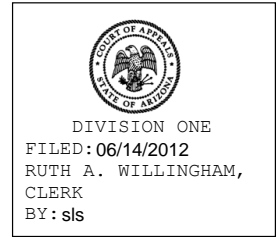


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 10-1002
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JUAN AURELIO SANCHEZ,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-144687-001 DT

The Honorable Roland J. Steinle, III, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Division
And Robert A. Walsh, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Paul J. Prato, Deputy Public Defender
Attorneys for Appellant

T H O M P S O N, Judge

¶1 Defendant Juan Aurelio Sanchez appeals his conviction and sentence for second degree murder, a class one dangerous felony and domestic violence offense, on the ground that the

trial court deprived him of his due process right to present a complete defense by erroneously precluding evidence that the victim had told Sanchez that she did not want to return to prison, which supplied a motive for her to commit suicide. For the reasons that follow, we find no reversible error.

¶12 The evidence introduced at trial, viewed in the light most favorable to sustaining the conviction,¹ briefly was as follows. Shortly after 4 a.m. on July 6, 2009, police received a 9-1-1 call from the victim's cell phone, but someone hung up before the caller said anything. When the 9-1-1 dispatcher called back, she heard a television in the background before someone again hung up the phone. When the dispatcher called back again, at 4:15 a.m., a woman could be heard repeatedly screaming "Johnny"² in the background before someone hung up the phone.

¶13 Sanchez called the victim's sister at 4:19 a.m., but he hung up before he said anything. When the 9-1-1 dispatcher called the victim's phone a third time, at 4:20 a.m., a male voice said, "Nothing is wrong." When the dispatcher informed him that something was wrong and police were on the way, and asked to speak to the woman, he hung up.

¹See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

² Sanchez later identified himself to police as "Johnny."

¶14 Two minutes later, Sanchez called the victim's niece, asking her to come and get his girlfriend's two-year-old boy, and "[t]ake care of him for the rest of his life," explaining that he had "fucked up" with his girlfriend, and he was "sorry for what he had done." The family rushed to the apartment, where they found Sanchez's girlfriend dead, lying face up on the floor in a pool of blood, with Sanchez lying face down on top of her. Sanchez grabbed a knife and cut his neck before the victim's brother-in-law took the knife away from him.

¶15 When police arrived at the scene about one-half hour later, Sanchez repeatedly swore, yelled, and kicked at them, said he wanted to die, and informed the officers, "I told her not to do it," and "I tried not to do it." In an interview the following day, Sanchez denied killing his girlfriend. He told the detective, however, that he had told the 9-1-1 dispatcher that he had killed her. Sanchez testified at trial that he and his girlfriend were fighting, and she cut him with a knife after he called 9-1-1 twice, hanging up both times without saying anything. He testified that after the 9-1-1 operator called back and told him that police were on the way, she slit her throat while standing in front of him and her two-year-old boy, and he grabbed her and put her on the floor, where she died.

¶16 The medical examiner ruled the death a homicide, caused by a deep cut to the victim's neck, which sliced through

the neck muscle, into the thyroid cartilage, through the jugular vein, and through one-third of the left carotid artery. He testified that when the wound was inflicted, "most likely, the tip of the knife was pointing to her left side. The handle was on the right side." The victim was left-handed. The medical examiner testified that the wound was not consistent with suicide because of the absence of hesitation marks. He testified that the victim could have continued breathing thirty seconds to two minutes after her throat was slashed, and the lack of damage to her central nervous system would have permitted her to move after she was injured.

¶17 An expert in blood spatter analysis concluded that the victim's throat was slashed when she was sitting on the love seat, after which she stood up and tried to leave the apartment by the front door, but she came back into the living room, where she fell. He indicated that the blood spatter showed that she was prevented from leaving by Sanchez, who slammed the door closed after she had partially opened it. The victim's sister found the front door to the apartment locked, but a set of keys had been left in the deadbolt lock.

¶18 The jury convicted Sanchez of the charged crime of second degree murder, a class one felony, and found that it was a dangerous, domestic violence offense. The jury found the

existence of three aggravators. The judge sentenced Sanchez to twenty-two years in prison. Sanchez timely appealed.

¶9 Sanchez argues that the trial court abused its discretion and deprived him of his due process right to present a complete defense by precluding evidence of the victim's motive to commit suicide: that she did not want to return to prison. He argues that the trial court erred in precluding the victim's statement because it was admissible under the exception to the preclusion of hearsay in Evidence Rule 803(3) to show declarant's state of mind. The state assumes for the purposes of appeal that the statement would have been admissible under Evidence Rule 803(3) as showing the victim's state of mind, but argues that Sanchez failed to raise this claim below, and has failed to meet his burden on fundamental error review to show he was prejudiced by the error.

¶10 The background on this issue is as follows. Before trial, the state filed a motion *in limine* in pertinent part to preclude Sanchez from presenting any evidence at trial of his girlfriend's recent imprisonment, on the ground it had no relevance to any issue at trial, was unfairly prejudicial, and was inadmissible character evidence. The state filed a separate motion *in limine* on hearsay grounds to preclude Sanchez from introducing any statements he made to police, including the statement that the victim told him she could not go back to

prison. Sanchez responded that the evidence of the victim's recent imprisonment was relevant to show her motive for committing suicide, and that the state had failed to show it was unfairly prejudicial; her statement was admissible for the non-hearsay purpose of showing that investigators failed to investigate the possibility of suicide; and, if the state introduced some of Sanchez's statements, his statement to police explaining her suicide was admissible under the rule of completeness codified in Arizona Evidence Rule 106.

¶11 The judge ruled that, under Evidence Rules 106 and 806, Sanchez was entitled to introduce all of his statements before and after police arrived if the state introduced any. On grounds of hearsay and unfair prejudice, however, the judge precluded any evidence suggesting that "the reason [the victim] cut her throat is she didn't want to go back to prison."³ He ordered that any such statements be redacted from the recorded statement, and precluded Sanchez from testifying about them. The judge reasoned with respect to the statements Sanchez made to police outlining what the victim had told him before killing herself:

The purpose of admitting the statement is not to show that the defendant [sic] was in prison before. The purpose of the statement is to show the defendant's

³ The state informed the court that the victim "had been in prison for about eight months shortly before this offense for a Class 6 and had been released."

explanation of what happened that day. And the portion about being in prison would be one of those situations. It would be hearsay within hearsay.

The Court is going to strike in the portion of the recorded or written statement is to be deleted about the reason she cut her throat is she didn't want to go back to prison.

The judge also ruled that Sanchez would not be permitted to testify that the reason that the victim cut her throat was that she did not want to go back to prison. He reasoned that "[t]he nature of the evidence, to me, is, under 403, substantially outweighed by the prejudice involved."

¶12 The judge ruled that the state would not open the door to allowing a reference to the victim's fear of returning to prison by offering evidence that the victim had no motive to kill herself. The judge ruled that Sanchez "can get into the fact that his testimony is he was going to call the police and have the police come and arrest her for assault. But you're not getting into the DOC [Department of Corrections]." Following his conviction, Sanchez filed a motion for new trial, arguing for the first time that the victim's statement that she did not want to go back to prison was admissible under the state of mind exception to the evidence rules precluding hearsay. The judge denied the motion for new trial.

¶13 The constitutional rights to due process, compulsory process, and confrontation guarantee a criminal defendant "a

meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (citation omitted). A defendant's right to present evidence is subject to restriction, however, by application of reasonable evidentiary rules. See *United States v. Scheffer*, 523 U.S. 303, 308 (1998). We review rulings on the admissibility of evidence for abuse of discretion, and constitutional issues *de novo*. *State v. Ellison*, 213 Ariz. 116, 129, ¶ 42, 140 P.3d 899, 912 (2006).

¶14 The victim's purported statements to Sanchez before she died that she was not going back to prison were clearly hearsay, as out-of-court statements offered to prove the truth of the matter asserted. See Ariz. R. Evid. 801(c). If testified to by Sanchez they were potentially admissible as an exception to the rules precluding hearsay, however, under Rule 803(3) of the Arizona Rules of Evidence, which allows admission of a declarant's "then-existing state of mind . . . (such as motive, intent, plan . . .), but not including a statement of memory or belief to prove the fact remembered or believed." Ariz. R. Evid. 803(3). As to Sanchez's recorded statement to police offered by Sanchez, the court correctly determined the statement was hearsay, admissible to the extent allowed by the fairness principle in Rule 106, and only with prejudicial matter excised. As to Sanchez's proposed testimony that the victim said she was not going back to prison, the court reasonably

disallowed it under Rule 403, and we find no abuse of discretion. See *State v. Connor*, 215 Ariz. 553, 564, ¶ 39, 161 P.3d 596, 607 (App. 2007) (We review trial court's 403 determinations under an abuse of discretion standard and trial court has broad discretion in making the determination) (citations omitted). The trial court did not abuse its discretion in determining that while the assertion that the victim was suicidal would be admitted, the victim's asserted intention not to go back to prison was unduly prejudicial and would not be admitted. See *McCormick on Evidence* § 275 (Kenneth Broun ed., 6th ed. 2006) ("[S]tatements of intent to commit suicide have been admitted when offered by the accused in Homicide cases to prove that the victim took his or her own life . . ."). However, *McCormick* also says that ordinarily statements are admitted to corroborate other evidence that a victim intended to commit suicide:

The matter of the admissibility of declarations of state of mind to prove subsequent conduct is a far different question from that of the sufficiency of these statements, standing alone, to support a finding that the conduct occurred. In a typical case, it is reasonable to hold that the declarations are themselves insufficient to support the finding and therefore that statements of intention must be admitted in corroboration of other evidence to show the acts.

Id. at 478. Here, the physical evidence did not support defendant's theory that the victim intended to commit suicide at all. The evidence that Sanchez had slashed the victim's throat was overwhelming: the medical examiner concluded that it was not likely she slashed her own throat because of the absence of any hesitation marks; the blood spatter patterns showed that she had tried to escape the apartment after her throat was slashed and was prevented from doing so by Sanchez; on one of the calls made by the 9-1-1 dispatcher, a female can be heard screaming; and two minutes after telling the 9-1-1 operator that nothing was wrong, Sanchez told a relative to come and pick up the child and take care of him for life because he had "fucked up" with his girlfriend, for which he was sorry. He also told a police detective the day after the murder that he thought he had told the 9-1-1 dispatcher that he had killed his girlfriend. We find no abuse of discretion.

¶15 For the foregoing reasons, we affirm Sanchez's conviction and sentence.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

PETER B. SWANN, Presiding Judge

/s/

MICHAEL J. BROWN, Judge