

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

NAZARIO BOBBY CASTILLO, *Appellant*.

No. 1 CA-CR 16-0868
FILED 3-13-2018

Appeal from the Superior Court in Maricopa County
No. CR2013-003622-002
The Honorable Michael D. Gordon, Judge

AFFIRMED

COUNSEL

Wendy L. Mays, Attorney at Law, Phoenix
By Wendy L. Mays
Counsel for Appellant

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

STATE v. CASTILLO
Decision of the Court

MEMORANDUM DECISION

Judge James P. Beene delivered the decision of the Court, in which Presiding Judge Jon W. Thompson and Judge Peter B. Swann joined.

B E E N E, Judge:

¶1 Nazario Bobby Castillo (“Castillo”) appeals his convictions and sentences. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 The evidence at trial, viewed in the light most favorable to supporting the conviction,¹ showed that at approximately 1:00 a.m. on September 1, 2013, C.M. was walking home in south Phoenix. A white Dodge Magnum pulled up next to her. Castillo was driving and his brother, Emmanuel, was in the passenger seat. C.M. knew Emmanuel so she accepted a ride and got in the car. They drove to a liquor store, and while there, C.M. saw her sister and her sister’s boyfriend and briefly spoke with them. After leaving the store, C.M. thought they were driving her home, but Castillo stopped at a gas station instead. At this point, Emmanuel got into the backseat with C.M. and Castillo drove away. Emmanuel then searched C.M., taking a knife, cell phone, and bag from her. Instead of taking C.M. home, Castillo drove to his apartment in Mesa. After parking the car, Castillo brandished a shotgun, pointed it at C.M. and escorted her into his apartment.

¶3 Over the next 66 hours, Castillo and Emmanuel held C.M. in the apartment and repeatedly assaulted her. They knocked out C.M.’s two front teeth when she was struck in the mouth with the shotgun. C.M. was brought into a bedroom with no furniture. Mattresses covered the bedroom windows and a shower curtain was laying out on the floor. C.M. was forced to lay face down on the shower curtain while she was hit in the back of the head with the shotgun. During this assault, she pleaded to be let go. Castillo and Emmanuel refused, moving her at gunpoint, to different locations in the apartment. Once in the kitchen, they heated a knife on the stove and burned her with it several times. They did not say anything to C.M. except, “who set me up.” C.M. passed out after being forced to drink

¹ *State v. Harm*, 236 Ariz. 402, 404 n.2, ¶ 2 (App. 2015).

STATE v. CASTILLO
Decision of the Court

water that had been tampered with by Castillo and Emmanuel. When C.M. awoke, she heard Castillo and Emmanuel express a desire to "get rid of this bitch." Once it was dark enough, they put a shirt, hat, and sunglasses on C.M. and took her outside. While holding the shotgun to her back, Castillo put C.M. in the backseat of the car and got in the backseat with her. Emmanuel got in the driver's seat and drove away. C.M. begged to be released, saying that her "kids are going to be expecting me." Unaffected by her repeated entreaties, they drove to a nearby canal and stopped. Castillo forced C.M. out of the car, shot her in her mid-section with the shotgun, and got back into the car without saying a word. As Castillo and Emmanuel drove away, C.M. was on the ground, screaming for help, saying "I've been shot."

¶4 On September 3 at approximately 7:15 p.m., residents of an apartment complex heard a gunshot and saw a white car speed away. The residents then heard moaning, crying, and screaming coming from the canal; it was C.M. asking for help, saying she had been shot. After finding C.M., they noticed a gunshot wound to her stomach and that she had a "big gaping hole" in her right arm. They then called 9-1-1.

¶5 When officers arrived, C.M. identified Emmanuel by both first name and nickname. She also provided officers with the vehicle description as a white Dodge Magnum. A pair of sunglasses were found on the ground near C.M. She told officers the sunglasses belonged to the person who hurt her. Soon after, officers traced Emmanuel and the Dodge to an apartment in west Phoenix and waited for the Dodge to arrive. When officers saw a white Dodge Magnum driving through the apartment complex, they attempted to make a traffic stop but the car took off at a high rate of speed and a pursuit ensued. The Dodge drove erratically; reaching speeds of 90 miles per hour, weaving in and out of traffic, and running red lights. The Dodge finally stopped in south Phoenix and the two occupants bailed out, running off in opposite directions. Officers apprehended Emmanuel without incident. Castillo, however, hid under a nearby truck with his shotgun. When a group of officers approached saying, "Police. Let me see your hands," Castillo shot at them, hitting two officers. Officers eventually subdued Castillo with the assistance of a police dog.

¶6 C.M. spent six weeks in the hospital. She sustained several major injuries, including removal of her kidney and four fractured vertebrae. While in the hospital, C.M. identified both Castillo and Emmanuel from photo lineups. C.M.'s shoes and bag were found in Castillo's apartment. Emmanuel's DNA was found on C.M.'s shoes and the

STATE v. CASTILLO
Decision of the Court

sunglasses. Castillo's DNA was found on the shotgun in his possession when apprehended.

¶7 Castillo was charged with the following 17 counts: conspiracy to commit first degree murder (count 1); kidnapping (count 2); 10 counts of aggravated assault (counts 3-5 and 10-16); attempted first degree murder (count 6); and four counts of misconduct involving weapons (counts 7, 8, 17, and 18). The superior court severed three of the weapons charges (counts 7, 8, and 17) pursuant to the parties' agreement. Castillo moved to sever counts 1-6 (involving offenses against C.M.) from counts 10-16 (involving offenses against police officers). The court denied Castillo's motion, finding the charges were "appropriately joined." Following a month-long trial, the jury convicted Castillo on all counts. The superior court sentenced Castillo to life without the possibility of release for 25 years on count 1 and varying terms of imprisonment for his remaining convictions, totaling 245 years to be served consecutive to his sentence on count 1.

¶8 Castillo timely appealed. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, and Arizona Revised Statutes sections 12-120.21(A)(1), 13-4031 and -4033(A)(1).

DISCUSSION

¶9 Castillo's only argument on appeal is that he did not receive a fair and impartial trial because the superior court failed to sever the offenses against police officers (counts 10-16) from the offenses against C.M. (counts 1-6). We disagree.

¶10 Offenses may be joined for trial if they: "(1) are of the same or similar character; (2) are based on the same conduct or are otherwise connected together in their commission; or (3) are alleged to have been a part of a common scheme or plan." Ariz. R. Crim. P. 13.3(a). Joined offenses must be severed "if necessary to promote a fair determination of any defendant's guilt or innocence of any offense" or "if the offenses are only joined by virtue of their same or similar nature [under 13.3(a)(1)][.]" *State v. Garland*, 191 Ariz. 213, 216, ¶ 8 (App. 1998); see also Ariz. R. Crim. P. 13.4(a). "[O]therwise they may be severed at the trial court's discretion." *Garland*, 191 Ariz. at 216, ¶ 8. The superior court has "broad discretion" when ruling on a motion to sever offenses, and "[i]ts decision will not be disturbed absent a clear abuse of such discretion." *State v. Prince*, 204 Ariz. 156, 159, ¶ 13 (2003).

STATE v. CASTILLO
Decision of the Court

¶11 Castillo argues only that joinder was impermissible under Arizona Rule of Criminal Procedure 13.3(a)(1) and (3). He asserts that the two groups of offenses are neither (1) the same or similar character because they involve different victims and occurred hours apart, nor (2) part of a common scheme or plan because they are not part of an over-arching criminal plan. Castillo fails, however, to recognize or address that offenses may also be joined if they are “connected together in their commission.” Ariz. R. Crim. P. 13.3(a)(2). Offenses are “connected together in their commission” when they are “so intertwined and related that much the same evidence was relevant to and would prove both, and the crimes themselves arose out of a series of connected acts.” *State v. Prion*, 203 Ariz. 157, 162, ¶ 32 (2002).

¶12 Here, most of the same evidence was relevant and admissible to prove either group of offenses because the crimes arose out of a series of connected acts occurring within a relatively short period of time. First, evidence of both sets of crimes showed Castillo’s consciousness of guilt for the assault against C.M. and his motive to elude police and avoid apprehension. *See State v. Williams*, 183 Ariz. 368, 375-76 (1995) (offenses properly joined as “connected together in their commission” because later offense sought to silence witness who implicated defendant in earlier murder, thus showing defendant’s consciousness of guilt); *State v. Johnson*, 212 Ariz. 425, 429-30, ¶¶10-13 (2006) (offenses properly joined because later offense showed defendant’s motive to silence witness to earlier offense). The evidence showed the assault Castillo committed against C.M. was vicious and unrelenting. C.M. was beaten, burned, drugged, shot, and left for dead — all serious crimes for which Castillo went to great lengths to avoid being apprehended. Although Emmanuel was driving when officers tried to stop them, Castillo told his brother to “go, go” and they fled. Once stopped, Castillo ran, hid under a truck, fired his shotgun at officers, and continued to resist arrest until physically subdued. These connected acts showed Castillo’s consciousness of guilt. *See State v. Bible*, 175 Ariz. 549, 592 (1993) (“Evidence of flight from, or concealment of, a crime usually constitutes an admission by conduct.”); *State v. Edwards*, 136 Ariz. 177, 184 (1983) (“Evidence of an accused’s resistance to arrest is also admissible as evidence of consciousness of guilt, and thus of guilt itself.”).

¶13 Next, evidence of both sets of offenses was admissible and relevant to dispute Castillo’s account of the events and lend credibility to C.M.’s testimony. *See Williams*, 183 Ariz. at 376 (offenses properly joined to support witness’s credibility). Castillo claimed that he assaulted C.M. only in self-defense, shot her accidentally, and thought he was running from two unknown men dressed in black, not the police. Castillo testified that C.M.

STATE v. CASTILLO
Decision of the Court

voluntarily came back to his apartment with them. Emmanuel and C.M. went into one of the bedrooms to have sex and Castillo went to sleep on the couch. When Castillo awoke several hours later, C.M. was upset because Emmanuel was gone. When Castillo tried to physically force C.M. out of his apartment, she attacked him with a knife, and he hit her twice in the face in self-defense. Originally, Castillo was going to drive C.M. to the hospital, but ended up at the canal. C.M. refused to get out of the car and during a brief struggle, C.M. reached for Castillo's shotgun and was accidentally shot. Castillo testified he was scared and simply drove away.

¶14 After leaving C.M. wounded at the canal, Castillo stated that he picked up Emmanuel at the apartment. He did not tell Emmanuel what happened because he wanted to talk to his mother first. Before going to his mother's house, however, Castillo drove to buy beer and then to a friend's house to drink for approximately 30-40 minutes. When they left, Emmanuel drove as Castillo sat in the passenger seat. They drove to his mother's apartment complex but did not stop because her lights were off. Castillo said that upon leaving, while stopped at a stop sign, two unknown men, dressed all in black, "jumped out of a Chrysler 300 with a rifle" and told them to get out of the car. Castillo told Emmanuel to "go, go . . . we flee." Castillo said he did not see any police cars. Because they were low on gas, Castillo told Emmanuel to stop and they attempted to escape on-foot. He did not think there was any connection between accidentally shooting C.M. earlier at the canal and the two unknown men chasing them. Castillo took his shotgun, ran, and hid under the truck. While hiding, Castillo could hear footsteps and a dog barking, but did not hear police officers announcing their presence or giving commands. He shot his weapon to scare whoever was chasing him. Because evidence of both sets of offenses was admissible and relevant to dispute Castillo's account of the events and lend credibility to C.M.'s testimony, we find the superior court did not abuse its discretion in denying the severance motion.

¶15 Finally, the lapse of time between Castillo shooting C.M. and shooting at officers militates against severance of the offenses. Castillo and Emmanuel picked up C.M. at approximately 1:00 a.m. on September 1, holding her captive, assaulting her and ultimately shooting her 66 hours later. Residents found C.M. at 7:17 p.m. on September 3, almost immediately after she had been shot. Officers arrived at 7:19 p.m. and shortly thereafter C.M. provided officers with Emmanuel's first name and nickname and a detailed vehicle description. By 10:00 p.m., officers attempted to make a traffic stop of the Dodge and the high-speed pursuit ensued, ending in Castillo shooting at officers, hitting two. The evidence shows the offenses against C.M. and the offenses against officers were

STATE v. CASTILLO
Decision of the Court

connected in their commission and occurred within a relatively brief timeframe.

¶16 We find the superior court did not abuse its discretion in joining counts 1-6 with counts 10-16 for trial.

CONCLUSION

¶17 For the foregoing reasons, we affirm Castillo's convictions and sentences.



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