

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20060768-CA	
v.)		
)	F I L E D	
Tren Sheldon Horrocks,)	(March 20, 2008)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2008 UT App 96</td></tr></table>	2008 UT App 96
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Eighth District, Vernal Department, 041800326
The Honorable A. Lynn Payne

Attorneys: Michael L. Humiston, Vernal, for Appellant
Mark L. Shurtleff and Marian Decker, Salt Lake City,
for Appellee

Before Judges Bench, Billings, and Orme.

BILLINGS, Judge:

Defendant Tren Sheldon Horrocks appeals from his conviction of two felony counts of criminal nonsupport, see Utah Code Ann. § 76-7-201(3)(c) (2003). We affirm.

Horrocks first appeals the trial court's ruling that he was not entitled to an accountant as part of his defense. Because Horrocks was indigent, he was entitled to legal counsel, see Utah Code Ann. § 77-32-302(1) (Supp. 2007). He argues, however, that Utah Code section 77-32-302(1) and rule 15(a) of the Utah Rules of Criminal Procedure also entitled him to an accountant to examine the State's financial bookkeeping, see id. ("Legal counsel shall be assigned to represent each indigent and the indigent shall also be provided access to defense resources necessary for an effective defense."); Utah R. Crim. P. 15(a) ("Upon showing that a defendant is financially unable to pay the fees of an expert whose services are necessary for adequate defense, the witness fee shall be paid as if he were called on behalf of the prosecution."). Specifically, Horrocks contends that an accountant might have rigorously examined the State's accounting of child support he had paid and found it to be incorrect. He argues that "[a] sufficient discrepancy in the accounts might have undermined the State's credibility entirely" or at least could have meant the difference between a felony and a misdemeanor conviction.

The trial court ruled against providing an accountant because it determined that an accountant was unnecessary. The State's records were kept on a computer. There were no other records or backup documents to review for accuracy other than Horrocks's own records. The trial court agreed to give Horrocks credit for any payments he made for which he had proof of payment. Horrocks had no proof of payments beyond those admitted at trial. On appeal, Horrocks has not pointed to any errors in the State's calculation of his arrearages or identified any defense theory he might have used if he had obtained the services of an accountant. Accordingly, we affirm the trial court's ruling.

Next, Horrocks argues that he was prejudiced by having both offenses for criminal nonsupport prosecuted in one trial. Utah Code section 77-8a-1 governs the joinder of offenses:

(1) Two or more felonies, misdemeanors, or both, may be charged in the same indictment or information if each offense is a separate count and if the offenses charged are:

(a) based on the same conduct or are otherwise connected together in their commission; or

(b) alleged to have been part of a common scheme or plan.

(4)(a) If the court finds a defendant or the prosecution is prejudiced by a joinder of offenses or defendants in an indictment or information or by a joinder for trial together, the court shall order an election of separate trials of separate counts, grant a severance of defendants, or provide other relief as justice requires.

Utah Code Ann. § 77-8a-1 (2003).

Horrocks challenges the trial court's determination that the two counts were part of a common scheme or plan to avoid paying child support. We agree with the trial court that avoiding payment of child support to two wives during the same time period is suggestive of a common plan and, in any event, is "based on the same conduct" or is "otherwise connected together," see id. § 78-8a-1(a).

Horrocks also alleges that the joinder of the two counts was prejudicial. In ruling on joinder, "[t]he initial inquiry regarding whether a defendant is prejudiced by joinder is whether evidence of the other crime would have been admissible in a separate trial." State v. Mead, 2001 UT 58, ¶ 59, 27 P.3d 1115 (internal quotation marks omitted). We will reverse only if "it is affirmatively shown that a defendant's right to a fair trial

has been impaired." Id. ¶ 54 (internal quotation marks omitted). Here, the trial court determined that Horrocks would not be prejudiced by the admission of evidence because "evidence of one count would be admissible at a separate trial on the other count for purposes of establishing motive, intent, absence of mistake, etc." The trial court also determined that Horrocks's income and expenses would be relevant in both cases "[b]ecause the time periods for each count overlap substantially[and so his] obligations and payments to one former spouse would be admissible in establishing the ability to pay his obligations to the other former spouse." We agree.

Finally, Horrocks contends that he was prejudiced by the trial court's bias. He has not complied with the requirement of rule 29(c) of the Utah Rules of Criminal Procedure that a party alleging bias must move to disqualify the judge within twenty days of discovering the bias. See Utah R. Crim. P. 29(c). He argues that he failed to do so because "when this bias becomes apparent through a cumulative series of slanted rulings, it is often difficult to say with precision exactly when the bias became apparent." He asks us to nevertheless consider the issue under a plain error analysis. As evidence of bias, Horrocks states that "a predisposition in favor of the prosecution tainted all of the proceedings and effectively prevented [him] from obtaining the defense resources he needed, as well as from presenting his full theory of defense in a non-cumulative forum." However, our independent review of the trial court's rulings demonstrates they were all based on a sound interpretation of the law. We therefore decline to reverse his convictions on this basis. In sum, we affirm.

Judith M. Billings, Judge

WE CONCUR:

Russell W. Bench, Judge

Gregory K. Orme, Judge