MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

STATE OF MISSOURI

Respondent

v.

GODFREY K. KIRUI

Appellant

DOCKET NUMBER WD83384

DATE: March 2, 2021

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Kevin Harrell, Judge

Appellate Judges:

Division One
Alok Ahuja, P.J., Thomas H. Newton, and Thomas N. Chapman, JJ.

Attorneys:

Nancy McKerrow, Columbia, MO — Counsel for Appellant

Attorneys:

Jason Lewis, Jefferson City, MO — Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, Respondent,
v.
GODFREY K. KIRUI, Appellant.

WD83384 **Jackson County**

Before Division One Judges: Ahuja, P.J., Newton, and Chapman, JJ.

Mr. Godfrey Kirui appeals convictions after a Jackson County Circuit Court bench trial on charges of first-degree rape, first-degree kidnapping, third-degree assault, and first-degree tampering with a motor vehicle. Mr. Kirui was sentenced to 20 years' imprisonment for rape to run consecutively to concurrent terms of 15 years' imprisonment for kidnapping, one year for assault, and seven years' imprisonment for tampering with a motor vehicle. Mr. Kirui contends that the trial court clearly erred in failing to suppress and in overruling the objections at trial to the evidence obtained by swabbing his hands, neck, penis, and scrotum and all testimony concerning that evidence, in that the evidence was seized without a warrant, consent, or exigent circumstances in violation of the Fourth Amendment right to be free from unreasonable searches and seizures.

After kidnapping T.M. in a vehicle, Mr. Kirui overpowered T.M. and shoved her upper body unto the bottom of the passenger seat with her legs pointing out of the car. T.M. testified that Mr. Kirui dropped his pants and succeeded in pulling her shorts around her knees and her panties down. T.M. continued to fight Mr. Kirui and because of this, he was only able to insert his penis into her vagina an inch or so. The sexual assault came to an end within five minutes when Mr. Kirui saw red and blue police lights. Mr. Kirui threw T.M. out of the car and climbed through the passenger side to sit in the driver's seat. Mr. Kirui tried to drive off, but failed, and was taken into custody at 2:50 a.m.

Mr. Kirui was taken to Shoal Creek Patrol Division station. At about 4:15 a.m., Mr. Ben Simmons, Crime Scene Technician, searched Mr. Kirui for perishable evidence, including combing his head and pubic hair, swabbing his hands, neck, penis, and scrotum. Mr. Simmons testified that Mr. Kirui was cooperative during the process. Mr. Simmons did not observe or document any injuries, tears in his clothes, or fluids on his clothes. Detective Burnett testified that he did not request Mr. Kirui's consent to collect DNA swabs because they are perishable items, and Mr. Kirui had the potential to destroy evidence.

AFFIRMED.

Division One holds:

Under the totality of the circumstances, the trial court did not err in overruling the motion to suppress or admitting the foreign DNA evidence and testimony at trial. We find that exigent circumstances existed as an exception to the warrant requirement. Detective Burnett testified that he believed that Mr. Kirui had the potential to destroy T.M.'s DNA, perishable evidence, before a warrant could be issued. He further testified that in the early morning hours when Mr. Kirui was arrested, it takes approximately four hours to prepare a warrant application, present it to a judicial officer, obtain a warrant, and execute it. Detective Burnett also testified that his unit generally attempts to collect such swabs within two hours, because the suspect is being kept away from water and bathroom facilities. It is significant that Mr. Kirui was arrested in the early morning, after taking a car from outside a nightclub. There was an appreciable risk that, with a four-hour delay in swabbing, Mr. Kirui would urinate and destroy DNA evidence in his genital area (whether intentionally or not). We also note that Mr. Kirui had attempted to flee from police at the crime scene, suggesting that he would be willing to take any available action to frustrate his arrest or successful prosecution. Further, given T.M.'s description of the rape and the limited extent to which Mr. Kirui was able to penetrate her vagina, police could reasonably conclude that only small amounts of genetic material had been deposited on Mr. Kirui's skin and that those materials could easily disappear. Finally, Ms. Emily Warren, a forensic specialist with the Kansas City Police Department (KCPD) Crime Lab testified about the "many scenarios" in which Mr. Kirui could have destroyed the evidence including: any sort of washing, sweating heavily, clothing could rub against the body and remove foreign DNA. Considering the evidence presented at both the suppression hearing and at trial, we find sufficient evidence in the record to support the trial court's ruling.

Opinion by: Thomas H. Newton, Judge March 2, 2021

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