STATE OF LOUISIANA

VERSUS

PAUL J. ANTOINE JR.

NO. 24-KA-418

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 19-4567, DIVISION "J"
HONORABLE STEPHEN C. GREFER, JUDGE PRESIDING

April 02, 2025

JOHN J. MOLAISON, JR.
JUDGE

Panel composed of Judges Marc E. Johnson,
John J. Molaison, Jr., and Timothy S. Marcel

CONVICTIONS AND SENTENCES AFFIRMED

JJM
MEJ
TSM

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STATE OF LOUISIANA

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COUNSEL FOR DEFENDANT/APPELLANT,
PAUL ANTOINE

Gwendolyn K. Brown

MOLAISON, J.

The defendant appeals his criminal convictions and sentences for simple rape and indecent behavior with a juvenile under thirteen. We affirm for the following reasons.

FACTS[1]

On May 1, 2019, K.C. reported to the Jefferson Parish Sheriff's Office ("JPSO") that her minor daughter, M.F.,[2] disclosed that the defendant, Paul J. Antoine, Jr., had touched her vagina twice when she was eight, while K.C. and M.F. were living with him and K.C.'s aunt on the Westbank of Jefferson Parish. M.F. spoke to JPSO Sergeant Kevin Tillman and described incidents when the defendant pulled her pants down and pinned her to a bed with his hands while he rubbed his exposed penis on M.F's vagina over her panties. M.F. told Sergeant Tillman that the assaults had taken place between May 2014 and June 2015 while she was ten and the defendant was fifty-one.[3]

During the 2019 investigation into M.F.'s allegations, a JPSO detective found a police report from 2003, in which a second victim, B.W., alleged that the defendant, her uncle, had raped her on the Westbank of Jefferson Parish when she was sixteen. Law enforcement located B.W., and during an interview on July 17, 2019, she corroborated the details of the rape first reported to police in 2003.

On June 21, 2019, Detective Robinson from the JPSO obtained an arrest warrant for the defendant based on M.F.'s disclosure.

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[1] Because sufficiency of the evidence is not raised by the defendant on appeal, we find it unnecessary to recount the offenses that the defendant has been convicted of in graphic detail.

[2] The record shows that M.F. was thirteen at the time she reported the sexual abuse.

[3] M.F. recounted the specific details of the two sexual assaults in interviews at Children's Hospital and the Children's Advocacy Center. One important detail from M.F.'s account, which will be discussed below, was that defendant pinned her to the bed at one point while he molested her.

PROCEDURAL HISTORY

The Jefferson Parish District Attorney filed a bill of information on March 9, 2020, charging the defendant, Paul J. Antoine, Jr., with indecent behavior with M.F., a juvenile under thirteen, in violation of La. R.S. 14:81. The defendant pled not guilty on May 18, 2020. On August 24, 2022, the trial court ruled that the State would be allowed to introduce evidence that the defendant had previously raped B.W, who was a minor at the time of the alleged offense in 2003. The State filed a superseding bill of information on October 31, 2023, charging the defendant with the forcible rape of B.W., a violation of La. R.S. 14:42.1 (count one), and indecent behavior with a juvenile under thirteen in violation of La. R.S. 14:81 (count two). The defendant pled not guilty to count one, a new charge, on November 8, 2023.

After denying the defendant's oral motion to sever the charges, a jury trial commenced on March 12, 2024. On March 15, 2024, the jury returned a responsive verdict of simple rape on count one and found the defendant guilty as charged on count two. After the court denied the defendant's motion for a new trial on April 17, 2024, the defendant waived delays and was sentenced on that same date to consecutive sentences of twenty years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence for count one and fifteen years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence for count two. On May 14, 2024, the trial court denied the defendant's motion for reconsideration of sentence and granted his motion for appeal.

ASSIGNMENTS OF ERROR

1. The trial court erred by denying the motion for a new trial.
2. The 2003 simple rape charge is prescribed.
3. The trial court erred in denying the motion to sever.

4. Mr. Antoine was denied the effective assistance of counsel at trial.

LAW AND ANALYSIS

Assignments of errors one and two

The defendant's first two assignments are related. In summary, he argues that the court should have granted him a new trial because the count for the 2003 offense, count one, of the superseding indictment prescribed before the state instituted the additional charge in 2020. Specifically, the defendant contends that the prescriptive period for the responsive verdict of simple rape should apply even though the state charged him with forcible rape.

As a preliminary matter, we observe that the defendant's prescription claim is not one of the six grounds for relief afforded under La. C.Cr.P. art. 851, which addresses motions for a new trial. We also note that the proper procedural vehicle for this issue would have been to file an arrest of judgment, as provided in La. C.Cr.P. art. 859, which states in part:

> The court shall arrest the judgment only on one or more of the following grounds:
>
> . . .
>
> (7) The prosecution was not timely instituted, if not previously urged.

Although the court had a procedural basis for denying the defendant's prescription claim, we will review the merits of his claim on appeal, as it is also related to his ineffective assistance of counsel assignment of error.

The 2003 charge

The 2003 incident involving B.W., which formed the basis of count one in the superseding indictment, was initially offered by the State under La. C.E. arts. 412.2 and 404(B) to show the "defendant's sexually assaultive behavior and his lustful disposition toward children, and in particular young girls in his family or family home." The State's motion included a JPSO Crime Report dated May 5,

2003. The report contains B.W.'s statement, which details an incident involving the defendant, her uncle through marriage. After picking her up in a van to go to her aunt's house, he drove to an unknown location in Avondale, where he parked and used physical force to get her into the back of the van. The defendant pinned B.W.'s arms above her head with one hand and removed her undergarments with his other hand before having vaginal sex with her. B.W., who was sixteen at the time, told police that she could not throw the defendant off of her because of his weight and size and that she also pleaded unsuccessfully for the defendant to stop. B.W. told police that she had been a virgin before the incident and that she was scared while the defendant raped her. Nothing indicates that the police conducted any further investigation, and the state did not charge the defendant then.

The State's motion to introduce evidence of B.W.'s rape also contained an August 20, 2019, supplemental report by JPSO Detective Blana Robinson. Detective Robinson recounted that she had located B.W. and interviewed her at the JPSO Investigations Bureau on July 16, 2019. B.W. indicated in a recorded statement that she did not want to pursue criminal charges against the defendant. At trial, Detective Robinson testified that B.W. also gave an unrecorded statement that confirmed the details of the rape that she had provided to police in 2003.[4]

The statute of limitations

In 2015, the Louisiana Legislature renamed the crime of forcible rape in La. R.S. 14:42.1 as "second-degree rape."[5] However, the statute still maintained elements of the offense as a rape committed "when the anal, oral, or vaginal sexual

[4] At trial, B.W. testified that she did not scream or fight as she was being raped but also admitted that she did not recall many details of the assault because of the passage of time.

[5] La. R.S. 14:42.1(C) states:

> C. For all purposes, "forcible rape" and "second degree rape" mean the offense defined by the provisions of this Section and any reference to the crime of forcible rape is the same as a reference to the crime of second degree rape. Any act in violation of the provisions of this Section committed on or after August 1, 2015, shall be referred to as "second degree rape".

intercourse is deemed to be without the lawful consent of the victim because it is committed under any one or more of the following circumstances:

> (1) When the victim is prevented from resisting the act by force or threats of physical violence under circumstances where the victim reasonably believes that such resistance would not prevent the rape."

At the time of the offense in 2003, La. C.Cr.P. art. 571 provided that there was no time limitation within which to institute prosecution of forcible rape.[6]

The defendant argues that because the jury found him guilty of the responsive verdict of simple rape, the statute of limitations for that offense should be retroactively applied. La. C.Cr.P. art. 574 is clear, however, that the time limitations applicable to the offense charged apply to a conviction or punishment for a lesser and included offense. In this case, because there is no statute of limitation to prosecute a charge of forcible rape, the responsive verdict of simple rape also would not have been prescribed. Accordingly, the defendant's argument lacks merit.

Assignments of errors one and three

The defendant's first and third assignments of error are related. The defendant argues that the trial court erred in denying his motion for a new trial because it improperly denied his request to sever his two charges.

La. C.Cr.P. art. 495 states that a motion to quash the indictment for misjoinder of offenses is the only method to contest this issue. La. C.Cr.P. art. 535 requires the defense to file the motion to quash before the commencement of trial. When a defendant fails to file a motion to quash the indictment or information, he waives any objection to the misjoinder of offenses. *State v. Manuel*, 20-172 (La. App. 5 Cir. 6/2/21), 325 So.3d 513, 557, *writ denied*, 21-926 (La. 10/12/21), 325

[6] The statute provides:

> There is no time limitation upon the institution of prosecution for any crime for which the punishment may be death or life imprisonment or for the crime of forcible rape (R.S. 14:42.1).

So.3d 1071, *citing State v. Robinson*, 11-12 (La. App. 5 Cir. 12/29/11), 87 So.3d 881, 910, *writ denied*, 12-279 (La. 6/15/12), 90 So.3d 1059. We note that the defendant did not file a motion to quash based on misjoinder, nor did he file a written motion to sever the two counts at any point in the proceedings. This Court has previously held that failing to file a motion to quash objecting to the misjoinder of offenses also waives review on appeal. *State v. Maize*, 16-575 (La. App. 5 Cir. 6/15/17), 223 So.3d 633, 645, *writ denied*, 17-1265 (La. 4/27/18), 241 So.3d 306. Defense counsel did orally move the court to sever the offenses.

While the defendant technically waived his objection of misjoinder, we will consider the claim's merits as it relates to his ineffective assistance of counsel assignment of error.

The trial court first considered the nexus between the defendant's two counts in the context of the State's motion to introduce other crimes evidence. As stated previously, the state discovered a police report for the defendant's 2003 offense during the investigation into his most recent sex offenses. The State argued that the 2003 rape demonstrated that the defendant used a particular *modus operandi* with both victims. The State also asserted that the other crime evidence was relevant to show the defendant's sexually assaultive behavior and his "lustful disposition toward children and, in particular, young girls in his family or family home." At the hearing on the State's motion, the trial court considered the nature of the testimony to be offered by B.W. and the similarity of the allegations by M.F, and the probative value outweighed any chance of prejudice to the defendant. The trial court granted the State's motion to allow evidence of the 2003 rape into evidence. However, the State's amendment of the bill of information to include a charge for the defendant's 2003 offense made the trial court's ruling on admissibility moot.

The joinder of offenses

La. C.Cr.P. art. 493 allows the joinder of offenses that "are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan; provided that the offenses joined must be triable by the same mode of trial." There is no prejudicial effect from the joinder of offenses when the evidence of each is relatively simple and distinct so that the jury can easily keep the evidence of each offense separate in its deliberations. *State v. Achelles*, 16-170 (La. App. 5 Cir. 12/21/16), 208 So.3d 1068, 1080. A defendant alleging a prejudicial joinder of offenses has a heavy burden of proof. *State v. Molette*, 17-697 (La. App. 5 Cir. 10/17/18), 258 So.3d 1081, 1091, *writ denied*, 18-1955 (La. 4/22/19), 268 So.3d 304. This court will not overturn the denial of a motion to sever absent a clear abuse of discretion. *Id.*

On appeal, the defendant denies that the separate crimes demonstrated he has a lustful disposition towards pre-pubescent children and also claims that there are no similarities between the two allegations. The defendant also contends that the joinder of the two offenses had a prejudicial effect because it gave the jury a basis to infer that he is a man with a criminal disposition.

La. C.E. art. 412.2 states, in relevant part:

> A. When an accused is charged with a crime involving sexually assaultive behavior, or with acts that constitute a sex offense involving a victim who was under the age of seventeen at the time of the offense, evidence of the accused's commission of another crime, wrong, or act involving sexually assaultive behavior or acts which indicate a lustful disposition toward children may be admissible and may be considered for its bearing on any matter to which it is relevant subject to the balancing test provided in Article 403.

In *State v. Montero*, 18-397 (La. App. 5 Cir. 12/19/18), 263 So.3d 899, 907, we observed that in enacting Article 412.2, "the Legislature did not see fit to impose a restriction requiring such evidence to meet a stringent similarity requirement for admissibility [citation omitted]." For example, this Court has upheld the

admissibility of other crimes evidence in child sexual assault cases where the charges involved separate victims and the crimes were over fifteen years apart "given the similarities between the two instances of rape of minors with whom defendant was familiar." *State v. Evans*, 19-237 (La. App. 5 Cir. 6/3/20), 298 So.3d 394, 403.

In this case, both charges against the defendant are sexual assaults of a female child. Beyond that, the evidence of each offense was relevant to establish the defendant's propensity to use his authority as an adult family member to gain access to and sexually abuse both victims. Both victims also alleged that the defendant similarly pinned them down while committing the offenses. The state can introduce evidence of the offenses committed against either victim at the trial of the crimes committed against the other. *State v. Burks*, 04-1435 (La. App. 5 Cir. 5/31/05), 905 So.2d 394, 400, *writ denied*, 05-1696 (La. 2/3/06), 922 So.2d 1176.

Potential prejudice to the defendant

In determining whether prejudice results from joinder of offenses, the trial court must consider the following factors: whether the jury would be confused by the various counts; whether the jury would be able to segregate the multiple charges and evidence; whether presenting defenses would confound his in presentation; whether the jury would use the crimes charged to infer a criminal disposition; and whether, considering the nature of the charges, the charging of several crimes would make the jury hostile. *State v. Washington*, 386 So.2d 1368 (La. 1980). Additionally, the trial court must consider whether prejudice from the joinder of offenses can be mitigated by clear jury instructions and by an orderly presentation of evidence by the State. *Manuel*, 325 So.3d at 558. Finally, there is no prejudicial effect from the joinder of offenses when the evidence of each is relatively simple and distinct so that the jury can easily keep the evidence of each offense separate in its deliberations. *State v. Achelles*, *supra*.

In this case, considering the similarity of the offenses, the simplicity of the facts of the offenses, the orderly presentation of evidence at trial, and the positive identification of the defendant as the perpetrator by both victims, we find it unlikely the jury was confused by the joinder or that it prejudiced the defendant. *See State v. Evans*, 03-752 (La. App. 5 Cir. 12/9/03), 864 So.2d 682, 695, *writ denied*, 04-80 (La. 5/7/04), 872 So.2d 1079.

Finally, we observe that the issue of joinder is not grounds for relief in a motion for a new trial under La. C.Cr.P. art. 851. Accordingly, there was a procedural basis for the trial court to deny the defendant's claim.

For the foregoing reasons, this assignment lacks merit.

Ineffective assistance of counsel

In his fourth assignment of error, the defendant claims that he received ineffective assistance of counsel at trial because the issues of a statute of limitations and the joinder of charges were not properly raised or preserved.

Generally, an application for post-conviction relief in district court is appropriate when raising an ineffective assistance of counsel claim, where a full evidentiary hearing can be conducted, if necessary, rather than by direct appeal. *State v. Kimble*, 22-373 (La. App. 5 Cir. 5/8/24), 389 So.3d 902, 927, *writ denied*, 24-882 (La. 12/27/24), 2024 WL 5232585. However, when the record contains sufficient evidence to rule on the merits of the claim and the issue is properly raised in an assignment of error on appeal, we may address the claim in the interest of judicial economy. *State v. Gatson*, 21-156 (La. App. 5 Cir. 12/29/21), 334 So.3d 1021, 1040. Here, we find that the record sufficiently addresses the defendant's claims for ineffective assistance of counsel.

Under the Sixth Amendment to the United States Constitution and Article I, § 13 of the Louisiana Constitution, a defendant is entitled to effective assistance of counsel. *State v. McMillan*, 23-317 (La. App. 5 Cir. 12/27/23), 379 So.3d 788,

798-99, *writ denied*, 24-131 (La. 9/4/24), 391 So.3d 1057. To prove ineffective assistance of counsel, a defendant must show (1) that counsel's performance was deficient, that is, that the performance fell below an objective standard of reasonableness under prevailing professional norms, and (2) that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Robinson*, 23-277 (La. App. 5 Cir. 6/28/23), 368 So.3d 737, 742, *writ denied*, 23-1042 (La. 12/5/23), 373 So.3d 979. We consider an error prejudicial if it is so severe as to deprive the defendant of a fair trial or "a trial whose result is reliable." *Robinson, supra*. To prove prejudice, the defendant must demonstrate that, but for the counsel's unprofessional conduct, the trial's outcome would have been different. *Id.*

As previously discussed, we have reviewed the record and addressed the defendant's prescription claims regarding the 2003 charge and the improper joinder of the two offenses in the superseding bill of information. We have found no merit in either claim for the reasons assigned. Even if we assume the defense counsel was ineffective for the reasons suggested, under *Strickland,* the defendant has not met his burden in demonstrating that filing the motions would have changed the trial's outcome. This assignment of error lacks merit.

ERROR PATENT REVIEW

We reviewed the record for errors patent according to La. C.Cr.P. art. 920; *State v. Oliveaux*, 312 So.2d 337 (La. 1975); and *State v. Weiland*, 556 So.2d 175 (La. App. 5 Cir. 1990). There are no errors that require corrective action.

DECREE

We affirm the defendant's convictions and sentences.

CONVICTIONS AND SENTENCES AFFIRMED

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 2, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

24-KA-418

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE STEPHEN C. GREFER (DISTRICT JUDGE)
ANDREA F. LONG (APPELLEE)
BROOKE A. HARRIS (APPELLEE)
THOMAS J. BUTLER (APPELLEE)
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