[Cite as *State v. Brazina*, 2019-Ohio-2708.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

ERIC J. BRAZINA,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 18 MA 0057

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2014 CR 457

BEFORE:
Carol Ann Robb, Gene Donofrio, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed.

Atty. Paul J. Gains, Mahoning County Prosecutor*, Atty. Ralph M. Rivera*, Assistant Prosecuting Attorney, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee and

Atty. Rhys B. Cartwright-Jones, 42 N. Phelps Street, Youngstown, Ohio 44503, for Defendant-Appellant.

Dated: June 26, 2019

Robb, J.

{¶1} Defendant-Appellant Eric Brazina appeals the decision of the Mahoning County Common Pleas Court imposing consecutive sentences for his telecommunications harassment, impersonating a peace officer, and disrupting public services convictions. The issue in this case is whether the trial court made the necessary consecutive sentence findings and whether the record supports the imposition of consecutive sentences. For the reasons expressed below, the aggregate sentence imposed is affirmed.

Statement of the Facts and Case

{¶2} In 2013, Appellant committed seven counts of fifth-degree felony telecommunication harassment. While he was in the Mahoning County Jail awaiting trial on those charges, Appellant was reprimanded by Deputy Hawkins, one of the deputies supervising him. According to Appellant, he felt Deputy Hawkins treated him unfairly. A plea agreement was reached in that case and in March 2014, Appellant was released from jail and sentenced to community control sanctions.

{¶3} In April 2014, Deputy Hawkins, while working at the jail, received two calls from an individual named "Brian Myers" claiming to be a Struthers police officer and/or detective. This person told Deputy Hawkins somebody called and complained about her, and he was investigating the complaint. This person set a date and time to meet with the deputy. Deputy Hawkins informed her supervisors of the calls immediately after each call occurred and wrote incident reports. The Mahoning Valley Law Enforcement Task Force was notified of the calls and meeting. It provided surveillance for the meeting, but "Brian Myers" did not show up for the meeting.

{¶4} In May 2014, Deputy Hawkins, while working at the jail, received a phone call from a person claiming to be from the Trumbull County Administration Office or the Trumbull County Sheriff's Office named "Kevin Bryant." This person told Deputy Hawkins he was setting a meeting for workers from jails to talk about jail operations. Deputy Hawkins recognized his voice as the same person claiming to be "Brian Myers" and

immediately advised her supervisors of the telephone call and wrote a report. When "Kevin Bryant" called the next day, Deputy Hawkins recorded the conversation. "Kevin Bryant" told her the meeting was going to take place the following morning and she was to wear dress clothes and heels. The Task Force accompanied Deputy Hawkins to the meeting. No one appeared for the meeting.

{¶5} An investigation of these incidents pursued and Deputy Hawkins was shown a picture of Appellant and asked if she knew him. She responded she did from his earlier stay in the Mahoning County jail. She listened to telephone calls he made from the jail and identified Appellant's voice as "Brian Myers" and "Kevin Bryant."

{¶6} Appellant was on probation at the time and agreed to cooperate with the investigation. He made a statement admitting to using a computer to make the phone calls and stated he did these things to "mess" with Deputy Hawkins because of how she treated him when he was in jail.

{¶7} Thereafter, Appellant was indicted for four counts of telecommunication harassment in violation of R.C. 2917.21(B)(C)(1)(2), fifth-degree felonies; four counts of impersonating a peace officer in violation of R.C. 2921.51(E)(G), third-degree felonies; and four counts of disrupting public services in violation of R.C. 2919.04(B)(C), fourth-degree felonies. 5/22/14 Indictment. A jury found Appellant guilty of four counts of telephone harassment, four counts of impersonating a peace officer, and one count of disrupting public services. Appellant received an aggregate sentence of 144 months (12 years). Appellant received 12 months for each telecommunication harassment conviction (counts 1–4), 36 months for each impersonating a peace officer conviction (counts 5–8), and 18 months for disrupting public services (count 9). The sentences for counts 1, 5, and 9 ran concurrently. The sentences for counts 2 and 6 ran concurrently. The sentences for counts 3 and 7 ran concurrently. The sentences for counts 4 and 8 ran concurrently. Each of those concurrent sentences ran consecutively to each other and consecutively to any sentence imposed for violating community control.

{¶8} Appellant timely appealed his convictions. *State v. Brazina*, 7th Dist. No. 15 MA 0191, 2017-Ohio-7500 (*Brazina I*). In *Brazina I*, we affirmed the jury's 2015 guilty verdicts for four counts of telephone harassment, four counts of impersonating a peace officer, and one count of disrupting public services. *Id*. However, we reversed the

sentence and remanded the matter for resentencing because the trial court did not make the required consecutive sentence findings at the sentencing hearing. *Id.* at ¶ 1, 31-42.

{¶9} A resentencing hearing occurred on April 13, 2018. The trial court reimposed the 144 month sentence for the nine convictions. In doing so, the trial court ordered some sentences concurrent and some consecutive.

{¶10} Appellant timely appealed the imposition of consecutive sentences.

Assignment of Error

"The trial court erred in imposing consecutive sentences, totaling 12 years, without make adequate findings under R.C. 2929.14 and that were otherwise contrary to law."

{¶11} Appellant's assignment of error asks this court to review the felony sentence imposed by the trial court. Appellate courts review felony sentences under the standard set forth in R.C. 2953.08(G)(2). *State v Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1. Under R.C. 2953.08(G)(2) an "appellate court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court's findings under relevant statutes or that the sentence is otherwise contrary to law." *Id*.

{¶12} With that standard in mind, we turn to Appellant's arguments. Appellant asserts two arguments under this assignment of error. First, he argues the trial court did not make the required consecutive sentence findings. Next, he contends these crimes, which according to him amount to prank calls, do not warrant a 12 year sentence; the sentence imposed is beyond what is necessary to carry out the purposes and principles of felony sentencing.

{¶13} Starting with the consecutive sentence findings, in *Brazina I* we explained the requirements for imposition of consecutive sentences:

> When a trial court imposes consecutive sentences it must make the required R.C. 2929.14(C)(4) findings at the sentencing hearing, and it must incorporate those findings into the sentencing entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29. We have previously explained R.C. 2929.14(C)(4) requires a sentencing court to find: "(1) consecutive sentences are necessary to protect the public from future crime or to punish the offender, (2) that consecutive sentences are not

> disproportionate to the seriousness of the defendant's conduct and to the danger he poses to the public, and (3) one of the findings described in subsections (a), (b) or (c).” State v. Jackson, 7th Dist. No. 15 MA 93, 2016-Ohio-1063, ¶ 13. Subsections (a), (b), and (c) provide:
>
> (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.
>
> (b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.
>
> (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.
>
> R.C. 2929.14(C)(4)(a)-(c).

Brazina I, 2017-Ohio-7500 at ¶ 32.

{¶14} At resentencing the trial court complied with those sentencing mandates. The trial court stated:

> The court finds that consecutive sentences are warranted pursuant to Ohio Revised Code 2924.14(C)(4) [sic]. The court finds that consecutive sentences are necessary to protect the public from future crimes and punish the offender and that consecutive sentences are not disproportionate to the defendant’s conduct and to the danger the defendant poses to the public. The court also finds that the defendant committed one or more multiple offenses while the defendant was awaiting trial or sentencing, was under a

> sanction imposed pursuant to Section 2929.16, 2929.17, or 2929.18 of the Revised Code or was under post-release control for a prior offense.
>
> The court finds that at least two multiple offenses were committed as part of one or more courses of conduct and the harm caused by two or more of the multiple offenses so committed was so great or unusual that a single prison term for any of the offenses committed as part of the course of conduct adequately reflects the seriousness of the offender's conduct.

4/13/18 Sentencing Tr. 6-7.

{¶15} The sentencing judgment entry contains the same findings. 4/16/18 J.E.

{¶16} The trial court clearly made the first two findings. As to the third finding, although the trial court was only required to find either subsection (a), (b), or (c), the trial court found both (a) and (b) were applicable.

{¶17} In making the findings, the trial court safely tracked the language of the statute and used the words "The court finds." In doing so the trial court ensured that it was making all necessary findings. We do not fault a trial court for tracking the language of the statute as long as it is clearly indicating it is making those findings. *State v. Williams*, 7th Dist. No. 16 MA 0041, 2017-Ohio-856, ¶ 20 ("A recitation of the trial court's findings in the judgment entry indicates the court quoted requirements of the court directly from the statute. Quoting requirements from the statute is not problematic per se. While we do not require trial court's to use talismanic or magic words, we have urged trial courts to track the language of the statute. The problem here is the trial court did not alter the language of the statute to indicate it was actually making the findings. The finding as it was stated in the judgment entry provided, "if multiple prison terms are imposed," "the court may require," and "if the court finds." The "if" and "may" language does not indicate an actual finding by the trial court. It would have been simple for the trial court to reword the language to show that it was making the findings."). Consequently, despite Appellant's insistence to the contrary using the language of the statute is not problematic in this situation.

{¶18} Appellant also contends the trial court's section (a) finding that the offenses were committed "while the defendant was awaiting trial or sentencing, was under a

sanction imposed pursuant to Section 2929.16, 2929.17, or 2929.18 of the Revised Code or was under post-release control for a prior offense" was not specific enough. Appellant argues the trial court was required to state which one applied. For instance, the trial court was required to state whether the offenses were committed while Appellant was awaiting trial or whether the offenses were committed while he was on community control issued pursuant to R.C. 2929.17.

{¶19} This argument has no merit. While it would have been more thorough for the trial court to state Appellant was on a community control sanction issued pursuant to R.C. 2929.17 for a prior felony, the record indicates the trial court was aware of the fact that Appellant was on a community control sanction when these offenses were committed. We have previously stated, "[W]e may liberally review the entirety of the sentencing transcript to discern whether the trial court made the requisite findings." *State v. Stephen*, 7th Dist. No. 14 BE 0037, 2016-Ohio-4803, ¶ 22. *See also State v. Hairston*, 10th Dist. No. 17AP-416, 2017-Ohio-8719, ¶ 8 (favorably quoting our decision). At the resentencing hearing, the state indicated the reason for the resentencing was our decision in *Brazina I;* we found all of the required consecutive sentence findings were not made. 4/13/18 Sentencing Tr. 2-3. Our decision in *Brazina I* noted the fact that Appellant was on community control for fifth-degree felony convictions for telecommunications harassment when he committed these offenses. *Brazina I*, 2017-Ohio-7500 at ¶ 35 ("The trial court made a (C)(4)(a) finding; it found Appellant committed the offenses while on community control for another offense."). Consequently, given that this case was remanded with instructions, it is presumed the trial court read our opinion and was aware Appellant committed the offenses while on community control for other felony telecommunications harassment convictions.

{¶20} Furthermore, although it was not noted during the resentencing hearing, at trial, Appellant's prior convictions of telecommunication harassment were admitted; previous convictions of telephone harassment were an element of the current telephone harassment charge elevating the offense to a fifth-degree felony. This was noted in our *Brazina I* opinion. *Brazina I* at ¶ 2, 11. The judgment entry of the 2014 felony telecommunications harassment convictions was admitted into evidence along with the indictment for that conviction indicating Appellant in 2013 was convicted of misdemeanor

telecommunications harassment in Mahoning County Court. The 2014 judgment entry indicated Appellant was sentenced to community control for the fifth-degree felony convictions for telecommunications harassment. Consequently, it could be gleaned from the entire record that the trial court's (C)(4)(a) finding was based on Appellant's community control sanction issued pursuant to R.C. 2929.17 for the prior 2014 felony telecommunications harassment convictions.

{¶21} Thus for those reasons, the (C)(4)(a) finding was sufficient and did not require a more specific statement given the record.

{¶22} However, even if the trial court should have been more specific in its (C)(4)(a) finding, any error is harmless. As stated above, the trial court was only required to find (C)(4)(a), (b), **or** (c). The trial court found both subsection (a) and (b) were applicable. Section (a) is formulated different than section (b). While section (a) sets forth different instances in which it may apply, section (b) is not written in that manner. In order for section (b) to apply all factors set forth in that section must be found. The trial court found all factors in section (b) applicable. Therefore, if the trial court was not specific enough in its findings regarding section (a), any error is harmless because the trial court found section (b) and all its requirements were applicable.

{¶23} Appellant's second argument is the sentence is a general abuse of discretion and the crimes do not warrant a 12 year sentence since they were essentially prank calls and did not harm anyone. This same argument was made in *Brazina I*:

> "Appellant's second argument under this assignment of error is the sentence is an abuse of discretion. Appellant asserts 12 years for "prank phone calls" is beyond what is necessary to carry out the purposes and principles of felony sentencing. He asserts no one was injured, there was no destruction of property, and there was no calculated expense."

Brazina I, 2017-Ohio-7500 at ¶ 39.

{¶24} Although this court was not required to address the argument at that time because we were remanding for resentencing on the consecutive sentences issue, we did state:

> This argument is meritless. We do not review a sentence for an abuse of discretion. R.C. 2953.08(G)(2) ("The appellate court's standard for review is not whether the sentencing court abused its discretion."). Furthermore, trial courts have broad discretion in making sentencing decisions; sentencing statutes and case law indicate appellate courts defer to trial court's sentencing decisions. *State v. Rahab*, 150 Ohio St.3d 152, 2017-Ohio-1401, ¶ 10, 80 N.E.3d 431, citing *Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002 at ¶ 23, 59 N.E.3d 1231 and R.C. 2953.08(G). Moreover, despite Appellant's insistence to the contrary, expenses were incurred because of these "prank calls," and the crimes caused the victim distress. The victim testified she was scared. Appellant knew the victim was a Mahoning County Deputy and called her at the jail; the phone calls occurred while she was at work supervising inmates. The Task Force investigated the matter and provided surveillance for the arranged meetings. Additionally, Appellant has a prior record of telephone harassment and had just begun serving community control for his prior harassing telephone calls when he committed these crimes. Consequently, for those reasons, Appellant's abuse of discretion argument lacks merit.

Id. at ¶ 40.

{¶25} This reasoning still applies; the record supports the imposition of consecutive sentences.

{¶26} For all the above stated reasons, both of Appellant's arguments lack merit. Appellant's sole assignment of error is overruled and the sentence is affirmed.

Donofrio, J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.