCA 1986) (holding that knowledge of lack of consent is not an element of the crime of sexual assault); Dean v. State, 277 So. 2d 13 (Fla.1973) (holding that the trial court did not err in refusing to add to the standard jury instructions for sexual battery); Williamson v. State, 338 So. 2d 873, 874 (Fla. 3d DCA 1976) (finding no error in refusing to go beyond the standard instructions for sexual battery);

see App'x 4 (denying motion for certification of a question of great public importance because "*Watson* is well-established in this district and has not been questioned for decades"). Petitioner has not argued otherwise. He does not contend, for instance, that the issue affects a large swath of cases or arises frequently. And that the issue does not often arise is confirmed by the absence of caselaw from other districts addressing the question. *See* Am'd Ptr.'s Jur. Br. 7 (discussing the "little Florida case law" on this issue).

Third, the decision below is correct. In rejecting Petitioner's claim that the statute was unconstitutional, the First District merely applied well established caselaw in which this Honorable Court has held the following: only where the proscribed conduct is passive, innocent, or constitutionally protected does the omission of a mens rea requirement render a statute unconstitutional. State v. Adkins, 96 So. 3d 412, 417 (Fla. 2012); Lambert v. California, 355 U.S. 225, 227-28 (1957) (concluding that a statute criminalizing a felon's failure to register—irrespective of "actual knowledge of his duty to register"—was held to be violative of due process *because*

the conduct in question was "wholly passive" and innocent. (emphasis added)); State v. Giorgetti, 868 So. 2d 512, 515 (Fla. 2004) (concluding that the conduct in question "was similar to the *passive* conduct discussed in Lambert, i.e., relocating residences and failing to notify the State within forty-eight hours." (emphasis added)).[3] Accordingly, the State respectfully maintains that Petitioner has incorrectly asserted that Section 794.011(5)(b), Florida Statutes, is violative of due process and therefore unconstitutional.

Further, this Honorable Court has stated that in considering a challenge to the constitutionality of a statute, this Court is obligated to accord legislative acts a presumption of constitutionality and to construe challenged legislation to effect a constitutional outcome whenever possible. Fla. Dep't of Revenue v. City of Gainesville, 918 So. 2d 250, 256 (Fla. 2005).

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[3] Petitioner cites to Giorgetti and United States v. Balint, 258 U.S. 250 (1922), both of with support the State's position. In the latter, the Supreme Court concluded that the absence of a mens rea requirement in the Anti Narcotic Act of 1914 was not unconstitutional. Id. at 252. Despite the substantial penalty for noncompliance with the Act, the Balint Court declined to read a mens rea element into the statute. Id.

Given the legislature's broad authority to define the elements of crimes, the requirements of due process ordinarily do not preclude the creation of offenses without a guilty-knowledge element. Adkins, 96 So. 3d at 417. Both this Honorable Court and the United States Supreme Court have repeatedly recognized that the legislature has broad discretion to omit a mens rea element from a criminal offense. Id. at 418. "[W]here the lawmaking body seeks to prohibit affirmative acts, it can do so without requiring proof that the actor knew his or her conduct to be illegal." Id. at 417. Generally, it is within the power of the legislature to declare an act a crime regardless of knowledge of the violation. Id. (citing to Coleman v. State ex rel. Jackson, 193 So. 84, 86 (Fla. 1939)). The "definition of the elements of a criminal offense is entrusted to the legislature." Staples v. United States, 511 U.S. 600, 605 (1994).

A due process violation results from the omission of a mens rea requirement *only under limited circumstances*: where the proscribed conduct is passive, innocent, or constitutionally protected. Adkins, 96 So. 3d at 417-20; Lambert, 355 U.S. at 227; Giorgetti, 868 So. 2d at 517; Saiez, 489 So. 2d at 1129. Because Section

794.011(5)(b), Florida Statutes, does not concern conduct that is passive, innocent, or constitutionally protected, any omission of a mens rea requirement would not render it unconstitutional.

Unlike Lambert and Giorgetti, the instant case does not involve passive or otherwise innocent conduct. According to the facts laid out in Petitioner's jurisdictional brief, Petitioner snuck into the room in which the victim was resting and, without attempting to obtain her consent or to alert her that Petitioner was not the man (Tait) with whom she had just engaged in sexual intercourse, began having sex with her from behind. Am'd Ptr's Jur. Br. 3-4. When the victim learned that it was Petitioner and not Tait, she became "hysterical" and accused him of rape. *Id.* at 3.

Any reasonable person in Petitioner's position would have understood that his conduct was rape, as there was a substantial likelihood that the victim would mistakenly believe that Petitioner was Tait—to whom she had earlier consented to have sex—rather than a stranger. In other words, Petitioner's conduct was far from "wholly passive" or "innocent."

What is more, it has long been accepted that the State may prosecute instances of statutory rape even where the defendant was unaware that the victim was under the age of consent. See § 800.04(3), Fla. Stat. ("The perpetrator's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the perpetrator's bona fide belief of the victim's age cannot be raised as a defense in a prosecution under this section."); Baker v. State, 377 So. 2d 17, 19 (Fla. 1979) (observing that "it is no defense that the defendant actually believed the female to be in excess of the prohibited age," and relying on a case from 1875); Morissette v. United States, 342 U.S. 246, 251 n.8 (1952). So too, this Court has long held that a defendant cannot defend against a charge of rape on the ground that he did not know the victim was "chaste," even though the victim's chastity was at that time an element of the crime. *Simmons v. State*, 10 So. 2d 436, 437-39 (Fla. 1942). Section 794.011(5)(b) is in the same mold: It protects victims from sexual conduct with persons to whom they have not granted consent.

CONCLUSION

Based on the foregoing reason, the State very respectfully requests that this most Honorable Court decline to exercise jurisdiction over of the matter in question.

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished by email to Mr. GLEN PHILLIP GIFFORD, at glen.gifford@flpd2.com on this 10th day of March 2021.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing contains 2171 words, per the "word count" feature in Microsoft Word and was printed in 14-point Bookman Old Style and thereby satisfies the requirements of Florida Rule of Appellate Procedure 9.045.

Respectfully submitted and certified,

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