Third District Court of Appeal

State of Florida

Opinion filed May 1, 2024.
Not final until disposition of timely filed motion for rehearing.

No. 3D22-1276
Lower Tribunal No. F19-8598

Alejandro Giraldo,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Ellen Sue Venzer, Judge.

Daniel J. Tibbitt P.A., and Daniel J. Tibbitt, for appellant.

Ashley Moody, Attorney General, and Magaly Rodriguez, Assistant Attorney General, for appellee.

Before SCALES, GORDO and BOKOR, JJ.

BOKOR, J.

Alejandro Giraldo appeals his conviction for one count of official misconduct and one count of battery, specifically the trial court's denial of his motions for judgment of acquittal. Because Giraldo did not knowingly or intentionally falsify an official record or document, pursuant to section 838.022(1)(a), Florida Statutes, we reverse.[1]

The pertinent facts are undisputed. Giraldo was charged with one count of official misconduct and one count of battery resulting from an incident arising on March 5, 2019, in which Giraldo arrested Dyma Loving for disorderly conduct and resisting an officer without violence.[2] In both the arrest affidavit and offense incident report, Giraldo remarked:

> [W]e were speaking with Ms. Dyma Loving, defendant. During the conversation Ms. Loving began acting belligerent and would not obey commands. As we tried to keep the parties involved separated, Ms. Loving became further upset, very irate, and uncooperative. Ms. Loving began to scream at us causing a scene in the residential neighborhood. Ms. Loving was asked several times to stop screaming and cooperate. Ms. Loving was advised that the investigation was interrupted by her screaming and disruptive behavior. Ms. Loving

[1] We review the trial court's application of law to the facts of the case de novo. Murphy v. State, 898 So. 2d 1031, 1033 (Fla. 5th DCA 2005) (citing Phuagnong v. State, 714 So. 2d 527, 529 (Fla. 1st DCA 1998)).

[2] On that day, Dyma Loving and her friend, Adriana Green, called the police following an altercation with a neighbor. Giraldo arrived at the scene shortly after the other police officers arrived. Following a tense interaction between Giraldo and Loving, Giraldo arrested Loving.

> continued screaming at the officers, would not obey commands, and was arrested. . . . During the arrest, Officer Giraldo grabbed her right arm to effect the arrest and she violently pulled it away to defeat the arrest.

At trial, the defense moved twice for judgment of acquittal, arguing the State had failed to prove that Giraldo's statements in the arrest affidavit and offense incident report were false. The defense also moved for judgment of acquittal on the battery count, asserting there was no evidence establishing the arrest was illegal or not made during the performance of Giraldo's duties as a police officer. The trial court denied Giraldo's motions for judgment of acquittal. The jury found Giraldo guilty as charged, and the trial court sentenced Giraldo to jail for 364 days, followed by 18 months of probation.

When ruling on a motion for judgment of acquittal, "the trial court must determine whether the evidence adduced at trial, when viewed in a light most favorable to the State, would allow a rational trier of fact to find 'the existence of the elements of the crime beyond a reasonable doubt.'" Perdomo v. State, 336 So. 3d 767, 768 (Fla. 3d DCA 2021) (quoting in part Bush v. State, 295 So. 3d 179, 201 (Fla. 2020)). "A court should grant a motion for judgment of acquittal only if 'the evidence is such that no view which the jury may lawfully take of it favorable to the opposite party can be sustained under the law.'" Joseph v. State, 65 So. 3d 587, 588 (Fla. 4th DCA 2011) (citation omitted).

To prove official misconduct, the State was required to show beyond a reasonable doubt that Giraldo knowingly and intentionally falsified the arrest affidavit and offense incident report.[3] In other words, "to establish a prima facie case of official misconduct, the State had to present evidence sufficient to establish that [the defendant]: (1) was a public servant, (2) acted with corrupt intent, (3) acted to obtain a benefit for any person, and (4) falsified an official record or document." Wasserstrom v. State, 21 So. 3d 55, 58 (Fla. 4th DCA 2009) (footnote omitted).

Here, we resolve the appeal by determining whether Giraldo's description in the arrest affidavit constitutes a knowing or intentional falsification. Giraldo contends his statements do not illustrate any knowing or intentional falsification; rather, at most, he claims he "painted with too broad a brush when writing the narrative." We agree. At trial, the State

[3] The official misconduct statute states, in relevant part:

> (1) It is unlawful for a public servant or public contractor, to knowingly and intentionally obtain a benefit for any person or to cause unlawful harm to another, by:
> (a) Falsifying, or causing another person to falsify, any official record or official document[.]

§ 838.022(1)(a), Fla. Stat.

played footage from several officers' body cameras, each displaying different vantage points illustrating Loving and Giraldo's interaction with one another. Giraldo's subjective account of the events depicted doesn't rise to the level of knowing or intentional falsification. No one argues Giraldo falsified objective, concrete facts. For example, he didn't say it was a residential neighborhood when it was something else, like a busy commercial district or an empty country road with no houses around. He didn't say Loving was causing a scene when she was standing still and speaking in a whisper. Rather, the objectionable language in the arrest affidavit and offense incident report pertains to Giraldo's describing the interaction, that is, Giraldo's perception of the events pertaining to and surrounding Loving's arrest. Loving was clearly upset and speaking loudly. Her friend tried to calm her down, as did at least one other officer. Whether the loud and argumentative tone and her other actions constituted "causing a scene" and "disruptive behavior" is a matter of degree and perception. Upon a review of the footage, Giraldo's description isn't patently false or inaccurate. Cf. Harnum v. State, 384 So. 2d 1320, 1321–22 (Fla. 2d DCA 1980) (concluding the evidence was sufficient to support a finding that the appellant falsified records when he caused the records of a DUI suspect to be altered to show a breathalyzer reading of .13 rather than .30); Barr v. State, 507 So. 2d 175,

176 (Fla. 3d DCA 1987) (acknowledging an officer falsified a police report when he wrote he had discovered a gun case in the back seat of his patrol car after transporting a suspect to the police station, when in fact it was discovered the next day by another officer).

Unlike the aforementioned cases, here, the State attempts to criminalize a whole new category of statements relying on subjective opinions and perceptions, as opposed to objective falsehoods. Because Giraldo's subjective interpretation wasn't clearly refuted by objective facts, it didn't—and couldn't—rise to the level of intentional falsification pursuant to section 838.022(1)(a), Florida Statutes. Therefore, the trial court erred in denying Giraldo's motions for judgment of acquittal. The State conceded at oral argument that if the motion for judgment of acquittal on the official misconduct count should have been granted, it should have not proceeded with the battery count, as the arrest would have been lawfully made.[4] We therefore reverse the final judgment of conviction and sentence and remand for entry of judgment of acquittal on both counts.

[4] As noted during oral argument, Giraldo's interaction with Loving was not a model interaction. We are tasked, however, not with determining whether the arrest was a result of best practices, but rather whether Giraldo committed a crime during the arrest and subsequent completion of the arrest affidavit and offense incident report.

Reversed and remanded.