[Cite as *State v. Ruggles*, 2023-Ohio-54.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ADAMS COUNTY

STATE OF OHIO,	:	
	:	Case No. 21CA1138
Plaintiff-Appellee,	:	
	:	
v.	:	DECISION AND JUDGMENT
	:	ENTRY
ROBERT D. RUGGLES, JR.,	:	
	:	**RELEASED: 01/04/2023**
Defendant-Appellant.	:	

APPEARANCES:

Victoria Bader, Assistant State Public Defender, Office of the Ohio Public Defender, Columbus, Ohio, for Appellant.

C. David Kelley, Adams County Prosecuting Attorney, and Anthony Hurst, Adams County Assistant Prosecutor, West Union, Ohio, for Appellee.

Wilkin, J.

{¶1} Appellant, Robert D. Ruggles, Jr., appeals the Adams County Court of Common Pleas judgment of conviction entry. After a two-day jury trial, Ruggles was found guilty of unlawful sexual conduct with a minor, a fourth-degree felony, in violation of R.C. 2907.04(A). The trial court imposed a prison term of 15 months.

{¶2} Ruggles challenges his conviction and claims in the first three assignments of error that the trial court abused its discretion and violated his constitutional right to equal protection and right to confront witnesses when the court limited his cross-examination of two of the state's witnesses. The witnesses are minors and Ruggles wanted to question them on whether they are/were in an intimate relationship with each other. The trial court denied the

request finding such questioning not relevant and more prejudicial than probative. We agree with the trial court and hold that it did not abuse its discretion. Any questioning of the minors about their sexual orientation was not relevant to the case and Ruggles had other means to challenge their credibility on bias grounds by asking if they were close friends. We similarly find no plain error with regard to Ruggles' constitutional challenges that he argues for the first time on appeal.

{¶3} In the fourth assignment of error, Ruggles claims the trial court committed plain error by permitting the state to elicit victim-impact evidence during its questioning of D.D., the victim. According to Ruggles, the evidence was not relevant and it aroused the sympathies and passion of the jury. We disagree and hold that the evidence was relevant, cumulative to other evidence not objected to or challenged, and did not affect the outcome of the case.

{¶4} In the final assignment of error, Ruggles contends his attorney was ineffective for failing to object to the victim-impact evidence that was admitted during D.D.'s testimony. Based on our resolution of the fourth assignment of error, we find counsel's strategy did not fall below an objective standard of reasonable representation and no prejudice can be demonstrated. Accordingly, we affirm Ruggles' conviction and sentence.

FACTS AND PROCEDURAL BACKGROUND

{¶5} In July 2020, Ruggles' criminal proceedings began with the filing of the indictment accusing him of committing the fourth-degree felony offense of unlawful sexual conduct with a minor, in violation of R.C. 2907.04(A). The

charge stemmed from Ruggles, 18 years of age, having intercourse with 13-year old D.D. Ruggles pleaded not guilty and the matter proceeded to a two-day jury trial.[1]

{¶6} Forensic interviewer Cecelia Freihofer of the Mayerson Center located in Children's Hospital was the first witness. In May 2020, she met with D.D. at the Mayerson Center. D.D. was referred to the center through Investigator Kenneth Dick of the Adams County Prosecutor's Office. D.D. was cooperative and engaging during her meeting with Freihofer. The interview was played to the jury and was later admitted as State's Exhibit 1. D.D. explained that she was at the Mayerson Center because she "had sex with an 18 year old for marijuana[.]"

{¶7} In June 2020, Investigator Dick interviewed Ruggles at the prosecutor's office. Similar to D.D.'s interview, Ruggles' interview was played to the jury and was admitted as State's Exhibit 4. Ruggles admitted that D.D. and her friend, C.B., sent several messages asking him for marijuana. He agreed to give them marijuana and went to C.B.'s house where the girls were. When he arrived, Ruggles gave C.B. the marijuana and then D.D. came into the vehicle with him. This is when Ruggles had intercourse with D.D. In his interview, Ruggles explained that he knew D.D. through his ex-girlfriend and thought she was approximately 14 years old.

[1] The first day of trial was held on April 22, 2021, and the second day of trial was held on June 2, 2021. The trial court explained that the gap was due to D.D.'s exposure to COVID-19 and the requirement to quarantine. Ruggles agreed with the continuation of trial.

{¶8} C.B. was the third witness and explained that in March 2020, she and D.D. were messaging Ruggles asking him for marijuana. In exchange for the marijuana, Ruggles "wanted to have sex and he would not accept the money" from the girls. Ruggles arrived to C.B.'s house at night. C.B. walked to Ruggles' vehicle and took the marijuana from him and returned back to her house with the understanding that D.D. was going to have sex with him.

{¶9} D.D. was the final witness. In March 2020, she was communicating with Ruggles late at night asking him to bring marijuana. Ruggles agreed, but wanted sex in exchange for the marijuana. Ruggles arrived to C.B.'s house and handed the marijuana over to C.B., and D.D. got in the front passenger seat. Ruggles and D.D. moved to the back seat of the vehicle and this is when Ruggles pulled D.D.'s pants down. Ruggles also took his pants off. D.D. testified that this is when Ruggles "proceeded to put his mouth on my vagina after he took off my underwear. And then afterwards he put his penis in my vagina and then he flipped me over on top of him and took off my shirt and my bra. And then after he was done, he pushed me off."

{¶10} Ruggles elected not to testify and did not admit any exhibits. The jury found Ruggles guilty as charged of unlawful sexual conduct with a minor. At sentencing, Ruggles also declined to address the trial court. In addition to considering the sentencing statutory provisions, the pre-sentence investigative report, the victim's statement, and the record of the case, the court noted Ruggles' conduct during trial:

> I, I don't understand after seeing all the evidence, hearing all the evidence, what your point was in putting that little girl through

> what you did. And then to be so cavalier as to sleep through it or act disinterested and disengaged.

The trial court then imposed a prison term of 15 months. Ruggles conviction of unlawful sexual conduct with a minor is now before us for review.

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT VIOLATED MR. RUGGLES' CONSTITUTIONAL RIGHT TO PRESENT A COMPLETE DEFENSE AND CONFRONT WITNESSES WHEN IT PRECLUDED HIM FROM ASKING IMPEACHMENT QUESTIONS RELATED TO A SAME-SEX RELATIONSHIP ON CROSS-EXAMINATION.

II. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT PRECLUDED MR. RUGGLES FROM ASKING IMPEACHMENT QUESTIONS RELATED TO A SAME-SEX RELATIONSHIP ON CROSS-EXAMINATION.

III. THE TRIAL COURT VIOLATED THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES AND OHIO CONSTITUTIONS WHEN IT PRECLUDED IMPEACHMENT QUESTIONS RELATED TO A SAME-SEX RELATIONSHIP ON CROSS-EXAMINATION.

IV. THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT ALLOWED THE ADMISSION OF IRRELEVANT AND PREJUDICIAL VICTIM IMPACT TESTIMONY.

V. ROBERT RUGGLES WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION; AND ARTICLE I, SECTION 10, OHIO CONSTITUTION.

I. FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR

{¶11} Ruggles' first three assignments of error challenge the trial court's decision granting the state's motion in limine and preventing him from questioning the state's teenage witnesses, C.B. and D.D., if they were in an intimate relationship with each other. In his first assignment of error, Ruggles

argues that the trial court's limitation deprived him of his right to a complete defense and violated his right to confront the witnesses. Ruggles contends he was not permitted to question C.B. and D.D. regarding their close relationship and that he did not intend to question them regarding their sexual activity. According to Ruggles, the trial court's decision was based on its perception of same-sex relationship rather than evidentiary considerations of prejudice per Evid.R. 403. Ruggles claims the closeness of C.B. and D.D.'s relationship was relevant to demonstrate bias and attack their credibility pursuant to Evid.R. 611(B) and Evid.R. 614(A).

{¶12} Additionally, Ruggles asserts in the second assignment of error that the trial court's decision to limit cross-examination was an abuse of discretion. Ruggles reiterates that the trial court failed to conduct a proper prejudicial weighing of the evidence per Evid.R. 403 and instead focused on the implication of C.B. and D.D.'s sexual orientation.

{¶13} Finally, Ruggles in the third assignment of error challenges the trial court's limitation on constitutional grounds claiming it violated his right to equal protection. That is, the trial court's decision to limit cross-examination and preclude Ruggles from questioning the witnesses about their sexual orientation is not rationally related to any legitimate government purpose.

{¶14} The state disputes Ruggles' claim that the trial court failed to conduct a proper evidentiary analysis before limiting his questioning of C.B. and D.D. The state maintains that the trial court carefully weighed the probative value of questioning the minors about their sexual orientation against the danger

of unfair prejudice, confusing and misleading the jury. The state urges this court to overrule the first two assignments of error since the exclusion was proper, and, even if it was not, the error is harmless since Ruggles admitted to having intercourse with D.D. As for Ruggles' constitutional challenge per the Equal Protection Clause, the state asserts it cannot find any case that held a violation of the clause on the basis of limiting prejudicial cross-examination.

{¶15} In response, Ruggles declares the trial court failed to articulate the danger of unfair prejudice when limiting cross-examination. Further, nothing concerning the nature of B.C. and D.D.'s relationship would confuse or mislead the jury; rather it prevented the jury from evaluating the credibility and bias of these witnesses. Therefore, the trial court's summary conclusion demonstrated its own perception on same-sex relationships as opposed to sound reasoning. Finally, Ruggles echoes his claim that he was treated differently than "similarly situated defendants because he was precluded from asking impeachment questions on cross-examination of witness in a same-sex relationship, where other defendants would be able to undergo the same cross-examination of opposite-sex couples."

A. Standard of review and law

{¶16} Ruggles' constitutional challenges will be reviewed pursuant to the plain error standard of review. This is because Ruggles failed to raise a constitutional violation at the trial level. "Generally, a defendant who fails to raise a Confrontation Clause issue during the trial court proceedings forfeits the right to present it for the first time on appeal." *State v. Russell*, 4th Dist. Ross No.

21CA3750, 2022-Ohio-1746, ¶ 90. Thus, objecting on one ground does not preserve additional objections not mentioned at trial. *Id*. Similarly, Ruggles did not present any argument at trial that his right to equal protection was violated, consequently, he forfeits the right to present it for the first time on appeal. *See In re J.M.P.,* 4th Dist. Vinton No. 16CA702, 2017-Ohio-8126, ¶ 15.

{¶17} "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Crim.R. 52(B). In order to establish plain error, Ruggles "must show that (1) there was an error or deviation from a legal rule, (2) the error was plain and obvious, and (3) the error affected the outcome of the trial." *State v. Mohamed*, 151 Ohio St.3d 320, 2017-Ohio-7468, 88 N.E.3d 935, ¶ 26, citing *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002-Ohio-68, 759 N.E.2d 1240. "Notice of plain error under Crim.R. 52(B) is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *State v. Long*, 53 Ohio St.2d 91, 97, 372 N.E.2d 804 (1978). A "substantial right" is a "right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." R.C. 2505.02(A)(1).

{¶18} A trial court has the discretion to limit cross-examination and we review its decision under abuse of discretion. *State v. Handa*, 4th Dist. Athens No. 07CA26, 2008-Ohio-3754, ¶ 19, citing *State v. Sandlin*, Highland No. 07CA13, 2008-Ohio-1382, ¶ 22. An abuse of discretion "is more than a mere error of law or judgment; it implies that a trial court's decision was unreasonable, arbitrary or unconscionable." *State v. Martin*, 151 Ohio St.3d 470, 2017-Ohio-

7556, 90 N.E.3d 857, ¶ 27, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). A finding that a trial court did not abuse its discretion will be dispositive of the conclusion that no plain error occurred. *See State v. Jenkins*, 4th Dist. Lawrence No. 05CA7, 2006-Ohio-2546, ¶ 53.

{¶19} The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right * * * to be confronted with the witnesses against him[.]" This right is applicable to the states through the Fourteenth Amendment. *State v. Issa*, 93 Ohio St.3d 49, 2001-Ohio-1290, 752 N.E.2d 904, fn.4. Article I, Section 10 of the Ohio Constitution does not provide a greater right of confrontation than the Sixth Amendment. *State v. Arnold*, 126 Ohio St.3d 290, 2010-Ohio-2742, 933 N.E.2d 775, ¶ 12.

> [A] criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby "to expose to the jury the facts from which jurors … could appropriately draw inferences relating to the reliability of the witness."

Delaware v. Van Arsdall, 475 U.S. 673, 680, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986), quoting *Davis v. Alaska*, 415 U.S. 308, 318, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974).

{¶20} "The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws[.]' " *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985), quoting *Plyler v. Doe*, 457 U.S. 202, 216, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982). "The Equal Protection Clause 'is essentially a direction that all persons similarly situated should be treated alike.' "

State v. Chapman, 4th Dist. Ross No. 21CA3742, 2022-Ohio-2853, ¶ 29, quoting *Cleburne* at 439.

{¶21} Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evid.R. 401.

> All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of the State of Ohio, by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio, by these rules, or by other rules prescribed by the Supreme Court of Ohio. Evidence which is not relevant is not admissible.

Evid.R. 402.

"Cross-examination shall be permitted on all relevant matters and matters affecting credibility." Evid.R. 611(B). And "[b]ias, prejudice, interest, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by extrinsic evidence." Evid.R. 616(A).

{¶22} "Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury." Evid.R. 403(A). Unfair prejudice " 'refers to evidence which tends to suggest decision on an improper basis.' " *State v. Russell*, 4th Dist. Ross No. 21CA3750, 2022-Ohio-1746, ¶ 80, quoting *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 89. The trial court controls the "mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the

ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." Evid.R. 611(A).

B. Analysis

{¶23} We begin with what actually occurred at trial. The state filed a motion in limine to prevent Ruggles from questioning any witness concerning D.D.'s sexual history with any person other than Ruggles. The state argued such evidence would be irrelevant, and, even if admissible, would be more prejudicial than probative. At the conclusion of the voir dire, the state's motion in limine was discussed and Ruggles' counsel agreed with the state: "I believe those issues would not be relevant and should not come in both for any witness or the defendant himself, any prior or subsequent sexual history with any other parties, other than what's a[t] issue here in this trial." The trial court granted the state's motion in an entry filed prior to the second day of trial finding:

> Any evidence introduced during the trial of this action, mentioning or relating, in any way, to the victim's alleged sexual history with any person, other than the defendant in the instance alleged in the Indictment, is hereby prohibited and inadmissible; and Any questioning of any/all witnesses during the trial of this action, pertaining to the victim's alleged sexual history with any person, other than the defendant in the instance alleged in the Indictment, is hereby inadmissible and prohibited.

{¶24} At trial, prior to the state calling C.B. to the stand, Ruggles' counsel addressed the trial court informing the court of the potential cross-examination line of questioning:

> The second issue is that we'll actually be the next two witnesses, but more so the next witness. It's my understanding that the next witness either is, or was in a relationship with the alleged victim in this matter. Uh, and I just wanted to make the court aware, uh, of as far as questioning goes, as far as with the reading prejudice

> and asking those in regards to cross examination, Your Honor. As one may be more tempted to sway their responses or more aligned their responses with somebody which they have a close relationship with, Your Honor.
>
> * * *
>
> [C.B.], uh, either is currently, or was recently in a relationship with, uh, [D.D.] Uh, they, uh, it would be a same sex relationship. Uh, they, um, may no longer be in that relationship, but we believe they were recently. In regard to her testimony today, she may have discussed it with [D.D.] and may more align or purposely more align to [D.D.]'s testimony because of the fact that they were in a relationship or have that close tie, Your Honor, it's similar to the mother, child, and husband wife [inaudible] [sic.], something along those lines.

{¶25} The state opposed questioning the minors concerning their sexual activity as being irrelevant, falling under the mandatory exclusion per Evid.R. 403(A), and would distract the jury. Ruggles' counsel then clarified that he "had no intentions of asking about an, a sexual interactions between parties, no matter what, or between those two people." That statement by Ruggles' counsel prompted the trial court to question counsel:

> Court: But I think it does bleed over into suggesting that you're in a relationship, correct.
> Attorney Cantrell: Yeah, it would.
> Court: Or you were in a relationship.
> Attorney Cantrell: Yes.
> Court: Okay. Thank you. Anything further on that issue?
> Attorney Cantrell: Not on that issue, Your Honor.

{¶26} The trial court then made the decision to limit cross-examination and provided the following reasoning:

> Well, the, for the Court would first say that, uh, sexual orientation is a choice for which swords shall not be drawn against. I do find that any suggestion would be more prejudicial than probative or relevant. Um, the court, uh, has had the good fortune of presiding over many trials where, um, mothers, uh, have testified on behalf of alleged victims in the State's case in chief mothers and fathers have testified in defense of the defendant in the defense presentation. And

> it's a very standard to say, you know, you, you love your son, you, uh, you care for your son. You want no harm for your son. Um, that's fair game. But the, uh, sexual orientation, uh, is not, uh, be it minor or an adult.
>
> * * *
>
> And I realize that, uh, you are proffering that concern of your client. And, uh, so again, the court will just note that, um, it would be more prejudicial than probative or relevant. Certainly, you can inquire as to the, uh, that they, uh, she, uh, is dear friends, good friends has been, um, that, uh, she'd want the best for her. And, uh, you know, usually it's concluded with, uh, some people would even lie for people. I'm not suggesting that that be your pattern of questioning, but, uh, I understand. But in regard to touching in any way, the sexual orientation of either of these two witnesses that are about to come in here, uh, the court, uh, will not allow in any manner.

{¶27} The record supports the trial court's decision that any evidence of the minors' sexual orientation was not relevant and more prejudicial than probative. First, whether the minors were in an intimate relationship was based on speculation in which Ruggles' counsel three times states that C.B. and D.D. "either" are or were and "may no longer" be in an intimate relationship. Second, Ruggles' counsel was the one who initially termed the relationship as same-sex. Third, Ruggles' counsel agreed that questioning the minors regarding any sexual activity would be improper. Finally, Ruggles was not prevented from questioning the minors of the closeness of their relationship and attack their credibility on the basis of them being good friends. During the cross-examination of C.B. and D.D., Ruggles' counsel not once asked the minors about the duration of their friendship and/or if they were good friends.

{¶28} We therefore hold that the trial court did not abuse its discretion. This is consistent with the Second District Court of Appeals decision in *State v. Williams*, 2d Dist. Montgomery No. 26369, 2016-Ohio-322. Williams was

accused of sexually assaulting a minor boy and the matter proceeded to a jury trial. *Id*. at ¶ 3. During the defense's case, Williams' former girlfriend was questioned during direct examination whether Williams "had any 'homosexual tendencies[.]' " *Id*. at ¶ 16. The state objected to this line of questioning and argued it was irrelevant and inappropriate on "whether [Williams] molested a child" since "[c]hild molesters have sex with boys, girls, anything." *Id*. The trial agreed with the state and ordered the response to be stricken. *Id*. On appeal, the Second District agreed

> that the issue of Williams's sexual orientation may have been relevant. Since no expert testified to substantiate the known behavior of sex offenders and the correlation of their sexual orientation, it was within the province of the jury to determine whether the fact of his sexual orientation made the factual allegation of the sexual assault more or less probable.

Id. at ¶ 33.

The court nevertheless overruled Williams' assignment of error and concluded

> that the trial court did not abuse its discretion in finding that the probative value of that evidence is substantially outweighed by the danger of unfair prejudice that could arise by its admission. Accordingly, we find no error in the court's ruling that the question and answer regarding sexual orientation should be stricken.

Id.

{¶29} In the matter at bar, the trial court concluded that sexual orientation was one approach to attack the state's witnesses' credibility by demonstrating bias, but was not the only approach. The trial court found that the line of questioning regarding the minors' sexual orientation was "more prejudicial than probative or relevant." We agree and find no abuse of discretion. Our holding that the trial court did not abuse its discretion, compels us to necessarily

conclude that it did not commit plain error in declining to subject C.B. and D.D. to questioning regarding their sexual orientation.[2] *See State v. Jenkins*, 4th Dist. Lawrence No. 05CA7, 2006-Ohio-2546, ¶ 53. We reiterate that Ruggles admitted to having intercourse with D.D. *See* Crim.R. 52(A) ("Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded."); *see also State v. Noling*, 98 Ohio St.3d 44, 2002-Ohio-7044, 781 N.E.2d 88, ¶ 31, citing *Delaware v. Van Arsdall*, 475 U.S. 673, 680, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986) ("violation of confrontation rights is subject to harmless-error analysis.")

{¶30} We overrule Ruggles' first three assignments of error.

II. FOURTH ASSIGNMENT OF ERROR

{¶31} In this assignment of error, Ruggles argues the trial court committed plain error by admitting victim-impact evidence during D.D.'s testimony. The state questioned D.D. multiple times concerning her feelings before and after her sexual encounter with Ruggles. These questions and responses of feeling "gross," "intimidated," and "uncomfortable," according to Ruggles, were irrelevant and had no other purpose other than to arouse the "sympathies and inflame the passions of the jurors."

{¶32} The state disagrees with Ruggles' classification of the evidence as victim-impact testimony. The state asserts the evidence relates to the surrounding circumstances of the unlawful sexual conduct and adds credibility to

[2] Because we consequently found no plain error after concluding the trial court did not abuse its discretion, we do not need to address Ruggles constitutional confrontation and equal protection challenges nor the state's argument that the Equal Protection Clause does not apply here.

the victim's testimony. Therefore, there was no error, let alone plain error, that affected the outcome of the trial.

{¶33} Ruggles in response recaps his argument that D.D.'s responses to the prosecution's questions of her feelings before and after the encounter were not necessary to prove the elements of the offense. The victim-impact evidence was improper and exacerbated the credibility of D.D.'s testimony.

A. Standard of review and law

{¶34} "The admission or exclusion of relevant evidence rests within the sound discretion of the trial court." *State v. Sage*, 31 Ohio St.3d 173, 510 N.E.2d 343 (1987), paragraph two of the syllabus. Generally, an appellate court reviews the trial court's decision for abuse of discretion, but in this case, Ruggles failed to object during D.D.'s testimony. Ruggles acknowledges his failure to object, thus, he argues that the trial court committed plain error for failing to exclude the testimony.

{¶35} As we previously outlined, in order to establish plain error, Ruggles must demonstrate there was an error, it was obvious, and it affected the outcome of the trial. *State v. Mohamed*, 151 Ohio St.3d 320, 2017-Ohio-7468, 88 N.E.3d 935, ¶ 26, citing *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002-Ohio-68, 759 N.E.2d 1240. Similarly, we previously stated that relevant evidence is evidence that has any tendency to make the existence of a fact that is of consequence to the action more or less probable. Evid.R. 401. Relevant evidence is admissible unless otherwise provided by the United States or Ohio Constitutions, a statutory provision, or rules prescribed by the Supreme Court of Ohio. Evid.R. 402.

{¶36} "Victim-impact evidence includes evidence relating to the victim's personal characteristics and the impact that the crimes had on the victim's family." *State v. Graham*, 164 Ohio St.3d 187, 2020-Ohio-6700, 172 N.E.3d 841, ¶ 113, citing *State v. McKelton*, 148 Ohio St.3d 261, 2016-Ohio-5735, 70 N.E.3d 508, ¶ 259. And generally,

> testimony as to how a defendant's criminal acts have affected the victims are usually irrelevant because they do not ordinarily purport to go to the guilt or innocence of the accused. Rather than proving any fact of consequence on the issue of guilt, victim impact testimony tends to inflame the passions of the jury and risk conviction on facts unrelated to actual guilt.

State v. Wade, 8th Dist. Cuyahoga No. 90145, 2008-Ohio-4870, ¶ 17.

{¶37} However, "[v]ictim-impact evidence is admissible in certain circumstances. It is admissible when it is related to 'the facts attendant to the offense.' " *State v. Powell*, 132 Ohio St.3d 233, 2012-Ohio-2577, 971 N.E.2d 865, ¶ 134, quoting *State v. Frautenberry*, 72 Ohio St.3d 435, 440, 650 N.E.2d 878 (1995). Additionally, in certain circumstances the evidence is admissible when it relates "to the effect on the victim." *State v. Rucker*, 2d Dist. Montgomery No. 24340, 2012-Ohio-4860, ¶ 34, citing *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 138. As the Supreme Court proclaimed, " '[t]he victims cannot be separated from the crime.' " *State v. Williams*, 99 Ohio St.3d 439, 2003-Ohio-4164, 793 N.E.2d 446, ¶ 43, quoting *State v. Lorraine*, 66 Ohio St.3d 414, 420, 613 N.E.2d 212 (1993).

B. Analysis

{¶38} Ruggles challenges some of the testimony elicited during D.D.'s questioning by the state as improper victim-impact evidence that inflamed the

jury and affected the outcome of his trial. The following are the questions and responses:

> Q. We've talked about him making some sexual remarks to you, right?
> A. Yes.
> Q. You remember how you felt inside?
> A. I felt grossed out.
> *** * ***
> Q. Sort of thing we say to you that would make you feel grossed out.
> A. Like he wanted me like, like he wanted me as in like my body.
> * * *
> Q. Can you remember what you might've said? Did you say something back to him when he would say that to you?
> A. I would say, ew that's gross. I'm 13 and you're 18.
> * * *
> Q. And how did that make you feel?
> A. I felt uncomfortable.
> * * *
> Q. Right, then, how are you feeling at that moment?
> A. Like scared, intimidated, uncomfortable.
> * * *
> I told him I hated it and it didn't even happen yet. And then I offered him money again and he said, no, you're already in the car.
> * * *
> Q. What feelings were going through your head while this is happening?
> A. I wanted it to be over with, I wanted to get out of the car.
> * * *
> Q. How were you feeling when you left the car?
> A. I felt gross.

{¶39} We find that D.D.'s testimony was proper and not "overly emotional" to the extent that it affected the outcome of the case. *See State v. Clinton*, 153 Ohio St.3d 422, 2017-Ohio-9423, 108 N.E.3d 1, ¶ 134. First, the testimony related to Ruggles initiating sexual conversations that lead him to having intercourse with D.D. And D.D.'s age was an element of the offense of unlawful sexual conduct with a minor pursuant to R.C. 2907.04(A): "No person who is eighteen years of age or older shall engage in sexual conduct with another, * * *,

when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard."

{¶40} Second, the testimony related to the trauma 13-year old D.D. was experiencing before, during, and after having intercourse with Ruggles. *See State v. Eads*, 8th Dist. Cuyahoga No. 87636, 2007-Ohio-539, ¶ 56 ("The emotional scars of sexual abuse are as real as the physical scars caused by physical assaults. Just as the victim of a felonious assault may testify to the treatment needed as a result of the assault in order to prove that the assault actually did occur, so may the victim of a sexual assault testify to the lingering trauma suffered as a result of that abuse.")

{¶41} Third, the testimony was cumulative to previous evidence that was presented at trial which Ruggles does not challenge as improperly admitted. During forensic interviewer Freihofer's testimony, D.D.'s interview was played to the jury in which D.D. expressed feeling "disgusting afterwards," it "made me feel really weird after," and informing Ruggles she "already hate[s] this."

{¶42} Fourth, the evidence rebutted Ruggles' statement to Investigator Dick that he thought D.D. was "14-ish" and that she initiated intercourse. Finally, Ruggles admitted to having intercourse with D.D.

{¶43} Accordingly, there was no reasonable probability that D.D.'s testimony affected the outcome of the trial as Ruggles' own admission supports the finding that he committed the offense of unlawful sexual conduct with a minor. Therefore, Ruggles fails to demonstrate plain error. Ruggles' fourth assignment of error is overruled.

III. FIFTH ASSIGNMENT OF ERROR

{¶44} In the final assignment of error, Ruggles claims his trial counsel was ineffective for failing to object to the victim-impact testimony elicited at trial during the state's questioning of D.D. Had counsel objected, the jury would not have been influenced by the emotional testimony.

{¶45} The state disagrees and argues that trial counsel's decision on whether to object is a strategic one and it cannot be ineffective if the evidence is properly admitted.

A. Standard of Review

{¶46} To demonstrate ineffective assistance of counsel, Ruggles "must show (1) deficient performance by counsel, i.e., performance falling below an objective standard of reasonable representation, and (2) prejudice, i.e., a reasonable probability that, but for counsel's errors, the proceeding's result would have been different." *State v. Short*, 129 Ohio St.3d 360, 2011-Ohio-3641, 952 N.E.2d 1121, ¶ 113, citing *Strickland v. Washington*, 466 U.S. 668, 687-688, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1988), paragraph two of the syllabus. Failure to demonstrate either prong of this test "is fatal to the claim." *State v. Jones,* 4th Dist. Scioto No. 06CA3116, 2008-Ohio-968, ¶ 14, citing *Strickland*.

{¶47} Ruggles "has the burden of proof because in Ohio, a properly licensed attorney is presumed competent." *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 62, citing *State v. Calhoun*, 86 Ohio St.3d 279, 1999-Ohio-102, 714 N.E.2d 905, ¶ 62, citing *Vaughn v. Maxwell*, 2 Ohio

St.2d 299, 209 N.E.2d 164 (1965). "In order to overcome this presumption, the petitioner must submit sufficient operative facts or evidentiary documents that demonstrate that the petitioner was prejudiced by the ineffective assistance." *Id.*, citing *State v. Davis*, 133 Ohio App.3d 511, 516, 728 N.E.2d 1111 (8th Dist.1999). To demonstrate prejudice, Ruggles "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland* at 694. Additionally, "[a] trial counsel's failure to object is generally viewed as trial strategy and does not establish ineffective assistance." *State v. Teets*, 4th Dist. Pickaway No. 16CA3, 2017-Ohio-7372, ¶ 71, citing *State v. Roby*, 3d Dist. Putnam No. 12-19-19, 2010-Ohio-1498, ¶ 44.

B. Analysis

{¶48} Ruggles' argument here relates to the previous assignment of error in which he challenged the admission of D.D.'s victim-impact testimony. We reviewed the issue under plain error because Ruggles failed to object to the testimony during trial. Our holding that the admission of the testimony was proper and did not amount to plain error is dispositive of Ruggles' claim his counsel is ineffective for failing to object. " '[W]here the failure to object does not constitute plain error, the issue cannot be reversed by claiming ineffective assistance of counsel.' " *State v. Jarrell*, 2017-Ohio-520, 85 N.E.3d 175, ¶ 54 (4th Dist.), quoting *State v. Teitelbaum*, 2016-Ohio-3524, 67 N.E.3d 85, ¶ 113

(10th Dist.), citing *State v. Roy*, 10 Dist. Franklin No. 14AP-223, 2014-Ohio-4587, ¶ 20.

{¶49} Ruggles' fifth assignment of error is overruled.

CONCLUSION

{¶50} Having overruled Ruggles' five assignments of error, we affirm the trial court's judgment entry of conviction.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Adams County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

Smith, P.J. and Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.