STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Case Numbers Case No. 2014AP002900 - CR and
2014AP002899 - CR Consolidated

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

ERIC CHRISTOPHER BELL,
Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF
CONVICTION, AND SENTENCE ENTERED IN THE
CIRCUIT COURT FOR MILWAUKEE COUNTY
THE HONORABLE REBECCA DALLET, PRESIDING

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

Should Eric Christopher Bell should be granted a new trial because joinder of case files 11 CF 801 and 11 CF 1332 for trial was improper under s. 971.12, Wis Stats., and because it violated his due process rights to a fair trial under Fifth and Fourteenth Amendments of the United States Constitution and Article I, § 8 of the Wisconsin Constitution.

The trial court answered: No.

POSITION ON ORAL ARGUMENT AND PUBLICATION

The briefs of the parties should fully present the issues on appeal and develop the relevant theories and legal authorities. Therefore, the defendant-appellant does not believe oral argument is necessary.

Publication is publication is not requested.

STATEMENT OF CASE

February 16, 2011, the state filed a complaint in 11 CF 819 (14AP2899CR) charging Eric Christopher Bell with two counts of second degree sexual assault of a child.(2899-2).

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February 23, 2011, Bell pled not guilty to the charges in 11 CF 810.(2899-22: 3).

March 25, 2011, the state filed a complaint in 11 CF 1332 (14AP2900CR), charging Eric Christopher Bell with two counts of first degree sexual assault of a child, three counts of repeated sexual assault of the same child, two counts of incest with a child, and one count of second degree sexual assault of a child.(2900-2).

April 12, 2011 motion for joinder filed in 11 CF1332.(2900-6).

May 16, 2011, Bell pled not guilty charges in 11 CF 1332.(2900-45: 2).

May 16, 2011, State filed a motion to consolidate both cases for trial.(2899-7; 2900-45: 2).

June 3, 2011, circuit court orders cases consolidated for a jury trial.(2900-46: 9).

January 23-27, 2012, jury trial held.(2900-49, 50, 51,52,53, 54,55).

January 30, 2012, jury trial held.(2900-56).

January 30, 2012, Jury found Bell guilty on all charges.(2900-56: 97-99).

April 27, 2012, in 11 CF 1332, Bell was sentenced to three concurrent terms of fifteen years initial confinement and ten years extended supervision on one count of first degree sexual assault, one count of repeated first degree sexual assault and one count of incest; he was sentenced to another three concurrent terms of fifteen years initial confinement and ten years extended supervision on one count of first degree sexual assault, one count of repeated first degree sexual assault and one count of incest - consecutive to the previous sentence; and a final two concurrent terms of fifteen years initial confinement and ten years extended supervision on the last count of repeated sexual assault and one count of second degree sexual assault - consecutive to all other sentences. In 11 CF 810, he was sentenced to two consecutive terms of seven years initial confinement and seven years extended supervision.(2900-57: 38-40, 30, 2899-17).

July 15, 2014, Bell filed a timely notice of appeal in both cases, 2014AP1655CR (11CF810) and 2014AP1656CR (11CF1332).(2899-19, 2900-42)

October 16, 2014, on Bell's motion this court dismissed

those appeals and set a new deadline for filing for postconviction relief.(2899-25,2900-59)

December 15, 2014, a new notice of appeal was filed in both cases.(2899-28,2900-64)

December 19, 2014, this court consolidated these cases for briefing.(2900-63).

FACTS

The state charged Eric Bell with two counts of second degree sexual assault in file 11 CF 810.(2899-2). The charges involved Bell having sexual intercourse with LB in January, 2011, and SL in February, 2011.(Id). The intercourse was alleged to have been in part of a gang initiation held at Bell's house.

A few weeks later, he state initiated 11 CF 1332.(2900-2). After having been questioned by the police, Bell's three daughters, MB1, MB2 and TB said that Bell sexually assaulted them as well.(Id.) They claimed that Bell engaged is incestuous acts between August, 2005 and September 2010.(Id). All but two of the charges alleged in 1332, occurred on North Street in Milwaukee. (Id).

Two charges in 1332 and the charges in 810 were said to have occurred on North Fond du Lac, Milwaukee. (2899-2;2900-2).

The state moved to consolidate the cases for trial. (2900-6). Bell opposed the motion citing unfair prejudice.(2900-7).

The circuit court ordered the cases be joined for trial. In consolidating the case the court said,

> Case law indicates that I have to deliberately join things or allow other acts evidence in sexual assault cases and even - - especially in sexual assault cases of children, and that's because of the fact that - - the trauma that we do to young children in making them testify here in court, and if I don't join them, arguably his daughters are going to have to testify in two cases.

(2900-46:8- 9).

At trial, MB1 testified that Bell started sexually assaulting her when she was eleven going on twelve.(18). Her father came to her and put a blindfold on her eyes and touched her under her underwear.(2900-51:19).

Another time, she said he dad picked her up from school.(Id.23-24). He woke her up from a nap and said, "Lets just get it over with."(Id 24). She said she didn't want to.(Id). He came back later and said, "Let's get it over with before everyone comes home." (Id 25). She said he had intercourse with her.(Id 26).

Next time it happened was when she was about fifteen, he would come in her room when she was sleeping.(Id. 31) They would talk for awhile and then he would say, "Can't we just get it over with so that I can leave you alone and you can go back to sleep."(Id 32).

Sometimes, she would sleep in the living room and he would come in and he would lie next to her and talk and they would end up having sex.(Id 35).

MB2 testified that when she was nine years old, Bell put a bandana on her face and had her lie on the floor.(Id.72). He took her pants and underwear off and put hand inside her vagina and then his penis inside her vagina.(Id 73,75,77).

Another time, she was home with an allergy and

Bell blindfolded her and had her lie down. (66:8-9).He had intercourse with her.(Id: 9).

She said in 7th grade she got pregnant by Bell.(Id 18). Bell took her to a clinic to get an abortion.(Id.23-24).

When she was in 8th grade, she was doing homework and Bell came into her bedroom and told her to take off her pants.(Id 32-33). He stuck his penis in her.(Id.33).

TB denied that Bell ever sexually assaulted her. She said what she told the detective was not true. (67: 114). She said that she told the detective what he wanted to hear. (Id 120). She said MB1 and MB2's mother did not want to be with Bell anymore and that MB1 does not like Bell at all.(Id 141, 164). The other kids wanted Bell out of their life and would do what they had to get him out.(Id 145).

TB went along with it because she wanted to stay with Bell's girlfriend who was not her mother.(Id 145). TB said she had no place else to go.(Id).

LB testified that she wanted to join Vice Lords.(66: 105) She Jamelia Reed went to Bells house.(Id.97). MB2 told her she was supposed to have sex with Bell.(Id.106) She was in bedroom with Bell.(Id 108). He put towel on the bed.(Id109). She lay on the bed with her shirt and pants off.(Id 109-110). He was on top of her and he put his penis in her.(Id 111). She was bleeding and when she got up he gave her a towel and told her to go to the bathroom.(Id 113).

SL said she went to Jamelia Reed to house where MB2 and TB lived(2900-52:52) There were a lot of people there. (Id.53) There was a man called Chief.(Id.54)

She was in a room and he told her to take off her clothes.(Id.57) She was sitting on the bed and he was kissing her(Id. 60) He pushed her back.(Id61). He put his knee between her legs.(Id.62). He starts to have sex with her.(Id.63).

The jury found Bell guilty on all counts.(2900-56: 97-99). Bell now appeals.

ARGUMENT

Eric Christopher Bell should be granted a new trial because joinder of case files 11 CF 801 and 11 CF 1332 for trial was improper under s. 971.12, Wis Stats., and because he was substantially prejudiced in violation his due process rights to a fair trial under Fifth and Fourteenth Amendments of the United States Constitution and Article I, § 8 of the Wisconsin Constitution.

I. The cases were improperly joined under the statute.

"A trial court has power to try cases together when the defendants are charged with the same offenses arising out of the same transaction and provable by the same evidence." ***Jung v. State***, 32 Wis.2d 541, 545, 145 N.W.2d 684 (1966).

"What constitutes an abuse of discretion, of course, depends upon the facts of each case and although a single trial may be desirable from the standpoint of economical or efficient criminal procedure, the right of a defendant to a fair trial must be the overriding consideration." Id. 32 Wis.2d 545-546

A. Standard of Review

On appeal, review of joinder is a two-step process. First, the court reviews the initial joinder determination. Whether the initial joinder was proper is a question of law that this court reviews without deference to the trial court; the joinder statute is to be construed broadly in favor of the initial joinder. ***State v. Hoffman***, 106 Wis.2d 185, 208, 316 N.W.2d 143, 156 (Ct.App.1982).

Second, the court reviews the trial court's determination of prejudice under the erroneous exercise of discretion standard. ***State v. Locke***, 177 Wis.2d 590, 597, 502 N.W.2d 891, (Ct. App. 1993).

B. The Law.

Sections 971.12(1) and (4), Wis. Stats., permit joinder of two cases for trial only if

> (1) the crimes charged are the "same or similar character; or
>
> (2) the charges are based on the same act or transaction; or
>
> (3) the charges are based on 2 or more acts or transactions connected together or constituting parts of a common scheme or plan.

971.12 Joinder of crimes and of defendants.

(1) Joinder of crimes. Two or more crimes may be charged in the same complaint, information or indictment in a separate count for each crime if the crimes charged, whether felonies or misdemeanors, or both, are of the same or similar character or are based on the same act or transaction or on 2 or more acts or transactions connected together or constituting parts of a common scheme or

> plan. When a misdemeanor is joined with a felony, the trial shall be in the court with jurisdiction to try the felony.
>
> ***
>
> (4) Trial together of separate charges. The court may order 2 or more complaints, informations or indictments to be tried together if the crimes and the defendants, if there is more than one, could have been joined in a single complaint, information or indictment. The procedure shall be the same as if the prosecution were under such single complaint, information or indictment.

C. The criteria for joinder were not met.

Same or similar character

To be of the `same or similar character' under sec. 971.12(1), Stats., 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) (citing ***State v. Hoffman***, 106 Wis.2d 185, 208, 316 N.W.2d 143 (Ct.App.1982)). "It is not sufficient that the offenses involve merely the same type of criminal charge." Id.

While there were charges of second degree sexual assault in both of Bell's cases, that is not enough to justify joinder.

Court found that cases in ***State v. Hoffman***, 106 Wis, 2d at 208, where Hoffman was charged with two counts of murder, were properly joined, not because they were violations of the same statute but because the instrument of death, cyanide poisoning was unusual and the same in both cases.

State v Hamm, 146 Wis.2d at138, held that joinder was appropriate because,

> The crimes charged relating to the 1985 and 1983 incidents were the same type of offenses, since each incident gave rise to armed burglary and first-degree sexual assault charges.

Here the incidents involved in 11 CF 810 were not the same type of offenses involved in 11 CF 1332. In 810, the charges involved alleged sexual intercourse as part of a gang initiation. The victims were unrelated to Bell and were not in any family type relationship with him. The complaint alleged one second degree sexual assault of each victim - one in January, 2011 and the other in February, 2011. There was no suggestion that Bell assaulted either victim more than once.

The sexual assaults involved in 1332 were allegations of incest. They involve claims of repeated sexual assaults of Bell's daughters over a period from 2005 to the Spring of 2010. The daughters were said to have been as young as nine years old when the assaults began.

Close in time.

Nor were the incidence close in time. In ***Hamm***, 146 Wis. 2d 138, this court explained that the meaning of "relatively short period of time" as follows:

> is to be determined on a case-by-case approach; there is no per se rule on when the time period between similar offenses is so great that they may not be joined. Indeed, that is why we have referred to a `relatively short period of time' between the two offenses. The time period is relative to the similarity of the offenses, and the possible overlapping of evidence.

Hamm held that fifteen to eighteen months was a relatively short period of time where two sexual assaults

were similar and there as overlapping evidence. concluded[146 Wis.2d at 139.

In ***Hoffman*** the court found the three month period between both murders close enough in time given the similarity of the offenses and the overlapping evidence. 106 Wis.2d at 209.

In Bell's case, the alleged sexual assaults of his daughters occurred over a period of five years - one year before the alleged sexual assaults of LB and SL. As has been and will be discussed further below, the assaults were not similar and further there was no overlapping evidence.

Overlapping evidence

State v. Hamm, 146 Wis. 2d at 138, held that overlapping evidence is a prerequisite to joinder of crimes under the same or similar character.

In that case the court held that the evidence overlapped because

> [t]he similarities between the acts in each incident tended to establish the identity of the criminal. In each incident, the perpetrator entered a home in the small hours of the morning armed with a knife, disguised, and committed a sexual assault. Each occurred in apartments on the same street within a few hundred feet of each other, two of the three assaults occurring in adjoining apartments, and in each case entry and exist were through windows facing the same wooded area. In each case the perpetrator entered unarmed but armed himself with a knife taken from the premises, concealed his face with a towel taken from the premises, and entered to commit a sexual assault.

State v. Hoffman, 106 Wis, 2d at 209, found overlapping evidence where the complaint in one case

allowed the inference that the defendant murdered the first victim to obtain an insurance payment to pay the insurance premium on the second victim's life.

Bells cases does not qualify under this criteria because the offenses in each case were not similar so as to show identity as they were in ***Hamm***. And, there was no overlapping evidence to show a connection between the cases, such as to show the charges in one case being the motive for the charges in the other, as in ***Hoffman***.

While there were a few overlapping witnesses, their testimony did not overlap. For example, MB1, when asked, denied she ever saw SL or BL go into bedroom with Bell.(2900-51:57) She gave no other testimony about allegations in 810. MB2 said she knew SL and LB from school.(2900-66:38). She said she saw LB in living room dancing. She also said she was not aware of LB leaving room.(Id. 39) Was not at home when SL was allegedly there.(Id).

SL and BL gave no testimony about charges 1332.

Only testimony that arguably overlapped is that of Detective Steven Wall. He said he asked Bell's daughters if they had been sexually assaulted because the officer investigating SL and LB's allegations asked him to do so.(2900- 68: 9). This testimony differs fundamentally from the testimony in ***State v. Linton***, 2010 WI App 129, 329 Wis.2d 687, 791 N.W.2d 222, where this court found that evidence overlapped. In that case, England had been killed and the police had no suspects. A short time later Cuey was also killed.

> Through their investigation, police linked three individuals to the Cuey homicide, one of whom was Linton. Another individual believed to have been

> involved was Anthony Morris. When he was questioned about the Cuey homicide, the criminal complaint relays that Morris connected Linton to the England homicide.

2010 WI App 129, ¶ 3.

The ***Linton*** court concluded that the evidence for the Cuey and England homicides overlapped.

> [W]e conclude that the aforementioned overlap in testimony is sufficient because both cases involved homicides that ensued after efforts were made to take property from another (England, attempted armed robbery; Cuey, armed burglary) within an approximately one-week time frame. As further support for this conclusion, we note that if the cases against Linton had been tried separately, testimony would have been introduced connecting the two homicides because it was only through police investigation of the Cuey homicide that they connected Linton to the England homicide. Thus, we agree with the State's assessment that "the manner in which the England death investigation focused on [Linton], the fact that he was implicated in the Cuey murder was admissible in the England trial to explain to the jury how police identified Linton as England's assailant."

2010 WI App 129, ¶ 17.

In ***Linton***, identity was an issue. In Bell's cases, it was not. Wall's testimony about the request from the officer investigating SL and LB's allegations added nothing to his testimony about the charges in 1332.

Connected or constituted parts of a common scheme or plan

Francis v. State, 86 Wis.2d 554, 560-61, 273 N.W.2d 310 (1979), the leading case discussing the meaning of a common scheme or plan, approved of joinder where a rape and sexual perversion charges, involving one victim were properly joined with a robbery

charge involving another victim. In that case, both women were attacked as they got into their cars, were blinded by the use of a stocking cap over their heads, and driven from the scene in their own cars. One victim was taken to a location where she was sexually assaulted but the other managed to escape while the car was stopped in traffic.

Francis held that phrase "connected together or constituting parts of a common scheme or plan" applied where

> The crimes charged involve two or more acts or transactions exhibiting the same Modus operandi ; these acts are connected together or constitute parts of a common scheme or plan that tends to establish the identity of the perpetrator. The perpetrator attacked a lone woman as she was starting her car. He forced his way into the driver's seat and blinded the woman by placing a knit hat over her head. He forced the woman to lie down on the car seat with her head placed on his lap and her hands under his right leg. He drove away in the woman's car. The purpose of Francis' scheme was to assault the woman. He accomplished this purpose in his attack on Ms. L. Although he did not accomplish this purpose in his attack on Ms. G., he indicated his purpose when, in response to her question asking what he wanted, the defendant answered, "I want you." The two incidents were close in time (thirty-five days); they both occurred within two blocks of each other. The evidence of each crime would be admissible at separate trials for each.

Francis, 86 Wis.2d 560-561.

Citing ***Francis***, ***State v. Hamm*** holds that joinder is appropriate where the charges "involv[e] two or more incidents which exhibited the same *modus operandi*, were close in time, and occurred within the same geographic area, the acts were connected or constituted parts of a common scheme or plan which tended to establish the identity of the perpetrator." ***Hamm***, 146 Wis.2d at 138-

39, 430 N.W.2d 584 (citing ***Francis***, 86 Wis.2d at 560-61, 273 N.W.2d 310).

If the evidence of each crime would be admissible in separate trials for each, joinder is proper under WIS. STAT. § 971.12(1). ***Francis***, 86 Wis.2d at 561, 273 N.W.2d 310.

In Bell's cases, as pointed out above, the incidents were not close in time. Further, identity was not an issue. However, if identity had been an issue, the it is difficult to see how the alleged modus operandi in either 810 or 1332 would not have helped establish Bell as the perpetrator in the other case.

II. Even if the cases were properly joined under s.971.12(1) and (4), Wis. Stats., Bell was substantially prejudiced.

[I[f the offenses do not meet the criteria for joinder, it is presumed that the defendant will be prejudiced by a joint trial. The state may rebut the presumption on appeal by demonstrating the defendant has not been prejudiced by a joint trial."***State v. Leach*** 124 Wis.2d 648, 669, 370 N.W.2d 240 (1985).

Even if a court finds that joinder of the charges is proper, the court must weigh the prejudice that would result from a joint trial against the public interest in conducting a trial on multiple counts. ***State v. Locke***, 177 Wis.2d 590, 597, 502 N.W.2d 891, (Ct. App. 1993). The question of whether joinder is likely to result in prejudice to the defendant is left to the discretion of the trial court, and this court will find an erroneous exercise of discretion only if the defendant can establish that failure to sever the counts caused "substantial prejudice." Id.

In evaluating the likelihood of prejudice, "courts have recognized that, when evidence of the counts sought to be severed would be admissible in separate trials, the risk of prejudice arising because of joinder is generally not significant." Id. As a result, the joinder analysis leads to an analysis of other acts evidence under WIS. STAT. § 904.04(2).[1] See ***Locke***, 177 Wis. 2d at 597.

To determine whether, if tried separately, evidence from one trial would be admissible as other acts evidence in the other, the court must apply the following three-part test: (1) whether the other acts evidence is "offered for an acceptable purpose" under WIS. STAT. § 904.04(2) such as to establish motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident; (2) whether the other acts evidence is relevant, under WIS. STAT. § 904.01, and probative; and (3) whether the probative value of the other acts evidence is "substantially outweighed by the danger of unfair prejudice" under WIS. STAT. § 904.03. ***State v. Sullivan***, 216 Wis. 2d 768, 772-73, 576 N.W.2d 30 (1998) (citations omitted).

Other acts evidence must be entered to prove a fact at issue in the trial and cannot be entered merely to prove propensity. The Wisconsin Supreme Court has held that the Greater Latitude Rule does not absolve judges from

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[1] At the time these cases were tried, § 904.04(2)(b) read as follows: "In a criminal proceeding alleging a violation of s. 940.225 (1) or 948.02 (1), sub. (1) and par. (a) do not prohibit admitting evidence **that a person was convicted of a violation of s. 940.225 (1) or 948.02 (1)** or a comparable offense in another jurisdiction, that is similar to the alleged violation, as evidence of the person's character in order to show that the person acted in conformity therewith."(emphasis supplied).

Thus, under the statute, at least, the charges alleged in one case would not have been admissible in the other.

determining whether evidence is admissible under the same framework it uses for other evidence. ***State v. Davidson***, 2000 WI 91, *51-52,* 236 Wis. 2d 537, 613 N.W.2d 606.

Nevertheless, he trial court erroneously exercised its discretion because the court seemed to believe that Greater Latitude Rule expressed in case law required the court to allow other acts evidence in cases involving sexual assaults of children.(2900-46: 8).

The state did not meet its burden under Sullivan.

The state had the burden to show a proper purpose for the evidence and that it was relevant. State argued in motion that purpose was to show modus operandi, motive and intent.((2900-6: 4). As pointed out above the modus operandi was not the same in each case.

To be relevant, the evidence must have been relevant to something at issue. Here, Bell's motive and intent were not at issue. There was no suggestion that Bell mistakenly sexually assaulted these young ladies. So, his intent was not at issue. See ***Sullivan***, 216 Wis.2d at 785

Further, all, but one of the charges, involved sexual intercourse, so Bell's motive, i.e. sexual gratification, was not at issue. The evidence did nothing but suggest that Bell had a general propensity for sexually assaulting young women. That was an impermissible purpose.

Bell was prejudiced

> [I]t is the duty of the Government to establish **...** guilt beyond a reasonable doubt. This notion-basic in our law and rightly one of the boasts of a free society-is a requirement and a safeguard of due process of law in the historic, procedural content of due process.

In re Winship*,* 397 U.S. *358,* 362 (1970)(cites and quotes omitted).

Old Chief v. United States, 519 U.S. 172 (1997), recognizes that in Rule 403[2], "'unfair prejudice' speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on an improper basis rather than on proof specific to the offense charged" Such improper grounds certainly include generalizing from a past bad act that a defendant is by propensity the probable perpetrator of the current crime. Thus, Rule 403 requires that the relative probative value of prior-conviction evidence be balanced against its prejudicial risk of misuse.

State v. Bettinger, 100 Wis.2d 691, 303 N.W.2d 585 (1981), recognized the danger as well.
The potential problem as a result of a trial on joint charges is that a defendant may suffer prejudice since a jury may be incapable of separating the evidence relevant to each offense or because the jury may perceive a defendant accused of several crimes is predisposed to committing criminal acts. 100 Wis 2d 696-97.

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[2] The federal equivalent of 904.03, Wis. Stats.

Without Rule 403's ability to exclude unduly prejudicial evidence, admitting sexual propensity evidence under Rule 414[3] would be an unconstitutional deprivation of due process. ***United States v. Enjady,*** 134 F.3d 1427, 1433 (10th Cir. 1998). Failure to exclude unduly prejudicial sexual propensity in this case did violate Bell's right to due process.

State v. Leach, 124 Wis.2d 648, 671-72, 370 N.W.2d 240 (1985), holds that, on appeal, there is no prejudice to the defendant of misjoinder where the evidence of guilt is overwhelming. Here, the evidence against Bell was not overwhelming. Both cases were based on the credibility of the alleged victims. In 1332, one of the alleged victims specifically denied that Bell assaulted her. So also testified that the other alleged victims in that case wanted Bell out of their lives and their mother did not want to be with Bell anymore.(2900-52:141, 145).

In 810, the sexual assault nurse did not find any genital injury in SL(Id. 69). The nurse also testified that SL was having problems with her mother and that SL mentioned nothing about Bell having text her.(Id.78). There was no sexual assault nurse testimony for any other alleged victim.

Underpants police collected from SL and sheets and wash clothes collected from Bells home did not reflect any semen. (2900- 68: 9).

State v. Leach, also holds that there is no prejudice from misjoinder when the several counts are logically,

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[3] The federal equivalent of the Greater Latitude Rule.

factually and legally distinct, so that the jury does not become confused about which evidence relates to which crime and considers each of them separately. ***Leach***,124 Wis.2d at. 672. In that case, the court noted that each case was factually distinct from the others, occurring on a different date, different locality and different manner. Further, all of the evidence relevant to one victim was presented at the one time, then the evidence as to the next victim was presented. Id.

In Bell's case, the legal allegations were similar and evidence as to each alleged victim was interspersed. Evidence as to 1332 was interspersed with evidence as to 810. Thus the jury could have been confused as to what allegedly occurred in each case.

While, in this case, the jury was told to consider each count separately and that their verdict for one count should not affect their verdict on any other count(2900: 56:92-93), they were not told unequivocally that they could not use the evidence relating to one charge against Bell to find him guilty of another charge. See ***State v.Peters***, 70 Wis.2d 22, 32, 233 N. W. 2d 420(1975). that, as they would in a typical "other bad act" case, that they could not consider the evidence of the multiple acts to conclude that Bell

Such a cautionary instruction must be given in clear and certain terms, because otherwise there is a strong likelihood that the jury will regard the evidence on one count as sufficient in itself to find the defendant guilty of another charge. Id.

CONCLUSION

For the reasons stated above, Eric Christopher Bell ask this court to reverse his convictions in both files and to remand for to the circuit court for separate new trials in each case.

Dated: March 9, 2015

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CERTIFICATIONS

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is proportional serif font, minimum printing resolution of 200 dots per inch, 14 point body text,11 point for quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per full line of body text. The length of the brief is 5865 words.

_____
Patricia A.FitzGerald

I hereby certify that with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19 (2)(a) and that contains at a minimum : (1) a table of contents; (2) the findings or opinion of the trial court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, an final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

_____

Patricia A. FitzGerald

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stats. § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date .A copy of the certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

_____
Patricia A. FitzGerald