



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY CHRISTOPHER SELLECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 91389-COA

ORDER OF AFFIRMANCE

Anthony Christopher Selleck appeals from a corrected judgment of conviction, entered pursuant to a jury verdict, of domestic battery by strangulation and battery by a prisoner, probationer, or parolee. Second Judicial District Court, Washoe County; Hon. Scott N. Freeman, Judge.

Selleck argues the district court abused its discretion by denying his request to bifurcate his trial regarding his status as a probationer. This court reviews a district court's order denying a defendant's motion to bifurcate for an abuse of discretion. *Morales v. State*, 122 Nev. 966, 969, 143 P.3d 463, 465 (2006); *Tabish v. State*, 119 Nev. 293, 302, 72 P.3d 584, 589-90 (2003). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).

First, Selleck argues the district court should have bifurcated his status as a probationer. He contends the district court should have allowed the State to present evidence regarding the charges of domestic battery by strangulation and simple battery without referencing Selleck's status as a probationer and then conducted a second phase of the trial to address his

status as a probationer. We conclude the district court did not abuse its discretion by denying this request because Selleck's status as a probationer was an element of battery by a prisoner, probationer, or parolee, *see* NRS 200.481(1)(a), (2)(f), and the jury was required to consider each element of the charged offense, including Selleck's status as a probationer. *See Cunningham v. State*, No. 83483-COA, 2022 WL 2255903, at *3 (Nev. Ct. App. June 22, 2022) (Order of Affirmance); *see also State v. Javier C.*, 128 Nev. 536, 540-41, 289 P.3d 1194, 1197 (2012) (holding that juveniles in custodial confinement are not prisoners and therefore not "subject to prosecution for felony battery by a prisoner under NRS 200.481(2)(f)"); *Dumaine v. State*, 103 Nev. 121, 124, 734 P.2d 1230, 1232 (1987) ("Battery by a prisoner can only be committed [in violation of NRS 200.481] by a prisoner in lawful custody or confinement."). Selleck asks this court to apply the logic underlying ex-felon in possession of firearm cases dealing with bifurcation of charges or sentencing enhancements to the instant case but points to no authority addressing bifurcation of a status which serves as an element of the crime. In light of these circumstances, we conclude Selleck is not entitled to relief based on this claim.

Second, Selleck argues the district court should have severed the counts and conducted a bifurcated trial on each. Selleck contends that his conviction for battery by a prisoner, probationer, or parolee necessarily required proof he was actively on probation, something that only would have been possible had he committed a prior felony. He also argues that the prejudicial trial testimony from A. Narvaez, an officer with the Nevada State Police Division of Parole and Probation, regarding Selleck's status as a probationer would not have been separately admissible to prove the domestic battery count.

NRS 173.115(1) provides that “[t]wo or more offenses may be charged in the same indictment or information in a separate count for each offense if” they are “[b]ased on the same act or transaction” or “on two or more acts or transactions connected together or constituting parts of a common scheme or plan.” This court reviews a district court’s decision to join or sever charges for an abuse of discretion. *Weber v. State*, 121 Nev. 554, 570, 119 P.3d 107, 119 (2005), *overruled on other grounds by Farmer v. State*, 133 Nev. 693, 698, 405 P.3d 114, 120 (2017); *Tabish*, 119 Nev. at 302, 72 P.3d at 589-90. In evaluating the defendant’s motion to sever, the district court must consider “whether [the] joinder is so manifestly prejudicial that it outweighs the dominant concern [of] judicial economy and compels the exercise of the court’s discretion to sever.” *Tabish*, 119 Nev. at 304, 72 P.3d at 591 (quotation marks omitted). “[E]ven if joinder is permissible under NRS 173.115, the trial court should sever the offenses if the joinder is unfairly prejudicial, i.e., required by justice.” *Middleton v. State*, 114 Nev. 1089, 1107, 968 P.2d 296, 309 (1998); NRS 174.165(1); *see also Honeycutt v. State*, 118 Nev. 660, 667-68, 56 P.3d 362, 367 (2002) (“To require severance, the defendant must demonstrate that a joint trial would be ‘manifestly prejudicial.’ The simultaneous trial of the offenses must render the trial fundamentally unfair, and hence, result in a violation of due process.”), *overruled on other grounds by Carter v. State*, 121 Nev. 759, 765, 121 P.3d 592, 596 (2005). “If, however, evidence of one charge would be cross-admissible in evidence at a separate trial on another charge, then both charges may be tried together and need not be severed.” *Mitchell v. State*, 105 Nev. 735, 738, 782 P.2d 1340, 1342 (1989).

Here, the battery-by-strangulation count alleged that Selleck committed the offense on December 16, 2024, by putting a belt around the

victim's neck and tightening it. The battery-by-a-probationer count alleged Selleck used force or violence against the same victim and on the same day as the domestic battery count by placing a belt around her neck and strangling her—the same act of strangulation alleged in the domestic battery count—and alternatively, by hitting her in the face with his fist or sunglasses. The evidence presented at trial established that Selleck hit the victim close in time and in the same vehicle where the strangulation occurred and that all of the acts giving rise to both counts happened during a continuous, approximately five-hour period where Selleck and the victim traveled together in the same vehicle before being located by law enforcement. Based on these allegations and the evidence presented at trial, the district court could conclude both counts arose from the same act or transaction. *See State v. Carter*, 79 Nev. 146, 148, 379 P.2d 945, 946 (1963) (providing that an information “may properly charge different offenses if they relate to the same act, transaction, or event” but “may not join two separate and distinct felonies occurring at different and distinct times and places”).

Turning to Selleck's argument that the district court should have nonetheless severed the counts because he was unduly prejudiced by Officer Narvaez's testimony regarding his status as a probationer, we conclude Selleck fails to demonstrate the district court abused its discretion. Here, the State argued Officer Narvaez's testimony was being offered to show consciousness of Selleck's guilt because Officer Narvaez would testify that he requested Selleck to report to the Division but Selleck failed to report and instead fled from law enforcement. Evidence of flight is admissible “as indicative of a guilty mind.” *Williams v. State*, 85 Nev. 169, 175, 451 P.2d 848, 852 (1969); *see Rosky v. State*, 121 Nev. 184, 199, 111 P.3d 690, 699-700 (2005) (“[A] district court may

properly give a flight instruction if the State presents evidence of flight and the record supports the conclusion that the defendant fled with consciousness of guilt and to evade arrest.”).

During the trial, Officer Narvaez testified that he supervises probationers and parolees who are required to follow a set of rules or conditions while on supervision. He explained that, if a probationer or parolee broke those rules, “either the Division will give them a chance, or they can go back to prison or jail depending on the situation.” Officer Narvaez further testified that, as a part of his job supervising probationers, he will ask them to report by either coming into his office or meeting him somewhere. He explained that he was supervising Selleck on the day of the crimes and was contacted at approximately noon that day by the victim’s family members, who reported that Selleck was holding the victim hostage at a storage unit somewhere. Officer Narvaez testified that as soon as he got off the phone with the family members, he contacted Selleck by phone and told him to report to the Division as soon as possible. Officer Narvaez explained that Selleck initially agreed to report but then texted Officer Narvaez approximately 5 to 15 minutes later and told him he could not report because he was driving and had smoked marijuana. Officer Narvaez testified that he told Selleck to call him, which Selleck did. Officer Narvaez explained that he told Selleck to report to the Division as soon as possible, to which Selleck responded that he was not going to report.

Officer Narvaez then testified that he reported the location Selleck had given him to law enforcement and continued to try to contact Selleck by phone. Officer Narvaez explained that Selleck made a video call to him at one point and that Officer Narvaez observed a female in the vehicle Selleck was

driving. Officer Narvaez testified that he asked Selleck where he was and Selleck did not respond. Officer Narvaez explained that he also asked Selleck if the woman in the vehicle was the victim and Selleck responded by asking how Officer Narvaez knew it was her. Officer Narvaez testified that Selleck then stated, “You want me to disappear, I’ll disappear” before the phone call ended. Officer Narvaez explained that he tried to call Selleck back, but he did not answer and that Officer Narvaez was informed that the vehicle Selleck was in had left the area where Selleck reported he was.

Officer Narvaez testified that he went back to his office to write the report. Thereafter, at approximately 6:00 p.m., Officer Narvaez and another officer attempted to call Selleck one more time to reach a peaceful resolution of the situation and to have Selleck report. Officer Narvaez explained that Selleck answered and was twice asked to report to the Division. Officer Narvaez testified that Selleck responded that reporting was “not a good idea.” Officer Narvaez explained that, later in the conversation, Selleck told officers he was going to report at approximately 6:45 p.m. Testimony from another law enforcement officer established that Selleck thereafter fled from law enforcement officers when they tried to apprehend him in Carson City. After a chase, during which time Selleck’s vehicle got stuck and he fled on foot, Selleck was apprehended and arrested.

Officer Narvaez’s testimony would have been cross-admissible in a trial for the domestic-battery-by-strangulation count as evidence of Selleck’s consciousness of guilt. Officer Narvaez’s communications with Selleck and his unheeded request that Selleck report to the Division, made contemporaneously with Selleck’s commission of the crimes, Selleck’s ongoing flight from law enforcement with the victim, and Selleck’s statements about not reporting to

the Division as requested, evidenced the fact that Selleck fled from law enforcement with consciousness of guilt and to evade arrest. Therefore, we conclude the district court did not abuse its discretion by not severing the counts.¹

Even assuming the district court erred by failing to sever the counts, we conclude any error was harmless. *See Weber*, 121 Nev. at 570-71, 119 P.3d at 119 (“Error resulting from misjoinder of charges is harmless unless the improperly joined charges had a substantial and injurious effect on the jury’s verdict.”); *Brown v. State*, 114 Nev. 1118, 1124, 967 P.2d 1126, 1130 (1998). First, the State presented strong evidence of Selleck’s guilt. The victim testified that she was unwillingly testifying against Selleck and that she still loved him and believed the incident was partially her fault. The victim testified that Selleck was angry that she was late to meet him on the day of the incident and, when she arrived, Selleck had his belt off and in his hand before he placed it around her neck and tightened it until she was losing consciousness. The victim also testified that Selleck grabbed her by her hair and pulled. She explained that his fist hit the back of her head as he was pulling her down by her hair and that he injured her eye by inadvertently hitting her with sunglasses he had thrown. The officer who interviewed the victim after she was located by law enforcement in Carson City testified that he observed injuries to the victim’s face and neck. He explained that the victim told him Selleck had strangled her with a belt and had pulled her hair, punched her in the head several times, and struck her with a closed fist in her left eye.

¹We note that Selleck points to no authority supporting the conclusion that Officer Narvaez’s testimony implicating Selleck’s status as a probationer mandated severance.

The officer testified that the victim's eye injury was consistent with a strike with a closed fist. The officer's body camera footage of his interview with the victim was also admitted into evidence. Another officer, who took photographs of the victim hours after she was located, testified that one of the photographs admitted into evidence depicted marks and bruising on her neck.

In addition, Officer Narvaez did not testify about the crime for which Selleck was on probation, and the mere fact that a person is on probation and subject to supervision by the Division does not demonstrate the person previously committed a felony. *See* NRS 176A.100(1)(c) (providing the district court has the authority and discretion to place a defendant on probation for a felony, gross misdemeanor or misdemeanor); *cf. Brown*, 114 Nev. at 1126, 967 P.2d at 1131 (mandating severance of counts alleging possession of a firearm by an ex-felon to promote fairness and prevent undue prejudice by revealing a defendant's status as a prior felon). In light of these circumstances, we cannot conclude that joining the charges had a substantial and injurious effect on the jury's verdict. For these reasons, we

ORDER the corrected judgment of conviction AFFIRMED.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Scott N. Freeman, District Judge
Attorney General/Carson City

Washoe County District Attorney
Washoe County Public Defender
Second District Court Clerk