

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

GARRETT STATLER,

Appellant,

v.

CASE NO. 1D19-0264

LT NO. 01-2016-CF-1306

STATE OF FLORIDA,

Appellee.

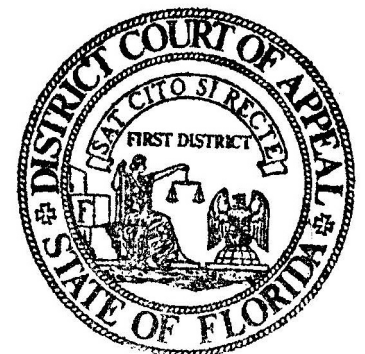
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NOTICE TO INVOKE DISCRETIONARY JURISDICTION

NOTICE IS GIVEN that Garrett Statler, Petitioner, invokes the discretionary jurisdiction of the Florida Supreme Court to review the decision of this court rendered December 28, 2020, rehearing denied January 27, 2021. The decision expressly declares valid a state statute, Florida Rule of Appellate Procedure 9.030(2)(A)(i). Specifically, the court in its written opinion rejected the argument that Section 794.011(5)(b), Florida Statutes, is facially unconstitutional and a denial of due process because it contains no mens rea requirement.

I CERTIFY THE ABOVE TO BE A TRUE COPY
KRISTINA SAMUELS, CLERK
FIRST DISTRICT COURT OF APPEAL

By: _____
Deputy Clerk



RECEIVED, 01/28/2021 10:10:35 AM, Clerk, Supreme Court
RECEIVED, 01/27/2021 03:19:27 PM, Clerk, First District Court of Appeal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished, via the Florida Courts E-Filing Portal, to Robert Charles Lee, Assistant Attorney General, at crimapptlh@myfloridalegal.com, on this date, January 27, 2021.

Respectfully submitted,

JESSICA J. YEARY
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

/s/ M. J. Lord

M. J. LORD

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COUNSEL FOR APPELLANT

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-264

GARRETT STATLER,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

December 28, 2020

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).*

* 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.

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.

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.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

January 27, 2021

CASE NO.: 1D19-0264
L.T. No.: 2016-CF-001306

Garrett Statler

v.

State of Florida

Appellant / Petitioner(s),

Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appellant's motion docketed January 06, 2021, for rehearing or certification of a question of great public importance is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

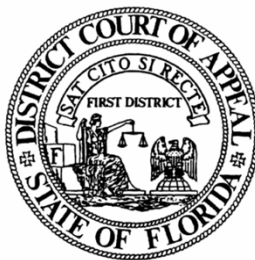
Served:

Hon. Ashley Moody, AG
M. J. Lord, APD
Steven Edward Woods, AAG

Hon. Jessica J. Yeary, PD
Robert "Charlie" Lee, AAG

th


KRISTINA SAMUELS, CLERK





DISTRICT COURT OF APPEAL
FIRST DISTRICT
STATE OF FLORIDA
2000 DRAYTON DRIVE
TALLAHASSEE, FLORIDA 32399-0950
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KRISTINA SAMUELS
CLERK OF THE COURT

DANA SHARMAN
CHIEF DEPUTY CLERK

January 28, 2021

Re: Garrett Statler vs State of Florida
Appeal No: 1D19-264
Trial Court No.: 2016-CF-001306
Trial Court Judge: Hon. Mark W. Moseley
If Crim, LT NOA date: N/A

Dear Mr. Tomasino:

Attached is a certified copy of the Notice Invoking the Discretionary Jurisdiction of the Supreme Court, pursuant to Rule 9.120, Florida Rules of Appellate Procedure. Attached also is this Court's opinion or decision relevant to this case.


- The filing fee prescribed by Section 25.241(2), Florida Statutes, was received by this court and is attached.
- The filing fee prescribed by Section 25.241(2), Florida Statutes, was not received by this court.
- Petitioner/Appellant has previously been determined insolvent by the circuit court or our court in the underlying case.
- Petitioner/Appellant has already filed, and this court has granted, petitioner/appellant's motion to proceed without payment of costs in this case.

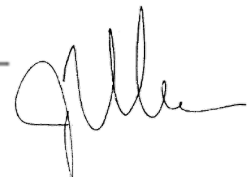
No filing fee was required in the underlying case in this court because it was:

- A summary Appeal, pursuant to Rule 9.141
- From the Unemployment Appeals Commission
- A Habeas Corpus proceeding
- A Juvenile case
- Other _____

If there are any questions regarding this matter, please do not hesitate to contact this Office. **A motion postponing rendition pursuant to Florida Rule of Appellate Procedure 9.020(i) is or is NOT pending in the lower tribunal at the time of filing this notice.**

Sincerely yours,


Kristina Samuels
Clerk of the Court



By: _____
Deputy Clerk