

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 115937
v.	:	
RICHARD L. MOORE,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 3, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-24-695994-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Michael Timms, Assistant Prosecuting Attorney, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Rick Ferrara, Assistant Public Defender, *for appellant*.

TIMOTHY W. CLARY, J.:

{¶ 1} Defendant-appellant Richard L. Moore (“Moore”) appeals from his conviction and sentencing. For the following reasons, we affirm.

I. Factual and Procedural History

A. Indictment

{¶ 2} This case stems from Moore’s alleged rape and kidnapping of C.H. on December 21, 2010, and his alleged gross sexual imposition and rape of T.S. on May 1, 2014, and November 17, 2014, respectively. Following both rape incidents, the victims sought medical attention and sexual assault kits were completed. On January 17, 2013, the Bureau of Criminal Investigation (“BCI”) informed the Cleveland Division of Police that the DNA collected from C.H.’s sexual assault kit was preliminarily associated with Moore’s DNA. Seven years later on February 11, 2020, the State indicted Moore on C.H.’s allegations in Cuyahoga C.P. No. CR-20-648179, but the indictment was subsequently dismissed. More than four years later, the State indicted Moore on October 8, 2024, on charges related to both victims (“2024 indictment”).

{¶ 3} Regarding Moore’s alleged encounter with C.H., the 2024 indictment charged Moore with Count 1, rape (vaginal penetration), Count 2, rape (oral penetration), Count 3, kidnapping, and Count 4, kidnapping. Counts 1 through 4 carried one- and three-year firearm specifications and sexually-violent-predator specifications; Counts 3 and 4 also each carried a sexual-motivation specification.

{¶ 4} Counts 5 through 7 of the 2024 indictment related to T.S.’s allegations. The indictment charged Moore with Count 5, gross sexual imposition, Count 6, rape (vaginal penetration), and Count 7, rape (oral penetration). Both rape charges included a sexually-violent-predator specification.

B. Motions and Related Hearing

{¶ 5} Moore pleaded not guilty to the 2024 indictment. Moore filed a motion for separate trials, arguing that he would be prejudiced if the State were permitted to join the charges related to C.H. and T.S. because they involved two complex incidents with unrelated victims, events, dates, and fact scenarios. Moore also argued that the absence of a common scheme, plan, or part of a course of criminal conduct supported his motion for separate trials. The State countered that the incidents were similar and the simple and direct evidence would not confuse the jury.

{¶ 6} Moore filed a motion to dismiss the 2024 indictment asserting that the delayed indictment caused him actual prejudice and the State failed to present a justifiable reason for the delay. The State opposed the motion to dismiss. The State also filed a notice of its intent to use Evid.R. 404(B) evidence, which Moore opposed.

{¶ 7} The trial court conducted a hearing on the three motions: Moore's motion to dismiss based upon preindictment delay, Moore's motion for separate trials, and the State's notice to use 404(B) evidence. Regarding Moore's motion to dismiss C.H.'s allegations because of preindictment delay, defense counsel argued that the preindictment delay was unjustifiable because the alleged incident and police investigation occurred in December 2010, the police department "received a CODIS hit" on Moore on January 11, 2013, and the case was not indicted until 2020, with a reindictment in 2024. As to T.S.'s case, defense counsel reiterated that the delayed indictment was unjustifiable because the police could have questioned

Moore in 2014, when the alleged offenses occurred and the events were fresh in everyone's minds, but they failed to do so. Moore also claimed actual prejudice from the delay because he no longer had access to text messages or phone calls that were previously exchanged between Moore and T.S.'s family: "[The State] did nothing to bring this case forward, and because of that our ability to defend these charges are greatly diminished because we don't have the information that we could have had with regard to the family discussing this, discussing where he is, because they knew where he was, Your Honor." Tr. 12-13.

{¶ 8} The State countered that the defense made no claim of actual prejudice in regard to C.H.'s allegations. And as to the alleged offenses committed against T.S., the State challenged that Moore's vague arguments did not establish actual prejudice: "Defense counsel argues in his motion that communications were lost, text messages, phone calls. He is not specific at all as to what those communications are, what they would say, when they were, what devices they would have been on." Tr. 16.

{¶ 9} As to Moore's motion for separate trials, defense counsel argued that the two cases presented different theories that would confuse the jury, i.e. C.H. alleged that she was raped by an unknown assailant whereas T.S.'s allegations stemmed from incidents that occurred with Moore, a person who was in a relationship with T.S.'s sister and lived in T.S.'s family home. Moore also challenged that the jury could use evidence from one case to corroborate the other case. The

State maintained that the simple and direct nature of the evidence precluded any jury confusion.

{¶ 10} Counsel for both parties presented their arguments on the State’s motion to use 404(B) evidence.

{¶ 11} At the conclusion of the hearing, the trial court summarily denied the motion to dismiss for preindictment delay and the motion to use 404(B) evidence. As to the motion for separate trials, the court found that the evidence was simple and direct and, therefore, denied the motion.

C. Jury Trial

{¶ 12} Moore voluntarily waived his right to a jury trial on the sexually-violent-predator specifications, and on October 27, 2025, a jury trial commenced on the remaining counts and specifications. The State introduced the following testimony in support of its case.

1. Testimony on Counts 1-4 — C.H.’s allegations

{¶ 13} C.H. did not testify at trial. The State introduced the testimony of Deputy Sheriff Randy Divis (“Divis”) who investigated C.H.’s cold case, Nurse Michelle Reali-Sorrell (“Reali-Sorrell”) who conducted a sexual assault examination of C.H. in 2010, and forensic scientist Heather Bizub (“Bizub”) who completed DNA testing of C.H.’s sexual assault kit.

a. Randy Divis

{¶ 14} Divis testified that as a special investigator for the Cuyahoga County Prosecutor’s Office’s task force he investigated cold-case sexual assaults. In January

2019, he was assigned to C.H.'s sexual assault case. Divis reviewed BCI reports related to C.H.'s sexual assault kit that had been collected in 2010 and her medical records. Divis testified that C.H.'s case file referenced East 105th Street and Superior Avenue in Cleveland in connection with the assault.

{¶ 15} Divis interviewed C.H., her mother, and her sister. Divis stated that during the interview, C.H. was shaking and crying and was visibly upset. C.H. did not mention to Divis that her assailant used a firearm but referenced a different weapon. C.H. also described the assailant as six feet or six feet one inch tall and medium-to-large in stature. In comparison, at trial Divis described Moore as slight-to-medium build and shorter than six feet tall. Divis testified that he had presented C.H. with a photo array but she was unable to identify the man who assaulted her in 2010. C.H. identified the vehicle driven by the assailant, and Divis unsuccessfully attempted to ascertain that Moore owned a vehicle matching C.H.'s description.

b. Michelle Reali-Sorrell

{¶ 16} Reali-Sorrell, a forensic nurse for the Cleveland Clinic, testified that on December 22, 2010, she treated C.H. following a sexual assault and completed a sexual assault kit with a corresponding report.

{¶ 17} Reali-Sorrell read her detailed report throughout her trial testimony. The report indicated that 17-year-old C.H. arrived at the hospital accompanied by her sister and C.H. was quiet and cooperative during the exam.

{¶ 18} Reali-Sorrell stated that the assault reportedly occurred between 8:30 p.m. and 9:00 p.m., when an unknown assailant offered C.H. a ride home from the

bus stop at East 105th Street and Superior Avenue because she had missed her bus and it was cold outside. C.H. told Reali-Sorrell that as they were driving down Superior Avenue, the assailant pulled out a gun and stated, “I want you.” Tr. 737. C.H. stated that the assailant parked by a house in an abandoned lot and at his demand she climbed into the back seat. The assailant exited the vehicle and also entered the back seat. The assailant told C.H. to remove her pants, and she complied. C.H. reported that she was very scared and was crying. The assailant told C.H. to “stop and shut up,” pulled his pants down, told her to insert his erect penis into her vagina, and vaginally penetrated her. Tr. 737. C.H. also reported to Reali-Sorrell that the assailant licked and kissed her on the mouth and nipples. The assailant and C.H. then got dressed, and the assailant told C.H. he would “blow [her] head off” if she told anyone about the incident. Tr. 738. The assailant pushed C.H. from the vehicle, and she ran away from the scene.

{¶ 19} Reali-Sorrell testified that she observed, during the physical exam, microtears in C.H.’s vaginal area, and she stated it was typical not to have additional injuries in a sexual assault case.

{¶ 20} Reali-Sorrell stated that she collected swabs from C.H.’s body parts, underpants, and pants and placed the items in the sexual assault kit. Reali-Sorrell stated that the kit was sealed and provided to law enforcement.

c. Heather Bizub

{¶ 21} Bizub, a forensic scientist with BCI’s DNA laboratory, analyzed data from C.H.’s sexual assault kit that other members of the laboratory had collected

and organized, and Bizub generated a report that stated C.H.'s underwear showed the presence of DNA, with two major contributors being consistent with C.H. and Moore. Additional DNA was found on C.H.'s underwear, but Bizub classified that individual — whom she could not identify as a male or female — as a minor contributor. Bizub also stated that the vaginal swabs and underwear were presumptively positive for seminal fluid, but no actual sperm cells were identified. Bizub testified it was not unusual to find seminal fluid, but no sperm cells, in an underwear sample obtained in a case of vaginal rape.

{¶ 22} Bizub's report also demonstrated that the swabs from C.H.'s left breast and nipple, where the assailant allegedly licked or kissed C.H., were positive for C.H.'s and Moore's DNA.

{¶ 23} Bizub rendered her conclusions based upon a reasonable degree of scientific certainty.

2. Testimony on Counts 5-7 — T.S.'s allegations

a. T.S.

{¶ 24} T.S. testified that in May 2014, at her family home where she resided with her parents; numerous siblings; Moore, who dated her sister P.S.; and several nieces, Moore unexpectedly approached T.S. in a bedroom, rubbed his naked penis on her shoulder, and attempted to push her onto a bed. T.S. testified that she fought off Moore and told P.S. about what had occurred. Moore continued to live at the house following that incident.

{¶ 25} T.S. further testified that on the morning of November 17, 2014, while she was sleeping, Moore knocked on her bedroom door — located on the third floor — and asked if she was awake. T.S. responded negatively and went back to sleep. T.S., who slept without any clothes on, remembers waking up to Moore performing oral sex on her. T.S. testified that Moore also made her perform oral sex on him, he vaginally penetrated her, he ejaculated on her vagina and inner thigh, he tossed fifty dollars at her, and he told her not to tell anybody about what had happened. T.S. further stated that she “was frozen,” “couldn’t move,” and “couldn’t speak.” Tr. 456.

{¶ 26} Following her encounter with Moore, T.S. did not tell anyone in the house about the alleged assault. T.S. used pajama bottoms to initially clean herself, then showered and took a bus to see her sister, C.S. T.S. told C.S. about what had occurred and showed her the \$50 dollar bill Moore left for her; C.S. contacted their mother who came to collect T.S. Several family members accompanied T.S. to the hospital where a sexual assault kit was collected. T.S. described the hospital examination as humiliating.

{¶ 27} The police were taking photographs at T.S.’s home when she returned home from the hospital.

{¶ 28} T.S. testified that Moore never returned to live at their family home following the November 2014 incident and P.S. also soon moved out of the house.

T.S. denied knowing Moore's and P.S.'s living arrangements after they left her family home.

b. C.S.

{¶ 29} C.S.'s testimony about her interactions with her sister, T.S., on November 17, 2014, corroborated T.S.'s testimony.

c. Kathleen Hackett

{¶ 30} Kathleen Hackett ("Hackett"), a sexual assault nurse examiner ("SANE nurse"), testified that she performed a SANE examination of T.S. on November 17, 2014, at 2:15 p.m. Hackett obtained a history from T.S.: "[T.S.] spoke softly. [T.S.] had tears coming from her eyes while giving [the] history while appearing cooperative." Tr. 631. T.S. informed Hackett that Moore had sexually assaulted her at 7:00 a.m. in her bedroom. T.S.'s description of the assault was consistent with her trial testimony, although she also reported to Hackett that Moore digitally penetrated her vagina and his tongue came into contact with her anal region. T.S. informed Hackett that during the encounter she "was shocked and didn't know what to do." Tr. 625. Hackett's records from the exam do not reflect that T.S. resisted the assault. Hackett testified that such behavior is a "very normal response" to a stressful situation. Tr. 626.

{¶ 31} Hackett stated that her physical examination revealed a dry hymen with white edges that could have been caused by constant rubbing, friction, or

irritation. Hackett completed a sexual assault kit and released the kit to a police officer.

d. Lawrence Stalter

{¶ 32} According to Stalter, a sexual assault investigator for Cuyahoga County, he took over the investigation against Moore in 2023 or 2024. Stalter testified that Moore was living in South Carolina at that time and was extradited to Ohio.

{¶ 33} Stalter testified about his interview of Moore. During the interview, Moore reviewed a photograph of C.H. that was taken in 2010, and stated he had never seen her before and he “didn’t recognize the incident.” Tr. 512. Moore recognized a photograph of the home on South Boulevard in Cleveland where he had lived with P.S. — T.S.’s sister — and her family, and he also recognized photographs of P.S. and T.S. Moore denied T.S.’s allegations, stated that he did not forcefully have sexual relations with her, and stated it would be impossible for his DNA to have been found in T.S.’s sexual assault kit because he “never touched her.” Tr. 440. Stalter’s interview of Moore was played at trial.

{¶ 34} Stalter testified that he collected a DNA specimen or buccal swab from Moore that was submitted to the BCI laboratory. Stalter also testified that the police file included a \$50 bill and T.S.’s pajamas that were collected at the hospital.

e. Andrew Ziegler

{¶ 35} Andrew Ziegler (“Ziegler”), a forensic DNA profile analyst with the Cuyahoga County Regional Forensic Science Laboratory, prepared a DNA lab report

that compared Moore's buccal swab with DNA evidence previously submitted and examined by the lab in 2017. Ziegler found, within a reasonable degree of scientific certainty, that it was likely that Moore's sperm and epithelial fractions were present in both the cuttings from the crotch and back of T.S.'s underpants and her vaginal swabs. Ziegler also noted that the sperm and epithelial fractions from the crotch of T.S.'s underpants had "a low-level second contributor." Tr. 715. Ziegler testified that the low-level second contributor could have been a male member of the household whose DNA transferred when handling T.S.'s underwear.

D. Trial Proceedings

{¶ 36} Following the State's case-in-chief, Moore made a Crim.R. 29 motion for acquittal on all counts, and the State conceded there was insufficient evidence on Count 2. The court granted Moore's Crim.R. 29 motion on Count 2, the alleged rape (oral penetration) of C.H., and denied the motion on all other counts. Moore rested without introducing any evidence. The court also denied Moore's renewed Crim.R. 29 motion made after the defense rested.

{¶ 37} The jury found Moore guilty of Count 1, rape (vaginal penetration), and Counts 3 and 4, kidnapping, against C.H., and the jury found him guilty of Count 5, gross sexual imposition, and Counts 6 and 7, vaginal and oral rape, against T.S. The jury rendered a not guilty verdict on all firearm specifications. The court received additional evidence on the sexually-violent-predator specification charges and found Moore not guilty. On November 19, 2025, the court sentenced Moore to an aggregate sentence of 24 years and five months.

{¶ 38} On December 16, 2025, Moore filed a notice of appeal and now presents five assignments of error:

Assignment of Error I: Moore was denied his right to due process and a fair trial through preindictment delay in bringing charges against him.

Assignment of Error II: Moore was denied his right to due process and a fair trial by joinder of cases having different alleged victims, dates, times, and modus operandi.

Assignment of Error III: Moore was denied his right to due process and a fair trial when he was denied his right to confront his accuser.

Assignment of Error IV: The state of Ohio violated Moore's rights to due process and a fair trial, presenting insufficient evidence for conviction as to C.H.

Assignment of Error V: Moore suffered manifest injustice on counts about which the manifest weight of his accuser's credibility could not be established or challenged.

II. Legal Analysis

A. Preindictment Delay

{¶ 39} In his first assignment of error, Moore argues that the trial court denied his right to due process and a fair trial by denying his motion to dismiss for preindictment delay.

{¶ 40} In reviewing a trial court's decision on a motion to dismiss for preindictment delay, this court applies a de novo standard of review to the legal issues, but we afford great deference to the findings of fact made by the trial judge. *State v. Walker*, 2018-Ohio-3669 (8th Dist.).

{¶ 41} The statute of limitations for a criminal offense is the defendant’s primary protection against overly stale criminal charges. *U.S. v. Marion*, 404 U.S. 307, 322 (1971); *see* R.C. 2901.13(A)(3)(4) (Rape charges “shall be barred unless [they are] commenced within twenty-five years after the offense is committed.”). However, the Due Process Clause of the Fifth Amendment provides additional protection in cases where the preindictment delay was unjustifiable and caused actual prejudice. *U.S. v. Lovasco*, 431 U.S. 783 (1977).

{¶ 42} In *State v. Jones*, 2016-Ohio-5105, the Ohio Supreme Court established a burden-shifting framework for analyzing a due process claim based on preindictment delay. *Id.* at ¶ 13. Under this framework, the defendant bears the initial burden of presenting evidence of actual prejudice. *Id.* “Once a defendant presents evidence of actual prejudice, the burden shifts to the [S]tate to produce evidence of a justifiable reason for the delay.” *Id.* at ¶ 13, citing *State v. Whiting*, 84 Ohio St.3d 215, 217 (1998); *State v. Adams*, 2015-Ohio-3954. Therefore, if the defendant fails to establish actual prejudice, the court is not required to consider the reasons for the delay. *Adams* at ¶ 107, citing *U.S. v. Schaffer*, 586 F.3d 414, 425 (6th Cir. 2009).

{¶ 43} “A court must ‘consider the evidence as it exists when the indictment is filed and the prejudice the defendant will suffer at trial due to the delay.’” *State v. Walker*, 2018-Ohio-3669, ¶ 18 (8th Dist.), quoting *Jones* at ¶ 20, quoting *State v. Walls*, 2002-Ohio-5059, ¶ 52. A claim of actual prejudice should be scrutinized “vis-à-vis the particular evidence that was lost or unavailable as a result of the delay” and

“the relevance of the lost evidence and its purported effect on the defense.” *Jones* at ¶ 23.

{¶ 44} “The ‘possibility that memories will fade, witnesses will become inaccessible, or evidence will be lost is not sufficient to establish actual prejudice.’” *Adams* at ¶ 105, citing *Marion*, 404 U.S. 307 at 325-326. “Those are ‘the real possibilit[ies] of prejudice inherent in any extended delay,’ and statutes of limitations sufficiently protect against them.” *Jones* at ¶ 21, quoting *Marion* at 326. “That does not mean, however, that demonstrably faded memories and actually unavailable witnesses or lost evidence cannot satisfy the actual-prejudice requirement.” *Id.*

{¶ 45} Pursuant to *Jones*, a defendant is not required to establish “precisely” what an unavailable witness would have testified to at trial and that the testimony would have been directly exculpatory. *Id.* at ¶ 27. However, a defendant cannot rely upon broad assertions of missing evidence or an unavailable witness to establish prejudice. “A defendant must demonstrate a viable, tangible connection between the missing evidence or the unavailable witness to the defense of the case.” *State v. Richardson*, 2016-Ohio-5843, ¶ 13 (8th Dist.). “Actual prejudice exists when missing evidence or unavailable testimony, identified by the defendant and relevant to the defense, would minimize or eliminate the impact of the state’s evidence and bolster the defense.” *Jones*, 2016-Ohio-5105, at ¶ 28.

{¶ 46} Moore’s written motion to dismiss referenced actual prejudice only with respect to T.S.’s allegations; the motion did not assert that delay in indicting

C.H.'s case caused him actual prejudice. Moore argued that T.S.'s sister — P.S. — remained in contact with Moore for several years after the alleged rape and any communications via phone, email, or text between T.S., her family, and Moore had been lost because of the delayed indictment. Moore also argued that T.S.'s allegations were made almost two years after the Cleveland Division of Police received verification of the DNA analysis in C.H.'s case. Moore cited *State v. Crymes*, 2017-Ohio-2655 (8th Dist.), in support of his claim of prejudice because of the loss of phone records. However, the facts in *Crymes* were distinguishable from the instant matter and did not support Moore's motion. (When *Crymes* was prosecuted 20 years after an alleged sexual assault, the court found the preindictment delay caused actual prejudice because phone records were no longer recoverable to support his defense that the victim called him twice before they met at her home. While the phone records would not have provided the content of the conversations, they would have helped to verify *Crymes*'s version of the events thereby bolstering his defense.)

{¶ 47} At the hearing on his motion, Moore again did not argue that the delayed indictment on C.H.'s allegations resulted in actual prejudice but simply stated that the State could have pursued C.H.'s allegations in 2010 or 2013 — when they received a CODIS hit on Moore — but did not indict him until 2020 and 2024. In regard to T.S., Moore argued that he was prejudiced by the delayed indictment because the texts, phone records, and other communications between T.S. and her family with Moore were no longer available. Moore did not specify what

communications were lost; what information would have been obtained from prior phone calls, emails, or text messages; or how that information would have aided his defense.

{¶ 48} For the first time, Moore argues on appeal that he suffered actual prejudice in C.H.’s and T.S.’s cases because the delayed indictment prevented him from specifically obtaining electronic information, such as “cell data, location data, text messages, photographs, and/or video taken during that time that might have proven [his] location and/or interactions” and he was unable to identify other potential witnesses. Appellant’s brief, p. 10. Moore also argues that the delay prevented his access to “physical evidence, and even an examination of his person or vehicle that might be beneficial.” *Id.* As to the charges related to C.H., Moore also now contends that he experienced actual prejudice because C.H. did not testify at trial and her case was based on excepted hearsay; C.H. could not identify Moore in a photo array; and any electronic communications, photographs, and witnesses were “undoubtedly lost to time.” *Id.* It is well settled in Ohio that an appellant may not, on appeal, present a new argument that was not previously raised before the trial court. *Independence v. Office of the Cuyahoga Cty. Executive*, 2014-Ohio-4650, ¶ 30, citing *Greer-Burger v. Temesi*, 2007-Ohio-6442, ¶ 30. Accordingly, Moore’s new arguments will not be entertained.

{¶ 49} After reviewing the record, we are unpersuaded by Moore’s arguments. The record shows that Moore made no argument to the trial court that the preindictment delay of Counts 1-4 stemming from his alleged encounter with

C.H. resulted in actual prejudice. Absent a showing of actual prejudice, the burden did not shift to the State and the trial court was not required to consider the State's reason for preindictment delay.

{¶ 50} As to Counts 5-7 of the 2024 indictment, Moore speculated that electronic communications with T.S.'s family around the time of the alleged incidents may have bolstered his defense. This speculative evidence is insufficient to satisfy Moore's burden of demonstrating actual prejudice where the requisite proof "must be specific, particularized, and non-speculative." *State v. Herrington*, 2018-Ohio-3049, ¶ 16 (8th Dist.), quoting *State v. Hubbard*, 1992 Ohio App. LEXIS 5784, *4 (12th Dist. Nov. 16, 1992), citing *U.S. v. Moran*, 759 F.2d 777 (9th Cir. 1985); *State v. Battiste*, 2015-Ohio-3586, ¶ 48 (8th Dist.). Further, Moore's claims that the inaccessible electronic communications would somehow bolster his defense are inconsistent with the DNA evidence presented by the State because the DNA evidence invalidated Moore's claim that "he never touched" T.S.

{¶ 51} Because Moore did not demonstrate actual prejudice by the State's delayed 2024 indictment, the trial court did not err when it denied his motion to dismiss for preindictment delay.

{¶ 52} Moore's first assignment of error is overruled.

B. Motion to Sever

{¶ 53} In his second assignment of error, Moore contends that the trial court erred when it failed to grant his motion to sever the cases of C.H. and T.S.

{¶ 54} We review a trial court’s ruling on a Crim.R. 14 motion for relief of prejudicial joinder for an abuse of discretion. *State v. Spaulding*, 2016-Ohio-8126, ¶ 63, citing *State v. Hand*, 2006-Ohio-18, ¶ 166. An abuse of discretion occurs if the court’s attitude in reaching its decision was arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). An abuse of discretion also occurs if a court exercises its judgment in an unwarranted way regarding a matter over which it has discretionary authority. *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35.

{¶ 55} “Two or more offenses may be charged in the same indictment . . . in a separate count for each offense if the offenses charged . . . 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.” Crim.R. 8(A). Further, it appears that the defendant would be prejudiced by the joinder. *State v. Diar*, 2008-Ohio-6266, ¶ 95. The defendant bears the burden of proving prejudice. *Id.*, citing *State v. Brinkley*, 2005-Ohio-1507, ¶ 29, quoting *State v. Torres*, 66 Ohio St.2d 340 (1981), syllabus.

{¶ 56} If a defendant successfully demonstrates prejudice from joinder, then the burden shifts to the State to rebut the showing of prejudice in one of two ways. *State v. Wardlaw*, 2025-Ohio-2221, ¶ 46 (8th Dist.), citing *State v. Jackson*, 2015-Ohio-4274, ¶ 13 (8th Dist.). The State may rebut defendant’s showing of prejudice by satisfying either the “joinder test” — also known as the “simple and direct test” —

or the “other acts test.” *State v. Miller*, 2023-Ohio-1141, ¶ 80 (8th Dist.), citing *State v. Lott*, 51 Ohio St.3d 160, 163 (1990). “If the [S]tate can meet the [requirements of] the joinder test, it need not meet the requirements of the stricter “other acts” test.” *Wardlaw* at ¶ 48, quoting *State v. Franklin*, 62 Ohio St.3d 118, 122 (1991).

{¶ 57} Under the “joinder test,” the State demonstrates that the evidence of each crime is simple and direct whereas the “other acts” test requires the State to show that the evidence of the other crimes would be admissible even if the counts were severed. “When the evidence is “simple and direct,” the defendant is not considered to be “prejudiced by joinder regardless of the nonadmissibility of evidence of the crimes as other acts under Evid.R. 404(B).” *State v. Galindez*, 2026-Ohio-832, ¶ 12, quoting *State v. Powell*, 2019-Ohio-4345, ¶ 74 (8th Dist.), citing *State v. Lott* at 163.

{¶ 58} “[E]vidence is simple and direct if it satisfies four requirements: if the jury is capable of readily separating the proof required for each offense, if the evidence is unlikely to confuse jurors, if the evidence is straightforward, and if there is little danger that the jury would improperly consider testimony on one offense as corroborative of the other.” (Cleaned up.) *Galindez* at ¶ 14. “[A] defendant is not prejudiced by joinder when each crime can be proven by simple and direct evidence, such that a jury is likely to be able to segregate the proof required for each offense.” *State v. Morris*, 2025-Ohio-3273, ¶ 28 (8th Dist.), citing *Brinkley* at ¶ 30.

{¶ 59} The object of the “simple and direct” test is to prevent the jury from improperly considering evidence of various crimes as corroborative of each other.

State v. Echols, 128 Ohio App.3d 677, 694 (1st Dist. 1998). However, “[a] trier of fact is believed capable of segregating the proof on multiple charges when the evidence as to each of the charges is uncomplicated.” *State v. Lunder*, 2014-Ohio-5341, ¶ 33 (8th Dist.), quoting *State v. Torres*, 66 Ohio St.2d 340, 343-344. Thus, “Ohio appellate courts routinely find no prejudicial joinder where the evidence is presented in an orderly fashion as to the separate offenses or victims without significant overlap or conflation of proof.” *State v. Echols*, 2015-Ohio-5138, ¶ 16 (8th Dist.), quoting *State v. Lewis*, 2010-Ohio-4202, ¶ 33 (6th Dist.).

{¶ 60} Moore argues that the trial court erred when it denied his motion for separate trials. Moore contends that hearsay statements — including those properly admitted under a hearsay exception to support C.H.’s allegations — are “necessarily complicated by an intermediary” and are neither simple nor direct. Appellant’s brief, p. 13. Moore contends that the jury applied “the credibility inherent in the T.S. case” to bolster the charges stemming from C.H.’s accusations. *Id.* And Moore contends that any “doubts . . . about T.S.’s testimony, the physical evidence, or the fact that T.S. failed to alert her family to any of Moore’s wrongdoing during the alleged crime” were assuaged by hearsay accusations presented in support of C.H.’s accusations. Appellant’s brief, p. 13-14.

{¶ 61} After thoroughly reviewing the record, we find Moore’s allegations are unfounded. Nothing in the record suggests the jury was confused by the evidence or was improperly influenced by the cumulative effect of the joinder. The 2010 and 2014 incidents were separated in time and involved unrelated facts and

circumstances. The evidence supporting each offense was distinct and uncomplicated, and the State's witnesses discussed the evidence relating to each victim separately, succinctly, and without significant overlap or conflation of proof. Viewed in its entirety, there was little danger that the jury would confuse the evidence or improperly consider the evidence stemming from C.H.'s and T.S.'s allegations as corroborative of the other. In fact, the jury demonstrated its ability to evaluate the evidence independently and segregate the evidence supporting the various charges when it entered a not guilty verdict on all firearm specifications.

{¶ 62} Because the evidence adduced at trial was simple and direct, we need not consider whether the State met the “other acts” test for joinder. Accordingly, we find the trial court did not abuse its discretion when it permitted the State to join the charges related to C.H. and T.S. for trial, and we overrule Moore's second assignment of error.

C. Sixth Amendment Right to Confrontation

{¶ 63} Moore argues in his third assignment of error that he was denied his Sixth Amendment right to confront C.H. because she did not testify at trial. Moore appears to argue that the testimony by forensic nurse Reali-Sorrell, who treated C.H., was testimonial in nature and subject to the Confrontation Clause. Conversely, Moore argues that the statements constituted nontestimonial evidence introduced under a hearsay exception that required mandatory exclusion because its prejudicial impact outweighed its probative value.

1. The Confrontation Clause

{¶ 64} “The Confrontation Clause of the Sixth Amendment to the United States Constitution preserves the right of a criminal defendant ‘to be confronted with the witnesses against him [or her].’” *State v. Johnson*, 2018-Ohio-1389, ¶ 33 (8th Dist.). “The Confrontation Clause bars the admission of ‘testimonial hearsay’ unless the declarant is unavailable and the accused had a prior opportunity to cross-examine the declarant.” *Crawford v. Washington*, 541 U.S. 36, 68 (2004). The *Crawford* Court “did not define the term ‘testimonial,’ but stated generally that the core class of statements implicated by the Confrontation Clause includes statements ‘made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.’” *State v. Ford*, 2018-Ohio-3563, ¶ 49 (8th Dist.), quoting *Crawford* at 52.

{¶ 65} In *State v. Stahl*, 2006-Ohio-5482, the Ohio Supreme Court adopted *Crawford*’s objective-witness test for out-of-court statements made to non-law-enforcement personnel. Specifically, the court found that when determining whether a statement is testimonial for Confrontational Clause purposes the focus should be on the expectation of the declarant making the statement. *Stahl* at paragraph two of the syllabus. At issue in *Stahl* were an adult rape victim’s statements contained in her medical records and her description of the assailant; the statements were made by the victim to the nurse working in a specialized medical facility for sexual assault victims. The victim was not available to testify at trial and, in lieu of her testimony, the prosecution introduced testimony from the doctor who treated her. Applying the objective-witness test, the *Stahl* Court found

that the statements were made to a medical professional, at a medical facility, for the primary purpose of receiving medical care rather than investigating past events relevant to criminal prosecution. “The [Stahl] court held that the statements made by the rape victim to the nurse were nontestimonial because the victim ‘could have reasonably believed that although the examination conducted at the [sexual assault] unit would result in scientific evidence being extracted for prosecution purposes, the statement would be used primarily for health-care purposes.’” *Ford* at ¶ 50, quoting *Stahl* at ¶ 47.

{¶ 66} In *State v. Muttart*, 2007-Ohio-5267, the Ohio Supreme Court found the statements of a child victim of sexual assault made to doctors and counselors about her alleged sexual abuse were not testimonial because they were made to medical personnel in the course of medical diagnosis and treatment. The *Muttart* Court found that such statements were not inadmissible under *Crawford* “because they are not even remotely related to the evils that the Confrontation Clause was designed to avoid.” *Id.* at ¶ 63. Further, the Court found that the State’s subsequent use of the information gathered by the medical personnel does not change the fact that the statements were nontestimonial. *Id.* at ¶ 62.

{¶ 67} Here, Reali-Sorrell testified that she treated C.H. following a sexual assault and completed a sexual assault kit and corresponding report. Reali-Sorrell read her detailed report during her trial testimony and reiterated C.H.’s initial interaction with her assailant, C.H.’s recollection of the rape, and the assailant’s comments to C.H. following the rape. Reali-Sorrell testified to her observations

during the physical exam and stated that she collected swabs from C.H.'s body parts, underpants, and pants and placed the items in the sexual assault kit, which Reali-Sorrell sealed and provided to law enforcement. The statements made by C.H. to Reali-Sorrell were nontestimonial because an objective witness under the same circumstances would have had no reason to believe that her statements would be used for anything other than medical treatment. Therefore, there is no Confrontation Clause issue regarding the admission of C.H.'s statements to Reali-Sorrell.

2. Hearsay

{¶ 68} Because C.H.'s statements were nontestimonial and did not violate the Confrontation Clause, they were admissible if they satisfied a hearsay exception. Applicable in the instant case is Evid.R. 803(4), an exception that permits the admission of hearsay statements made to further medical treatment or diagnosis. Such statements are “understood to be reliable because the effectiveness of treatment frequently depends upon the accuracy of the information related to medical professionals, and such statements are ‘reasonably relied on by [medical professionals] in treatment or diagnosis.’” *State v. Campbell*, 2024-Ohio-1693, ¶ 62 (8th Dist.), quoting *State v. Dever*, 64 Ohio St.3d 401, 411 (1992). “[Q]uestioning by a nurse or other medical professional during an emergency-room examination would appear to serve a primarily health-care-related function.” *Ford*, 2018-Ohio-3563, at ¶ 54 (8th Dist.), quoting *Stahl*, 2006-Ohio-5482, at ¶ 47.

{¶ 69} At trial, Moore objected to the admission of C.H.’s statements that referenced Moore’s possession of a firearm. Moore argued that the statements were inadmissible under the hearsay exception because they were not provided in furtherance of C.H.’s medical treatment or diagnosis. Assuming these statements were improperly admitted, their introduction constituted harmless error because the jury found Moore not guilty on all firearm specifications. *See State v. Jackson*, 2025-Ohio-109, ¶ 44 (8th Dist.), quoting *State v. Jones*, 2023-Ohio-380, ¶ 141 (8th Dist.), citing *State v. McKelton*, 2016-Ohio-5735, ¶ 192, quoting *Schneble v. Florida*, 405 U.S. 427, 432 (1972). (“Error in the admission of evidence is harmless beyond a reasonable doubt when ‘there is [no] reasonable possibility that the improperly admitted evidence contributed to the conviction.’”).

{¶ 70} Moore’s third assignment of error is overruled.

D. Cumulative Error

{¶ 71} Without arguing cumulative error under a single assignment of error, Moore contends within the first, second, and third assignments of error that cumulative error occurred when he was subject to (1) actual prejudice from the preindictment delay, (2) a Confrontation Clause violation when C.H. failed to testify at trial, and (3) a joinder issue when the State indicted Moore on C.H.’s and T.S.’s collective allegations: “The State of Ohio was allowed to impose three legal tools — delay, joinder, and hearsay — each of which degraded Moore’s ability to defend his case.” Appellant’s brief, p. 11. In his reply brief, Moore argues only cumulative error.

{¶ 72} Based upon our findings above that Moore has not presented any error or abuse of discretion by the trial court, there can be no cumulative error. *State v. Hill*, 2002-Ohio-4585, ¶ 31 (8th Dist.); *State v. Blankenship*, 102 Ohio App. 3d 534, 557 (12th Dist. 1995). Accordingly, Moore’s claims of cumulative error are overruled.

E. Sufficiency of the Evidence

{¶ 73} In his fourth assignment of error, Moore argues that the State presented insufficient evidence for conviction of Counts 1-4 relating to C.H.’s allegations.

{¶ 74} While Moore articulated the appropriate legal standard for sufficiency of the evidence, he did not otherwise articulate any independent arguments in support of this assignment of error as required under App.R. 16(A)(7). In accordance with App.R. 12(A)(2) and 16(A)(7), we decline to address this assignment of error. Moore’s fourth assignment of error is overruled.

F. Manifest Weight of the Evidence

{¶ 75} In his fifth assignment of error, Moore argues that his convictions on Counts 1 through 4 that stem from the alleged encounter with C.H. are against the manifest weight of the evidence. Specifically, Moore argues that the jury verdict was against the manifest weight of the evidence because “C.H.’s excepted hearsay statements [to Reali-Sorrell], and contradictory information provided to a detective, should not have been given greater weight than Moore’s presumption of innocence.” Appellant’s brief, p. 19.

{¶ 76} A manifest-weight challenge questions the credibility of the evidence presented and examines whether the State met its burden of persuasion at trial. *State v. Whitsett*, 2014-Ohio-4933, ¶ 26 (8th Dist.), citing *Thompkins*, 1997-Ohio-52 at ¶ 24; *State v. Bowden*, 2009-Ohio-3598, ¶ 13 (8th Dist.), citing *Thompkins* at ¶ 33. A reviewing court “weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *State v. Martin*, 20 Ohio App.3d 172 (1st Dist. 1983), paragraph three of the syllabus. A reversal on the basis that a verdict is against the manifest weight of the evidence is granted “only in the exceptional case in which the evidence weighs heavily against the conviction.” *Martin*.

{¶ 77} “[T]he decision whether, and to what extent, to credit the testimony of a particular witness is within the peculiar competence of the fact-finder, who has seen and heard the witness.” *State v. Johnson*, 2014-Ohio-494, ¶ 54 (8th Dist.). ““Because the factfinder * * * has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the factfinder’s determinations of credibility.”” *State v. Robinson*, 2013-Ohio-4375, ¶ 56 (8th Dist.), quoting *State v. Lawson*, 1997 Ohio App. LEXIS 3709 (2d Dist. Aug. 22, 1997).

Regarding this presumption in favor of the finder of fact, the Ohio Supreme Court explained: “In weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact. In determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the findings of fact. * * * If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.”

State v. York, 2021-Ohio-1591, ¶ 94 (8th Dist.), quoting *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 21, quoting *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, fn. 3 (1984).

{¶ 78} Further, “a defendant is not entitled to reversal on manifest weight grounds merely because a witness may have made inconsistent statements.” *State v. Robertson*, 2018-Ohio-2934, ¶ 30 (8th Dist.)

{¶ 79} We find that based upon the record before us, there was sufficient, competent, credible evidence to support Moore’s convictions beyond a reasonable doubt. The jury was in the best position to weigh the credibility of the witnesses and was free to believe some, all, or none of the testimony about Moore’s conduct. We decline to substitute our judgment for the trier of fact regarding the credibility of the witnesses or the weight to be given to their testimony. The State presented ample evidence upon which a jury could determine Moore committed the alleged charges, including DNA evidence linking Moore to both crimes. Our review of the record reflects that there was competent, credible evidence to support the verdict, and we

cannot say the jury clearly lost its way and created a manifest miscarriage of justice. Thus, we overrule the fifth assignment of error.

{¶ 80} Accordingly, we overrule Moore's five assignments of error and affirm the lower court's judgment.

{¶ 81} Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

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

TIMOTHY W. CLARY, JUDGE

EMANUELLA D. GROVES, P.J., and
ANITA LASTER MAYS, J., CONCUR