

ORIGINAL

IN THE SUPREME COURT OF OHIO

14-0980

STATE OF OHIO :
Appellee :
-vs- :
ANTONIO CAMPBELL :
Appellant :

On Appeal from the
Cuyahoga County Court
of Appeals, Eighth
Appellate District Court
of Appeals
CA: 100246 & 100247

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT ANTONIO CAMPBELL

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TABLE OF CONTENTS

	PAGES
EXPLANATION OF WHY THIS FELONY CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND AN ISSUE OF GREAT GENERAL AND PUBLIC INTEREST	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	3
LAW AND ARGUMENT	6
<i>Proposition of Law I: Trial counsel’s complete failure to offer any defense, argument, or mitigation at a sexually violent predator hearing renders “the adversary process itself presumptively unreliable” in violation of the Sixth Amendment. (United States v. Cronin (1984), 466 U.S. 648 applied)</i>	6
<i>Proposition of Law II: An appellate court cannot summarily reject an improper joinder argument on the sole basis that prejudice cannot be established in a bench trial. A defendant is prejudiced by improper joinder in a bench trial when the trial court erroneously ruled that each allegation is relevant to the guilt of the other, when the prosecutor makes improper arguments based on the improper joinder, and when the defendant is induced to waive his Sixth Amendment right to a jury trial.....</i>	8
<i>Proposition of Law III: An aggravated burglary conviction is not supported by legally sufficient evidence when the defendant is lawfully on the premises prior to the alleged crime and when there is no evidence that, after having his privilege revoked, he remained there by force, stealth, or deception.</i>	10
<i>Proposition of Law IV: A criminal defendant is denied the effective assistance of counsel when his trial counsel fails to object to prejudicial hearsay, improper witness bolstering, and prosecutorial misconduct during closing argument.</i>	12
CONCLUSION.....	15
SERVICE	16
APPENDIX	
Journal Entry Declaring defendant Indigent.....	A1-4
Opinion from the Eighth District Court of Appeals State of Ohio v. Antonio R. Campbell CA. 100246 & 100247	A5

**EXPLANATION OF WHY THIS FELONY CASE INVOLVES A
SUBSTANTIAL CONSTITUTIONAL QUESTION AND
AN ISSUE OF GREAT GENERAL AND PUBLIC INTEREST**

The United States Supreme Court has recognized different types of ineffective assistance counsel claims. In most cases, ineffective assistance of counsel claims are evaluated through the *Strickland* standard whereby the defendant must demonstrate specific prejudice from counsel's deficient performance. *Strickland v. Washington* (1984), 466 U.S. 668. In other cases, however, where "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing," no specific showing of prejudice is required because "there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable." *United States v. Cronin* (1984), 466 U.S. 648, 659. The instant case will provide this Court with the opportunity to delineate the line between garden-variety ineffective assistance of counsel claims and those where defense counsel has effectively abandoned his or her obligation to "require the prosecution's case to survive the crucible of meaningful adversarial testing." *Id.* at 656-657.

Antonio Campbell was jointly tried on two unrelated rape cases followed by a bifurcated trial on the sexual predator specifications attendant to the underlying charges. The sexual violent predator specification transformed Campbell's sentencing consequences for rape from a definite sentence of 3 to 11 years into an indefinite life sentence. The only penalty process more serious than a trial on the sexually violent predator specification is the penalty phase of a capital case. Still, Campbell's trial counsel treated it as a meaningless afterthought.

In his first proposition of law, Campbell maintains that his attorney was so woefully inadequate during his trial on the sexual violent predator that the process was rendered "presumptively unreliable" and reversal was required under *Cronin*. Defense counsel argued the incorrect law prior to trial on the specification. He made no opening statement. And when the

State's principal witness presented hearsay from a victim's statements in a prior case, Campbell's attorney did nothing. Then, upon cross-examination, Campbell's attorney simply made things worse by eliciting further damaging hearsay statements. Defense counsel then chose to present no evidence, called no witnesses, and waived any closing argument. Counsel's failure to offer a *single* word in defense of his client and failure to subject the State's case on the sexual violent predator specification to adversarial testing constituted a *Cronic* violation of Campbell's right to counsel.

Although Campbell's case presents several issues worthy of this Court's attention, this Court should, at a minimum, accept this case to establish clear boundaries for lower courts between *Strickland* and *Cronic* ineffective assistance of counsel claims.

STATEMENT OF THE CASE

On May 23, 2012, defendant Antonio Campbell was charged in a seven-count indictment, Case No. 562779, with aggravated burglary, two counts of gross sexual imposition, two counts of kidnapping, felonious assault, and rape. Several of the charges included, among other things, sexually violent predator specifications. All of these allegations are based on a single incident that allegedly involved 22-year-old A.D. and occurred on March 30, 2012.

Mr. Campbell was also charged in a second indictment, Case No. 563277, on June 25, 2012, with two counts of aggravated burglary, two counts of kidnapping, felonious assault, aggravated robbery, and rape. Several of the charges included, among other things, sexually violent predator specifications. The charges in this indictment related to two separate incidents involving 25-year-old M.W.

On January 30, 2013, the State of Ohio filed a motion requesting the joinder of these two cases for trial and defense counsel filed a motion for relief from prejudicial joinder. The trial

court granted the State's joinder motion and denied the defendant's motion for relief from prejudicial joinder.

The trial court commenced a consolidated bench trial on March 5, 2013. Six days later, the trial court rendered its verdict. In the case involving M.W., the trial court found the defendant not guilty of aggravated robbery and felonious assault but found him guilty of the remaining charges and specifications. In the A.D. case, the trial court found Campbell guilty of all counts and specifications. On the following day, the trial court held a brief bench trial on the sexually violent predator specifications. The trial court found the defendant guilty of all four sexually violent predator specifications. The trial court ultimately sentenced Campbell to a prison sentence of 29 years to life.

Mr. Campbell filed a timely appeal with the Eighth District Court of Appeals. On May 22, 2014, the Eighth District affirmed Campbell's convictions and sentence. *State v. Campbell*, 8th Dist. No. 100246 & 100247, 2014-Ohio-2181 ("Opinion Below").

STATEMENT OF FACTS

Because the underlying facts of the two cases are unrelated (different alleged victims, different locations, different time periods), they are discussed separately below.

A. 22-year-old A.D.

In early 2012, A.D. moved into the Loganberry Apartment complex in Richmond Heights with her then-boyfriend, John Sprafka. Both A.D. and Sprafka were drug addicts and regular users of various drugs. After moving into the apartment complex, A.D. began purchasing ecstasy from Campbell on a regular basis. A.D. testified that she only had a "business" relationship with Campbell, though she later admitted to previously smoking marijuana with Campbell.

In March 2012, A.D. began to struggle with her finances after she lost her job and her boyfriend began stealing her money to get high on heroin on a daily basis. A.D. lost her job, lost her car, could not pay any bills, had her phone cut off, and had no money to pay for her drugs. Despite having no money, A.D. kept using drugs. According to A.D., Campbell would “front her” the drugs and thus she owed him money.

On March 30, 2012, Campbell asked A.D. whether she wanted to smoke marijuana and she said yes because she “was upset and angry” at her boyfriend who had been gone for a week-long heroin binge. A.D. was already “extremely high off ecstasy” when she invited Campbell into her apartment to smoke marijuana in her bathroom. They then engaged in sexual intercourse. While Antonio Campbell maintains they engaged in consensual sex after he was invited into her apartment to smoke marijuana, A.D. denied having consensual sex with him. A.D. claims that Campbell choked her, sexually assaulted her, and then left.

A.D. went to the hospital and reported that she was “choked and raped.” The ER nurse observed “petechiae” around A.D.’s eyes which can be caused by “choking, bruising” or by natural causes such as “something wrong with their blood.” Neither medical professional noted any marks or injuries around A.D.’s neck. She was later transported by police to another hospital for a sexual assault examination. No injuries were noted in the physical assessment conducted in the emergency room. The SANE nurse noted “petechiae” on A.D.’s eyes and ears. She also reported seeing abrasions on the front of A.D.’s neck. She did not see any injuries or trauma to the genitalia.

B. 25-year-old M.W.

M.W. is a transgender person—he is physiologically a man but holds herself out as a woman. In 2012, she was also living at the Loganberry Ridge Apartment Complex with her

boyfriend, Leland Harris (aka "BG"). In February 2012, M.W. "suspected cheating" by BG and they separated for a while. BG and Antonio Campbell were "real good" friends. When BG was living with M.W., they would hang out together several times a week with M.W. and Campbell's girlfriend, Moriah Keefer.

M.W. testified that one night, after BG had moved out, Campbell came over to the apartment "late." M.W. invited Campbell in and they talked "about the situation between [her] and BG." According to M.W., Campbell then sexually assaulted her. She claimed that he first tried to force her to perform oral sex and then anally raped her. M.W. did not call the police or go to the hospital.

The following day, M.W. called her estranged boyfriend and said that she was "lonely" and that "Tone raped me." BG called Campbell's girlfriend and told her about M.W.'s claim that Campbell sexually assaulted her. Moriah then confronted Campbell. Campbell "got real mad," emphatically denied it, said M.W. was lying, said "[w]hy would I do that, that's man," and said that he "was going to beat her ass for lying on him." Campbell did go to M.W.'s apartment and punched her for "lying on" him.

On the following day, M.W. went to the police station and told the police that Campbell had beat her up. When asked what led up that, M.W. told the police that Campbell had raped her. Officer McCallister testified that M.W. did not want to press charges for the alleged rape but "wouldn't give [him] a specific reason" why. She later relented and agreed to prosecute Campbell for sexual assault.

C. Sexually Violent Predator Hearing

At the sexually violent predator hearing, the State offered testimony from one principal witness, Cleveland Police Detective Thompson, about a 2002 case in which Santina Smith

claimed that she was sexually assaulted by Antonio Campbell. According to the detective, Ms. Smith claimed that, while she was at a friend's house, Campbell had non-consensual oral and anal sex with her. Campbell told the detective that he had consensual sex with Ms. Smith. The detective did not recall Ms. Smith having any physical injuries. Although Campbell was charged with rape, he ultimately pled guilty to sexual battery.

LAW AND ARGUMENT

Proposition of Law I: Trial counsel's complete failure to offer any defense, argument, or mitigation at a sexually violent predator hearing renders "the adversary process itself presumptively unreliable" in violation of the Sixth Amendment. (United States v. Cronic (1984), 466 U.S. 648 applied)

Defendant was denied his constitutional right to the effective assistance of counsel during the bifurcated bench trial on the sexually violent predator specification. Indeed, with respect to that portion of the bifurcated trial, Mr. Campbell maintains that his attorney's performance, or more accurately lack of performance, during this critical stage of his bifurcated trial represented a complete breakdown in the adversarial system as described by the United States Supreme Court in *United States v. Cronic* (1984), 466 U.S. 648, 656-57.

A criminal defendant's Sixth Amendment right to counsel means more than the mere appointment and physical presence of an attorney. *Cronic*, 466 U.S. at 654. The "core purpose" of the constitutional guarantee of counsel is to "assure 'Assistance' at trial, when the accused is confronted with both the intricacies of the law and the advocacy of the public prosecutor." *Id.* If the assistance is not effective, then right to counsel is deprived of its meaning and value. *Id.* When, as was the case here, there was an actual breakdown of the adversarial process during the trial, there has been a denial of Sixth Amendment rights that defies the need to demonstrate prejudice. *Id.* at 659. Even if this Court does not find this to be a *Cronic* ineffective assistance

case, this Court should nonetheless find that Campbell was severely prejudiced by counsel's deficient performance as required by *Strickland*.

Campbell's counsel was essentially non-existent during the sexually violent predator specification hearing. His defense counsel's primary contribution to the trial was to argue, based on a misinterpretation of a 10-year old version of the law, that Campbell could not, as a matter of law, be classified as a sexually violent predator based on his convictions. However, as thoroughly explained by the State, defense counsel's argument was based on a version of the law that was amended *over 8 years ago* and the current version of law is "very clear" that Campbell's new convictions could be the basis for the SVP specification. Defense counsel responded to the State's argument by saying "clearly I don't have the appellate section in my office to do crack research at the drop of a pin when it's required" and so "I just object for the record."

When the trial actually began, defense counsel's performance vacillated between nonexistent and counterproductive. He made no opening statement. And when the State's principal witness related hearsay from a victim's statements in a prior case, Campbell's attorney did nothing. Then, upon cross-examination, Campbell's attorney simply made things worse by eliciting further damaging hearsay statements. Defense counsel then chose to present no evidence, called no witnesses, and waived any closing argument.

In essence, defense counsel treated the trial on the sexually violent predator specification as a meaningless afterthought. He was completely oblivious of the applicable law. He allowed the State to interject prejudicial hearsay into the trial court's deliberations and compounded that prejudice by eliciting additional prejudicial hearsay. And, perhaps most troubling, defense counsel did not offer a *single* word to the trial judge about why Antonio Campbell should not be classified as a sexually violent predator. Defense counsel's performance would be disturbing if

this were merely a sentencing hearing. However, his neglect is inexcusable in light of the fact that this was a *trial* on a specification that the State had to prove beyond a reasonable doubt and that, if proven, had dire punitive consequences—transforming a definite sentence of no more than 11 years into an indefinite life sentence.

Proposition of Law II: An appellate court cannot summarily reject an improper joinder argument on the sole basis that prejudice cannot be established in a bench trial. A defendant is prejudiced by improper joinder in a bench trial when the trial court erroneously ruled that each allegation is relevant to the guilt of the other, when the prosecutor makes improper arguments based on the improper joinder, and when the defendant is induced to waive his Sixth Amendment right to a jury trial.

The State sought to join and commingle the evidence of two unrelated sex offenses in order to secure convictions in otherwise weak cases. In the first case, Antonio Campbell was alleged to have raped a woman after smoking marijuana with her at her apartment. Campbell's defense was that the sex was consensual. In the second case, Antonio Campbell was alleged to have anally raped a man. Campbell's defense in that case was that it never happened. Despite the dissimilarity of the two cases and the obvious prejudice to Campbell from their improper joinder, the trial court overruled the defendant's objections, and held that joinder was proper.

The trial court's decision to join these two cases was erroneous and prejudiced Antonio Campbell because it: 1) Led the fact-finder to improperly intermingle the evidence in reaching its verdict in both cases; 2) Allowed the prosecutor to improperly argue that Campbell must be guilty of both cases because of the similarities in the two cases; and 3) Left Campbell with little choice but to waive his constitutional right to a jury trial.

When a defendant claims that he will be prejudiced by the joinder of two separate cases, the court must determine (1) whether the evidence of the other crimes would be admissible even if the counts were severed; and (2) whether the evidence of each crime is simple and distinct.

See State v. Frazier, 2004-Ohio-1121 (8th Dist.), ¶ 13 (citing *State v. Schaim* (1992), 65 Ohio

St.3d 51, 59, 600 N.E.2d 661, citing *State v. Hamblin* (1998), 37 Ohio St.3d 153, 158-59, 524 N.E.2d 476). In this case, the trial court erroneously found that Campbell would not be prejudiced by joinder because the evidence of other crimes would be admissible under Evid. R. 404(B) and because the evidence of each crime is simple and direct.

In its decision, the Eighth District made no attempt to analyze the propriety of the joinder. Even assuming that joinder was improper, the Eighth District concluded that Campbell suffered no prejudice because the trial court was the fact-finder and the trial court never made any explicit comments to suggest that it “considered improper evidence in determining Campbell’s guilt.” Opinion Below at ¶ 11. The Eighth District is wrong. Assuming that joinder was improper, an issue never decided by the Eighth District, Campbell has established prejudice from the improper joinder in this case in three different ways:

1. Trial court considered improper evidence in determining guilt: Given that the trial court expressly ruled that the evidence of each rape allegation was properly considered in the other case, the trial court, assuming that joinder was improper as argued by Campbell, necessarily “considered improper evidence in determining Campbell’s guilt.
2. Improper joinder enabled the prosecutor to make improper arguments: The thrust of the State’s closing argument was that that Campbell acted in conformity with his bad character. The State argued repeatedly that because there were two allegations from the same apartment complex they must be true. In essence, the State asked the trial court to convict Campbell of rape in both cases because the two rape allegations were not a “coincidence” but rather were indicative of Campbell’s bad character. The State emphasized that “the reason these incidents are very similar is *because that is what he does.*”
3. Improper joinder induced Campbell to waive his Sixth Amendment right to a jury trial: Although there was no explicit discussion on the record regarding the reason for the jury trial waiver, it is nonetheless clear that, *prior* to the trial court’s joinder ruling, Campbell was fully intending to have a jury trial and that changed only after the ruling. It is thus apparent that the erroneous joinder ruling caused Campbell to waive his right to a jury trial. And his relinquishment of that fundamental constitutional right due to an erroneous ruling by the trial court serves as an independent basis for establishing prejudice and requiring reversal in this case.

The Eighth District improperly truncated its analysis of Campbell's improper joinder claim when it failed to resolve the propriety of the joinder and when it failed to fully consider the various ways in which a defendant is prejudiced by improper joinder even when the case is ultimately tried to the judge.

Proposition of Law III: An aggravated burglary conviction is not supported by legally sufficient evidence when the defendant is lawfully on the premises prior to the alleged crime and when there is no evidence that, after having his privilege revoked, he remained there by force, stealth, or deception.

Antonio Campbell was convicted of three counts of aggravated burglary on three different dates. On each occasion, Campbell was invited into an apartment where a crime was allegedly committed. In the M.W. case, on the first occasion, Campbell came to the apartment looking for BG and M.W. invited him in. On the second occasion involving M.W., Campbell rang M.W.'s doorbell and was let into the apartment by her neighbor. In the A.D. case, Campbell was invited by A.D. into her apartment to smoke marijuana. While there is a factual dispute over what occurred after Campbell entered the apartments, there is no dispute that he was invited in and no evidence that he trespassed "by force, stealth, or deception." Accordingly, all three aggravated burglary convictions are not supported by legally sufficient evidence.

The Due Process Clause requires the State to prove every element of the crime charged beyond a reasonable doubt. *In re Winship* (1970), 397 U.S. 358, 364; see also *State v. McGee* (1997), 79 Ohio St. 3d 193, 196-97; *State v. Robinson* (1976), 47 Ohio St. 2d 103, 108 (providing that "[t]he state is constitutionally bound to prove beyond a reasonable doubt every fact necessary to constitute any crime for which it prosecutes a defendant.") Evidence is legally sufficient to support a conviction consistent with due process if, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia* (1979), 443

U.S. 307, 319; see also *State v. Jenks* (1991), 61 Ohio St. 3d 259, paragraph two of the syllabus. The determination of whether the evidence is legally sufficient to sustain a verdict is a question of law. *State v. Thompkins* (1997), 78 Ohio St. 3d 380, 386.

Aggravated burglary, as charged in the instant case, required the State to prove that Campbell “by force, stealth, or deception, [] trespass[ed] in an occupied structure . . . with the purpose to commit any criminal offense” and inflicted, threatened to inflict, or attempted to inflict physical harm upon M.W. or A.D. Here, Campbell maintains that the State did not present legally sufficient evidence that he trespassed “by force, stealth, or deception.”

In making this argument, Campbell acknowledges that this Court, in a death penalty case, rejected a defendant’s argument that the trespass element of aggravated burglary was not satisfied because the homeowner had invited him in to demonstrate a product he was selling. See *State v. Steffen* (1987), 31 Ohio St. 3d 111, 114. This Court explained that trespass includes entering *or remaining* on another’s property without privilege to do so and that an individual’s privilege to remain is revoked once he begins to assault the homeowner. *Id.* at 115.

Although the Eighth District found *Steffen* controlling, Campbell submits that the Eighth District has read *Steffen* too broadly. *Steffen* only addressed the trespass element of aggravated burglary and held that an individual, despite a lawful entry, can have their privilege to remain in a private residence terminated (and become a trespasser) if he assaults a resident. 31 Ohio St. 3d at 115. *Steffen* did not, however, address the fact that the aggravated burglary statute requires more than a trespass (i.e. the revocation of privilege to remain); it also requires that the trespass occur by “force, stealth, or deception.” In other words, an individual may have lost the privilege to remain on the person’s property by assaulting him, but the question remains whether there is any evidence that, *after* having his privilege revoked, he remained there by force, stealth, or

deception. It is this element of the offense that is lacking here. There was clearly no indication of stealth or deception in this case. Moreover, Campbell submits that the evidence presented by the State in this case does not establish that he *used force* to remain on A.D. or M.W.'s property *after* his privilege to be there had been revoked by the alleged assault. On the contrary, both individuals testified that, after the alleged assaults occurred, Campbell voluntarily left.

Because Campbell did not use force to remain on the property *after* his privilege to be there had been revoked, he did not trespass by “force, stealth, or deception” and thus did not commit aggravated burglary.

Proposition of Law IV: A criminal defendant is denied the effective assistance of counsel when his trial counsel fails to object to prejudicial hearsay, improper witness bolstering, and prosecutorial misconduct during closing argument.

Antonio Campbell was denied his right to the effective assistance of counsel Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution. *Gideon v. Wainwright* (1963), 372 U.S. 335; *Strickland, supra*. Defense counsel's failure to protect Campbell's right to a fair trial undermined confidence in the outcome.

Under *Strickland*, a defendant must establish both that counsel's performance was deficient and that such deficient performance prejudiced him so as to deprive him of a fair trial. *Strickland*, 466 U.S. at 687. With respect to prejudice, this Court must find that there is a “reasonable probability” that the result of the proceeding would have been different if not for the deficient performance. *Id.* at 687-88. Though the defendant bears the burden of showing “a probability sufficient to undermine confidence in the outcome,” he or she need not prove that “counsel's unreasonable performance more likely than not altered the outcome of the case.” *Harries v. Bell* (C.A. 6 2005), 417 F.3d 631, 639.

1. Failing to Object to Misconduct During Closing Argument

Mr. Campbell's due process right to a fair trial under the Fourteenth Amendment of the United States Constitution and Article I, Section 10 of the Ohio Constitution was violated because of prosecutorial misconduct during closing argument. *State v. Keenan* (1993), 66 Ohio St. 3d 402, 405-406; *Berger v. United States* (1935), 295 U.S. 78, 88. Defense counsel's failure to object to this misconduct deprived Campbell of both a fair trial and the effective assistance of counsel.

To combat the evidentiary shortcomings of its case, the State advanced several improper arguments at closing. To explain M.W.'s handling of her sexual assault allegations, the State injected alleged statistics, that were not included in the record, about the underreporting of sexual assault. It is the prosecutor's duty in closing argument "to avoid efforts to obtain a conviction by going beyond the evidence which is before the jury." *State v. Smith* (1984), 14 Ohio St. 3d 13, 14. Defense counsel failed to ensure that the prosecutor did not argue matters outside the record.

Moreover, as discussed in Campbell's second proposition of law, the prosecutor used much of his closing argument to argue that Campbell acted in conformity with his bad character in an attempt to bolster the credibility of two weak allegations. The State argued repeatedly that because there were two allegations from the same apartment complex they must be true. In essence, the State asked the trial court to convict Campbell of rape in both cases because there two rape allegations that were not a "coincidence" but rather were indicative of Campbell's bad character. The State reiterated at the end that "the reason these incidents are very similar is *because that is what he does.*" (Tr. at 824) (emphasis added). Because a prosecutor may not urge a factfinder to convict because the defendant was allegedly acting in conformity with his bad character, *See State v. Hamilton*, 1st Dist. No. C-020475, 2004-Ohio-1494, ¶ 66, defense counsel's failure to object to these improper remarks constituted IAC.

2. Failing to Object to Improper Witness Bolstering

The trial court erred in permitting a police officer to testify that, in her professional opinion, A.D. was “very honest” when she interviewed her. In admitting that testimony, the trial court violated the well-established prohibition against witness bolstering and denied Mr. Campbell a fair trial in violation of the Fourteenth Amendment of the United States Constitution. *State v. Dzelajilja*, Cuyahoga App. No. 88805, 2007 Ohio 4050, ¶¶ 34-40; *see also State v. Eastham* (1988), 39 Ohio St. 3d 307, 312 (Brown, J. concurring); *State v. Boston* (1989), 46 Ohio St. 3d 108, 129. Although the Eighth District indicated that Campbell’s trial counsel objected to this line of inquiry, Campbell submits that is not at all clear from the record. On the contrary, it appears that he did not object. Because of the significance of the victim’s credibility to the State’s case and the problems with her credibility, the officer’s opinion testimony that A.D. was “very honest” was particularly prejudicial and denied Campbell a fair trial. *See Dzelajilja*, 2007 Ohio 4050, ¶ 39.

3. Failing to Object to Prejudicial Hearsay

Defense counsel failed to object to inadmissible hearsay of M.W. and A.D.’s out-of-court statements to police and lay witnesses. Throughout her testimony, Sergeant Debiase offered inadmissible hearsay by recounting A.D.’s statements to her. Similarly, Officer McCallister improperly testified to “out-of-court” statements made by M.W. when she came to the police station. Both BG and Moriah Keefer testified about M.W.’s “out-of-court” statements to them. Campbell’s counsel failed to object to any of this inadmissible hearsay testimony.

The improperly admitted hearsay testimony prejudiced Antonio Campbell in multiple ways. First, it improperly bolstered the credibility of the allegations made by A.D. and M.W. Indeed, the State argued during closing that in “each one of these cases . . . you have evidence

that corroborates what each one of these victims told the police and told us here in court separately. . . .” The prosecutor emphasized that there is “corroboration as to what [M.W.] says” happened that night; namely, she told BG and Moriah that Campbell raped her. The prosecutor also argued that A.D.’s “statement to the police tell you the same thing and her statements to the nurse also tell you the same thing” as her trial testimony.

Second, the improper admission of the hearsay testimony injected prejudicial topics that the alleged victims did not testify about. For instance, A.D. did *not* testify that Campbell threatened to kill her. However, Sergeant Debiase improperly testified that A.D. “was told that she was going to die.” The improper admission of this hearsay testimony about Campbell’s alleged threats enabled the State to argue: “Both times he makes threats. Don’t tell your boyfriend, don’t tell the police or I’ll come back and I’ll kill you. Same threats made to both victims.” The State could not have argued that Campbell made identical threats against both victims if the trial court had properly kept out the inadmissible hearsay.

CONCLUSION

For the foregoing reasons, Defendant-Appellant respectfully asks this Court to accept jurisdiction over this matter as it presents substantial constitutional questions and issues of great general and public interest for review and reverse his convictions.

Respectfully submitted,


CULLEN SWEENEY, ESQ.
Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was hand delivered to Timothy J. McGinty, Cuyahoga County Prosecutor, 1200 Ontario Street, Cleveland, Ohio 44113, on this 5th day of June, 2014.



CULLEN SWEENEY, ESQ.
Counsel for Appellant



80312788

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

ANTONIO R CAMPBELL
Defendant

Case No: CR-12-563277-A

Judge: MICHAEL E JACKSON

INDICT: 2911.11 AGGRAVATED BURGLARY /NPC /RVOS
2905.01 KIDNAPPING /NPC /RVOS
2903.11 FELONIOUS ASSAULT /NPC /RVOS
ADDITIONAL COUNTS...

JOURNAL ENTRY

INITIAL SENTENCING HEARING OCCURRED ON 04/30/2013 WITH DEFENDANT, HIS COUNSEL DONALD BUTLER, AND APAS CANONICO AND HOFFMAN PRESENT. COURT HEARD ARGEMENTS RE: SEXUAL VIOLENT PREDATOR SPECIFICATION N COUNTS 6 & 7 IN CASE 562779 & COUNTS 6 & 7 IN CASE 563277. COURT RULED DEFENDANT GUILTY AS TO EACH COUNT IN EACH CASE. COURT HEARD ARGUMENTS RE: MERGER AND ALLIED OFFENSES AND TOOK MATTER UNDER ADVISEMENT. HEARING TO CONCLUDE SENTENCING SET FOR 05/14/2013.

ON 05/14/2013, THE FOLLOWING OCCURRED:

DEFENDANT IN COURT. COUNSEL DONALD BUTLER PRESENT.

COURT REPORTER DIANE CIEPLY, APAS HOFFMAN & VAN PRESENT.

ON A FORMER DAY OF COURT THE COURT FOUND THE DEFENDANT GUILTY OF AGGRAVATED BURGLARY 2911.11 A(1) F1 WITH NOTICE OF PRIOR CONVICTION SPECIFICATION(S), REPEAT VIOLENT OFFENDER SPECIFICATION(S) 2941.149 AS CHARGED IN COUNT(S) 1, 5 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE COURT FOUND THE DEFENDANT GUILTY OF KIDNAPPING 2905.01 A(3) F1 WITH NOTICE OF PRIOR CONVICTION SPECIFICATION(S), REPEAT VIOLENT OFFENDER SPECIFICATION(S) 2941.149 AS CHARGED IN COUNT(S) 2 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE COURT FOUND THE DEFENDANT GUILTY OF FELONIOUS ASSAULT 2903.11 A(1) F2 WITH NOTICE OF PRIOR CONVICTION SPECIFICATION(S), REPEAT VIOLENT OFFENDER SPECIFICATION(S) 2941.149 AS CHARGED IN COUNT(S) 3 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE COURT FOUND THE DEFENDANT NOT GUILTY OF AGGRAVATED ROBBERY 2911.01 A(3) F1 WITH NOTICE OF PRIOR CONVICTION SPECIFICATION(S), REPEAT VIOLENT OFFENDER SPECIFICATION(S) 2941.149 AS CHARGED IN COUNT(S) 4 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE COURT FOUND THE DEFENDANT GUILTY OF KIDNAPPING 2905.01 A(4) F1 WITH NOTICE OF PRIOR CONVICTION SPECIFICATION(S), REPEAT VIOLENT OFFENDER SPECIFICATION(S) 2941.149, SEXUAL MOTIVATION SPECIFICATION(S) 2941.147, SEXUAL VIOLENT PREDATOR SPECIFICATION(S) AS CHARGED IN COUNT(S) 6 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE COURT FOUND THE DEFENDANT GUILTY OF RAPE 2907.02 A(2) F1 WITH NOTICE OF PRIOR CONVICTION SPECIFICATION(S), REPEAT VIOLENT OFFENDER SPECIFICATION(S) 2941.149, SEXUAL VIOLENT PREDATOR SPECIFICATION(S) AS CHARGED IN COUNT(S) 7 OF THE INDICTMENT.

DEFENDANT ADDRESSES THE COURT, VICTIM/REP ADDRESSES THE COURT, DEFENSE COUNSEL ADDRESSES THE COURT

PROSECUTORS BRIAN HOFFMAN AND DAN VAN ADDRESS THE COURT.

THE COURT CONSIDERED ALL REQUIRED FACTORS OF THE LAW.

THE COURT FINDS THAT PRISON IS CONSISTENT WITH THE PURPOSE OF R. C. 2929.11.

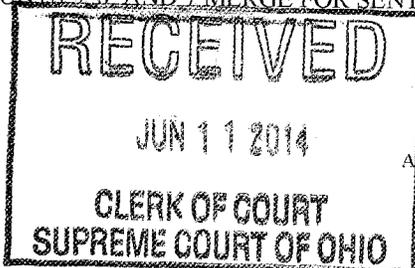
THE COURT IMPOSES A PRISON SENTENCE AT THE LORAIN CORRECTIONAL INSTITUTION OF 17 YEARS TO LIFE.

COUNTS 1 THROUGH 3 MERGE FOR SENTENCING AS ALLIED OFFENSES OF SIMILAR IMPORT. STATE ELECTS

COUNT 1 AGGRAVATED BURGLARY, FEL-1 AS THE SENTENCING COUNT. COURT ORDERS 5 YEARS IN PRISON ON

COUNT 1. COUNTS 5, 6, AND 7 MERGE FOR SENTENCING AS ALLIED OFFENSES OF SIMILAR IMPORT. STATE

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05/14/2013



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ELECTS COUNT 7, RAPE WITH SVP SPEC, FEL-1 AS THE SENTENCING COUNT. COURT ORDERS 12 YEARS TO LIFE IN PRISON. COUNTS 1 AND 7 TO RUN CONSECUTIVE TO EACH OTHER.

SENTENCE TO RUN CONSECUTIVE TO CASE CR 562779 IN ACCORDANCE WITH RC 2929.14(C)(4).

DEFENDANT TO RECEIVE CREDIT FOR TIME SERVED TO DATE; SHERIFF TO COMPUTE ADDITIONAL JAIL CREDIT FROM SENTENCING DATE TO DELIVERY TO LCI.

PRC VIOLATION COULD RESULT IN ONE HALF OF 29 YEARS FOR A VIOLATION. TOTAL PRISON TIME BEFORE ELIGIBLE FOR PAROLE IS 29 YEARS.

DEFENDANT DECLARED INDIGENT.

COSTS WAIVED

APPEAL RIGHTS EXPLAINED.

DEFENDANT INDIGENT. ATTORNEY JEROME EMOFF IS APPOINTED AS APPELLATE COUNSEL, AND IF HE IS PERMITTED TO WITHDRAW, THE PUBLIC DEFENDER IS APPOINTED IN HIS PLACE.

DEFENDANT REMANDED.

SHERIFF ORDERED TO TRANSPORT DEFENDANT ANTONIO R CAMPBELL, DOB: 01/29/1982, GENDER: MALE, RACE: BLACK.

05/14/2013

CPMEJ 07/19/2013 10:19:06

Judge Signature

07/19/2013

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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

ANTONIO R CAMPBELL
Defendant

Case No: CR-12-562779-A

Judge: MICHAEL E JACKSON

INDICT: 2911.11 AGGRAVATED BURGLARY /NPC /RVOS
2907.05 GROSS SEXUAL IMPOSITION /SVPS
2907.05 GROSS SEXUAL IMPOSITION /SVPS
ADDITIONAL COUNTS...

JOURNAL ENTRY

INITIAL SENTENCING HEARING OCCURRED ON 04/30/2013 WITH DEFENDANT, HIS COUNSEL DONALD BUTLER, AND APAS CANONICO AND HOFFMAN PRESENT. COURT HEARD ARGUMENTS RE: SEXUAL VIOLENT PREDATOR SPECIFICATION N COUNTS 6 & 7 IN CASE 562779 & COUNTS 6 & 7 IN CASE 563277. COURT RULED DEFENDANT GUILTY AS TO EACH COUNT IN EACH CASE. COURT HEARD ARGUMENTS RE: MERGER AND ALLIED OFFENSES AND TOOK MATTER UNDER ADVISEMENT. HEARING TO CONCLUDE SENTENCING SET FOR 05/14/2013.

ON 05/14/2013, THE FOLLOWING OCCURRED:

DEFENDANT IN COURT. COUNSEL DON BUTLER PRESENT.

COURT REPORTER DIANE CIEPLY, APAS HOFFMAN & VAN PRESENT.

ON A FORMER DAY OF COURT THE COURT FOUND THE DEFENDANT GUILTY OF AGGRAVATED BURGLARY 2911.11 A(1) F1 WITH NOTICE OF PRIOR CONVICTION SPECIFICATION(S), REPEAT VIOLENT OFFENDER SPECIFICATION(S) 2941.149 AS CHARGED IN COUNT(S) 1 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE COURT FOUND THE DEFENDANT GUILTY OF GROSS SEXUAL IMPOSITION 2907.05 A(1) F4 UNDER COUNT(S) 2, 3 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE COURT FOUND THE DEFENDANT GUILTY OF KIDNAPPING 2905.01 A(3) F1 WITH NOTICE OF PRIOR CONVICTION SPECIFICATION(S), REPEAT VIOLENT OFFENDER SPECIFICATION(S) 2941.149 AS CHARGED IN COUNT(S) 4 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE COURT FOUND THE DEFENDANT GUILTY OF FELONIOUS ASSAULT 2903.11 A(1) F2 WITH NOTICE OF PRIOR CONVICTION SPECIFICATION(S), REPEAT VIOLENT OFFENDER SPECIFICATION(S) 2941.149, SEXUAL MOTIVATION SPECIFICATION(S) 2941.147 UNDER COUNT(S) 5 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE COURT FOUND THE DEFENDANT GUILTY OF KIDNAPPING 2905.01 A(4) F1 WITH SEXUAL VIOLENT PREDATOR SPECIFICATION(S), SEXUAL MOTIVATION SPECIFICATION(S) 2941.147, NOTICE OF PRIOR CONVICTION SPECIFICATION(S), REPEAT VIOLENT OFFENDER SPECIFICATION(S) 2941.149 AS CHARGED IN COUNT(S) 6 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE COURT FOUND THE DEFENDANT GUILTY OF RAPE 2907.02 A(2) F1 WITH SEXUAL VIOLENT PREDATOR SPECIFICATION(S), NOTICE OF PRIOR CONVICTION SPECIFICATION(S), REPEAT VIOLENT OFFENDER SPECIFICATION(S) 2941.149 AS CHARGED IN COUNT(S) 7 OF THE INDICTMENT.

DEFENDANT ADDRESSES THE COURT, VICTIM/REP ADDRESSES THE COURT, PROSECUTOR(S) ADDRESSES THE COURT

DEFENSE COUNSEL ADDRESSES THE COURT.

THE COURT CONSIDERED ALL REQUIRED FACTORS OF THE LAW.

THE COURT FINDS THAT PRISON IS CONSISTENT WITH THE PURPOSE OF R. C. 2929.11.

THE COURT IMPOSES A PRISON SENTENCE AT THE LORAIN CORRECTIONAL INSTITUTION OF 12 YEARS TO LIFE. COUNTS 1 THROUGH 7 MERGE FOR SENTENCING AS ALLIED OFFENSES OF SIMILAR IMPORT; STATE ELECTS COUNT 7, RAPE, FEL-1 AS THE SENTENCING COUNT. COURT ORDERS 12 YEARS TO LIFE ON COUNT 7.

SENTENCE TO RUN CONSECUTIVE TO CASE CR 563277 IN ACCORDANCE WITH RC 2929.14(C)(4).

DEFENDANT TO RECEIVE CREDIT FOR TIME SERVED TO DATE; SHERIFF TO COMPUTE ADDITIONAL JAIL CREDIT

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FROM SENTENCING DATE TO DELIVERY TO LCI.
PRC VIOLATION COULD RESULT IN ONE HALF OF 29 YEARS FOR A VIOLATION. TOTAL PRISON TIME BEFORE
ELIGIBLE FOR PAROLE IS 29 YEARS.
DEFENDANT DECLARED INDIGENT.
COSTS WAIVED
TRANSCRIPT AT STATE'S EXPENSE.
APPEAL RIGHTS EXPLAINED.
DEFENDANT INDIGENT. ATTORNEY JEROME EMOFF IS APPOINTED AS APPELLATE COUNSEL, AND IF HE IS
PERMITTED TO WITHDRAW, THE PUBLIC DEFENDER IS APPOINTED IN HIS PLACE.
TIER III SEXUAL OFFENDER DOCUMENTS EXPLAINED AND SIGNED BY DEFENDANT.
DEFENDANT REMANDED.
SHERIFF ORDERED TO TRANSPORT DEFENDANT ANTONIO R CAMPBELL, DOB: 01/29/1982, GENDER: MALE, RACE:
BLACK.

05/14/2013
CPMEJ 07/19/2013 10:14:36

Judge Signature

07/19/2013

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Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 100246 and 100247

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ANTONIO R. CAMPBELL

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-12-563277 and CR-12-562779

BEFORE: Rocco, J., S. Gallagher, P.J., and McCormack, J.

RELEASED AND JOURNALIZED: May 22, 2014



KENNETH A. ROCCO, J.:

{¶1} In this consolidated appeal, defendant-appellant Antonio Campbell appeals from his conviction and sentence stemming from two cases that were tried together. Finding no merit to any of Campbell's assignments of error, we affirm the trial court's final judgment.

{¶2} On May 23, 2012, Campbell was indicted in Cuyahoga C.P. No. CR-12-562779, and charged with aggravated burglary,¹ two counts of gross sexual imposition,² two counts of kidnapping,³ felonious assault,⁴ and rape.⁵ All of the charges were based on a single incident occurring on March 30, 2012, at the Loganberry Apartment Complex involving victim, A.D. ("the A.D. case").

{¶3} On June 25, 2012, Campbell was indicted in Cuyahoga C.P. No. CR-12-563277, and charged with two counts of aggravated burglary,⁶ two counts of

¹This charge carried a repeat violent offender specification and a notice of prior conviction.

²These charges both carried a sexually violent predator specification. The state voluntarily dismissed these specifications.

³Both kidnapping charges carried a repeat violent offender specification and a notice of prior conviction. One of the kidnapping charges carried a sexually violent predator specification and a sexual motivation specification.

⁴This charge carried a repeat violent offender specification, a sexually violent predator specification, and a sexual motivation specification.

⁵This charge carried a repeat violent offender specification, a sexually violent predator specification, a sexual motivation specification, and a notice of prior conviction.

⁶These charges both included a notice of prior conviction and a repeat offender specification.

kidnapping,⁷ felonious assault,⁸ aggravated robbery,⁹ and rape.¹⁰ The charges in this indictment were related to two incidents occurring at the Loganberry Apartment Complex in March 2012, both involving M.W. (“the M.W. case”).¹¹ The rape charges stem from the first incident, and the assault charges stem from the second incident.

{¶4} The state filed a motion requesting that the trial court join the A.D. and M.W. cases. Campbell filed a motion for relief from prejudicial joinder. The trial court granted the state’s motion and denied Campbell’s motion. Thereafter, Campbell waived his right to a jury trial and elected to proceed with a bench trial.

{¶5} Following the bench trial, the trial court found Campbell guilty on all counts and specifications in the A.D. case, except that it reserved judgment

⁷These charges both included a notice of prior conviction, and a repeat offender specification. One of the kidnapping charges included a sexual motivation specification and a sexually violent predator specification.

⁸This charge included a notice of prior conviction and a repeat offender specification. The charge originally included a sexual motivation specification and sexually violent predator specification but the state voluntarily dismissed those specifications.

⁹This charge included a notice of prior conviction and a repeat offender specification.

¹⁰This charge included a notice of prior conviction, a repeat offender specification, and a sexually violent predator specification.

¹¹M.W. is a transgender person who is physiologically a male but presents as a female. Because M.W. identifies as a female, M.W. is referred to throughout this opinion using feminine pronouns.

on the issue of whether the sexually violent predator specification would apply. In the M.W. case, the trial court found Campbell guilty on both counts of aggravated burglary, both counts of kidnapping, misdemeanor assault (as a lesser included offense of felonious assault), and rape. The trial court found Campbell not guilty of aggravated robbery in the M.W. case. The trial court also convicted Campbell for the repeat violent offender and notice of prior conviction specifications on each of the counts in the M.W. case and on the sexual motivation specification on one of the kidnapping charges. And, as in the A.D. case, the trial court deferred judgment on whether the sexually violent predator specifications would apply.

{¶6} The trial court conducted a separate bench trial on the sexually violent predator specifications. Following that trial, the court found Campbell guilty of all four sexually violent predator specifications that applied to one count of kidnapping and one count of rape in the A.D. case, and to one count of kidnapping and one count of rape in the M.W. case.

{¶7} After determining that some of the charges in the case were subject to merger, Campbell was sentenced to consecutive sentences as follows: (1) 12 years to life for the rape in the M.W. case; (2) 5 years for the aggravated burglary in the M.W. case; and (3) 12 years to life for the rape in the A.D. case.

{¶8} Campbell now appeals, setting forth ten assignments of error for our review:

- I. The trial court violated Campbell's due process rights when it improperly joined two separate and distinct rape cases and when it improperly considered the evidence of each case as other acts evidence in the other case.
- II. The trial court committed reversible error and violated Campbell's constitutional right to a fair trial by allowing the prosecutor to admit prejudicial hearsay testimony.
- III. The trial court committed reversible error and violated Campbell's right to a fair trial when it improperly permitted a police officer to bolster the credibility of the alleged victim's testimony.
- IV. Campbell was denied his right to a fair trial as the result of prosecutorial misconduct.
- V. Campbell's convictions involving M.W. are against the manifest weight of the evidence.
- VI. Campbell's convictions involving A.D. are against the manifest weight of the evidence.
- VII. Campbell's aggravated burglary convictions are not supported by legally sufficient evidence.

- VIII. Campbell was denied effective assistance of counsel at his initial trial.
- IX. The trial court committed reversible error by allowing the prosecutor to introduce prejudicial hearsay testimony at the trial on the sexually violent predator specification.
- X. Campbell was denied effective assistance of counsel at his trial on the sexually violent predator specification.

We address the assignments of error out of order where practical. For the reasons that follow, we overrule all assignments of error.

{¶9} In his first assignment of error, Campbell argues that the trial court erred in joining the A.D. case and the M.W. case. A trial court “may order two or more cases be tried together ‘if the offenses * * * could have been joined in a single indictment * * *.’” *State v. Harris*, 8th Dist. Cuyahoga Nos. 98183 and 98184, 2013-Ohio-484, ¶ 8, quoting Crim.R. 13. Two or more offenses may be joined in a single indictment if the offenses “are of the same or similar character * * * 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).

{¶10} Although the law generally favors the joinder of offenses that are of the “same or similar character,” Crim.R. 14 provides that a defendant may move to sever the charges on the basis that joinder will prejudice the defendant. *Harris* at ¶ 8, citing *State v. Lott*, 51 Ohio St.3d 160, 163, 555 N.E.2d 293 (1990). The state may rebut this claim by showing that evidence of the joined offenses would be admissible even if the counts were severed, or by demonstrating that evidence of each crime joined at trial was so simple and distinct that the factfinder was able to segregate the evidence between the two offenses. *Id.* at ¶ 9, citing *State v. Diar*, 120 Ohio St.3d 460, 2008-Ohio-6266, 900 N.E.2d 565, ¶ 96. We will not overturn a trial court’s order denying a defendant’s motion for severance unless the defendant demonstrates that his

rights were prejudiced and that the trial court abused its discretion in denying severance. *Id.*, citing *Diar* at ¶ 95.

{¶11} Applying the foregoing to the instant case, we conclude that Campbell has not demonstrated that he was prejudiced by the joinder. Campbell waived his right to a jury trial, and his case was tried to the bench:

The Ohio Supreme Court has repeatedly recognized that when a judge hears evidence in a bench trial, the trial court must be presumed to have “considered only the relevant, material, and competent evidence in arriving at its judgment unless it affirmatively appears to the contrary.” *State v. Post*, 32 Ohio St.3d 380, 384, 513 N.E.2d 754 (1987), quoting *State v. M.W.*, 15 Ohio St.2d 146, 239 N.E.2d 65, paragraph two of the syllabus (1968).

State v. Thomas, 8th Dist. Cuyahoga No. 90623, 2008-Ohio-6148, ¶ 34.

Campbell has not pointed out anything in the record that would lead us to conclude that the trial court considered improper evidence in determining Campbell's guilt.

{¶12} Campbell argues that he was prejudiced because the only reason that he waived his constitutional right to a jury trial was because the trial court had granted the state's motion for joinder and denied his motion for severance. Assuming that this would form the basis for a viable claim of prejudice, the record does not support Campbell's contention. Campbell concedes that there is no discussion on the record regarding the reason why Campbell decided to waive his right to a jury trial. The first assignment of error is overruled.

{¶13} In his second assignment of error, Campbell argues that the trial court erred in allowing the prosecutor to introduce prejudicial hearsay. Campbell's counsel did not object to any of the evidence raised in this assignment of error, so our review is limited to plain error. *State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, 892 N.E.2d 864, ¶ 52. Under Crim.R. 52(B), "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." But even if an error exists, Campbell bears the burden of demonstrating that the outcome of the trial clearly would have been different but for the error. *See State v. Long*, 53 Ohio St.2d 91, 372 N.E.2d 804 (1978), paragraph two of the syllabus.

{¶14} "The main premise behind the hearsay rule is that the adverse party is not afforded the opportunity to cross-examine the declarant." *State v. Primeau*, 8th Dist. Cuyahoga No. 97901, 2012-Ohio-5172, ¶ 69. For this reason, we have found hearsay errors to be harmless where the defense had the opportunity to cross-examine the declarant. *Id.* *See also State v. Thompson*, 8th Dist. Cuyahoga No. 99846, 2014-Ohio-1056, ¶ 31.

{¶15} In this case, all of the alleged hearsay that Campbell objects to involves statements made by A.D. and M.W. Both A.D. and M.W. testified at trial and were subject to cross-examination. Accordingly, assuming Campbell is correct that inadmissible hearsay was entered into evidence, Campbell cannot demonstrate that there was plain error.

{¶16} Furthermore, when the trial court is the trier of fact, we presume that the judge disregards improper hearsay evidence unless there is affirmative evidence in the record to the contrary. *State v. Crawford*, 8th Dist. Cuyahoga No. 98605, 2013-Ohio-1659, ¶ 61. Campbell has not pointed to any statements made by the trial court that would lead us to conclude that the trial court considered inadmissible hearsay evidence in reaching its decision. For the aforementioned reasons, we overrule the second assignment of error.

{¶17} In his third assignment of error, Campbell argues that the trial court erred by improperly permitting a police sergeant to bolster the credibility of A.D.'s testimony. Sgt. Denise DeBiase of the Richmond Heights Police Department spoke with A.D. following the rape. Sgt. DeBiase testified for the prosecution at trial and testified that A.D. "was very honest" in telling her that A.D. and Campbell had smoked marijuana prior to the rape. Tr. 248-249. Such testimony is inadmissible, because "[i]t is undisputed that a police officer may not testify as to a witness's veracity." *State v. Williams*, 8th Dist. Cuyahoga No. 95796, 2011-Ohio-5483, ¶ 56.

{¶18} Campbell asserts that his counsel never objected to this testimony, but the record reveals that defense counsel did, in fact, raise an objection. Tr. 249. The prosecutor then said, "Never mind, I withdraw it." *Id.* The trial court did not rule on the objection, but we presume that the trial court followed the rules of evidence. We, therefore, conclude that, in its role as factfinder, the trial

court did not consider DeBiase's testimony that A.D. was "was very honest." See *State v. Corbin*, 8th Dist. Cuyahoga No. 82266, 2004-Ohio-2847, ¶ 10-19. Accordingly, we overrule the third assignment of error.

{¶19} In his fourth assignment of error, Campbell argues that he was denied his right to a fair trial due to prosecutorial misconduct. When reviewing a claim of prosecutorial misconduct, this court's task is to determine whether the comments and questions by the prosecution were improper and, if so, whether they prejudiced the appellant's substantial rights. *State v. Treesh*, 90 Ohio St.3d 460, 480, 739 N.E.2d 749 (2001). A conviction will not be reversed based on prosecutorial misconduct unless the misconduct can be said to have deprived the appellant of a fair trial based on the entire record. *Lott*, 51 Ohio St.3d at 166, 555 N.E.2d 293. "The touchstone of analysis 'is the fairness of the trial, not the culpability of the prosecutor.'" *State v. Gapen*, 104 Ohio St.3d 358, 2004-Ohio-6548, 819 N.E.2d 1047, ¶ 92, quoting *Smith v. Phillips*, 455 U.S. 209, 219, 102 S.Ct. 940, 71 L.Ed.2d 78 (1982). Because Campbell's counsel did not raise any objections at trial based on prosecutorial misconduct, we review Campbell's arguments under the plain-error standard of review. See *Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, 892 N.E.2d 864, at ¶ 52.

{¶20} Campbell argues that the prosecutor made a number of improper statements during closing arguments. But because this was a bench trial, we presume that the trial court was able to separate the wheat from the chaff. If

the prosecutor made improper comments during closing arguments, we presume that the trial court did not consider those comments in reaching its verdict, unless the defendant marshals affirmative evidence to the contrary. *See State v. Nelson*, 8th Dist. Cuyahoga No. 81286, 2003-Ohio-559, ¶ 21-24. Campbell has not effectively rebutted that presumption. Moreover, assuming that improper comments were made, Campbell cannot demonstrate that the outcome of the trial would have been different but for these comments. Finding no plain error, we overrule the fourth assignment of error.

{¶21} In Campbell's eighth assignment of error, he argues that he received ineffective assistance of counsel at his initial trial. A criminal defendant has the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To demonstrate ineffective assistance of counsel, a defendant must satisfy both parts of a two-prong test. *Id.* at 687. The first prong requires that the defendant show that his trial counsel's performance was so deficient that the attorney was not functioning as the counsel guaranteed by the Sixth Amendment to the United States Constitution. *Id.*

{¶22} Under the second prong, the defendant must establish that counsel's "deficient performance prejudiced the defense." *Id.* We determine prejudice by analyzing whether "there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different."

Id. at 694. “Reasonable probability” is defined as probability sufficient to undermine confidence in the outcome. *Id.* The failure to prove either prong of the *Strickland* test is fatal to a claim of ineffective assistance. *Id.* at 697.

{¶23} Campbell argues that his counsel was ineffective at his initial trial because he repeatedly failed to object to inadmissible and prejudicial evidence as well as improper prosecutorial arguments. The evidence and prosecutorial arguments that Campbell alludes to are the same ones that Campbell raises in his second, third, and fourth assignments of error.

{¶24} With regard to the bolstering, defense counsel did object, so Campbell cannot show that counsel was deficient. And a review of the record does not convince us that counsel’s performance affected the outcome of the trial, especially in light of the fact that the case was tried to the bench.

{¶25} Campbell argues that his counsel failed to object to corroborative hearsay. But the declarants were the two victims, both of whom testified, in detail, as to how Campbell had raped them. The trial court could have found the victims’ testimony credible even without any corroborative testimony. And we presume that the trial court disregarded any inadmissible hearsay testimony. We similarly presume that the trial court disregarded any improper statements made by the prosecutor during closing arguments. For these reasons, we cannot say that there is a reasonable probability that without the

alleged errors, the outcome of the trial would have been different. Accordingly, we overrule the eighth assignment of error.

{¶26} In his tenth assignment of error, Campbell argues that he received ineffective assistance of counsel at his trial on the sexually violent predator specification. Applying the *Strickland* standard, we conclude that Campbell cannot demonstrate that he was prejudiced by any of his counsel's alleged deficiencies.¹² R.C. 2971.01(H)(1) defines a "sexually violent predator" as "a person who, on or after January 1, 1997, commits a sexually violent offense and is likely to engage in the future in one or more sexually violent offenses."

{¶27} Before the trial on the sexually violent predator specification commenced, the trial court indicated that it was unclear on whether it could find that the specification applied based on the underlying convictions alone. The state pointed out to the trial court that under *State v. Boynton*, 8th Dist. Cuyahoga No. 93784, 2010-Ohio-4670, the current version of the statute "allows an offender to be classified and sentenced as a sexually violent predator based

¹²Campbell argues that we should apply *United States v. Cronin*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984), to this assignment of error because there was an actual breakdown of the adversarial process during the trial on the sexually violent predator specification. We are unconvinced. *Cronin* "stands for the proposition that there are rare cases involving Sixth Amendment right to counsel violations, which are presumptively prejudicial." *State v. Dobson*, 8th Dist. Cuyahoga No. 92669, 2010-Ohio-2339, ¶ 16. Such cases exist where there is a complete denial or absence of counsel or where counsel completely fails to test the prosecution's case. *Id.* Campbell's counsel was present, participated in the trial, and cross-examined both witnesses. *Cronin* is inapplicable.

on the conviction of the underlying offense contained in the indictment.” *Id.* at ¶ 5.

{¶28} Campbell argues that his counsel was deficient because he was not up-to-date on current law. In support of this argument, Campbell points out that his counsel argued that the underlying convictions should not be considered in determining whether the specification should be applied. But even if Campbell’s counsel misstated the law, we fail to see how Campbell was prejudiced by this error. Counsel’s mistaken view of the law resulted in counsel making an argument that, if true, would have favored Campbell. And even if counsel had known the law under *Boynton*, counsel could not have changed the fact that Campbell had been convicted for rape in the two underlying cases and that the trial court could find that Campbell was a sexually violent predator based on those convictions.

{¶29} Campbell also argues that his counsel was ineffective in failing to object to hearsay testimony. The state put on two witnesses, both detectives. The first detective testified about the facts underlying Campbell’s earlier conviction for sexual battery, and Campbell argues that his counsel should have objected to portions of this testimony on the basis that it was inadmissible hearsay. The second detective testified about Campbell’s subsequent conviction for failing to register as a sex offender following his release from prison on the sexual battery conviction. The state also entered into evidence two journal

entries setting forth his convictions in these two cases. Campbell did not dispute that he was convicted of the offenses that were set forth in the journal entries.

{¶30} We conclude that the result of the proceeding would not be different even if counsel had raised hearsay objections. The trial court could easily determine that the sexually violent predator specification applied in light of the two journal entries that were admitted into evidence along with the two rape convictions in the A.D. case and the M.W. case. And, further, we presume that the trial court, as the trier of fact, disregarded any inadmissible hearsay evidence. See *Crawford*, 8th Dist. Cuyahoga No. 98605, 2013-Ohio-1659 at ¶ 61. The tenth assignment of error is overruled.

{¶31} We also overrule the ninth assignment of error. Campbell argues here that the trial court erred in allowing the prosecutor to introduce prejudicial hearsay testimony at the trial on the sexually violent predator specification. This is the same hearsay testimony that Campbell raises in the tenth assignment of error. Because trial counsel did not object to the testimony, our review is limited to plain error. *Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, 892 N.E.2d 864, at ¶ 52.

{¶32} As discussed earlier, the state presented ample other evidence to demonstrate that the sexually violent predator specification could apply to Campbell. The alleged hearsay testimony pertained to a conviction that was

also proven through the admission of a journal entry. Furthermore, we presume that the trial court disregarded any inadmissible hearsay evidence. Accordingly, Campbell cannot demonstrate that the outcome of the trial would be different but for the error. The ninth assignment of error is overruled.

{¶33} In his seventh assignment of error, Campbell argues that his convictions for aggravated burglary were not supported by legally sufficient evidence. We disagree. When reviewing the record on a sufficiency challenge, “the relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶ 77, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶34} In the A.D. case, Campbell was convicted on one count of aggravated burglary. In the M.W. case, Campbell was convicted on two counts of aggravated burglary; one count was in conjunction with the date of the rape incident and the other was in conjunction with the date of the assault incident. All of the aggravated burglary charges were pursued under R.C. 2911.11(A)(1), which required the state to prove that Campbell “by force, stealth, or deception, * * * trespass[ed] in an occupied structure * * * with [the] purpose to commit * * * any criminal offense,” and inflicted, or attempted to inflict, or threatened

to inflict physical harm on another. Campbell points out that he was invited into the apartments on all three occasions.

{¶35} We have consistently read the Ohio Supreme Court's decision in *State v. Steffen*, 31 Ohio St.3d 111, 115, 509 N.E.2d 383 (1987), as standing for the proposition that "a violent crime committed in the residence of one other than the defendant always constitutes aggravated burglary (i.e., the commission of the crime terminates the privilege to remain in the home)." *State v. Mitchell*, 8th Dist. Cuyahoga No. 94287, 2010-Ohio-5775, ¶ 15. *See also State v. Johnson*, 8th Dist. Cuyahoga No. 97698, 2012-Ohio-3812, ¶ 18 (relying on *Steffen* in affirming an aggravated burglary conviction and concluding that, even if the defendant had permission to enter the victim's residence, that permission was revoked when the defendant committed an "act of violence against a person who has the authority to revoke the privilege of initial entry"); *State v. Hill*, 8th Dist. Cuyahoga No. 95379, 2011-Ohio-2523, ¶ 25 (same).

{¶36} The state's evidence demonstrated that, on all three occasions, Campbell committed a violent crime against the victim while inside the victim's residence. In the A.D. case, the victim testified that Campbell choked and raped A.D. in her apartment. In the M.W. case, the victim testified that Campbell raped her in her apartment. The victim testified that on a separate occasion, Campbell repeatedly punched her while in her apartment. Regardless of how he initially gained entry, any permission given to Campbell to enter the

apartments was revoked once he committed the violent acts against the victims.¹³ See *Mitchell* at ¶ 15.

{¶37} Campbell's position on appeal is that the case law in our district reads *Steffen* too broadly, and that we should, therefore, reconsider our interpretation of *Steffen*. But stare decisis compels us to follow our prior decisions and so we must decline Campbell's invitation. Construing the evidence in the light most favorable to the prosecution, the evidence was sufficient to sustain each conviction of aggravated burglary and we overrule the seventh assignment of error.

{¶38} In his fifth assignment of error, Campbell argues that the convictions stemming from the M.W. case are against the manifest weight of the evidence. In evaluating whether a conviction is against the manifest weight of the evidence, this court sits as the 13th juror. We are tasked with reviewing the entire record, weighing the evidence and all reasonable inferences, considering the witnesses' credibility, and determining whether the jury clearly lost its way such that there was a manifest miscarriage of justice. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). We should grant a new trial only in the exceptional case where the evidence weighs heavily against the conviction.
Id.

¹³Campbell does not challenge the sufficiency of the evidence for the rape convictions or assault convictions, and so, for purposes of this analysis, we presume that the acts of violence took place.

{¶39} Although we consider the credibility of witnesses in a challenge to the manifest weight of the evidence, we do so with the caveat that the trier of fact is in the best position to determine a witness' credibility through its observation of his or her demeanor, gestures, and voice inflections. *State v. Williams*, 8th Dist. Cuyahoga No. 98210, 2013-Ohio-573, ¶ 31, citing *State v. Clark*, 8th Dist. Cuyahoga No. 94050, 2010-Ohio-4354, ¶ 17.

{¶40} Campbell argues that his convictions in the M.W. case are against the manifest weight of the evidence because M.W. was not a credible witness. Campbell asserts that M.W.'s rape allegation makes "little sense." In support of this argument Campbell points out the following: (1) Campbell and M.W. were friends; (2) Campbell had never suggested any sexual interest in M.W.; (3) Campbell was heterosexual; (4) M.W. is a transgender person and is physiologically a man; (5) there was no evidence of any problems between Campbell and M.W.; and (6) the alleged rape was "unprovoked" and "came out of nowhere." Campbell Br. 30. Campbell asserts that M.W.'s allegations are "bizarre" and that they are unsupported by any physical evidence.

{¶41} We first note that violent crimes often make "little sense" and a guilty verdict is not against the manifest weight of the evidence simply because the defendant's violent conduct is irrational or because there is no evidence that the victim "provoked" the defendant. If anything here makes "little sense," it is Campbell's argument that he can avoid a guilty verdict for raping a transgender

person simply by asserting that he is heterosexual.¹⁴ And we see no connection between M.W.'s credibility as a witness and the fact that Campbell had not expressed a sexual interest in M.W. prior to the rape.

{¶42} Furthermore, Campbell's convictions are not against the manifest weight of the evidence due to a lack of physical evidence. M.W. testified that she did not seek medical attention following the rape. The evidence for the rape in this case was based on the victim's testimony. "Hospital admissions do not, per se, have any relationship to credibility." *In re D.B.*, 8th Dist. Cuyahoga No. 84831, 2005-Ohio-1864, ¶ 14. The evidence in the M.W. case does not weigh heavily against conviction and so we overrule the fifth assignment of error.

{¶43} We also overrule Campbell's sixth assignment of error, which is based on his assertion that the convictions stemming from the A.D. case are against the manifest weight of the evidence. Campbell asserts that A.D. was not a credible witness and that her claim that she was raped is unsupported by the medical records. Campbell argues that the record supports his contention that A.D. and Campbell engaged in consensual sex.

{¶44} First, Campbell points out that there was no evidence of injuries or trauma to A.D.'s genitalia. But "a physical injury is not a condition precedent

¹⁴And it is not even clear from the record that Campbell was aware of the fact that M.W. was physiologically a man. M.W. testified that she presented as a woman and that she had never indicated to Campbell that she was a transgender person.

to a conviction for rape; not all rape victims exhibit signs of physical injury.” *State v. Leonard*, 8th Dist. Cuyahoga No. 98626, 2013-Ohio-1446, ¶ 46. Furthermore, the state presented evidence of other physical injuries that corroborated A.D.’s testimony that the sexual contact was not consensual. A.D. testified that just before the rape, Campbell choked her almost to the point of unconsciousness. Trial testimony established that A.D. went to two different hospitals following the rape. A.D. first went to Richmond Medical Center and reported that she had been choked and raped, and she was admitted into the emergency room. Because there was no nurse trained to perform a sexual assault examination, A.D. was told to go to Hillcrest Hospital. A.D. was later examined by a sexual assault nurse at Hillcrest.

{¶45} Two different nurses, one from Richmond Medical and one from Hillcrest, both testified at trial that they observed petechiae around A.D.’s eyes and behind her ears. The trial court heard testimony that petechiae are broken blood vessels appearing as red dots on the skin, and that petechiae around the eyes and ears is often caused by strangulation.

{¶46} Campbell counters that there was also testimony that petechiae is not always caused by strangulation. He further notes that A.D. had red marks on her face at the time of trial that was almost a year after the alleged rape. A.D. testified that she had red bumps on her face at trial because she was under stress. According to Campbell, the red marks that the nurses found on A.D.’s

face were these same stress-related marks and not petechiae. Campbell asserts that A.D. was under extreme stress at the time that she engaged in consensual sex with Campbell, because she was having financial and relationship difficulties.

{¶47} But based on the record, the factfinder could determine that the red marks on A.D.'s face at trial were different from the petechiae reported by the nurses. The testimony established that petechiae is generally flat and is beneath the skin's surface, whereas acne is textured and appears on the skin's surface. Two trained, medical professionals independently identified petechiae around A.D.'s eyes and behind her ears at the time that A.D. reported that she was raped. In contrast, the red marks on A.D.'s face at trial were described as "pimples."

{¶48} Campbell also argues that A.D.'s testimony was not credible because her initial testimony that she received medical treatment for bleeding from scratches on her neck turned out to be false. Although the nurse at Hillcrest noted abrasions on A.D.'s neck, no injuries were noted by the nurse or doctor from Richmond Medical, the first hospital where A.D. went for treatment. To the extent that this can be characterized as inconsistent testimony, this is not the kind of inconsistency that would lead us to conclude that the evidence weighed heavily against conviction. A.D. testified that Campbell strangled her and that she sustained injury to her neck as a result of

that strangulation. The medical records from Hillcrest indicating abrasions on A.D.'s neck supported her allegation. We conclude that the medical evidence did not negatively impact on A.D.'s credibility as a witness. To the contrary, the medical evidence supported A.D.'s claim that she was choked and that the sex was not consensual.

{¶49} Campbell also attacks A.D.'s credibility because she was addicted to drugs, she owed Campbell money, and she had no financial means to pay off a drug debt she owed to Campbell. Campbell claims that A.D. engaged in consensual sex with Campbell in order to pay off her debt. "On issues of credibility, where there is no evidence [that] the [factfinder] lost its way in its assessment and resolving conflicts in evidence, we defer to the [factfinder]."

State v. Ortiz, 8th Dist. Cuyahoga No. 89952, 2008-Ohio-4120,

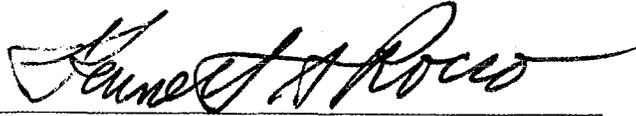
¶ 25. The trial court was apprised of A.D.'s drug addiction and her financial situation. As the trier of fact, the trial court was in the best position to observe A.D. and to assess her credibility. A.D. was not inherently incapable of rendering credible testimony merely because she was addicted to drugs and lacked money to pay off her drug debt. For the aforementioned reasons, we conclude that the evidence in the A.D. case does not weigh heavily against conviction and so we overrule the sixth assignment of error.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution. Defendant's convictions affirmed.

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

A handwritten signature in black ink, appearing to read "Kenneth A. Rocco", written in a cursive style. The signature is positioned above a horizontal line.

KENNETH A. ROCCO, JUDGE

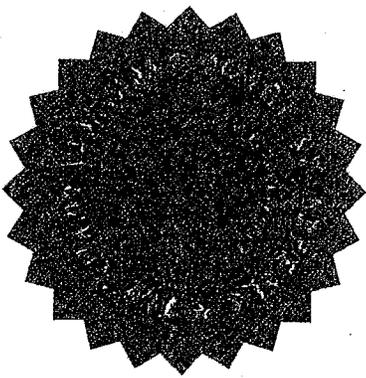
SEAN C. GALLAGHER, P.J., and
TIM McCORMACK, J. CONCUR

The State of Ohio, }
Cuyahoga County. } ss.

I, GERALD E. FUERST, Clerk of the Court of

Appeals within and for said County, and in whose custody the files, Journals and records of said Court are required by the laws of the State of Ohio, to be kept, hereby certify that the foregoing is taken and copied from the Journal entry dated on 5/22/14 CA 10246

of the proceedings of the Court of Appeals within and for said Cuyahoga County, and that the said foregoing copy has been compared by me with the original entry on said Journal entry dated on 5/22/14 CA 10246 and that the same is correct transcript thereof.



In Testimony Whereof, I do hereunto subscribe my name officially, and affix the seal of said court, at the Court House in the City of Cleveland, in said County, this 22 day of May A.D. 20 14

GERALD E. FUERST, Clerk of Courts

By [Signature] Deputy Clerk