

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

ADRIAN GONZALES CRUZ, *Appellant*.

No. 1 CA-CR 18-0543
FILED 9-3-2020

Appeal from the Superior Court in Maricopa County
No. CR2008-006151-001
The Honorable John R. Hannah Jr., Judge
The Honorable Michael D. Gordon, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Terry M. Crist, III
Counsel for Appellee

The Stavris Law Firm PLLC, Scottsdale
By Alison Stavris
Counsel for Appellant

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OPINION

Judge Michael J. Brown delivered the opinion of the Court, in which Presiding Judge Jennifer B. Campbell and Judge Lawrence F. Winthrop joined.

B R O W N, Judge:

¶1 In the middle of his 2009 trial on various sexual misconduct and kidnapping charges (“Sexual Assault Case”), Adrian Gonzales Cruz escaped from custody. The trial proceeded and Cruz was found guilty on multiple charges, but sentencing could not occur in his absence. After Cruz was arrested years later, he was charged and tried for escape (“Escape Case”). He contended he was not the man who had escaped from custody, and the jury found him not guilty. Cruz then argued the acquittal in the Escape Case collaterally estopped the State from trying to prove his identity at sentencing in the Sexual Assault Case. The superior court rejected the argument, found that the State proved identity beyond a reasonable doubt, and sentenced him to prison. For the following reasons, we reject Cruz’s challenge to the court’s ruling.

BACKGROUND

¶2 During the lunch break on the sixth day of trial in the Sexual Assault Case, a deputy handcuffed Cruz to a metal ring in the floor of a courthouse interview room; when the deputy returned Cruz was gone. After the superior court found that Cruz had voluntarily absented himself, the trial proceeded *in absentia*, resulting in guilty verdicts on two counts of kidnapping and one count each of sexual conduct with a minor, sexual abuse of a minor, and sexual assault. At the end of trial, the court issued a bench warrant for Cruz’s arrest, and sentencing was held in abeyance pending his apprehension. *See* Ariz. R. Crim. P. 26.9 (“The defendant . . . must be present at sentencing.”).

¶3 Soon thereafter a grand jury indicted Cruz, alleging he “knowingly escaped from custody” in violation of Arizona law. He was apprehended six years later. At trial on the escape charge, the main issue was his identity. After his acquittal, Cruz filed an “Objection to Sentencing” in the Sexual Assault Case, asserting that because the jury in the Escape Case necessarily found he was not the person who escaped from trial in the

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Sexual Assault Case, the State was collaterally estopped from attempting to prove his identity for sentencing in the Sexual Assault Case.

¶4 The superior court overruled Cruz’s objection, concluding that although Cruz had made a “superficially appealing argument,” collateral estoppel did not preclude it from finding Cruz was the defendant in the Sexual Assault Case. The court reasoned in part that the two matters did not involve precisely the same issues, explaining that “[t]he undecided factual issue is not whether [Cruz] is the person who escaped from the Sexual Assault Case, but rather whether he is the person who stands charged and convicted in the Sexual Assault Case.” The court therefore determined that sentencing in the Sexual Assault Case would proceed if the State could prove Cruz’s identity.

¶5 The superior court then conducted a hearing at which the State presented evidence, including DNA, fingerprints, and pretrial photographs, showing that Cruz was the person who was arrested and tried in the Sexual Assault Case. The court found that the State proved his identity beyond a reasonable doubt and sentenced Cruz to presumptive consecutive prison sentences totaling 54 years, all consecutive to his prison sentence from a previous 2004 conviction. This timely appeal followed.

DISCUSSION

¶6 Cruz argues that double jeopardy principles and collateral estoppel barred the superior court from sentencing him in the Sexual Assault Case. We review constitutional and legal determinations de novo. *State v. Davolt*, 207 Ariz. 191, 202, ¶ 21 (2004).

¶7 The Double Jeopardy Clause prohibits multiple prosecutions and punishments for the same offense. *Currier v. Virginia*, 138 S. Ct. 2144, 2149–50 (2018). As the superior court appropriately recognized, Cruz’s double jeopardy rights were not violated because his sentencing in the Sexual Assault Case did not involve (1) a second prosecution for the same offense after an acquittal or a conviction, or (2) multiple punishments for the same offense. Thus, the only issue before us is whether collateral estoppel precluded the State from proving Cruz’s identity at sentencing.

¶8 Collateral estoppel, also known as issue preclusion, means that “when an *issue of ultimate fact* has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.” *Ashe v. Swenson*, 397 U.S. 436, 443 (1970) (emphasis added). The doctrine is an “integral part of the protection against double jeopardy guaranteed by the Fifth and Fourteenth

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Amendments.” *State v. Detrich*, 188 Ariz. 57, 62 (1997) (quoting *Harris v. Washington*, 404 U.S. 55, 56 (1971)); see also *State v. Nunez*, 167 Ariz. 272, 276 (1991) (discussing collateral estoppel as one element found in the protection against double jeopardy). But the doctrine is not favored in criminal cases and is therefore applied sparingly. *Lemke v. Rayes*, 213 Ariz. 232, 241, ¶ 24 (App. 2006). Nevertheless, it should not be applied “with the hypertechnical and archaic approach of a 19th century pleading book, but with realism and rationality.” *Ashe*, 397 U.S. at 444. To determine whether collateral estoppel applies, a court should

examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration. The inquiry must be set in a practical frame and viewed with an eye to all the circumstances of the proceedings.

(Internal quotation marks and citations omitted.)

¶9 Our supreme court has described the traditional elements of collateral estoppel as follows: “[T]he issue sought to be relitigated *must be precisely the same* as the issue in the previous litigation; a final decision on the issue must have been necessary for the judgment in the prior litigation; [and] there must be mutuality of parties.” *State v. Jimenez*, 130 Ariz. 138, 140 (1981) (emphasis added). To invoke collateral estoppel on a specific issue, a defendant has the burden of proving that the jury “acquitted him because it resolved in his favor *the very issue* that he seeks to foreclose from consideration in the second trial.” *Detrich*, 188 Ariz. at 62 (citation omitted) (emphasis added). For several reasons, we agree with the superior court’s conclusion that collateral estoppel did not bar the State from proving Cruz’s identity at the sentencing hearing.

¶10 At sentencing, the State needed to present evidence showing that Cruz was the same person who was arrested and charged in the Sexual Assault Case. After considering the evidence, the superior court found Cruz was that person.

¶11 Cruz cites no authority suggesting that under any circumstances, invoking collateral estoppel based on an acquittal may bar the State in a separate case from proving at sentencing that the defendant is the same person who was arrested, tried, and convicted on the charges filed in that separate case. Stated differently, Cruz does not explain how an event

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occurring after a finding of guilt but before sentencing could collaterally estop the State from proving the defendant's identity at sentencing. Thus, the situation here is unlike other circumstances where retrial of a defendant may be barred by collateral estoppel based on a second prosecution for the same underlying conduct. See *Ashe*, 397 U.S. at 445 (man acquitted of robbing one of several players at a poker game could not be tried for robbing another player at same game); see also *Currier*, 138 S. Ct. at 2150 (noting that *Ashe* presents a demanding test that "forbids a second trial only if to secure a conviction the prosecution must prevail on an issue the jury necessarily resolved in the defendant's favor in the first trial"). And even assuming collateral estoppel could apply to this unusual fact pattern, Cruz has not shown that the issues at stake in the Escape Case and the sentencing proceeding in the Sexual Assault Case were "precisely the same."

¶12 We have previously held that before a court may sentence a defendant tried *in absentia*, the State must prove that the person to be sentenced is the person who was "initially arrested" and charged in the case. *State v. Hall*, 136 Ariz. 219, 221-22 (App. 1983); see *State v. Rocha-Rocha*, 188 Ariz. 292, 295 (App. 1996) ("The 'real question' here is whether the [defendant] who was sentenced is the same person as was initially arrested."). The verdict in the Escape Case therefore could collaterally estop the sentencing in the Sexual Assault Case only if the jury in the Escape Case necessarily decided that Cruz was not the person arrested and charged in the Sexual Assault Case. But the jury in the Escape Case was not asked to decide that issue. Rather, the only "issue of ultimate fact" for the jury to determine was whether Cruz was the person who escaped from custody after being arrested on an unspecified felony charge. See *Ashe*, 397 U.S. at 443. The charges on which that escapee was initially arrested, and the cause number of that case, were simply not at issue in the Escape Case. By contrast, before sentencing Cruz in the Sexual Assault Case, the superior court heard abundant evidence, including fingerprint and DNA results, that Cruz was the person arrested in the cause number that resulted from the sexual misconduct and kidnapping charges. See *Hall*, 136 Ariz. at 222 (stating there was "no question but that the jury convicted a specific man and that he is the person who was sentenced").

¶13 We acknowledge that identity was the primary issue the jury needed to decide at trial in the Escape Case, given the parties' stipulation that "[o]n February 17, 2009[,] the charge that the defendant had been charged with and was in trial on was a felony." But, as the superior court instructed the jury, it was free to accept or reject the stipulation, in whole or in part. The stipulation did not cover all elements of the offense of escape nor did it include specific information about the referenced "trial," such as

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the charges, cause number, dates, or location, or whether Cruz was in custody throughout the trial proceedings. We see no definitive indication in the record that the jury's verdict reflects more than its finding that the State failed to meet its burden to prove each element of the offense beyond a reasonable doubt. Thus, the issues decided by the jury in the Escape Case, and by the superior court at sentencing, were not "precisely the same."

¶14 Finally, as noted above, we apply collateral estoppel from the perspective of "realism and rationality." See *Ashe*, 397 U.S. at 443-44. In *Ashe*, the court held that the first jury necessarily found that the defendant was not "one of the robbers" who showed up at the poker game in which both of the respective victims were players. *Id.* at 446. But here, the jury in the Escape Case was asked only to determine whether Cruz was the man who escaped from custody on an unidentified felony charge. That jury found that the State failed to prove Cruz committed the offense of escape, but even assuming identity was the only disputed issue for the jury's determination, the jury's verdict in the Escape Case did not encompass, involve, or consider whether Cruz was the same person who was arrested and charged in the Sexual Assault Case. The jury's verdict in the Sexual Assault Case cannot be voided merely because another jury acquitted the defendant on the escape charge. We therefore conclude that the jury's acquittal in the Escape Case did not bar the State from presenting evidence at sentencing to prove that Cruz is the same person arrested, charged, and convicted in the Sexual Assault Case.

CONCLUSION

¶15 We affirm Cruz's convictions and sentences in the Sexual Assault Case.



AMY M. WOOD • Clerk of the Court
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