

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 107672
	:	
v.	:	
	:	
TERRELL REDDIX,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: June 20, 2019

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-17-616467-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Jeffrey Schnatter, Jennifer Meyer, and Lindsay Raskin, Assistant Prosecuting Attorneys, *for appellee.*

Charles Ruiz-Bueno Co., L.P.A., and J. Charles Ruiz-Bueno, *for appellant.*

SEAN C. GALLAGHER, P.J.:

{¶ 1} Appellant Terrell Reddix appeals his convictions on multiple counts.

Upon review, we affirm.

{¶ 2} Appellant was indicted under a seven-count indictment with four counts of gross sexual imposition, two counts of kidnapping with sexual motivation specifications, and one count of abduction. Counts 1 to 5 charged offenses occurring in April 2016 and included allegations of sexual contact committed against Jane Doe I. Counts 6 and 7 charged offenses occurring from August 2012 to June 2013 and included allegations of sexual contact committed against Jane Doe II. Appellant entered a plea of not guilty to the charges.

{¶ 3} During the course of proceedings, the state filed a notice of intent to use Evid.R. 404(B) evidence, which the trial court considered as a motion and denied. Also, appellant filed a motion to sever that was denied by the trial court.

{¶ 4} Appellant waived his right to a jury trial, and the case proceeded to a bench trial. The trial court found appellant guilty of gross sexual imposition as charged in Counts 1, 2, 3, and 6 of the indictment; guilty of abduction, the lesser included offense under Counts 4 and 7 of the indictment, but not guilty of the sexual motivation specifications charged in those counts; and guilty of abduction as charged in Count 5 of the indictment. At sentencing, the trial court merged Count 4 with Counts 1, 2, and 3, and Count 7 with Count 6. The trial court imposed a total aggregate prison term of 24 months, advised appellant of postrelease control, and found appellant to be a Tier I sex offender.

{¶ 5} Appellant timely filed this appeal. Under his sole assignment of error, appellant raises several challenges to the trial court's denial of his motion to sever counts pursuant to Crim.R. 14.

{¶ 6} Crim.R. 8(A) provides that “two or more offenses may be charged in the same indictment” if the offenses “are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct.” Ohio law generally favors joinder under Crim.R. 8(A) if the offenses charged are of the same or similar character; however, a defendant may be entitled to severance under Crim.R. 14 if he can establish prejudice. *State v. McKelton*, 148 Ohio St.3d 261, 2016-Ohio-5735, 70 N.E.3d 508, ¶ 299, citing *State v. Lott*, 51 Ohio St.3d 160, 163, 555 N.E.2d 293 (1990). When a defendant claims prejudice by the joinder of multiple offenses, a court must determine whether evidence of the other crimes would be admissible even if the counts were severed; and if not, whether the evidence of each crime is simple and distinct. *State v. Schaim*, 65 Ohio St.3d 51, 59, 1992-Ohio-31, 600 N.E.2d 661, citing *State v. Hamblin*, 37 Ohio St.3d 153, 158-159, 524 N.E.2d 476 (1988).

{¶ 7} Ordinarily, a trial court’s ruling on a Crim.R. 14 motion is reviewed for an abuse of discretion. *State v. Spaulding*, 151 Ohio St.3d 378, 2016-Ohio-8126, 89 N.E.3d 554, ¶ 63, citing *State v. Hand*, 107 Ohio St.3d 378, 2006-Ohio-18, 840 N.E.2d 151, ¶ 166. However, where a defendant fails to renew a Crim.R. 14 motion for severance at the close of the state’s case or at the close of all evidence, the defendant waives all but plain error on appeal. *State v. Nitsche*, 2016-Ohio-3170, 66 N.E.3d 135, ¶ 90 (8th Dist.). To establish plain error, the defendant must establish that an error occurred, that the error was obvious, and that the error

affected his or her substantial rights. *Spaulding* at ¶ 64. In order for an error to have affected a defendant's substantial rights, the error "must have affected the outcome of trial." *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002-Ohio-68, 759 N.E.2d 1240. "Notice of plain error * * * is to be taken with the utmost caution, under exceptional circumstances, and only to prevent a manifest miscarriage of justice." *State v. Gordon*, 152 Ohio St.3d 528, 2018-Ohio-259, 98 N.E.3d 251, ¶ 23, quoting *State v. Long*, 53 Ohio St.2d 91, 372 N.E.2d 804 (1978), paragraph three of the syllabus.

{¶ 8} Appellant raises a number of issues with regard to the trial court's ruling. He claims that the trial court erred in denying his motion to sever without holding a hearing on the record and that the trial court denied the state's request to use Evid.R. 404(B) evidence at trial, yet allowed impermissible "other acts evidence" at trial when it heard and considered evidence of the sexual conduct testified to by the separate victims. Appellant argues that this was plain error and in contravention of R.C. 2907.05(E), which prescribes limits in which evidence of specific instances of a defendant's sexual activity may be admitted against a defendant charged with gross sexual imposition. Appellant also claims that the evidence of the crimes against both victims was not simple and direct, and he points to contradictory evidence in the record with regard to incidents involving each of the victims. Appellant asserts that he was prejudiced by the denial of severance and that he was compelled to waive a jury trial as a result.

{¶ 9} Appellant moved to sever the counts with respect to each victim pursuant to Crim.R. 14 and *Schaim*, 65 Ohio St.3d 51, 1992-Ohio-31, 600 N.E.2d 661. In *Schaim*, the Supreme Court of Ohio recognized the limits placed upon the admissibility of other acts evidence because of the substantial danger that a jury will convict a defendant solely because it assumes that the defendant has a propensity to commit criminal acts, or deserves punishment regardless of whether the charged offenses were actually committed. *Id.* at 59. The court observed that the legislature has recognized the problems raised by the admission of other acts evidence in prosecutions for sexual offenses, and that the statutes for forcible rape, R.C. 2907.02, and gross sexual imposition, R.C. 2907.05, carefully limit the circumstances in which evidence of the defendant's other sexual activity is admissible. *Id.* at 59-60.¹ Under the circumstances presented in *Schaim*, the court determined that the joinder of counts charging rape committed against one daughter and gross sexual imposition against the other had allowed the jury to consider significant amounts of other acts evidence that would not have been admissible in separate trials. *Id.* at 60-62.² The court found that the defendant was prejudiced by the trial court's refusal to sever charges where the evidence supporting a conviction for gross sexual imposition with one victim was "at best thin," the record reflected confusion of the testimony, and the case had been tried to a jury.

¹ In *Schaim*, the Supreme Court of Ohio did not rule that R.C. 2907.05(E) precluded joinder and only recognized the limits of this type of evidence in separate trials. *Id.* at 60.

Id. at 62-63. Upon the record therein, the court concluded that the defendant was prejudiced by the consolidated trial “[g]iven the highly inflammatory nature of the offenses [involved], the similarities between portions of [two of the victims’] testimony, and the fact that joinder allowed the state to circumvent the prohibition on other acts testimony[.]” *Id.* at 62.

{¶ 10} On appeal, appellant claims that permitting joinder herein violates the mandatory prohibition in R.C. 2907.05(E) and that the state was permitted to “backdoor” the admission of other acts regarding specific instances of the defendant’s sexual activity that would not have been permitted in separate trials. We are not persuaded by his argument.

{¶ 11} Appellant cites *State v. Frazier*, 8th Dist. Cuyahoga No. 83024, 2004-Ohio-1121. In *Frazier*, this court reversed the joinder of cases charging sex crimes involving two different victims where the record demonstrated that it was unlikely upon the evidence presented that the appellant would have been convicted of attempted rape against the second victim without the jury having heard the details of the evidence supporting the charges of rape involving the first victim. *Id.* at ¶ 19. On the record presented, the court found the jury “most likely, concluded that appellant had a propensity to commit the same crime against [the second victim] on evidence that would otherwise be insufficient to support a conviction for attempted rape.” *Id.*

{¶ 12} Appellant also cites *State v. Kaufman*, 187 Ohio App.3d 50, 2010-Ohio-1536, 931 N.E.2d 143 (7th Dist.). However, in *Kaufman* the defendant had

renewed his motion during a jury trial and it was summarily denied; the court recognized the tendency for a jury to cumulate the evidence of separate offenses that are jointly tried, and the appeal was not resolved under the plain-error standard. *Id.* at ¶ 182-190.

{¶ 13} As recognized in *Kaufman*, although prejudicial joinder can occur with offenses that are highly inflammatory in nature and involve similar victim testimony, this does not mean that any offenses of a sexual nature must be severed for fear that a factfinder will erroneously use the evidence of one crime to corroborate the other. *Id.* at ¶ 189. In such cases, while there may be a tendency for a jury to use one victim's testimony to corroborate another victim's testimony, the record may demonstrate that the jury was in fact able to segregate the evidence regarding each victim. *See id.* at ¶ 189-190.

{¶ 14} Unlike the cases relied upon by appellant, in this matter, there is nothing in the record to reflect that a prejudicial joinder occurred. The charges stemmed from separate incidents relating to each of the different victims. Although both victims were teachers at the Ginn Academy, where appellant was also a teacher, the incidents occurred several years apart and involved unrelated facts and circumstances. In large part, the state first presented testimony and evidence as to the offenses involving Jane Doe II, followed by testimony and evidence as to the offenses involving Jane Doe I. The state's witnesses provided straightforward testimony, and each victim provided detailed testimony of the separate incidents. The record herein reflects that the evidence pertaining to each victim and each

offense is separate and distinct and could easily be segregated. Further, unlike the cases cited by appellant, this case was not tried to a jury and there is no indication that evidence pertaining to each victim's claims was confused or improperly used to corroborate the other's.

{¶ 15} In *State v. Morsie*, 12th Dist. Warren No. CA2012-07-064, 2014-Ohio-172, the court found no plain error in a trial court's decision to deny a defendant's motion to sever under Crim.R. 8(A) and 14, where the state presented an organized, chronological overview of the facts and charges stemming from unwanted sexual encounters alleged against the defendant by four women; the witnesses were all "victim specific" in their testimony; the evidence pertaining to each victim and each offense could easily be segregated; and the matter was tried to the bench. *Morsie* at ¶ 2, 32-34. Further, based on the strength of the state's evidence, the court found it clear that "the state did not merely 'attempt to prove one case simply by questionable evidence of other offenses[,]'" but, rather, "provided a detailed account of the defendant's conduct, thereby leading to his conviction." *Id.* at ¶ 34, quoting *Hand*, 107 Ohio St.3d 378, 2006-Ohio-18, 840 N.E.2d 151, at ¶ 170.

{¶ 16} Likewise, our review in this matter is for plain error that must have affected appellant's substantial rights. "[A] joinder cannot result in prejudice if the evidence of the offenses joined at trial is simple and direct, so that a jury is capable of segregating the proof required for each offense." *State v. Harris*, 8th Dist. Cuyahoga No. 104833, 2017-Ohio-2985, ¶ 13, quoting *State v. Lytle*, 10th Dist. Franklin Nos. 15AP-748 and 15AP-754, 2016-Ohio-3532, ¶ 65. The lack of prejudice

is even more pronounced in a bench trial where it can be presumed that the court, as the trier of fact, is capable of determining the facts pertinent to the distinct elements of the crimes in each separate case. *Harris* at ¶ 13, citing *State v. Campbell*, 8th Dist. Cuyahoga Nos. 100246 and 100247, 2014-Ohio-2181, ¶ 11; *see also Morsie* at ¶ 33. Indeed, a judge in a bench trial is presumed not to have considered improper evidence in reaching a verdict, and to have considered only the relevant, material, and competent evidence in reaching its judgment unless it affirmatively appears to the contrary. *State v. Arnold*, 147 Ohio St.3d 138, 2016-Ohio-1595, 62 N.E.3d 153, ¶ 39, citing *State v. Post*, 32 Ohio St.3d 380, 384, 513 N.E.2d 754 (1987). Appellant has not shown, nor does it affirmatively appear, that the trial court considered improper evidence in determining guilt. Further, although appellant claims he suffered prejudice because he waived his constitutional right to a jury trial because his motion to sever was denied, there is nothing in the record to support his contention. *See Harris* at ¶ 12 (rejecting a similar claim).

{¶ 17} Finally, appellant claims that the trial court did not comply with Crim.R. 14 in ruling on the motion to sever because it did not order the prosecution to deliver any statements or confessions made by the defendant that the state intended to introduce at trial. Appellant points to no evidence of any such statements introduced at trial and has failed to demonstrate any prejudice occurred.

{¶ 18} For these reasons, we conclude appellant has failed to demonstrate plain error from the trial court's denial of his motion to sever. Accordingly, we overrule appellant's assignment of error.

{¶ 19} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, PRESIDING JUDGE

**KATHLEEN ANN KEOUGH, J., and
EILEEN A. GALLAGHER, J., CONCUR**