COURT OF APPEALS
DECISION
DATED AND FILED

August 27, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal Nos. 2008AP2475-CR
2008AP2476-CR
2008AP2477-CR

Cir. Ct. Nos. 2005CF407
2005CF422
2005CF424

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EDWARD L. CRAMER, JR.,

DEFENDANT-APPELLANT.

APPEAL from judgments and orders of the circuit court for Columbia County: JOHN R. STORCK, Judge. *Affirmed*.

Before Dykman, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Edward Cramer, Jr., appeals from judgments convicting him on seven counts of second-degree sexual assault of a child, and

two counts of repeated sexual assaults of the same child. He also appeals from orders denying him postconviction relief, but raises no issues concerning those orders. The State originally filed three complaints, each charging assaults against a different victim. The cases were subsequently joined and tried together to a jury. The sole issue on appeal is whether the trial court properly ordered joinder of the three prosecutions. We affirm.

¶2 The information in case No. 2005CF407 charged Cramer with repeated sexual assaults of Amanda R.M., DOB 12/27/1989, in 2002, and two counts of second-degree sexual assaults of Amanda in July 2005. The information in No. 2005CF422 charged him with repeated sexual assaults of Mallory K.H., DOB 08/16/1990, between April and September 2005. The information in No. 2005CF424 charged five counts of second-degree sexual assault of Samantha S.D., DOB 10/01/1989, two committed on April 1, 2005 and three committed on July 11, 2005. On the State's motion, and over Cramer's objection, the court joined the three cases. The court concluded that the charges were similar in character, and constituted a common plan or scheme. The court also applied the test for other acts evidence set forth in ***State v. Sullivan***, 216 Wis. 2d 768, 783-90, 576 N.W.2d 30 (1998), and concluded that evidence of the offenses in each case would be admissible in prosecuting the offenses charged in the other cases, even if they were tried separately. Cramer's appeal follows guilty verdicts and convictions on all nine of the charged offenses.

¶3 The trial court may order that crimes charged in two or more complaints or informations be tried together if the State could charge them in a

single complaint or information. WIS. STAT. § 971.12(4) (2007-08).[1] The State may charge crimes in a single complaint or information if, among other things, they are of the same or similar character, or constitute parts of a common scheme or plan. WIS. STAT. § 971.12(1). "To be of the 'same or similar character' …, crimes must be the same type of offenses occurring over a relatively short period of time and the evidence as to each must overlap." ***State v. Hamm***, 146 Wis. 2d 130, 138, 430 N.W.2d 584 (Ct. App. 1988).

¶4 The court should not grant joinder if the defendant can show substantial prejudice. ***State v. Locke***, 177 Wis. 2d 590, 597, 502 N.W.2d 891 (Ct. App. 1993). Because the defendant cannot show substantial prejudice if evidence of the other charged crimes would be admissible in separate trials, the test for joinder includes an analysis of the charged crimes under the test for admitting other acts evidence. *See* ***id.*** Under that test the court uses a three-part analysis to determine whether the evidence is admissible for a proper purpose under WIS. STAT. § 904.04(2), whether it is relevant, and whether the probative value outweighs the danger of unfair prejudice. *See* ***Sullivan***, 216 Wis. 2d at 783-90. The decision on joinder is a matter of trial court discretion. ***Locke***, 177 Wis. 2d at 596-97.

¶5 Cramer contends that the charges involving Amanda should have been tried separately because they were not, in his view, of the same or similar character to those involving Mallory or Samantha. In support he notes that the first set of assaults against Amanda occurred three years before the second set of

[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

assaults against all three girls, Amanda was twelve when first assaulted while Mallory and Samantha were fourteen and fifteen when first assaulted, Amanda was Cramer's stepdaughter while Mallory and Samantha were not related to Cramer, and the charged assaults against Mallory and Samantha involved significantly more intrusive sexual contact than the assaults on Amanda. However, the court reasonably determined that these factors did not outweigh the similarities between the cases, including the fact that all the charged offenses occurred in the same location (Cramer's home), he used the same general methods of approach to assault all three victims, and the contact was of the same general nature even if it progressed to more intrusive contact with Mallory and Samantha. Additionally, only one of the three offenses against Amanda preceded the assaults on the other two girls, while two were contemporaneous. ***Locke*** deemed offenses committed two years apart sufficiently close in time to support joinder, *see* ***id.*** at 595-96, and under the circumstances here we conclude that the one offense against Amanda was sufficiently close in time for joinder with the other offenses against Amanda and with those against the other two victims.

¶6 Cramer next contends that the evidence of his offenses against Mallory and Samantha was inadmissible other acts evidence for the purposes of proving the offenses against Amanda. We disagree. In cases charging sexual assaults against children the "greater latitude rule" permits the more liberal admission of other crimes evidence, and is applied to the entire ***Sullivan*** analysis. ***State v. Davidson***, 2000 WI 91, ¶51, 236 Wis. 2d 537, 613 N.W.2d 606. In ***Davidson*** the State prosecuted the defendant for sexually assaulting his thirteen-year-old niece. The court held admissible, to prove motive and plan or scheme, evidence that the defendant had sexually assaulted an unrelated six-year-old girl ten years previously, in a different manner and in a completely different setting.

Id., ¶¶5, 58-62. The court noted that "defendant's past offense need not be identical to the charged offense in order to be probative. Remoteness in time and differences in age are considerations, but they are not determinative." ***Id.*** at 72. Here, the incidents were much closer in time, the victims much closer in age, all occurred in the same place, and mostly involved the same method of approach, beginning with playful or innocent touching and progressing to sexual contact. Given that the other acts evidence in ***Davidson*** was admissible under the ***Sullivan*** analysis, it follows that the trial court reasonably exercised its discretion in holding the other acts evidence admissible in this case.

By the Court.—Judgments and orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.