

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	No. 115801
MARCELLUS SHAW,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: October 22, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-25-700040-A

Appearances:

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

Joseph V. Pagano, *for appellant*.

ON RECONSIDERATION¹

EILEEN A. GALLAGHER, J.:

{¶ 1} Marcellus Shaw (“Shaw”) appeals his convictions for various sex offenses spanning three decades and relating to three victims. For the reasons that follow, we reverse Shaw’s convictions and remand this case for further proceedings consistent with this opinion.

I. Facts and Procedural History

A. Before Trial

{¶ 2} On March 6, 2025, Shaw was named in an eight-count indictment related to crimes committed against C.M., L.S. and T.J. The charges were as follows:

Count 1: rape, a first-degree felony, in violation of R.C. 2907.02(A)(2), of C.M. on or about October 17, 2001 (digital penetration of vagina);

Count 2: rape, a first-degree felony, in violation of R.C. 2907.02(A)(2), of C.M. on or about October 17, 2001 (vaginal intercourse);

Count 3: rape, a first-degree felony, in violation of R.C. 2907.02(A)(2), of C.M. on or about October 17, 2001 (fellatio);

Count 4: rape, a first-degree felony, in violation of R.C. 2907.02(A)(2), of L.S. on or about September 14, 2012 (vaginal intercourse);

Count 5: rape, a first-degree felony, in violation of R.C. 2907.02(A)(2), of T.J. on or about October 2, 2023 (vaginal intercourse);

Count 6: rape, a first-degree felony, in violation of R.C. 2907.02(A)(2), of T.J. on or about October 2, 2023 (anal intercourse);

¹ The original decision in this appeal, *State v. Shaw*, 8th Dist. Cuyahoga No. 115801, 2026-Ohio-3957, released on October 8, 2026, is hereby vacated. This opinion, issued upon reconsideration, is the court’s journalized decision in this appeal. See App.R. 22(C); see also S.Ct.Prac.R. 7.01.

Count 7: rape, a first-degree felony, in violation of R.C. 2907.02(A)(2), of T.J. on or about October 2, 2023 (digital penetration of vagina);

Count 8: rape, a first-degree felony, in violation of R.C. 2907.02(A)(2), of T.J. on or about October 2, 2023 (digital penetration of anus).

Counts 4 through 8 included sexually violent predator specifications.

{¶ 3} Shaw was arraigned on April 2, 2025, and pled not guilty.

{¶ 4} On May 16, 2025, Shaw filed a pretrial motion requesting the trial court to “sever . . . the separate offenses within the indictment for separate trials[,]” under Crim.R. 8, Crim.R. 14 and R.C. 2941.04. Immediately prior to trial, the following colloquy took place in open court:

THE COURT: Next I have your motion to sever counts.

DEFENSE COUNSEL: Yes, your Honor.

THE COURT: Did you still want to be heard on that?

DEFENSE COUNSEL: No. I would just stand on the brief.

THE COURT: And I do have the State’s opposition to that. So I’m going to deny that motion.

{¶ 5} The trial commenced on September 17, 2025, and the parties elicited the following testimony pertinent to this appeal.

B. Trial Testimony

{¶ 6} C.M. testified that she met Shaw in August 2001 while she was working as a receptionist at her father and uncle’s auto body shop and Shaw came to the shop as a customer. C.M. was 14 years old at the time.

{¶ 7} C.M. testified that Shaw told her he was 19 years old and asked for her number. In the weeks that followed, they spoke on the phone several times and

planned to go out to eat together. One day after school, Shaw picked up C.M. at a bus stop. Instead of going to a restaurant, they drove to a house where Shaw was staying. At the house, Shaw put on a pornographic movie and asked C.M. questions of a sexual nature. After learning that C.M. was a virgin, Shaw told her, “I change that, usually break you girls in. I usually break you all in.”

{¶ 8} C.M. testified that Shaw kissed her, including on her neck and breasts. When Shaw attempted to pull C.M.’s pants down, she started “kicking him away” and tried to stop what he was doing. When Shaw started to unbutton his pants, C.M. told him that she wanted to leave. C.M. testified that Shaw pulled out his penis and tried to penetrate her with it. C.M. explained that the head or tip of Shaw’s penis was inside of her vagina at which time C.M. felt a sharp pain, screamed “no” and told Shaw to stop.

{¶ 9} According to C.M., when she asked to leave, Shaw told her to kiss his penis before they could go. C.M. declined to kiss Shaw’s penis, but Shaw again told her to do it. C.M. testified that she did not have a driver’s license and did not know how to get home. C.M. kissed the side of Shaw’s penis. Shaw then told C.M. to kiss his penis with her mouth open, which she did, but added that it did not go past her teeth. They left the house and Shaw dropped C.M. off a few houses away from her bus stop.

{¶ 10} The next day, C.M. reported the incident to the school clinic and went to the hospital for a sexual-assault examination. C.M. believed that she spoke to a police officer while at the hospital.

{¶ 11} C.M. testified that during the sexual-assault examination she told the nurse that Shaw did not penetrate her. C.M. testified that she said this because Shaw did not fully penetrate her and because she believed, at the time, that penetration meant “full penis penetration.” C.M. testified that this was her first sexual experience.

{¶ 12} In 2019 — 18 years after the incident — C.M. reviewed a photo array that was administered by a police department in Maryland, where C.M. was living at the time. C.M. testified that she did not identify anyone in the photo array. When presented with the same photo array at trial, C.M. stated that she did not have consensual sex with anyone in the photo array.

{¶ 13} Sergeant Patricia Miller (“Miller”) from the Cuyahoga County Sheriff’s Department testified that in 2019 she investigated the matter involving C.M. while she was assigned to the cold-case task force concerning previously untested rape kits. Miller stated that when she started investigating the matter, she had only the first name of Marcellus for the suspect and, after doing some research, she was able to match the last name Shaw to him and a birthday of June 3, 1975. Miller created a photo array that included Shaw, which was administered to C.M. by the Maryland police department.

{¶ 14} Miller testified that she interviewed Shaw and obtained a buccal swab from him for the purpose of sending it to the Ohio Bureau of Criminal Investigation (“BCI”) to compare his DNA to the items in C.M.’s sexual-assault-examination kit.

{¶ 15} Theresa Ealy (“Ealy”), the nurse who conducted the sexual-assault examination of C.M. on October 18, 2001, testified that C.M. told her that on October 17, 2001, a male acquaintance took C.M. to his house where he touched C.M.’s genitals with his penis, but did not penetrate her. Ealy described the findings of C.M.’s sexual-assault examination, including a mucosal tear observed in C.M.’s vaginal area.

{¶ 16} Lindsey Nelson-Rausch (“Nelson-Rausch”), a forensic scientist at BCI who conducted the initial testing on C.M.’s sexual-assault-examination kit, testified that none of the samples that she tested, which included C.M.’s underwear and vaginal swabs, identified Shaw as a contributor of DNA. However, Nelson-Rausch sent several of the samples determined to have “a high enough level” of male DNA for specialized Y-STR testing, which specifically looks at male DNA.

{¶ 17} Stacey Violi (“Violi”), another forensic scientist at BCI, testified about the Y-STR testing she conducted on C.M.’s sexual-assault kit. Violi testified that there was male DNA detected on the interior of C.M.’s bra cup that is consistent with Shaw and his paternal male relatives. She also testified that there was a DNA profile detected on the back panel of C.M.’s underwear. That DNA profile was determined to be from an unknown male with Shaw being excluded as a source.

{¶ 18} L.S. testified that on September 13, 2012, she went to a bar for a family member’s birthday party. While at the bar, a man that she did not know at that time, but whom she pointed out in the courtroom and identified as Shaw, approached and asked her if she was “Johnny’s friend.” Johnny is the man that she was dating at the

time. L.S. stated that Johnny's last name is Jackson. L.S. confirmed that she was Johnny's friend and "waved [Shaw] off and went about [her] business." Johnny came to the bar about an hour later.

{¶ 19} L.S. testified that she had left the bar separately from Johnny. Later in the evening, Johnny and Shaw picked her up in Shaw's car. Shaw took L.S. and Johnny to Johnny's house, and "from [her] understanding," she and Johnny were alone in Johnny's house.

{¶ 20} Later that night, L.S. and Johnny had sex. After they had sex, Johnny went to the bathroom. Whilst L.S. was lying face down on the bed, she felt somebody touch her arm. She thought it was Johnny but quickly realized it was Shaw and fought to get him off her. Shaw was wearing "no bottoms" and he was "trying to force his [sic] self on me." L.S. testified that Shaw tried to put his penis in her vagina. She explained that Shaw's penis touched her vagina but she does not recall if it went inside her vagina. L.S. stated that Shaw was "really tussling" with her and threw her phone at some point during the struggle. L.S. testified that she was screaming for Johnny, but "he act[ed] like he didn't hear [her]," which led her to believe that Johnny set her up to be raped by Shaw.

{¶ 21} L.S. testified that after the struggle ended, she grabbed a knife from the kitchen, put it to Johnny's neck, and demanded that he tell her the name of the person who tried to rape her. Eventually, Johnny provided Shaw's name. L.S. called the police and went to the hospital, where a sexual-assault examination was completed.

{¶ 22} L.S. explained that in January 2021, nine years after the incident, the police contacted her. She testified that she was presented with a photo array and identified Shaw as the person who had assaulted her with 80 percent certainty.

{¶ 23} Christine Conklin (“Conklin”), a nurse at MetroHealth Main Campus Medical Center, testified that she conducted the sexual-assault examination on L.S. on September 14, 2012. According to the notes in the sexual-assault-examination kit, L.S. told Conklin that an acquaintance in his late 30s vaginally penetrated her with his penis.

{¶ 24} Kenneth Riolo (“Riolo”), a retired FBI agent and cold-case investigator with the Cuyahoga County Prosecutor’s Office, investigated L.S.’s 2012 allegations in 2021. According to Riolo, the prosecutor’s office was “trying to rush through the [cases] that were coming up due to the [20-year] statute [of limitations] and see if there was anything that we could work and indict prior to the statute” running. Riolo interviewed Shaw and showed him a picture of L.S., who Shaw stated he did not know. Shaw also stated that he did not know John Jackson.

{¶ 25} Laura Stanton (“Stanton”), a former DNA analyst for the Cuyahoga County Medical Examiner’s Office, testified that she analyzed several items in L.S.’s sexual-assault kit, but was not able to obtain enough information to include or exclude any potential contributors.

{¶ 26} T.J. testified that she was vaginally and anally raped on October 2, 2023. At the time, T.J. was staying at the Norma Herr Center, a shelter on Payne Avenue in Cleveland, Ohio. She testified that while walking to a BP gas station with

her “play sister,” an unknown man walked up to her, picked her up, and “took [her] in the cut by the BP gas station.” The man digitally penetrated T.J. in her vagina and anus, put his penis in her vagina “in the back” and turned around and “put it in [her] vagina in the front.” T.J. testified that her “play sister” was not her biological sister and that her “play sister” was in the store at the gas station during the incident.²

{¶ 27} T.J. stated that she screamed for help, but nobody heard her. T.J. testified that when the man let her go, she ran back to the shelter and called 911. She also called an ambulance, which took her to MetroHealth, where she was examined. T.J. testified that she had consensual sex with one person in the 24 hours before the incident.

{¶ 28} T.J. testified that the incident occurred during the daytime. The recording of the 911 call that was played in court indicates that T.J. made the call at 10:23 p.m. In the 911 call, T.J. stated, “I was just raped,” and provided details of the incident, including a description of the assailant whom she stated she did not know. Under cross-examination, T.J. testified that the incident happened at 6:00 p.m.

{¶ 29} T.J. testified that during the investigation of the incident, she was shown a photo array but did not identify anyone in the array as the perpetrator of the rape.

² The record reveals some lack of clarity regarding whether T.J.’s “play sister” saw any part of the incident. At one point T.J. states that her “play sister” was inside the store during the incident, but later states that her “play sister . . . never seen it but a little bit.” T.J. later explained that her “play sister” did not want to be involved in “this,” presumably meaning the investigation and prosecution.

{¶ 30} Christine Ibarra-Andrade (“Ibarra-Andrade”), a nurse who worked at MetroHealth in 2023, testified that she conducted a sexual-assault examination of T.J. related to this incident. Ibarra-Andrade stated that T.J. arrived at the hospital at 11:08 p.m. and was examined at 11:45 p.m. Ibarra-Andrade documented T.J.’s description of the incident, which T.J. stated occurred at 9:50 p.m. that day.

{¶ 31} Ibarra-Andrade’s testimony referred to T.J.’s patient “narrative” included in the sexual-assault-examination record. Reading from that narrative, Ibarra-Andrade testified:

Patient states, I was walking with my sister to the BP gas station. He was picking me up. He was carrying me like I was on his back. I put my legs around him because I thought I was going to fall. He was carrying me in the cut by the gas station by the fence. He put it in the front and back. He was forcing his fingers in my butt and my private part.

{¶ 32} Ibarra-Andrade stated that the sexual-assault examination records also included a “which of the following occurred” section, with questions and answers provided as follows:

Which of the following occurred?

Vaginal penetration by assailant’s: Fingers and Penis

Anal penetration by assailant’s: Fingers and Penis

Oral Penetration by assailant’s: No

Assailant mouth on patient genitals: Yes

{¶ 33} Anthony Kratsas, an investigator for the Cuyahoga County Prosecutor’s Office Sexual-Assault Kit Task Force, testified that he interviewed T.J.

and created a photo array that included Shaw. The photo array was presented to T.J. by another investigator.

{¶ 34} Cuyahoga County Medical Examiner’s Office DNA analyst Christine Scott (“Scott”) also testified. Scott testified that L.S.’s sexual-assault kit was resubmitted for testing of a previously untested item — a pubic-hair combing. Scott’s analysis found there was no statistical support to show a match between Shaw’s DNA and the pubic-hair combing.

{¶ 35} The State called Reshma Gheevarghese (“Gheevarghese”), who was formerly employed as a forensic scientist at the Cuyahoga County Medical Examiner’s Office. Gheevarghese conducted testing of the sexual-assault-examination kit collected from T.J. She testified that Shaw’s DNA was found on numerous tested items, including an anal swab taken from T.J. and dried stains from T.J.’s breast, inner thighs and buttocks. Some of the items tested positive for seminal fluid. Gheevarghese also identified at least one, and possibly two, unknown contributors on several tested items, such as the dried stain from T.J.’s breast.

C. Verdict, Sentencing and Appeal

{¶ 36} After both parties rested, Shaw renewed his motion to sever which the trial court summarily denied. On September 26, 2025, a jury found Shaw not guilty of rape as charged in Count 1, guilty of rape as charged in Counts 2, 3 and 5 through 8, guilty of attempted rape, a lesser included offense under Count 4, and guilty of the sexually-violent-predator specifications associated with Counts 4 through 8.

{¶ 37} On October 7, 2025, the court sentenced Shaw to life in prison with parole eligibility after 50 years.

{¶ 38} Shaw appeals, raising the following four assignments of error:

I. Appellant was deprived of due process, his right to effective assistance of a counsel, and a fair trial where he was provided inaccurate information during the plea negotiations.

II. The Court erred by denying Appellant’s motion to sever.

III. The trial court erred when it denied appellant’s motion for acquittal under Crim.R. 29 because the state failed to present sufficient evidence to establish beyond a reasonable doubt the elements necessary to support the convictions on counts 2, 3, 5, 6, 7, and 8.

IV. The convictions are against the manifest weight of the evidence.

{¶ 39} We begin and end our analysis by reviewing Shaw’s second assignment of error because it is dispositive of this appeal.

II. Law and Analysis

A. Standard of Review, Joinder and Severance

{¶ 40} Appellate courts review a trial court’s denial of a motion for relief from prejudicial joinder, also referred to as a motion to sever, under an abuse of discretion standard. *See State v. Schaim*, 65 Ohio St.3d 51, 63 (1992) (holding that “the court abused its discretion in refusing to sever [the] counts, particularly when its reasons for doing so were based on the fact that committing one of these crimes shows a propensity to commit another — an inference that a jury is forbidden to draw”). An abuse of discretion is “a court exercising its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority.” *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35.

{¶ 41} Pursuant to Crim.R. 8(A), “[t]wo or more offenses may be charged in the same indictment . . . 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.” In *State v. Hamblin*, 37 Ohio St.3d 153, 157-158 (1988), the Ohio Supreme Court held that “[j]oinder of offenses is favored because it conserves resources by avoiding duplication inherent in multiple trials and minimizes the possibility of incongruous results that can occur in successive trials before different juries.”

{¶ 42} However, under Crim.R. 14, “[i]f it appears that a defendant . . . is prejudiced by a joinder of offenses . . . in an indictment . . . the court shall order [a] separate trial of counts” The defendant “bears the burden of proving prejudice and of proving that the trial court abused its discretion in denying severance.” *State v. Brinkley*, 2005-Ohio-1507, ¶ 29. A claim of prejudice may be refuted by the State in one of two ways: “(1) a showing that the evidence of each crime is simple and direct or (2) evidence of the other crimes would be admissible even if the counts were severed.” *State v. Williams*, 2020-Ohio-269, ¶ 79 (8th Dist.).

B. Analysis

{¶ 43} In March 2025, the State charged Shaw with various sexual offenses concerning the October 2023 incident with T.J. and joined onto that indictment charges related to two other incidents that had gone “cold,” not because there were

no suspects, rape kits or police reports but because the cases were ignored for 18 years and nine years, respectively.

{¶ 44} The United States Supreme Court has held that joining multiple offenses in a single trial is favored because “[j]oint trials . . . conserve state funds, diminish inconvenience to witnesses and public authorities, and avoid delays in bringing those accused of crime to trial.” *Bruton v. United States*, 391 U.S. 123, 134 (1968).

{¶ 45} In this case, these traditional public-policy reasons favoring joinder are simply not present. Joining multiple offenses into one trial did not make it more convenient for any of the witnesses because each witness testified as to only one of the victims and there was no inherent duplication to avoid. Furthermore, joining multiple offenses in one trial did not avoid any delays here. There were inexplicably long delays regarding, and between, the first two incidents before the third incident even occurred. C.M.’s and L.S.’s allegations went uninvestigated despite police reports being filed, sexual-assault examinations being conducted and Shaw’s identity being known.

{¶ 46} Evidence in the record shows that, the day after the rape, C.M. reported it to her school clinic, had a sexual-assault examination at a local hospital and spoke with police officers. Furthermore, Shaw’s identity was known to C.M. when the sexual assault occurred in 2001 but was not investigated until 2019 as a cold case.

{¶ 47} Shaw’s identity was known to L.S. in 2012 when she was sexually assaulted. This is evidenced in the record by L.S.’s testimony that the man who raped her was an acquaintance of her boyfriend Johnny and she believed that Johnny set her up to be raped by Shaw. L.S. further testified that Johnny provided her with Shaw’s name. L.S. reported this incident to the police and had a sexual-assault examination performed at a local hospital. But it was not until 2021 that the police presented L.S. with a photo array and she identified Shaw as her assailant with 80 percent certainty.

{¶ 48} In summary, there were massive unexplained delays in investigating two of the three assaults at issue in this case and trying these offenses together did nothing to avoid these delays. Rather, the delays can be attributed to the lack of investigation on the part of the State. Additionally, these allegations do not concern the same act or transaction, they are not part of a common scheme or plan and they are not part of a course of criminal conduct.

{¶ 49} However, all eight charges are for rape in violation of R.C. 2907.02(A)(2), thus qualifying as offenses of the same or similar character for the purpose of Crim.R. 8(A). *See State v. Reed*, 2026-Ohio-1174, ¶ 27 (finding that the charged offenses were of the same or similar character because they “all involved sex crimes that Reed was alleged to have committed against minor victims while in a relationship with their mother or grandmother”). Accordingly, we must find that these offenses were properly joined in one indictment.

{¶ 50} Next, we consider whether this joinder was prejudicial to Shaw under Crim.R. 14. Shaw’s argument, both in the trial court and on appeal, is that, without severance, the jury was allowed “to consider significant amounts of other acts evidence that would not have been admissible in separate trials.” *State v. Reddix*, 2019-Ohio-2441, ¶ 9 (8th Dist.), citing *State v. Schaim*, 65 Ohio St.3d 51, 60-62 (1992). We agree with this argument.

{¶ 51} In the State’s briefs in opposition to severance, both in the trial court and on appeal, it does not appear to dispute the fact that other-acts evidence would be inadmissible as improper propensity evidence at each trial if the counts were severed and tried separately. As the Ohio Supreme Court held in *Schaim*, “[t]he admissibility of other acts evidence is carefully limited because of the substantial danger that the jury will convict the defendant solely because it assumes that the defendant has a propensity to commit criminal acts or deserves punishment regardless of whether he or she committed the crime charged in the indictment.” *Schaim* at 59. The *Schaim* Court further held as follows: “Given the highly inflammatory nature of the offenses, the similarities between portions of [the victims’] testimony, and the fact that joinder allowed the state to circumvent the prohibition on other acts testimony, we conclude that the defendant was prejudiced by the consolidated trial.” *Id.* at 63.

{¶ 52} In *State v. Torres*, 66 Ohio St.2d 340, 343 (1981), the court held that a “defendant claiming error in the trial court’s refusal to allow separate trials of multiple charges has the burden of affirmatively showing that his rights were

prejudiced More specifically, he has the burden of furnishing the trial court with sufficient information so that it can weigh the considerations favoring joinder against the defendant's right to a fair trial." The *Torres* Court further held that "[j]oinder may be prejudicial when the offenses are unrelated and the evidence as to each is very weak." *Id.*

{¶ 53} Our review of the evidence presented at trial shows that the State's cases against Shaw were individually weak.

{¶ 54} For example, C.M. was unable to identify Shaw in a photo array that included Shaw's picture, Shaw was excluded as the source of the DNA found on C.M.'s underwear and there was no match for the DNA found in C.M.'s vagina although she allegedly related to him that she was a virgin. However, advanced testing showed that the DNA found on C.M.'s bra was consistent with Shaw or one of his paternal male relatives.

{¶ 55} L.S. was able to identify Shaw from a photo array with 80 percent certainty, but there was no DNA evidence matching Shaw to the items tested in L.S.'s rape kit.

{¶ 56} In T.J.'s case, while there is no evidence that T.J. identified Shaw in a photo array that included Shaw's picture, Shaw's DNA was found on numerous items tested in T.J.'s rape kit. We note, however, that Shaw's DNA was found on T.J.'s anal swab and T.J.'s medical records from this incident indicate anal penetration, but T.J. testified at trial that Shaw did not penetrate her anally.

{¶ 57} Upon review, we find that the bootstrapping effect of the evidence in T.J.’s case onto C.M.’s and L.S.’s cases, which allowed the jury to consider improper propensity evidence, prejudiced Shaw at trial. *See State v. Kramer-Kelly*, 2023-Ohio-1031, ¶ 90 (8th Dist.) (“[H]ad the trials been severed, evidence concerning L.W. would have been inadmissible at S.S.’s trial, and evidence concerning S.S. would have been inadmissible at L.W.’s trial,” and the failure to sever prejudiced the defendant.). In this case, Shaw met his burden of showing his right to a fair trial was prejudiced, providing enough information to the court to “weigh the considerations favoring joinder against the defendant’s right to a fair trial” and showing that the court “abused its discretion in refusing to separate the charges for trial.” *Schaim* at 59. *Compare State v. Reed*, 2026-Ohio-1174, ¶ 29 (finding that, in part because the defendant pled no contest rather than go to trial, he “provided remarkably little to the trial court in support of his motion to sever”).

{¶ 58} We turn to the final part of the analysis in this case, i.e., whether the State’s evidence was simple and direct, “so that the jury is believed capable of segregating the proof on each charge.” *State v. Roberts*, 62 Ohio St.2d 170, 175 (1980). As the Ohio Supreme Court recently held in *Reed*, “the State can negate a claim of prejudice by satisfying . . . the simple-and-direct test.” *Id.* at ¶ 28. “In applying the simple-and-direct test, the inquiry is on whether the evidence of each offense is separate and direct, whether the evidence is uncomplicated, and whether the jury is likely to be confused.” *Id.* at ¶ 31. Furthermore, this test “focuses on whether the trier of fact is likely to consider ‘evidence of one [offense] as

corroborative of the other” *State v. Wiles*, 59 Ohio St.3d 71, 77 (1991), quoting *Dunaway v. United States*, 205 F.2d 23, 27 (D.C.Cir. 1953).

{¶ 59} In this case, it is clear that the jury was confused and used evidence of one sexual assault to convict Shaw of other sexual assaults. For unknown reasons — possibly because of weak evidence — C.M.’s case went uninvestigated for 18 years and L.S.’s case went uninvestigated for nine years. Both cases remained cold, despite Shaw being identified as a suspect until T.J.’s case arose and the prosecutor decided to charge Shaw with offenses related to all three victims. This scenario encourages the State to wait until the offender strikes again and another victim is harmed before initiating prosecution. It further obliterates any protection Evid.R. 404(B), which prohibits improper other-acts propensity evidence from being introduced at trial, affords defendants. If the government cannot introduce other-acts evidence at trial, it should not follow that they can circumvent this rule by joining the other acts in one indictment.

{¶ 60} Additionally, the nurse who conducted C.M.’s sexual-assault examination testified inconsistently with C.M. about whether Shaw’s penis penetrated C.M.’s vagina, yet Shaw was convicted of vaginal intercourse rape as charged regarding C.M. The nurse who conducted the sexual-assault examination of L.S. testified inconsistently with L.S. about whether Shaw penetrated L.S., yet the jury convicted Shaw of the lesser included offense of attempted rape concerning L.S. Regarding T.J., the jury convicted Shaw of anally raping her despite her adamant testimony that he did not anally rape her.

{¶ 61} We find that the State failed to rebut Shaw’s showing of prejudice by failing to establish that the evidence was uncomplicated. Furthermore, not only was the jury likely to be confused by the evidence, the jury was actually confused, was unable to segregate the proof on individual charges and considered evidence of one offense as corroborative of other offenses.

{¶ 62} Accordingly, we find that the court abused its discretion by denying Shaw’s motion to sever the offenses for separate trials. Shaw’s second assignment of error is sustained. Shaw’s remaining assignments of error are rendered moot under App.R. 12(A)(1)(c).

{¶ 63} Judgment reversed and case remanded to the trial court for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee 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.

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

EILEEN A. GALLAGHER, JUDGE

EMANUELLA D. GROVES, J., CONCURS;
LISA B. FORBES, P.J., DISSENTS (WITH SEPARATE OPINION)

LISA B. FORBES, P.J., DISSENTING:

{¶ 64} Respectfully, I dissent. I would find that the trial court did not abuse its discretion when it denied Shaw’s motion to sever. The record reveals that the State refuted any claim of prejudice by demonstrating the evidence of each of the crimes was simple and direct. Consequently, I would affirm the trial court’s decision.

{¶ 65} This court reviews a trial court’s denial of a motion to sever under an abuse-of-discretion standard. *See Schaim*, 65 Ohio St.3d 51. An abuse of discretion occurs when a court exercises “its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority.” *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35. An abuse of discretion “‘implies that the court’s attitude is unreasonable, arbitrary or unconscionable.’” *W.A.F.P., Inc. v. Sky Fuel Inc.*, 2024-Ohio-3297, ¶ 13 (8th Dist.), quoting *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 66} As noted by the majority, pursuant to Crim.R. 8(A), the three cases against Shaw were properly joined in one indictment on the basis that they are all of the same character, i.e. all rapes.

{¶ 67} Shaw argued that, once joined, the charges should have been severed from one another for trial because he would be prejudiced if they were heard together. Crim.R. 14 provides that, “[i]f it appears that a defendant . . . is prejudiced by a joinder of offenses . . . in an indictment . . . the court shall order . . . separate trial[s] of [the] counts” A defendant must show prejudice was likely to occur based on specific facts of his case, because “‘there is always a possibility of prejudice

in joining separate instances of any offense in the same indictment.” *Reed*, 2026-Ohio-1174, at ¶ 29, quoting *State v. Strobel*, 51 Ohio App.3d 31, 32-33 (3d Dist. 1988).

{¶ 68} The Ohio Supreme Court has held that the defendant “bears the burden of proving prejudice and of proving that the trial court abused its discretion in denying severance.” *Brinkley*, 2005-Ohio-1507, at ¶ 29. The State can refute a defendant’s claim of prejudice by either: “(1) a showing that the evidence of each crime is simple and direct or (2) evidence of the other crimes would be admissible even if the counts were severed.” *Williams*, 2020-Ohio-269, at ¶ 79 (8th Dist.). The Ohio Supreme Court recently reiterated the long-standing principle that under the simple and direct method, “the state is not required to meet the stricter ‘other acts’ admissibility test, but is merely required to show that the evidence of each crime joined at trial is simple and direct.” *Reed* at ¶ 22, quoting *State v. Lott*, 51 Ohio St.3d 160, 163 (1990); *see also State v. Peterson*, 2015-Ohio-1013, ¶ 66 (8th Dist.).

{¶ 69} I disagree with the majority’s focus on, and agreement with, Shaw’s argument that the jury was allowed “to consider significant amounts of other acts evidence that would not have been admissible in separate trials.” Majority, ¶ 50 quoting *Reddix*, 2019-Ohio-2441, at ¶ 9 (8th Dist.), citing *Schaim*, 65 Ohio St.3d at 60-62 (1992). Here, the State did not argue that the other offenses could come in as “other acts” evidence. Rather, in response to Shaw’s motion to sever and on appeal, the State argued that it had refuted any claim of prejudice by showing that the evidence of each of the crimes was simple and direct.

{¶ 70} “Simple and direct evidence’ means the evidence of each crime is ‘so clearly separate and distinct as to prevent the jury from considering evidence of one crime as corroborative as the other.’” *State v. Wardlaw*, 2025-Ohio-2221, ¶ 46 (8th Dist.), quoting *State v. Belle*, 2019-Ohio-787, ¶ 25 (8th Dist.). “Evidence is ‘simple and direct’ if the trier of fact is capable of segregating the proof required for each offense.” *Id.*, quoting *id.*, citing *State v. Gravely*, 2010-Ohio-3379, ¶ 39 (10th Dist.). “[A] trier of fact is believed capable of segregating the proof of multiple charges when the evidence as to each of the charges is uncomplicated.” *Wardlaw* at ¶ 47, quoting *State v. Lunder*, 2014-Ohio-5341, ¶ 33 (8th Dist.). 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.).

{¶ 71} At trial, the evidence against Shaw was presented in a clear, orderly, and almost entirely chronological manner (except for the testimony of one, nonmaterial, DNA expert). The manner of presentation allowed the jury to understand the offenses as separate and distinct from each other.

{¶ 72} The record reflects that the offenses are each separated by a period of over ten years. The Supreme Court recently noted that “[t]emporal distance makes it easier — not more difficult — for a jury to segregate offenses.” *Reed*, 2026-Ohio-1174, at ¶ 35.

{¶ 73} The alleged victims have different relationships to Shaw. The 2001 incident involved C.M. as an “adolescent acquaintance”; the 2012 incident involved L.S. who was a “known adult person[]”; and, the 2023 offense involved T.J. in what was described as a “stranger assault behind a gas station.” Shaw’s recognition that the “transcript reflects entirely different circumstances” in each of the three offenses supports the conclusion that the evidence of each offense was simple and direct, such that it lent itself to being segregated by the jury.

{¶ 74} The jury’s verdict demonstrated that the jury was, in fact, capable of segregating the proof required for each offense. The jury found Shaw not guilty on one of the counts related to C.M., guilty of a lesser-included crime related to L.S., and guilty on each charge related to T.J.

{¶ 75} In light of the distinctive circumstances described by each of the victims in their testimony, along with the jury’s demonstrated ability to distinguish the charges and evidence related to one victim from the charges and evidence related to the others, I would find that the majority’s reliance on *Schaim*, 65 Ohio St.3d 51, is misplaced. There, the Supreme Court found that joinder of defendant’s charges of gross sexual imposition and rape involving his adopted daughter and daughter was improper. *Id.* at 62-63. The Supreme Court held that the evidence was not “simple and distinct,” pointing out that the court of appeals had apparently confused testimony from the two alleged victims when addressing the sufficiency of the evidence to support a charge that related to only one of the victims. *Id.* at 62. The Court concluded that it could not “maintain a fiction that a jury was capable of

segregating the evidence when three judges were not.” *Id.* at 62-63. Nothing similar occurred here.

{¶ 76} Under these circumstances, I would find that the trial court did not abuse its discretion when it applied well-established law to the facts of this case and denied Shaw’s motion to sever. I would overrule assignment of error No. 2.