

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

JAMES N. CAMPAIN

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 09CA35

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Richland County Court of
Common Pleas, Case No's.
2007-CR-0131 H, 2007-CR-0415 H

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

September 2, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant James Campain appeals his convictions and sentences entered by the Richland County Court of Common Pleas, on two counts of gross sexual imposition, eight counts of dereliction of duty, and two counts of sexual battery, following a jury trial. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE AND FACTS

{¶2} On February 5, 2007, the Richland County Grand Jury indicted Appellant in Case No. 2007CR0131H, on two counts of gross sexual imposition; and ten counts of dereliction of duty arising from Appellant's actions while acting in his capacity as a corrections/transport officer. Subsequently, on May 10, 2007, the Richland County Grand Jury indicted Appellant in Case No. 2007CR415H, on two counts of sexual battery. Appellant filed waivers of presence at arraignment and written pleas of not guilty to both Indictments.

{¶3} On June 11, 2007, the State filed a Motion to Consolidate or Join the Cases for trial purposes. Appellant opposed the motion, and filed a motion to sever the felony counts from the misdemeanor counts in Case No. 2007CR131. The trial court conducted a hearing on the motions on August 29, 2007. Via Journal Entry filed September 25, 2007, the trial court granted the State's motion, and consolidated the two

cases for trial purposes. The trial court overruled Appellant's motion to sever the misdemeanor counts.

{¶4} The jury trial commenced on January 7, 2008. The following evidence was adduced at trial.

{¶5} On November 27, 1995, Appellant, who was 58 years old at the time of trial, commenced employment with the Richland County Sheriff's Department as a Corrections Officer, working the jail floor. Sometime in 1999, Appellant became a transport officer. Appellant remained a corrections officer, but worked in a different department. The policies and procedures were the same for both positions. The policies included, inter alia, rules which 1) prohibited male officers from entering the female housing area unescorted by either a female corrections officer or another male corrections officer with supervisor approval unless such is done in an emergency; 2) required male transport officers to report mileage when transporting female inmates without an escort; 3) prohibited officers from exchanging gifts, or asking for or receiving favors from inmates; 4) prohibited officers from intentionally humiliating or demeaning inmates; 5) prohibited officers from fraternizing or having unnecessary conversations with inmates; 6) prohibited officers from becoming socially involved with a current or former inmate; and 7) prohibited officers from compromising jail security by bringing unauthorized items into the jail and/or providing contraband to inmates.

{¶6} Ashley Drummond, who was incarcerated in the Richland County Jail from April 5, 2006, to July 9, 2006, filed a complaint of inappropriate conduct against Appellant on June 27, 2006. During her incarceration, Drummond worked in the jail kitchen and laundry room, which resulted in frequent contact with Appellant. Appellant

would follow Drummond into the walk-in cooler located in the jail kitchen and ask her to “show him her boobs”. On two occasions, Appellant inappropriately brushed up against Drummond. Appellant threatened to place Drummond in solitary confinement if she did not comply with his demand she show him her breasts. Drummond observed Appellant give cigarettes to female inmates working in the kitchen, and also observed him with female inmates in the cooler or behind the dryer in the laundry room. Drummond encouraged other female inmates to also file complaints against Appellant.

{¶7} As a result of the complaints filed by the female inmates, the Richland County Sheriff assigned Captain Larry Faith to conduct an internal investigation into the allegations against Appellant. Captain Faith learned an inmate by the name of Erica Ramsey was also subjected to Appellant’s inappropriate actions. While Ramsey was incarcerated between July 21, 2005, and November 7, 2005, Appellant came into the female range, unescorted, asking the female inmates to flash their breasts. Ramsey initially refused to do so, but after she observed Appellant give cigarettes, which were not allowed in the jail, to another inmate, Ramsey complied. On October 7, 2005, Appellant transported Ramsey to the Mansfield Municipal Building under the guise of visiting her probation officer. Upon their arrival, Appellant told Ramsey her probation officer did not need to see her. Appellant took Ramsey into a holding cell, and keeping the lights off, began to touch her breasts. Appellant unzipped his pants and forced Ramsey to perform oral sex upon him. Appellant left Ramsey in the holding cell while he transported another inmate back to the jail, making it appear Ramsey was, indeed, meeting with her probation officer.

{¶8} Curtis Caldwell, a corrections officer in the Mansfield City Jail, noticed Ramsey inside the holding cell. Caldwell asked Ramsey why the lights were off and what she was doing. Ramsey told Caldwell Appellant had brought her to the holding cell and left her. Caldwell spoke with the probation department and learned Ramsey did not have an appointment. Appellant subsequently returned and transported Ramsey back to county jail, giving her ten cigarettes which she carried into the jail.

{¶9} During her initial conduct with Captain Faith, Ramsey did not disclose her performing oral sex on Appellant because she was embarrassed, but did so during a subsequent meeting. Ramsey agreed to make a controlled phone call to Appellant in order to assist Captain Faith in his investigation. Ramsey telephoned the county jail, pretended to be Appellant's niece, and left a message for Appellant to call her. Appellant returned the call, which Ramsey recorded. Ramsey attempted to get Appellant to admit what had he done to her in the holding cell. Ramsey talked to Appellant about what occurred between them in the holding cell and stated she "wouldn't mind seeing that thing again", referencing Appellant's penis. Ramsey arranged to meet Appellant at the forensic diagnostic center as he had transported another inmate there. Ramsey secretly recorded the meeting during which she spoke about what happened in the holding cell. Appellant did not make any admissions during the meeting, did not deny what had occurred in the holding cell, and did not question Ramsey as to what she was talking about.

{¶10} Witness after witness revealed Appellant's inappropriate behavior with female inmates. Lisa Ramseur, another inmate, had conversations with Appellant, during which she expressed her desire to get out of jail to be with her children, and

asked him to take letters for her to the judge. Appellant instructed Ramseur to write him a letter as to why he should do so, and write a letter to the judge explaining why she should be released. Appellant told Ramseur he would personally take her letter to the judge if she flashed her breasts. Additionally, Appellant had Ramseur, who was African American, and a white female inmate to flash their breasts at him simultaneously. Appellant gave the inmates a single cigarette to share. Other women who had been inmates testified to Appellant's giving them cigarettes and lighters if they showed them their breasts. Appellant followed female inmates into the walk-in cooler, fondled their breasts, and placed their hands on his clothed penis. Appellant told the inmates he would personally deliver letters to the judge to help them get early release. Other witnesses testified Appellant had unsnapped their jumpsuits, felt their breasts, and placed his fingers in their vaginas. Appellant ordered a female inmate to clean out his transport van, and while she did so, he sat in one of the backseats and made her perform oral sex upon him.

{¶11} Major Roger Paxton, the administrator for the Richland County Jail, testified Appellant had been demoted from a corporal to a corrections officer after he gave cigarettes to female inmates and advised them as to where to stand to avoid being seen on the security camera. Charles Pennywitt, a fellow transport officer; Lieutenant William Franklin, Appellant's supervisor; and Major Paxton testified regarding non-inmate complaints they had received against Appellant. Those making the complaints included a female employee at the dentist's office utilized by the county jail, the supervisor of the reception area of the Richland Correctional Institution, the staff at the People's Hospital Administration Building, and Judge DeWeese's courtroom. The

nature of the complaints was improper sexual actions by Appellant through sexual innuendos.

{¶12} When the State rested its case, Appellant made a Crim.R. 29 motion for acquittal, which the trial court overruled. Appellant testified on his own behalf, stating the female inmates had made up the claims against him as a result of his actions in his capacity as a corrections officer.

{¶13} After hearing all the evidence and deliberations, the jury found Appellant guilty of all counts in Case No. 2007CR131H, except for two counts of dereliction of duty which arose from conduct occurring outside the timeframe alleged in the indictment. The jury further found Appellant guilty of both counts in Case No. 2007CR415H. The trial court classified Appellant as a Tier III Sex Offender, and sentenced him to an aggregate term of imprisonment of nine years.

{¶14} It is from these convictions and sentences Appellant appeals, raising the following assignments of error:

{¶15} “I. THE TRIAL COURT COMMITTED PLAIN AND PREJUDICIAL ERROR AND DENIED THE DEFENDANT-APPELLANT’S RIGHT TO DUE PROCESS UNDER THE UNITED STATES AND OHIO CONSTITUTIONS, AND UNDER THE OHIO RULES OF EVIDENCE BY RECEIVING INTO EVIDENCE TESTIMONY REGARDING OTHER ALLEGED SEXUAL ACTS OF THE DEFENDANT.

{¶16} “II. DEFENDANT-APPELLANT WAS DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10, OF THE OHIO CONSTITUTION, AS WELL AS THE DUE PROCESS PROTECTION UNDER THE

FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND IN ARTICLE I, SECTION 16, OF THE OHIO CONSTITUTION.

{¶17} “III. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY JOINING THE TWO SEPARATE CASES, I.E., 2007CR415H AND 2007CR0131H, TO BE TRIED TOGETHER, DENYING DEFENDANT–APPELLANT’S RIGHT TO DUE PROCESS UNDER THE UNITED STATES AND OHIO CONSTITUTIONS [SIC] AND UNDER THE OHIO RULES OF EVIDENCE.”

III

{¶18} For ease of discussion, we shall address Appellant’s third assignment of error first. In his third assignment of error, Appellant contends the trial court committed prejudicial error by joining the two cases for trial, thereby denying him his right to due process.

{¶19} Crim. R. 14 provides:

{¶20} “If it appears that a defendant or the state is prejudiced by a * * * joinder for trial together of indictments, information 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)(a) any statements or confessions made by the defendants which the state intends to introduce in evidence at the trial.” *Id.*

{¶21} “It is well-established that the law favors joinder because the avoidance of multiple trials conserves time and expense and minimizes the potentially incongruous outcomes that can result from successive trials before different juries.” *State v. Glass*

(March 9, 2001), Greene App. No.2000 CA 74, at 2, citing *State v. Schiebel* (1990), 55 Ohio St.3d 71, 86-87; *State v. Torres* (1981), 66 Ohio St.2d 340, 343; and *State v. Thomas* (1980), 61 Ohio St.2d 223, 225.

{¶22} In order to prevail on his claim the trial court erred in overruling his motion to sever, Appellant must show: (1) his rights were prejudiced; (2) at the time of the motion to sever he provided the trial court with sufficient information so it could weigh the considerations favoring joinder against the potential prejudice; and (3) given the information provided to the court, it abused its discretion in refusing to sever the charges. See, *Torres*, supra, at syllabus. Specifically, Appellant complains of the trial court's allowing evidence concerning his conduct while at the office of the dentist utilized by the county jail for the treatment of inmates; the reception area of Richland Correctional Institution; the Administrative Building of People's Hospital; and Judge DeWeese's courtroom. Appellant's conduct at these four locations did not involve inmates in his custody, but rather civilian women with whom he came into contact at those locations.

{¶23} The State can negate such claims of prejudice using one of two methods. Under the first method, the 'other acts' test, the State must show the evidence of the other crimes would be admissible under the 'other acts' provision of Evid.R. 404(B), if the trial court conducted two separate trials. Under the second method, the 'joinder' test, the State is not required to meet the stricter 'other acts' admissibility test, but is merely required to show the evidence of each crime joined at trial is simple and direct. *

* * . Thus, when simple and direct evidence exists, an accused is not prejudiced by

joinder regardless of the nonadmissibility of evidence of these crimes as ‘other acts’ under Evid.R. 404(B).” *State v. Lott* (1990), 51 Ohio St.3d 160,164. (Citations omitted).

{¶24} Regardless of whether the “other acts” evidence would have been admissible in separate trials, we find the evidence in this case was simple and direct. *State v. Schaim* (1992), 65 Ohio St.3d 51, 59. Accordingly, we find the trial court did not abuse its discretion in joining the Indictments for trial.

{¶25} Appellant’s third assignment of error is overruled.

II

{¶26} In his second assignment of error, Appellant maintains his trial counsel was ineffective for failing to object to the State’s introduction of other acts testimony.

{¶27} The standard of review of an ineffective assistance of counsel claim is well-established. Pursuant to *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 673, in order to prevail on such a claim, the appellant must demonstrate both (1) deficient performance, and (2) resulting prejudice, i.e., errors on the part of counsel of a nature so serious that there exists a reasonable probability that, in the absence of those errors, the result of the trial court would have been different. *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373.

{¶28} In determining whether counsel’s representation fell below an objective standard of reasonableness, judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 142. Because of the difficulties inherent in determining whether effective assistance of counsel was rendered in any given case, a strong presumption exists counsel’s conduct fell within the wide range of reasonable, professional assistance. *Id.*

{¶29} In order to warrant a reversal, the appellant must additionally show he was prejudiced by counsel's ineffectiveness. This requires a showing there is a reasonable probability but for counsel's unprofessional errors, the result of the proceeding would have been different. *Bradley*, supra at syllabus paragraph three. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.*

{¶30} We agree with Appellant defense counsel's failure to object to other acts evidence fell below an objective standard of reasonable representation.

{¶31} R.C. 2945.59 and Evid.R. 404(B) provide the rules for the admission or exclusion of other crimes, wrongs, or acts. R.C. 2945.59 states:

{¶32} "In any criminal case in which the defendant's motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing an act is material, any acts of the defendant which tend to show his motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing the act in question may be proved, whether they are contemporaneous with or prior or subsequent thereto, notwithstanding that such proof may show or tend to show the commission of another crime by the defendant." *Id.*

{¶33} Evid.R. 404(B) provides:

{¶34} "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Id.*

{¶35} Generally, these rules are to be construed against admissibility of the "other acts" evidence. *State v. Burson* (1974), 38 Ohio St.2d 157, 158.

{¶36} The other acts evidence introduced by the State revealed the Sheriff's Department had received a number of non-inmate complaints against Appellant for his inappropriate sexual behavior. The evidence was presented to place Appellant's character in a bad light. Although we find such evidence should not have been admitted, we find Appellant is, nonetheless, unable to establish the second prong of the *Strickland* Test as there does not exist a reasonable probability the outcome of the trial would have been different given the substantial evidence of Appellant's guilt with respect to the crimes charge.

{¶37} Appellant's second assignment of error is overruled.

I

{¶38} In his first assignment of error, Appellant contends he was denied his right to due process as a result of the trial court's admission of the same other sexual acts testimony identified in our discussion of Assignment of Error II, supra. Because trial counsel failed to object to the testimony, we must review this assignment of error under the plain error doctrine. *State v. Maurer* (1984), 15 Ohio St.3d 239.

{¶39} In order to prevail under a plain error analysis, Appellant bears the burden of demonstrating the outcome of the trial clearly would have been different, but for the error. Crim. R. 52(B). Notice of plain error must be taken with utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice. *State v. Long* (1978), 53 Ohio St.2d 91, 372 N.E.2d 804.

{¶40} As we determined in Assignment of Error II, supra, Appellant has failed to establish a reasonable probability existed the outcome of his trial would have been different had trial counsel objected to the testimony at issue. Under a plain error

{¶41} Appellant's first assignment of error is overruled.

Delaney, J. concur

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

Case No. 09CA35

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Richland County Court of Common Pleas is affirmed. Costs assessed to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY