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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

CHALICE RENEE ZEITNER, *Appellant*.

No. 1 CA-CR 16-0680
FILED 3-20-2018

Appeal from the Superior Court in Maricopa County
No. CR2015-002583-001
The Honorable Pamela S. Gates, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Michael O'Toole
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Lawrence H. Blieden
Counsel for Appellant

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Jennifer M. Perkins joined.

C A T T A N I, Judge:

¶1 Chalice Renee Zeitner appeals from her convictions and sentences for two counts of fraudulent schemes and artifices, one count of money laundering, two counts of theft, one count of taking the identity of another, and one count of fraudulent use of a credit card. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Zeitner’s convictions resulted from her involvement in and theft of resources from two associated military-veterans-related organizations: Veteran’s Hope, a non-profit charity designed to connect veterans with existing assistance programs, and Armed Forces Racing (“AFR”), a racing program intended to build military involvement in the motorsports industry.

¶3 Rick Ecker, a retired Marine, created Veteran’s Hope and AFR, but as of early 2012, both organizations remained in what Ecker characterized as a “building phase” with no income or fundraising activities. Around that time, Ecker met Chris Johnson, who had previously volunteered with a different foundation involving racing and veterans, and Johnson began to work with Veteran’s Hope and AFR.

¶4 Johnson met Zeitner and they began a relationship in mid-2012. Although Zeitner had been discharged from the Army after only a few months and had never served in the Marine Corps, she told Johnson that she had served in the Army and the Marines for a few years each. She claimed to have extensive background in non-profit work and to have strong racing connections and corporate connections. (She also claimed to be an attorney in South Africa with significant financial assets and a monthly stipend.)

¶5 Zeitner’s claimed experience seemed tailor-made for Veteran’s Hope and AFR, and Johnson put Zeitner in contact with Ecker. Zeitner falsely told Ecker that she had been a Marine staff sergeant (which

STATE v. ZEITNER
Decision of the Court

would have required 5–10 years of service) and that she had been a “top fuel dragster driver” and retained connections with several racing organizations. Ecker soon made Zeitner AFR’s vice president of operations and Veteran’s Hope’s chairman of the board and executive director.

¶6 Zeitner came up with an idea to hold a Veteran’s Day gala celebrating the history of motor racing as a “coming-out party” for the organizations – with the proceeds providing an initial funding infusion for Veteran’s Hope. A caravan of race cars would drive across the country, then be displayed at the gala. Zeitner, claiming that her father was the director of U.S. Customs, said she could arrange to store the race cars at Customs buildings. At Zeitner’s request, Ecker gave her his personal identifying information, as well as identifying information for his wife and his daughter, purportedly so Zeitner could get them security clearance passes to access the race cars in the Customs buildings.

¶7 Zeitner used the Eckers’ personal identifying information to acquire three credit cards. Ecker received the cards, which he understood to be opened on a business account for AFR, and at Zeitner’s request, sent her the card designated for “Operations” (which had in fact been opened with Ecker’s daughter’s information). Zeitner told Ecker she would use the card for everyday expenses and, as AFR had no funds, she would pay the balance monthly from her personal bank account that she claimed was linked to the card.

¶8 Over the next two months, Zeitner charged over \$25,000 in primarily personal purchases on the AFR card, but did not pay the balance owed. In late 2012, Ecker himself made a \$300 payment; two attempted payments from Zeitner’s bank accounts did not clear due to insufficient funds; two attempted payments of \$10,000 and \$15,166 drawn from an account belonging to Johnson were stopped because he had not authorized Zeitner to make them.

¶9 Meanwhile, Zeitner contacted the Arizona-based Veteran’s Tickets Foundation (“VetTix”) offering to designate it as the “charity of choice” for the gala; as such, VetTix would ostensibly receive certain proceeds from silent auction items. Zeitner again claimed to be a Marine veteran and talked about AFR and Veteran’s Hope. VetTix agreed to participate and spent around \$7,800 on gala tickets and hotel reservations, paid through a website specified by Zeitner. The payments never reached Veteran’s Hope or the hotel, however, and instead were deposited into Zeitner’s PayPal account.

STATE v. ZEITNER
Decision of the Court

¶10 Zeitner then told VetTix that the gala had been postponed, but that the delay offered VetTix an opportunity to be included in all of AFR and Veteran’s Hope promotional activities upon payment of a “\$10,000 placeholder” by the first part of November 2012. She claimed that the full amount would be repaid after the gala, with her personally responsible for half and the balance from other organizations involved in the gala. VetTix ultimately paid the \$10,000; at Zeitner’s request and due to purported time constraints, VetTix sent the money to Johnson’s personal account. (Johnson, in turn, believed the \$10,000 deposit was from Zeitner as a contribution to their shared living expenses.)

¶11 In the end, neither the cross-country race-car caravan nor the gala ever occurred, VetTix never received the promised promotions, and Zeitner never repaid VetTix’s \$10,000 “placeholder” payment and never reimbursed the \$7,800 paid for tickets and accommodations.

¶12 The State ultimately charged Zeitner with four counts (fraudulent schemes, taking the identity of another, fraudulent use of a credit card, and theft) related to her acquisition and use of the AFR credit card (the “Veteran’s Hope counts”) and four counts (fraudulent schemes, money laundering, theft, and taking the identity of another) related to her receipt and use of money from VetTix (the “VetTix counts”).

¶13 Before trial, Zeitner moved to sever the Veteran’s Hope counts from the VetTix counts. The superior court denied severance, reasoning that the offenses were properly joined under Arizona Rule of Criminal Procedure 13.3(a)(1) (same or similar character), (2) (same conduct or otherwise connected in commission), and (3) (common scheme or plan); that even if severed, evidence of each set of charges would be admissible as other-acts evidence during trial on the other set of charges; and that joinder would not “defeat the ends of justice.” *See* Ariz. R. Crim. P. 13.3(a)(1)-(3), 13.4(a)-(b); Ariz. R. Evid. 404(b). Zeitner renewed her motion during trial, and the court again denied severance.

¶14 The jury convicted Zeitner of all but one count (taking the identity of another as to Johnson), and the superior court sentenced her to concurrent terms of imprisonment, the longest of which is 15.75 years. Zeitner timely appealed, and we have jurisdiction under Arizona Revised Statutes (“A.R.S.”) § 13-4033.

DISCUSSION

¶15 Zeitner argues that the superior court erred by denying her request to sever the Veteran’s Hope counts from the VetTix counts. We

STATE v. ZEITNER
Decision of the Court

review for an abuse of discretion the denial of a motion to sever counts. *State v. Benson*, 232 Ariz. 452, 458, ¶ 11 (2013).

¶16 The State may charge multiple offenses “of the same or similar character” in a single indictment. Ariz. R. Crim. P. 13.3(a)(1).¹ A defendant is entitled to severance of offenses joined solely on that basis “unless evidence of the other offense or offenses would be admissible if the offenses were tried separately.” Ariz. R. Crim. P. 13.4(b); *Benson*, 232 Ariz. at 458, ¶ 12.

¶17 Zeitner conceded before the superior court and does not dispute on appeal that the Veteran’s Hope counts and VetTix counts reflect similar conduct justifying joinder under Rule 13.3(a)(1). She argues, however, that she was entitled to severance as a matter of right under Rule 13.4(b) on the basis that evidence of each set of charges would be improper propensity evidence under Arizona Rule of Evidence 404(b) – and thus not cross-admissible – in a separate trial of the other set of charges. Although Rule 404(b) generally prohibits use of a defendant’s other acts as propensity evidence, it permits other-acts evidence offered for other purposes, including “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Ariz. R. Evid. 404(b).

¶18 Here, Zeitner’s actions in diverting payments from VetTix into personal accounts suggested that her intent in using the AFR credit card for personal purchases was not just to build AFR’s relationship with the credit card company as she claimed, but rather for her personal benefit. Likewise, Zeitner’s misrepresentations as to her military service and experience to build trust with Ecker (facilitating the Veteran’s Hope counts) suggested that her similar misrepresentations to VetTix were part of a plan to defraud, rather than innocent mistakes or misunderstandings. And mounting pressure from Ecker regarding the unpaid AFR credit card (Veteran’s Hope evidence) provided a motive for Zeitner to solicit additional money from VetTix; although not conclusive, the timing of VetTix’s \$10,000 payment into Johnson’s account and Zeitner’s attempt to

¹ In addition to joinder of offenses “of the same or similar character,” Rule 13.3(a) provides grounds for joinder of offenses in two other circumstances: offenses that “(2) are based on the same conduct or are otherwise connected together in their commission; or (3) are alleged to have been part of a common scheme or plan.” Because we conclude that joinder was proper under Rule 13.3(a)(1) (and severance not mandated by Rule 13.4(b)), we need not address joinder under Rule 13.3(a)(2) or (3).

STATE v. ZEITNER
Decision of the Court

draw \$10,000 from that account a few weeks later to pay the AFR card supported an inference that the two were connected.

¶19 Zeitner asserts that, notwithstanding a proper purpose under Rule 404(b) for cross admitting each set of evidence, the minimal relevance of the otherwise cross-admissible evidence was substantially outweighed by the danger of unfair prejudice. *See* Ariz. R. Evid. 403. But Zeitner’s defense was, in part, that her activities were not criminal acts but simply business deals gone wrong. In that context, her intent was of critical importance and the Rule 404(b) evidence weighing on intent thus of significant relevance.

¶20 Finally, Zeitner argues that the court was required to grant severance because it was “necessary to promote a fair determination of [her] guilt or innocence.” *See* Ariz. R. Crim. P. 13.4(a). She argues that joinder hamstrung her ability to assert a third-party defense (accusing Johnson of wrongdoing), particularly given her voluntary absence from most of trial. Although Zeitner now asserts that Johnson was involved primarily in the Veteran’s Hope counts (so that including the VetTix counts in the same trial diverted the jury’s attention from his Veteran’s Hope-related actions), her closing argument urged that Johnson’s receipt or use of the money from *both* sets of offenses meant Zeitner should be acquitted of both the Veteran’s Hope and the VetTix counts. And Zeitner offers no explanation (other than the length of trial) for how her voluntary absence from trial would mandate severance, particularly given the court’s discussion (during voir dire) regarding a defendant’s right not to be present at trial and the court’s instruction to the jury prohibiting consideration of her presence or absence when determining guilt.

¶21 Accordingly, the superior court did not abuse its discretion by declining to sever the Veteran’s Hope counts from the VetTix counts.

CONCLUSION

¶22 We affirm Zeitner’s convictions and sentences.



AMY M. WOOD • Clerk of the Court
FILED: AA