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DISTRICT III

December 17, 2019

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You are hereby notified that the Court has entered the following opinion and order:

2018AP1447-CR State of Wisconsin v. Rodney G. Enneper
2018AP1448-CR (L.C. Nos. 2015CF43, 2015CF153)

Before Stark, P.J., Hruz and Seidl, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Rodney Enneper appeals judgments, entered upon a jury's verdicts, convicting him of twenty-five assorted felonies arising from two cases. Enneper argues the circuit court erred by joining the cases for trial. Based upon our review of the briefs and record, we conclude at conference that these cases are appropriate for summary disposition. We further conclude that if

there was any error in joining the cases for trial, it was harmless. Therefore, we summarily affirm the judgments. *See* WIS. STAT. RULE 809.21 (2017-18).[1]

In Oconto County Circuit Court case No. 2015CF43, the State charged Enneper with first-degree sexual assault of a child; repeated sexual assault of a child; four counts of child enticement with the intent to have sexual contact; and five counts of second-degree sexual assault of a child. The complaint alleged that, between 2005 and 2014, Enneper repeatedly enticed and sexually assaulted five underage boys. In Oconto County Circuit Court case No. 2015CF153, the State charged Enneper with fourteen counts of possession of child pornography. The complaint alleged that law enforcement discovered the child pornography on Enneper's computer when searching his house incident to his arrest for child enticement and sexual assault in the other case.

The State moved to join the cases for trial pursuant to WIS. STAT. § 971.12 or, in the alternative, to admit as other acts evidence the charges in each case at the trial in the other case. After a hearing, the circuit court granted the motion for joinder, concluding that the criminal acts in both cases were intertwined and evidence related to the charges in each case would be admissible as other acts evidence at trial in the other case. After a trial, the jury found Enneper guilty of all charges. These appeals follow.

Enneper argues the circuit court erred by joining the two cases. We conclude that any error in joining the cases for trial is harmless. *See* ***State v. Leach***, 124 Wis. 2d 648, 671, 370 N.W.2d 240 (1985) (holding that improper joinder is subject to harmless error analysis). A

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

joinder error is harmless if there is "no reasonable possibility that the error contributed to the conviction." ***State v. Davis***, 2006 WI App 23, ¶21, 289 Wis. 2d 398, 710 N.W.2d 514. Here, the joinder was harmless because, as discussed below, the child pornography evidence would have been admissible as other acts evidence in the sexual assault case and vice versa. *See* ***State v. Bettinger***, 100 Wis. 2d 691, 697, 303 N.W.2d 585 (1981) (holding that if a crime is admissible as other acts evidence, joinder is not prejudicial).

The admissibility of evidence lies within the circuit court's sound discretion. ***State v. Pepin***, 110 Wis. 2d 431, 435, 328 N.W.2d 898 (Ct. App. 1982). In determining the admissibility of other acts evidence, the court must engage in a three-step analysis. ***State v. Sullivan***, 216 Wis. 2d 768, 771-73, 576 N.W.2d 30 (1998). The first inquiry is whether the other acts evidence is offered for an acceptable purpose under WIS. STAT. § 904.04(2), such as establishing motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. ***Id.*** at 772-73. After ascertaining whether the other acts evidence is offered for a permissible purpose under § 904.04(2), the analysis turns to whether the other acts evidence is relevant and, finally, whether its probative value outweighs the danger of unfair prejudice. ***Id.***

In the instant matters, the child pornography evidence could be used to demonstrate Enneper's intent and motive to obtain sexual gratification from pubescent boys in the other case. Likewise, evidence from the sexual assault case could be used to demonstrate Enneper's motive and intent to view child pornography. Further, the other acts evidence is highly relevant in each case, as intent and motive go to elements of the crimes charged. Finally the probative value of the proffered evidence outweighs the danger of unfair prejudice, especially given the ability to utilize cautionary jury instructions. Moreover, Wisconsin recognizes that in child sexual assault

cases, courts permit "greater latitude of proof as to other like occurrences." *See* ***State v. Davidson***, 2000 WI 91, ¶36, 236 Wis. 2d 537, 613 N.W.2d 606.

In his reply brief, Enneper asserts that the circuit court could not use the greater latitude rule to justify admission of the other acts evidence because the victims are now adults. We are not persuaded. The victims were minors at the time of the offenses; therefore, not only would they be less likely to raise issues or discuss the crimes when they happened, but they would be less likely to recall the details of the crimes given their young ages at the time the crimes occurred.

Enneper also asserts that the child pornography evidence is not relevant to motive because an interest in child pornography is not akin to an interest in "actually assaulting" a child. Enneper, however, fails to explain why child pornography evincing a sexual desire for pubescent boys is unrelated to sexual contact with pubescent boys, nor why sexual contact with pubescent boys would not be evidence of Enneper's desire for sexual gratification obtained through observing child pornography involving pubescent boys. While looking at child pornography involving boys is certainly distinguishable from sexually assaulting a boy, there is a common and significant factor between the two—both crimes are connected by Enneper's motive, intent and desire to have sexual gratification involving pubescent boys. The actions may be different, but the reasons for them are the same. Because evidence of the child pornography would be admissible as other acts evidence in the sexual assault case and vice versa, there would have been no purpose to try the cases separately. Thus, we conclude that if there was any error in joining the cases, the error was harmless.

Upon the foregoing,

IT IS ORDERED that the judgments are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals