

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 KA 0328

STATE OF LOUISIANA

VERSUS

LARRY LIONELL CLARK, II

Judgment Rendered: September 14, 2011

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit number 11-06-0398

Honorable Trudy White, Presiding

Hon. Hillar Moore
District Attorney

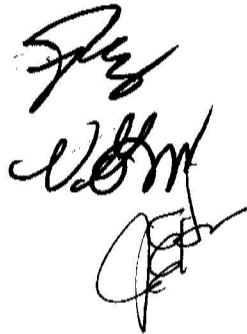
Counsel for Appellee
State of Louisiana

Dylan C. Alge
Assistant District Attorney
Baton Rouge, LA

Frederick Kroenke
Baton Rouge, LA

Counsel for Defendant/Appellant
Larry Lionell Clark, II

BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.



GUIDRY, J.

The defendant, Larry Lionell Clark, II, was charged by grand jury indictment with one count of aggravated rape (count I), a violation of La. R.S. 14:42, and one count of second degree kidnapping (count II), a violation of La. R.S. 14:44.1, and pled not guilty on both counts. Following a jury trial, by unanimous verdict, on count I, the defendant was found guilty of the responsive offense of forcible rape, a violation of La. R.S. 14:42.1, and on count II, he was found guilty as charged. On count I, he was sentenced to fifteen years at hard labor, with ten years without benefit of probation, parole, or suspension of sentence. On count II, he was sentenced to five years at hard labor without benefit of parole, probation, or suspension of sentence, to run concurrently with the sentence imposed on count I. The defendant now appeals, contending the trial court erred in accepting Janani Siva as an expert forensic scientist in the field of DNA analysis. For the following reasons, we affirm the convictions and sentences.

FACTS

The victim, B.H.,¹ testified at trial. His date of birth was October 28, 1990. He gave the following account of the incident. On November 13, 2006, he did not go to school because he had an appointment to see a doctor. Prior to 7:00 a.m., he walked outside to the bus stop, which was on the corner of the street where his house was located. He was approached by a man driving an Impala automobile. The man claimed he was police officer "Ray Williams" and wanted to ask the victim some questions. He also showed the victim a business card for Baton Rouge City Police Department Corporal Ray Williams.

The victim approached the driver's side of the car and spoke to the man. The man asked the victim to take a ride with him, but the victim did not want to ride with

¹ The victim is referenced herein only by his initials. See La. R.S. 46:1844(W).

the man. The man exited his vehicle and showed the victim a toy box in the trunk of the car. The man told the victim that the toy box contained "drugs and stuff" and if the victim did not get in the car, he "was going to have that charge." The man also had two yearbooks, police belts, and "a vest" in the trunk of the car. The man told the victim he wanted to show him a yearbook and see if he could identify anyone in the book. The man told the victim to get into the car, and that it would only take a few minutes to answer questions and to see if he could identify some suspects. Believing the man was a police officer, the victim got into his car. Thereafter, the victim saw a small black gun in the car.

After the victim got into the car, the man handcuffed him. The man drove to an ATM, and then to an old apartment complex behind Earl K. Long Hospital. While still in the car, the man told the victim he wanted to search him, and felt his pockets. The man then told the victim to pull the victim's pants down. The victim refused, and the man struck him on the back of his head with the gun, stating the victim was the second person he had to hit for not cooperating. The victim began bleeding from the wound, and asked the man to either let him out of the car or take him to the hospital. The man gave the victim a towel to put on his wound and pulled down the victim's pants and underwear. He then repeatedly put his mouth on the victim's penis for about ten minutes.

Thereafter, the man drove to "his house." The man took the victim into the house through the laundry room, and the victim noticed certain pictures on the wall. In the kitchen, the man took the victim's bloody shirt and gave him another one to wear. The man laid down on the floor, forced the victim to get into a "push up position" above him, and placed his mouth on the victim's penis. The victim's ordeal ended when the man subsequently drove the victim close to his house, put \$20 in his pocket, and dropped him off.

The victim remembered the license plate number of the Impala. He identified the defendant in a photographic lineup on the day after the incident and in court as his assailant. He also indicated the assailant had a tattoo that read, "100 percent real."

The defendant also testified at trial. He indicated he owned an Impala automobile at the time of the offense, and sometimes let his friend, Alonte Bynum, use the car. He claimed Bynum was the passenger in his car shown on surveillance video taken on the day of the incident at the ATM.

The defendant conceded there was a toy box in the trunk of his car, but claimed the toy box contained a tricycle for his godchild. He indicated he was a member of the National Guard and worked as an armed security officer. He owned approximately four or five guns. He conceded that the guns and the yearbook in his Impala belonged to him, as did the yearbook found in his house. He claimed a police officer had given him a bulletproof vest, because the officer had an extra one and because the defendant provided security at clubs where there was gunfire.

The defendant conceded he had a tattoo stating, "100 percent real" on his left arm. He conceded he knew Police Officer Ray Williams from church and indicated Officer Williams had given him the business card for Corporal Ray Williams found in the defendant's car. He claimed he had never seen the victim before and specifically denied "pick[ing] [the victim] up" on the day of the incident and committing sex acts on him.

QUALIFICATION OF EXPERT WITNESS

In his sole assignment of error, the defendant argues the trial court abused its discretion in accepting Janani Siva as an expert witness.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as

an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. La. C.E. art. 702. Preliminary questions concerning the competency or qualification of a person to be a witness or the admissibility of evidence shall be determined by the court. La. C.E. art. 104(A). The trial court is vested with wide discretion in determining the competency of an expert witness, and its ruling on the qualification of the witness will not be disturbed absent an abuse of discretion. State v. Lamonica, 09-1366, p. 8 (La. App. 1st Cir. 7/29/10), 44 So. 3d 895, 900, writ denied, 10-2135 (La. 2/18/11), 57 So. 3d 331.

At trial, the State sought to qualify Janani Siva as a forensic scientist and an expert in DNA analysis. At the time of trial, she was employed as the laboratory director of Tuscan Medical Center in Tucson, Arizona. Between May of 2004 and December of 2008, she had been employed at the Louisiana State Police Crime Laboratory as a DNA analyst. She had earned a bachelor's degree in medical technology from New Orleans Medical Center and a master's degree in natural science with an emphasis in forensic science. She worked in biomedical research and, while employed at the Louisiana State Police Crime Laboratory, completed the training required to perform DNA analysis on forensic cases. She had been trained on extraction, quantification, amplification, and running final samples to obtain DNA profiles. She had experience in all types of criminal cases, including rape cases, and had worked with between 3,000 and 5,000 DNA samples. She had taken specific courses required by FBI guidelines to be a DNA forensic scientist including: genetics, molecular biology, biochemistry, and statistics. She was a member of the American Academy of Forensic Scientists and the Louisiana Academy of Forensic Scientists. She also obtained continuing education while working as a forensic scientist and attended state and national conferences for forensic scientists.

On cross-examination, Siva indicated her initial degree trained her to perform accurate testing with quality control in place, using valid reagents and providing accurate results. She indicated she began working independently at the Louisiana State Police Crime Laboratory in 2006, and last worked with DNA samples in December of 2008. She had not previously testified as an expert in court.

The defense objected to Siva being qualified as an expert, arguing she had never previously testified as an expert and had not “run a DNA sample in about two years.” The State responded that the fact that Siva had not tested DNA since 2008 was irrelevant because she would be testifying about testing she conducted in 2007, while employed by the Louisiana State Police Crime Laboratory. The court accepted Siva as a forensic scientist with an expertise in DNA analysis, and the defense objected to the court’s ruling.

After a thorough review of the record, we conclude the trial court did not abuse its wide discretion in determining the competency of Siva as an expert witness.

This assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.