

**THIRD DIVISION
DILLARD, P. J.,
GOBEIL and PIPKIN, JJ.**

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October 13, 2026

In the Court of Appeals of Georgia

A26A1322. CASTILLO v. THE STATE.

PIPKIN, Judge.

Fernando Castillo was indicted by a Cherokee County grand jury on a 34-count indictment for the sexual assault of his girlfriend, B. M., and for crimes committed in violation of Georgia’s Street Gang Terrorism and Prevention Act. After a trial, the jury found Castillo not guilty on the street gang charges but guilty on all of the charges related to the sexual assault of B. M.¹ Castillo was sentenced as a recidivist to life without parole followed by thirty years in confinement. On appeal, Castillo alleges that

¹ Specifically, Castillo was convicted of rape, criminal attempt to commit murder, aggravated battery, false imprisonment, burglary in the first degree, two counts of aggravated assault, two counts of aggravated sodomy, and two counts of aggravated sexual battery. The State also nolle prossed two weapons charges and a drug charge after the jury’s verdict.

the trial court erred by admitting certain expert testimony at trial and erred during sentencing. We affirm.

The record shows that,² at all relevant times, B. M. was in an abusive relationship with Castillo, a man 15 years her senior with gang affiliations. The incident for which Castillo was on trial occurred in the early morning hours of June 26, 2020. B. M. testified that she and Castillo got into an argument the night before, during which she suggested they end their relationship. B. M. left her townhouse and went to work; Castillo showed up later that night, angry, and got into a physical fight with two of the customers. Castillo then called B. M. “a stupid whore” and a “bitch” and demanded she drive him home, but she refused and finished her shift. Castillo spoke with B. M. on her way home from work and informed her that he was going to go to her house to get his things; B. M. told Castillo not to go into her house. After B. M. arrived home, she locked her doors and informed a friend that she was scared Castillo was going to hurt her. Around 4:30 in the morning, Castillo entered B. M.’s home, walked upstairs, broke down B. M.’s locked bedroom door, held B. M. down on her bed, and began to beat and strangle her, yelling “die, bitch, die, bitch, die”

² Although Castillo does not challenge the sufficiency of the evidence, the facts of the crime will assist in our analysis of the issues raised on appeal.

until she fell to the floor and lost consciousness.³ B. M. woke up on the floor covered in blood. Castillo told her to go clean herself up; B. M. went into the bathroom and, shortly thereafter, Castillo began to beat her again. He then ordered her to remove her clothes, and he forced B. M. to have oral and vaginal sex on her bed numerous times. Castillo fell asleep after the assault; B. M. took pictures of the scene, grabbed the few items she could, and then fled from the house. B. M. called a friend and her parents and told them what had happened, and one of them called the police on her behalf. B. M. arrived at the police station covered in bruises and blood; the lead detective testified that she “was crying off and on. Hysterical. Very upset[,]” and the officer documented all of her injuries, including red marks around her neck and a “severely damaged” and swollen eye. B. M. informed the police that Castillo had beaten and assaulted her, and her interview was played for the jury.

When the police arrived at B. M.’s home, they found Castillo asleep in her bed and found her bedroom in disarray and covered in blood. Officers arrested Castillo and collected evidence from the scene. A sexual assault examination was performed on B. M.; the nurse that conducted the exam testified at trial as an expert regarding

³ B. M. testified that, at the time of the incident, she was 5’3” and 100 pounds. In contrast, Castillo was 6’1” and 240 pounds.

sexual assault and strangulation and explained her findings regarding B. M.'s injuries to the jury. The State also called two forensic nurses as expert witnesses at trial; one explained the signs and symptoms of strangulation for the jury, while the other explained the cycle of domestic violence. DNA evidence collected during the investigation showed the presence of male DNA on B. M.'s body, and the State's DNA expert testified that Castillo's DNA could not be excluded as a contributor.

The State also presented evidence of three prior incidents where Castillo was violent toward B. M., which included the following: putting a gun to her head and then slamming her head into a car's front console, beating her with closed fists after seeing her speak to another man, and slapping her in the face and attempting to suffocate her after seeing a picture of a childhood friend on her phone.⁴ B. M. explained that sometimes Castillo would apologize after beating her, ask her not to call the police, and threaten her life if she did call to report his conduct. She also explained that he had isolated her from her friends and family, and she was instructed "to ignore people" when she was with Castillo.

⁴ B. M. testified that she had taken pictures of many of her injuries after these attacks, and the State introduced these photographs at trial.

1. At trial, the State tendered Teresa Millsap as an expert in the field of intimate partner violence in order to explain to the jury the cycle of violence, the power control wheel, and victim behavior and trauma. Castillo objected to this witness being tendered as an expert, arguing that Millsap failed to meet the fourth prong of OCGA § 24-7-702(b) (hereinafter “Rule 702”), which provides, in relevant part, as follows: “A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise, if . . . (4) The expert has reliably applied the principles and methods to the facts of the case.” The trial court overruled the objection and qualified her as an expert witness.

On appeal, Castillo argues that the trial court erred by allowing Millsap to testify as a witness, contending that she failed to meet Rule 702 in its entirety. As an initial matter, we note that the portion of Castillo’s claim regarding subsection (4) of Rule 702 would be reviewed under ordinary appellate review, while the challenge to the remaining prongs of Rule 702 would be reviewed under plain error. Still, no matter which standard we apply, there is no basis to reverse the trial court.

Assuming without deciding that it was error for the trial court to admit Millsap as an expert witness under Rule 702, this error was harmless given the strength of the

State's evidence against Castillo. See *Crawford v. State*, 301 Ga. App. 633, 637(2) (688 SE2d 409) (2009) ("The test for determining nonconstitutional harmless error is whether it is highly probable that the error did not contribute to the verdict." (citation modified)). See also *Wilson v. State*, 301 Ga. 83, 88(2) (799 SE2d 757) (2017) (to establish plain error, appellant must, among other things, show that the error "affected [his] substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the trial court proceedings" (citation modified)). Millsap's testimony was limited to explaining to the jury why a victim of domestic abuse would continue to return to her abuser rather than leave. Meanwhile, regarding the rape and related charges Castillo faced, the jury heard evidence and saw photographs of B. M.'s injuries that she sustained after prior beatings from Castillo. They also heard direct testimony from B. M. regarding her brutal rape and assault. The jury saw photographs of her injuries that were taken mere hours after the crimes occurred and heard testimony from two forensic nurses regarding B. M.'s injuries and the signs and symptoms of strangulation. The jury heard evidence from a forensic DNA expert that male DNA was found on B. M.'s body, and Castillo could not be ruled out as a contributor. And, finally, the jury heard testimony that Castillo was

found asleep in B. M.'s bed while her room was in disarray and covered in blood. In light of the strong and competent evidence of Castillo's guilt, we cannot say that the admission of Millsap's testimony, even if erroneous, amounted to reversible error. See *Kingdom v. State*, 321 Ga. 363, 367-68(2) (914 SE2d 778) (2025) (overwhelming evidence of Appellant's guilt, which included surviving victim's identification of Appellant at trial, rendered any potential trial court error harmless). See also *Wilson*, 301 Ga. at 89(2) (claim reviewed under plain error failed where appellant could not "make an affirmative showing that exclusion of the evidence probably affected the outcome of his trial" because the evidence of appellant's guilt was overwhelming).

2. Next, Castillo argues that the trial court erred by failing to merge his conviction for false imprisonment into his rape conviction. The crux of Castillo's argument is that the false imprisonment should have merged into the rape conviction as a matter of fact because, he argues, the false imprisonment occurred as part of the rape. We disagree.

The question of whether there was a factual merger of the crimes is determined by looking to the actual evidence introduced at trial to determine whether a crime is established by proof of the same or less than all the facts required to establish the commission of another crime within the meaning of OCGA § 16-1-6. If the state uses up all the evidence that the defendant committed one crime in establishing another

crime, the former crime is included in the latter as a matter of fact under OCGA § 16-1-6.

Felton v. State, 270 Ga. App. 449, 452(2) (606 SE2d 649) (2004) (citation modified).

Here, Castillo's conviction for false imprisonment was not established by the same or less than all of the facts required to convict him of rape. Instead, the evidence adduced at trial showed that the false imprisonment occurred during the initial assault when Castillo detained B. M. on the bed where he beat and tried to strangle her to death. The rape did not occur until after B. M. woke up on the floor and found herself covered in blood, moved to the bathroom to clean herself up where she then endured further beatings from Castillo, and then was ordered to return to the bed and have oral and vaginal sex against her will. Accordingly, this claim fails. See *Davis v. State*, 370 Ga. App. 439, 443(2) (896 SE2d 612) (2023) (rejecting merger argument for convictions of rape and false imprisonment).

Judgment affirmed. Dillard, P. J., and Gobeil, J., concur.