[Cite as *State v. Weaver,* 2018-Ohio-1232.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO.: 27582
	:	
v.	:	T.C. NO.: 16-CR-2127/2
	:	
SHUREKA WEAVER	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

. . . . . .

O P I N I O N

Rendered on the 30th day of March, 2018.

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MATHIAS H. HECK, JR., by MICHAEL SCARPELLI, Atty. Reg. No. 93662, Assistant Prosecuting Attorney, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, 301 W. Third Street, 5th Floor, Dayton, Ohio 45422
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Attorney for Defendant-Appellant

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DONOVAN, J.

{¶ 1} This matter is before the Court on the May 11, 2017 Notice of Appeal of Shureka Weaver. Shureka appeals from her May 9, 2017 Judgment Entry of Conviction

on one count of endangering children (parent – serious harm), in violation of R.C. 2919.22(A), a felony of the third degree. The victim, S.T., was the foster son of Shureka and her husband, Torace Weaver. Shureka received a sentence of 36 months. We hereby affirm the judgment of the trial court.

{¶ 2} Shureka was indicted on November 1, 2016, and she pled not guilty on November 3, 2016. On November 15, 2016, Shureka filed a Motion to Suppress, and on December 14, 2016, she filed Defendant's Motion to Sever. The motion to sever provides in part that Shureka "has been charged with endangering children, a felony of the third degree. Her co-defendant, this Defendant's husband, is facing more serious charges, including two counts of murder, involuntary manslaughter, two counts of endangering children, and reckless homicide." Shureka argued that although she "is not charged with the death of the child, this Defendant will undoubtedly be prejudiced by the evidence adduced at a combined trial of the co-defendant's alleged conduct that resulted in the death of the child, and limiting instructions alone cannot protect this Defendant's constitutional right to a fair trial." She further asserted that "in the discovery previously provided by the State of Ohio, the co-defendant makes numerous statements about the child and injuries suffered by the child in the weeks prior to the child's death that could potentially implicate this Defendant in the alleged criminal history." The State opposed the motion on December 16, 2016.

{¶ 3} On January 23, 2017, the trial court held a hearing on the motion to sever. Shureka and Torace were present, with respective counsel. The court initially confirmed that counsel for Torace did not join in the motion to sever. The court indicated receipt of the following authority via email from counsel for Shureka: *State v. Dixon*, 3d Dist. Logan

No. 8-02-44, 2003-Ohio-2547. Counsel for Shureka argued that "joinder may not be permissible if it will cause substantial prejudice to the right of a Defendant's fair trial." Counsel noted that Shureka and Torace were indicted separately. He further noted that Shureka's indictment provides that she committed the offense of child endangering between September 24 and November 18, 2015, while the child endangering count in Count 6 in Torace's indictment is limited to November 18, 2015. Counsel for Shureka asserted that the indictments do not reflect "the same patterns of conduct, apparently, because one is talking about over a period of two months. And the other is talking about a single day."

{¶ 4} Counsel further asserted that if "this Court holds a single trial, I can't subpoena Mr. Weaver to testify," since "he would be in a position to invoke his Fifth Amendment right against self-incrimination. And Mrs. Weaver might be prejudiced by not being allowed to present relevant evidence that goes to her guilt or innocence on these charges."

{¶ 5} Counsel asserted that Shureka "would be substantially prejudiced by having to proceed in a joint trial, where the jury is hearing facts that would otherwise have absolutely no relevance to Mrs. Weaver's guilt or innocence. The State has made clear their allegations are some burns that they believe would have caused the child pain, that were not treated." Counsel argued that the burns did not cause the child's death, and "yet, this jury is going to see autopsy photos, they're going to hear evidence how this child was hurt, and that those injuries, that had nothing to do with burns, is what led to the child's death." According to counsel, Shureka was at risk of prejudice if the court "allows both trials to be heard together, and to allow one jury to determine all the serious charges

against Mr. Weaver, as well as, the one serious charge against Mrs. Weaver. And like I said, which on the face of the indictments are different charges."

{¶ 6} The State responded that "primarily the charges that are identical, which are going to be the F3s, related to a violation of a duty of care that both Mr. and Mrs. Weaver had for the victim in this case. And what's interesting about that particular charge is it's not necessarily an act so much as a failure to act." According to the State, "we believe the testimony is going to be that the victim had sustained severe injuries in the form of burns that were on his right forearm, that those have been existing prior to the day of his death."

{¶ 7} The State asserted as follows:

> As far as the time frames and the indictment, I'll have to go back and take a look at that, but whether it gets amended or not, it still relates to both of these individuals and a legal duty to care for the child. And when they failed to obtain the proper medical treatment for these burns, they violated that duty. I'm not exactly sure what defenses all fit for this particular charge. I can't think of any affirmative defenses for a failure to act, which is the case.
>
> We believe that the testimony and the evidence is going to be easily separated by the jury. The jury, we believe, will be able to make a differentiation - - difference between the burns, and then the head trauma that the child sustained.

{¶ 8} The court asked the State to make a "professional statement" regarding "what the State believes the proof will be at trial. Obviously, that will be up to the jury to

decide, but this is sort of that initial step of whether there should be joint or severe [sic]." The State indicated that as to the child endangering charge, the State would present the testimony of the deputy coroner, Dr. Susan Allen, who performed an autopsy on S.T. and noted multiple injuries. Regarding the burns, the State indicated that "the testimony is going to be that there were severe burns. That they were either, first or second degree burns that required professional medical attention." The State asserted that "the testimony is going to be that no professional medical attention was ever sought by either one of the Defendants." The State indicated that Dr. Lori Vavul-Roediger will testify as an expert in the field of child abuse that "that failure to act is a form of abuse and neglect, and a violation of their legal duty to take care of this child." The State further indicated that it would produce photographs of the burns taken at the autopsy, as well as photographs of "the child in good shape" before he was transferred into the Weavers' care from a previous foster home.

{¶ 9} The State advised the court that "there are numerous injuries" on the child's body, and "so that will begin what I'll call the second piece of the evidence that we will present, which will be how the child actually died." The State asserted that it would present photographic and medical evidence "that will substantiate extensive trauma to the head, * * * to the brain, internal bleeding, multiple contusions around the head. And that will obviously go to the cause of death part of the case."

{¶ 10} The State asserted as follows:

> But we believe that that evidence is so distinguishable from one another. And we will certainly make every attempt to argue that to the jury that these are two separate sets of injuries. Obviously, they're on two

totally separate parts of the body. We believe the - - obviously, the burns occurred before the actual day of the death. And that will be substantiated through the Statements that were given by the Defendants themselves to the detectives.

And Judge, they were interviewed on two different occasions, and they both gave very similar versions, almost identical, in so far as they were aware of the burns, they do not know how the burns occurred on the victim. They don't know when exactly they occurred, and hence the - - the timeframe for Mrs. Weaver's indictment was stretched out a little bit, but looking - - it probably would behoove the State to maybe amend Mr. Weaver's too, just to make sure that's consistent, because really we don't know when the burns occurred, but the failure to act, and the failure to obtain proper medical attention ran the whole gamut, the whole span of that time frame.

* * *

It's an ongoing neglect theory on those F3 charges. So again, I think the jury will be able to distinguish Mrs. Weaver's case from Mr. Weaver's case, and again taking into consideration that they are charged with the exact same count for the failure to act, to - - to the violation of duty. That it will be the same witnesses for both of the Defendants. It will be the same evidence. It will be the same testimony, for the most part. And we believe that severance * * * would again cause undue hardship because really the prejudice that's being, I guess, presumed here is speculative.

> It can be severed out, I think, appropriately at a joint trial. And we will make every attempt to do that. In fact, we made it very clear we don't have any evidence to suggest that Mrs. Weaver was responsible for the death of the victim. * * *

{¶ 11} The State asserted that *State v. Dixon*, 3d Dist. Logan No. 8-02-44, 2003-Ohio-2547, is distinguishable. The State asserted that neither of the Defendants herein made any statements or provided any discovery implicating the other. He stated that both Defendants acknowledged awareness of the burns, and "other than the fact that there was some statements made of some home care that was attempted, neither one of them tries to lay blame on the other as to the causation of the burn, or the lack of - - failure to get the child the proper medical treatment."

{¶ 12} Counsel for Shureka responded that "the fact that the child died has nothing to do with Mrs. Weaver's case." He argued that "to ask a jury, just focus on the burns, don't focus on the fact that the child was injured, and died, and she was the foster mom" is "asking a lot of a jury to disregard that, the same jury that's going to determine Mr. Weaver's guilt or innocence on those charges." Counsel further asserted that "it puts Mrs. Weaver in a difficult position to have her attorney vociferously argue to the jury that she is not responsible for this, which could perhaps encourage the jury to say, if you find someone responsible, find Mr. Weaver responsible." Finally, counsel asserted that "that's something Mrs. Weaver is very uncomfortable having her attorney do if that jury - - that same jury then is going to make a decision on Mr. Weaver's guilt or innocence as well."

{¶ 13} At the conclusion of the hearing, counsel for Shureka indicated that she

would withdraw her motion to suppress. According to counsel, "in both interviews, she was Mirandized. She was read her rights. She completed a form. She voluntarily agreed to speak to law enforcement. And at no time in those interviews did she ever ask for an attorney." On January 27, 2017, an "Order and Entry Withdrawing Motion [to Suppress]" was issued.

{¶ 14} On February 15, 2017, the trial court overruled Shureka's motion to sever. The court noted the "indictment relating to Torace Weaver was amended on January 30, 2017 to reflect that the date of the offense as to Count 6[1] was alleged to be September 24, 2015 to November 18, 2015." The court noted the following facts:

> With the amended indictment relating to Torace Weaver, the counts at issue relating to both Torace Weaver and Shureka Weaver mirror one another. * * * [T]he State believes the evidence will show that both Torace and Shureka Weaver failed to properly treat or obtain care for first or second degree burns on the body of S.T. at some time prior to his death. The burn injuries were not related to the cause of S.T.'s death. The injuries to S.T. relating to the burns apply to the child endangerment charges against both Torace and Shureka Weaver. According to Mr. Amos, Dr. Susan Allen will testify at trial that S.T. had first or second degree burns on his arm which required professional medical attention, and that the State will present evidence that neither Defendant obtained medical care for S.T. to treat or address the burns. The State will also present evidence of numerous other external injuries that did not contribute to S.T.'s death, but required medical

[1] Count 6 in Torace's indictment charged the offense of endangering children.

attention.

During the investigation into S.T.'s death, both Torace and Shureka Weaver were interviewed by the police; both admitted knowing that the burns were present on S.T.'s body, but both denied knowing the cause of the burns. Neither made any statements that would implicate the other in any criminal activity.

The State, as articulated by Mr. Amos at the oral hearing, has no intention of introducing at trial any statements by one co-defendant against another. Neither indicted Defendant made statements implicating the other in the indicted offense or offenses. Mr. Lachman also indicated that he had no[] *Bruton*[2] concerns. No suggestion was made at the oral hearing that Defendants plan to present inconsistent defenses to the child endangerment charge at issue.

{¶ 15} The court found as follows:

Defendant has cited for this court's consideration *State v. Dixon*, 2003-Ohio-2547. In *Dixon*, a husband and wife were charged in a single indictment and were represented by the same attorney. Testimony elicited from the husband in *Dixon* on cross-examination and for purposes of impeachment of husband, implicated wife had knowledge of drug dealing or

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[2] *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968). " 'A *Bruton* problem arises in a joint trial of two or more defendants when evidence of a confession or statement by a non-testifying defendant is admitted that implicates the other defendant(s) in criminal activity.' * * * The underlying reason that this could present a problem is the other defendant's admitted statement cannot be cross examined." *State v. Hopkins*, 2d Dist. Montgomery No. 24940, 2012-Ohio-5536, ¶ 44.

the presence of illegal drugs in the couple's home. The court in *Dixon* held that, under the circumstances, certain impeachment evidence used against husband was prejudicial to wife. In essence, Defendant herein suggests that, as a result of the decision in *Dixon*, a husband and wife should never be tried together because prejudice is inherent in testimony about one spouse's culpability that could be associated by the jury with the other spouse. Additionally, Defendant argues that she would be prejudiced by the joinder because S.T. died as a result of injuries allegedly inflicted by her husband and co-defendant, Torace Weaver, but she is not implicated in his death. Defendant argues that it will be impossible for the jury to put aside the fact, when considering the charge against her, that S.T. is deceased as an alleged result of injuries inflicted by her husband.

The court finds that moving Defendant has failed to establish prejudice by the joinder of the indicted Defendants at trial. The charges and the proof are not so complicated that the jury will have difficulty separating its consideration of the culpability of each defendant herein. Further, moving Defendant's argument relating to prejudice is conclusory and speculative at best. Neither Defendant has made any statements against the other, and the State has represented that it does not intend to introduce any statements by either Defendant against the other. Further, the jury will be instructed to consider each Defendant separately. The jury will be additionally instructed that it cannot consider S.T.'s death in deliberating on the sole charge of child endangerment, related to burns on

the child's body, as to Defendant Shureka Weaver.

For the reasons stated above, the court finds Defendant Shureka Weaver's Motion to Sever to be not well taken and the same is **OVERRULED**.

{¶ 16} On May 10, 2017, the trial court overruled Shureka's motion for a stay of execution of her sentence.

{¶ 17} Shureka asserts one assignment of error herein as follows:

THE TRIAL COURT ERRED AND VIOLATED APPELLANT'S SIXTH AMENDMENT FAIR TRIAL RIGHTS BY OVERRULING APPELLANT'S MOTION TO SEVER AND ORDERING A JOINT TRIAL HEREIN.

{¶ 18} Shureka argues as follows:

* * * Though not personally charged with murder, Appellant was substantially prejudiced by the evidence at the joint trial regarding the co-defendant's conduct resulting in the death of a child and the limiting instructions could not protect her from such prejudice as eliminating her constitutional right to a fair trial. See State v. Dixon (2003), 2003-Ohio-2547.

Moreover, the State of Ohio used the co-defendant's numerous incriminating statements in the case regarding the injuries suffered by the child weeks prior to his death. (Transcript "Tr.". pp. 11-14, 9/13/2016; State's Trial Exhibits 65-71) As such, their usage easily tainted and prejudiced the jury and was foresaw by the Trial Court as stated by Trial

Counsel in earlier hearings re asking a jury to focus on just burns that were allegedly neglected by Appellant and had nothing to do with the child's death as compared to focusing on a child being injured and dying. (Tr. 39, 11-13). Even in the indictment, Appellant's indictment listed a two (2) month period, being between September 24, 2015 and November 18, 2015, for her only charge of endangering children as compared to her co-defendant/husband who was indicted for a specific day, November 18, 2015, for his charge of child endangerment besides murder, involuntary manslaughter, reckless homicide, etc… (Tr. 25, 1-11).

Thus, the basis of the charges were totally separate and distinguishable as indicted and should have been treated as such in separate trials per Appellant's request to do so. By not doing so, Appellant was substantially prejudiced by the State of Ohio being allowed to introduce those inculpating statements of her co-defendant/husband regarding the child's injuries and death that lead to her guilty verdict when the basis of her sole charge was unrelated burns on the child that had nothing to do with his death. (See State's Exhibits 65-71; Tr. 22-42, Vol. 1).

Therefore, Appellant's right to a fair trial was violated by the Trial Court in ordering a joint trial in this matter.

{¶ 19} The State responds as follows:

Shureka fails to carry her burden of demonstrating prejudicial error by the trial court. As a preliminary matter, Shureka and Torace Weaver were properly joined as defendants in a single proceeding. The sole count

> of Shureka's indictment and Count VI of Torace's indictment both charged the respective defendants with failing to get S.T. medical care for the burns he suffered prior to the date of his death. * * * Since the offenses relate to the same acts, omissions, or transaction, the State was permitted to join the defendants in a single case. * * *

{¶ 20} According to the State, "Shureka's right to confrontation was not violated in the admission of Torace's statements. * * * Neither defendant testified at trial, and, therefore, the State necessarily did not present any evidence to impeach Torace's testimony that would also serve to prove Shureka's substantive guilt." The State notes that the Weavers "presented the same defense: they both knew about the burns, but did not know how they were caused."

{¶ 21} The State asserts as follows:

> Shureka also fails to show how the joint trial prevented the jury from making a reliable judgment about guilt or innocence in her case. The evidence as to the charges against Torace and the charge against Shureka was simple and direct. Count VI of Torace's indictment and the sole count of Shureka's indictment charged the Weavers with failing to obtain medical care for S.T.'s burns. The testimony regarding these counts came in the form of Dr. Allen, Dr. Vavul-Roediger, and Paramedic Lesher, who all testified as to the severity of the burns and expressed opinions to the effect that the wounds should have been professionally treated. In contrast, Dr. Allen testified that S.T. died as a result of severe head trauma, specifically, a fracture to the back of his skull. It was undisputed that the fatal head

> trauma occurred while Torace Weaver was alone with S.T. at the King of Glory Church on November 18, 2015. Therefore, the allegation against Shureka concerned conduct that was separate in time and space from the charges concerning S.T.'s death that were directed at Torace. Consequently, the jury reasonably could have been expected to separate the evidence and charges against the Weavers and to come to reliable verdicts as to each defendant.

{¶ 22} The State asserts that the trial court instructed the venire at the start of voir dire that it was to consider the Weavers and the charges against them separately, that during voir dire the jurors were so instructed by the State and defense counsel, and that the jury was so instructed during preliminary instructions. The State notes that during "Dr. Allen's testimony concerning photographs taken during S.T.'s autopsy, the court again instructed the jury that it was to consider each defendant separately." The State argues that in the course of final instructions, "the trial court instructed the jury that it was to consider the two defendants, the respective charges against the defendants, and the evidence relevant to each charge separately; in fact, the court did so at least *nine times* during its final instructions alone." Finally, the State asserts that we must presume that the jury followed the instructions given.

{¶ 23} Crim.R. 13 provides: "The court may order two or more indictments or informations or both to be tried together, if the offenses or the defendants could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information." "Two or more defendants may be charged in the same indictment * * * if they are alleged to have

participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses, or in the same course of criminal conduct." Crim.R. 8(B).

{¶ 24} Crim.R. 14 provides:

> If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in an indictment, information, or complaint, or by such joinder for trial together of indictments, informations or complaints, the court shall order an election or separate trial of counts, grant a severance of defendants, or provide such other relief as justice requires. In ruling on a motion by a defendant for severance, the court shall order the prosecuting attorney to deliver to the court for inspection pursuant to Rule 16(B)(1) any statements or confessions made by the defendants which the state intends to introduce in evidence at the trial.

{¶ 25} "[J]oinder and the avoidance of multiple trials is favored for many reasons, among which are conserving time and expense, diminishing the inconvenience to witnesses and minimizing the possibility of incongruous results in successive trials before different juries." *State v. Torres*, 66 Ohio St.2d 340, 343, 421 N.E.2d 1288 (1981). "A defendant who asserts that joinder is improper has the burden of making an affirmative showing that his rights will be prejudiced thereby. * * *." *State v. Roberts*, 62 Ohio St.2d 170, 405 N.E.2d 247 (1980).

{¶ 26} As this Court has previously noted:

> "Antagonistic defenses exist when each defendant is trying to exculpate himself and inculpate his co-defendant." *State v. Humphrey*,

> Clark App. No. 2002-CA-30, 2003-Ohio-3401, ¶ 68. Although antagonistic defenses can be so prejudicial that they can deny a co-defendant a fair trial, antagonistic defenses are not prejudicial per se and separate trials are not required whenever co-defendants have conflicting defenses. *Id*., citing *State v. Daniels* (1993), 92 Ohio App.3d 473, 636 N.E.2d 336, and *Zafiro v. United States* (1993), 506 U.S. 534, 113 S.Ct. 933, 122 L.Ed.2d 317. As stated in *Zafiro* in the context of Fed.R.Civ.P. 14, which is substantially similar to Crim.R 14, "a [trial] court should grant a severance under Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Zafiro*, 506 U.S. at 539. In many cases, limiting instructions are sufficient to prevent any prejudice to a co-defendant. *Id*.

State v. Kleekamp, 2d Dist. Montgomery No. 23533, 2010-Ohio-1906, ¶ 103.

{¶ 27} A "jury is believed capable of segregating the proof on multiple charges when the evidence as to each of the charges is uncomplicated." *Torres*, *supra*, citing *Roberts* at 175. "Joinder may be prejudicial when the offenses are unrelated and evidence as to each is very weak, * * * but it is otherwise when the evidence is direct and uncomplicated and can reasonably be separated as to each offense * * *." *Id.*, 343-44.

{¶ 28} "We review the trial court's denial of a motion for separate trials for an abuse of discretion. *State v. Patterson*, Clark App. No. 05 CA 128, 2007-Ohio-29, ¶ 30 * * *." *Kleekamp* at ¶ 100. As this Court has previously noted:

> Generally, " 'abuse of discretion occurs when a decision is grossly

> unsound, unreasonable, illegal, or unsupported by the evidence.' " *[State v. Cassel,* 2016-Ohio-3479, 66 N.E.3d 318, ¶ 13 (2d Dist.)] (quoting *State v. Nichols*, 195 Ohio App.3d 323, 2011-Ohio-4671, 959 N.E.2d 1082, ¶ 16 (2d Dist.)). A "decision is unreasonable if there is no sound reasoning process that would support that decision." *Id.* (citing *State v. Jones*, 2d Dist. Montgomery Nos. 25315 & 25316, 2013-Ohio-1925, ¶ 32; *State v. LeGrant*, 2d Dist. Miami No. 2013-CA-44, 2014-Ohio-5803, ¶ 7). When "applying [this] standard, an appellate court may not merely substitute its judgment for that of the trial court." *Id.* (citing *Berk v. Matthews*, 53 Ohio St.3d 161, 169, 559 N.E.2d 1301 (1990)).

State v. Keller, 2017-Ohio-2609, 90 N.E.3d 176, ¶ 6 (2d Dist.).

{¶ 29} We conclude that an abuse of discretion is not demonstrated herein. We initially note that Torace's indictment was amended to mirror the time period of the endangering children offense in Shureka's indictment, a fact overlooked in Shureka's brief. We further agree with the trial court that Shureka's arguments regarding prejudice were speculative. In her motion to sever, Shureka asserted that Torace's unidentified statements "*could potentially* implicate this Defendant in the alleged criminal history." At the hearing on the motion, counsel for Shureka asserted that since he could not subpoena Torace in a joint trial, Shureka "*might be prejudiced.*" Counsel for Shureka further argued that zealous advocacy on behalf of Shureka "*could perhaps* encourage the jury to say, if you find someone responsible, find Mr. Weaver responsible."

{¶ 30} Regarding Shureka's assertion that "the State of Ohio used the co-defendant's numerous incriminating statements in the case regarding the injuries suffered

by the child weeks prior to his death," she directs our attention to a pre-trial hearing that occurred on December 5, 2016. Therein the following exchange occurred:

* * *

THE COURT: * * *

And then, with regard to the motion to suppress filed by Mr. Weaver on September the 7th, it's my understanding that there is going to be a stipulation and that that motion will then be withdrawn based on the stipulation. Is that correct, Mr. VanNoy?

MR. VANNOY: That's correct, Your Honor.

THE COURT: * * * And so, Mr. Amos or Ms. Madzey, if you want to make the representation that we discussed in chambers with Mr. VanNoy about the Statements.

MR. AMOS: Your Honor, pursuant to our conversation off the record, it's the State's understanding that Defense will withdraw the motion pursuant to us agreeing on statements that will be possibly presented at trial. And I think what I feel comfortable doing is just outlining what those statements are, at least, insofar as the interviews that were conducted.

The first would be the initial officer that responded to the scene. Any statements given by Mr. Weaver to that officer we would - -

THE COURT: And who was that officer?

MR. AMOS: That was Officer Tim Gould.

* * *

MR. AMOS: G-O-U-L-D, Dayton Police, who was the responding

officer that spoke with Mr. Weaver regarding the incidents.

There's also a set of statements that we expect to introduce that were inside the cruiser of Officer Gould regarding phone calls that were made by Mr. Weaver. This was not subject to any interrogation. It was just recorded conversations that he had with other entities via phone.

Then the first official interview that was conducted by Dayton Police detectives, we would expect to introduce that. And that occurred on November the 18th of 2015. So, that has been provided in discovery.

THE COURT: And who was that with?

MR. AMOS: There were several detectives involved in that. But, basically, it was Detective Kevin Phillips and Detective Heather Bruss * * *. And then there was another set, I'll call it set of interviews, conducted with Mr. Weaver that occurred on December 14th of 2015. And that was, again, by Dayton Police Detectives, Detective Elizabeth [Alley] * * * and Detective Bruss. And, subsequently, Detective Phillips was involved in that as well.

And there were also - - we expect some statements that may be introduced regarding when Mr. Weaver was taken back to his house. One of the detectives accompanies him and there were some statements given at that point. I think those are also noted in the discovery packet.

But other than that - -

THE COURT: Was that - - was that also on that - - after that initial response?

MR. AMOS: It would have been after the initial - -

THE COURT: Okay.

MR. AMOS: - - response. And other than that, Judge, I believe that - - and we've agreed that anything in the discovery is fair game. But those are the highlights of the Statements that we expect to potentially introduce at trial.

{¶ 31} As noted above, at the subsequent hearing on the motion to sever, the State made clear that there was no evidence that Shureka was responsible for S.T.'s death. Further, neither defendant made statements of an incriminating nature nor did they implicate each other as to the cause of the burns or the failure to seek proper medical treatment for the burns. Accordingly, we find that Shureka failed to affirmatively demonstrate that her rights would be prejudiced by joinder. As the trial court noted, Shureka and Torace were both indicted for violating a duty of care to S.T., namely by failing to seek medical care for his burns, and their offenses relate to the same acts or omissions. The evidence against them as to the endangering children offense was simple and direct; S.T. sustained severe burns which blistered prior to his death and the defendants did not seek medical attention for them. Neither defendant testified at trial, and there were no antagonistic, or inconsistent, defenses. The State did not introduce any statements by Torace implicating Shureka in endangering children at trial, and we agree with the State that *Dixon* does not apply. In *Dixon*, Mary Dixon and her husband were indicted for permitting drug abuse, and their trials were consolidated without objection. *Id*., ¶ 2. Mary's husband chose to testify, and on his cross-examination, "Mary's knowledge and acquiescence to the sale of drugs in her home was * * * implied."

Id., ¶ 13. The Third District determined that had the two cases not been consolidated, "the jury in Mary's case would not have been privy" to her husband's testimony. *Id*., ¶ 14. As noted above, Torace did not implicate Shureka.

{¶ 32} The additional evidence against Torace was that S.T. died as a result of severe head trauma that occurred while Torace was alone with S.T. on November 18, 2015. In other words, the evidence as to Shureka involved conduct temporally separate from the events of November 18, 2015, that resulted in S.T.'s death. There was no basis to conclude that a jury would be unable to consider the culpability of each defendant separately (as they were instructed to do at trial). Since Shureka failed to demonstrate the risk that a joint trial would prevent the jury from rendering a reliable verdict of guilty or not guilty for the offense of endangering children, her sole assignment of error is overruled. The judgment of the trial court is affirmed.

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WELBAUM, P.J. and TUCKER, J., concur.

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