

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

JORDAN RAMON-LEE SCHWAB, *Appellant*.

No. 1 CA-CR 24-0538

FILED 08-12-2025

Appeal from the Superior Court in Maricopa County
No. CR2023-117621-001
The Honorable Utiki Spurling Laing, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Eric Knobloch
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Jesse Finn Turner
Counsel for Appellant

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MEMORANDUM DECISION

Judge Veronika Fabian delivered the decision of the Court, in which Presiding Judge James B. Morse Jr. and Judge Anni Hill Foster joined.

F A B I A N, Judge:

¶1 Jordan Ramon-Lee Schwab appeals his convictions for driving while under the influence of intoxicating drugs (“DUI”), arguing the superior court erred in joining his DUI case with his theft case despite his objection and motion to reconsider. Because Schwab has not shown fundamental error, the judgment is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 On April 24, 2023, around 4:00 AM, a vehicle was reported stolen from Tempe. Later that morning, around 10:30 AM, a real-time crime-center operator received a notification that the vehicle was spotted through public cameras in Mesa. Around 11:04 AM, Schwab was stopped while driving the vehicle but drove away. He was then found at a park and detained at 11:13 AM.

¶3 Around 11:43 AM, Schwab was interrogated, at which time he claimed he had his friend’s permission to drive the vehicle and admitted to driving the vehicle “a day” and to smoking “blues” earlier that day. Based on a burnt piece of tin foil and straw (common drug paraphernalia) found in plain view in the vehicle, Schwab’s admissions, and his general behavior, the officer’s interrogation became a DUI investigation.

¶4 Schwab was then taken to the police station where his blood was drawn. During the following interrogation, Schwab admitted to taking fentanyl and meth “earlier yesterday.” He also claimed he had been driving the vehicle for approximately eight hours. When asked by the officer how he thought he was driving when he was stopped, Schwab answered “sporadic.”

¶5 On May 22, 2023, Schwab was indicted on one count of theft of means of transportation, alleged to have occurred on April 24, 2023. On January 3, 2024, Schwab was indicted on four counts of aggravated DUI, also alleged to have occurred on April 24, 2023. The State did not file the

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DUI counts at the same time as the theft of means of transportation count because of a delay in testing Schwab's blood.

¶6 Before trial, the State moved for joinder because "[t]he two cases arise from the same commission/common scheme of offenses" so that "the separate crimes and cases arise from the same connected acts and the same overlapping evidence." *See* Ariz. R. Crim. P. 13.3; *State v. Burns*, 237 Ariz. 1, 14 ¶¶ 31-32 (2015). Schwab objected, arguing severance was necessary to promote a fair determination of his guilt or innocence of each offense.

¶7 Over Schwab's objection, the court granted the motion. Schwab filed a motion to reconsider, which the court denied, finding:

[T]he traffic stop didn't even start as a DUI. It started as a theft of means investigation. So that alone, explaining why the contact was made with Mr. Schwab, would be difficult to do if these cases were separated. . . . [T]here's only one additional witness from either side [T]he facts of the case are so intertwined that the stories are not complete if they are separated. And if the blood had been evaluated prior to the State filing for the first one, all of this would have been joined together anyway.

¶8 After trial, the jury acquitted Schwab of theft of means of transportation and found him guilty of all four aggravated DUI counts.

¶9 This Court has jurisdiction over Schwab's timely appeal pursuant to Article VI, Section 9, of the Arizona Constitution and Arizona Revised Statutes §§ 12-120.21(A)(1), 13-4031 and 13-4033(A).

DISCUSSION

¶10 Schwab argues the court abused its discretion in granting joinder because, reading the joinder and severance rules together, severance was necessary to promote a fair determination of Schwab's guilt or innocence of any offense.

¶11 In determining whether the superior court erred, this Court must read the joinder and severance rules together. *See State v. Kinkade*, 140 Ariz. 91, 93 (1984). Absent waiver, this Court reviews rulings on joinder and severance for abuse of discretion. *State v. Hausner*, 230 Ariz. 60, 74 ¶ 43

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(2012). The court's joinder or denial of severance will be affirmed unless the defendant can show "compelling prejudice against which the trial court was unable to protect." *Burns*, 237 Ariz. at 13 ¶ 29 (quoting *State v. Murray*, 184 Ariz. 9, 25 (1995)).

¶12 However, a party seeking to sever counts must move to sever "at least 20 days before trial" and, if denied, renew the motion for severance "during trial before or at the close of evidence." Ariz. R. Crim. P. 13.4(c). Otherwise, "[t]he right to severance is waived if the defendant fails to timely file and renew a proper motion for severance." *Id.*

¶13 Where the right to severance has been waived, this Court reviews the superior court's refusal to sever for fundamental error. *See State v. Allen*, 253 Ariz. 306, 332 ¶ 50 (2022); *State v. Flythe*, 219 Ariz. 117, 120 ¶¶ 9-10 (App. 2008) ("[Arizona] courts have strictly applied the waiver provisions of Rule 13.4(c).").

¶14 Here, Schwab concedes he neither timely filed nor renewed a proper motion for severance when he filed a motion to reconsider joinder. Schwab, however, urges this Court to apply the abuse of discretion standard, arguing he appeals the superior court's grant of joinder, not failure to sever.

¶15 Because Rule 13.3 (joinder) and Rule 13.4 (severance) must be read together, *State v. Henderson*, 116 Ariz. 310, 316 (App. 1977), Schwab was required to renew his motion to sever in order to avoid waiver. *See State v. Laird*, 186 Ariz. 203, 206 (1996). Thus, this Court reviews his appeal for fundamental error, not abuse of discretion. *See id.*; *State v. Cruz*, 2022 WL 681950, at *4 ¶ 21 (Ariz. App. Mar. 8, 2022) (mem. decision) (where defendant objected to motion to consolidate but did not renew motion to sever before or at trial, standard of review was fundamental error).

¶16 Here, Schwab does not address fundamental error review. Thus, this Court could decline to reach the merits of his claim. *See Flythe*, 219 Ariz. at 120 ¶¶ 10-11. Nonetheless, this Court exercises its discretion to address the merits of Schwab's claim.

¶17 "Under fundamental error review, the defendant bears the burden to establish that: (1) error exists, (2) the error is fundamental, and (3) the error caused him prejudice." *State v. Riley*, 248 Ariz. 154, 170 ¶ 24 (2020). Error is fundamental when it "goes to the foundation of [the defendant's] case, takes away a right that is essential to [the defendant's] defense, [or] is of such magnitude that [the defendant] could not have

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received a fair trial.” *Id.* (alterations in original) (quoting *State v. Henderson*, 210 Ariz. 561, 568 ¶ 24 (2005)).

¶18 Here, the court did not err, let alone fundamentally so, by granting the State’s motion for joinder. Because “joint trials are favored in the interest of judicial economy,” *State v. Gutierrez*, 240 Ariz. 460, 464 ¶ 11 (2016), “joint trials are the rule rather than the exception.” *Murray*, 184 Ariz. at 25.

¶19 Under Rule 13.3(a), joinder is permitted if the offenses are: (1) of the same or similar character; (2) based on the same conduct or otherwise connected in commission or (3) alleged to have been part of a common scheme or plan. Offenses are “otherwise connected” when they arise out of a “continuing series of events.” *State v. Mincey*, 115 Ariz. 472, 483 (1977), *rev’d on other grounds*, 437 U.S. 385 (1978). Joinder, however, is not appropriate if severance is “necessary to promote a fair determination of any defendant’s guilt or innocence of any offense.” Ariz. R. Crim. P. 13.4(a).

¶20 Here, joinder of the offenses was proper under Rule 13.3(a)(2) because the DUI charges were “based on the same conduct” or were “otherwise connected together in [their] commission” with the theft of means charge. *See State v. Prince*, 204 Ariz. 156, 160 ¶ 17 (2003) (charges properly joined where separate crimes arise out of a series of connected acts provable by much of the same evidence); *State v. Martinez-Villareal*, 145 Ariz. 441, 445-46 (1985) (burglary of guns charge correctly joined with homicide charges because the weapons came from the burglary and property from the burglary was found at the murder scene).

¶21 Schwab was stopped because he was driving a vehicle that was reported stolen. The officer initiated a DUI investigation because of Schwab’s behavior and physical evidence found during the theft of means investigation. Thus, much of the evidence introduced at trial in support of all charges was the same or interwoven.

¶22 Schwab argues the two cases did not arise from the same connected acts because the “moment Sgt. Carr handed the investigation to Officer LaCroix is a clean break in the timeline and shows a lack of connection between both cases.” Under the joinder principles described above, whether two cases are based on the same conduct or otherwise connected in their commission does not depend on who conducts the investigation. Schwab fails to provide any legal citations to indicate otherwise.

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¶23 Nor has Schwab shown denial of joinder was necessary to “promote a fair determination of [his] guilt.” Ariz. R. Crim. P. 13.4(a). Before the superior court, Schwab's primary argument was that joinder would prejudice his theft of means charge because a “jury may be more likely to believe that someone high on drugs is more likely to steal a car and run from the police.” But the jury acquitted Schwab of the more serious offense, indicating he was not prejudiced by any evidence allowed by joinder. *See State v. Anderson*, 199 Ariz. 187, 193 ¶ 33 (App. 2000).

¶24 Finally, the record includes overwhelming evidence to support the jury's guilty verdict. This evidence included drug paraphernalia found in the car that Schwab admitted he used, Schwab's pupil constriction and eyelid tremors, inconsistent statements about when he consumed drugs, and positive blood test results for both methamphetamine and fentanyl. Therefore, Schwab fails to establish the necessary prejudice to show fundamental error. *See State v. Ramos*, 235 Ariz. 230, 236 ¶ 18 (App. 2014) (“If overwhelming evidence of guilt exists in the record, we may conclude that a defendant has failed to meet his burden of establishing prejudice.”).

CONCLUSION

¶25 Because Schwab has not shown fundamental error, the judgment and sentence are affirmed.



MATTHEW J. MARTIN • Clerk of the Court

FILED: JR