[Cite as *State v. Frasca*, 2012-Ohio-3746.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2011-T-0108**
- vs -	:	
MICHAEL R. FRASCA, JR.,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 2010 CR 0423.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

Michael A. Scala, 244 Seneca Avenue, N.E., P.O. Box 4306, Warren, OH 44482 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Michael R. Frasca, Jr.**,** appeals his convictions for Felonious Assault and Abduction, following a jury trial in the Trumbull County Court of Common Pleas, and his sentence for these convictions. The issues to be decided by this court are whether a jury instruction must be given by the court when there is limited evidence supporting such an instruction, whether Abduction is supported by sufficient evidence when the victim was grabbed by her arms and her family was threatened, and

whether the trial court properly sentenced the defendant to consecutive sentences pursuant to the recently amended version of R.C. 2929.14. For the following reasons, we affirm the decision of the trial court.

{¶2} On July 15, 2010, Frasca was indicted by the Trumbull County Grand Jury on one count of Felonious Assault, a felony of the second degree, in violation of R.C. 2903.11(A)(2) and (D)(1)(a), and one count of Abduction, a felony of the third degree, in violation of R.C. 2905.02(A)(2) and (C).

{¶3} A jury trial was held on June 20, 21, and 22, 2011. The following testimony was presented.

{¶4} Officer Robert Miketa, a patrolman with the Niles Police Department, testified regarding two separate incidents leading to the charges against Frasca. On April 5, 2010, Miketa was dispatched to the scene of a fight between two males on North Cedar Street, in Niles, Ohio. Upon arriving at the scene, Miketa saw Frasca and another man, Jesse Kegley, arguing and fighting in Frasca's yard. Miketa testified that upon arriving at the scene, both men were pushing each other and he noticed that Kegley was "bleeding profusely" from his arm. Kegley informed Miketa that Frasca had cut him with a knife. Miketa indicated in his incident report that the parties were engaged in "mutual combat." Miketa explained that both men were heavily intoxicated and Frasca was "combative" with the police officers. Kegley was ultimately taken by ambulance to the hospital for treatment, but Frasca was found to have no injuries.

{¶5} At the scene, Officer Miketa spoke with Frasca, who explained that the two men "got into a fight," but denied having a knife. Frasca stated that Kegley had started the fight. Upon conducting a search of the yard, near where the fight occurred,

Miketa located a white shirt covered in blood, later identified as Kegley's, a cell phone, and a folding knife lying in the grass.

{¶6} Regarding the second incident, which occurred on June 9, 2010, Officer Miketa explained that he responded to a call from an officer following the driver of a silver Alero that was speeding and had evaded police. Soon thereafter, Miketa saw Frasca walking in the area of the reported location of the Alero, who approached Miketa and attempted to report his girlfriend, Renee Sample's, silver Alero stolen. Later that day, Miketa received a call of a domestic dispute occurring at 15 North Cedar Street, near the same area where Frasca had been earlier, where a caller reported seeing a male "dragging the female back into the home." Police were informed upon arrival at the address that there was no problem. Soon after, Sample flagged down Miketa in his cruiser, and was frantic and crying. She reported that Frasca had taken her silver Alero and falsely reported it stolen. She stated that she was in the residence with Frasca at 15 North Cedar, tried to leave, and Frasca would not let her. She reported that he dragged her back into the residence by her hair when she tried to leave. According to Sample, Frasca threatened to kill her and her family if she spoke to police about the stolen car incident. She said that she was held against her will, although Miketa did not observe any marks or injuries on her body.

{¶7} Jesse Kegley testified regarding the fight on April 5, 2010. He explained that he and Frasca, who had been friends for many years, had been out with Sample on that night, going to several bars and drinking alcohol. They returned to Frasca's home, where Frasca became agitated while speaking to someone on the phone. Kegley testified that Frasca became upset about some comment made by Kegley and Frasca

called him a derogatory term. Kegley then insulted Frasca, who came up to Kegley and pushed him. Kegley pushed back and was then head-butted by Frasca. He explained that the parties then "started fighting," which consisted of the two men "wrestling" on the ground. He explained that they may have thrown some punches but that they did not connect with each other. After that, Frasca began "bragging" about how he had cut Kegley. Kegley looked down and noticed his arm and fingers were bleeding. The two continued fighting until police arrived.

{¶8} Kegley explained that he never saw a knife. He stated that he did not have any weapons on his person and that, although he threatened to beat Frasca up, he never threatened to kill him. He explained that at some point during the fight, Frasca's mother Sandra Warner, tried to stop the fight but was unsuccessful. Kegley explained that the cuts to his arm and fingers required staples and stitches.

{¶9} Sample testified that she was dating Frasca at the time of both incidents. She was out drinking with Kegley and Frasca on the night of April 5 and saw each man have approximately five to six beers and a shot. The men began arguing at Frasca's home, but Sample was unsure how the argument started. She saw Frasca head-butt Kegley and then both men began fighting and rolling on the ground. She went into Frasca's house to get his mother to stop the fight. When she came outside, she saw Kegley bleeding from his arm.

{¶10} Regarding the incident on June 9, Sample explained that Frasca asked to borrow her car and left his home. When he came back, he told her different stories about losing the keys. Sample did not know where her car was but stated that Frasca told her he was going to report the car stolen and did so to a police officer in the area.

While outside, the two started arguing about her car. Sample explained that Frasca put his hands around her neck and the two continued to argue as they walked back to Frasca's home and went inside. Sample wanted to leave, started to exit the house, and Frasca started "grabbing [Sample's] arms" and "got [her] back into the house" by pulling her. After this, police came to the house and, according to Sample, Frasca threatened to kill her family if she talked to the police. Sample explained that this was why she told police that everything was fine. After the police left, Sample again exited the house and Frasca "pulled [her] back in by [her] hair." She eventually exited a third time and ran from the house, toward the police station.

{¶11} Brenda Gerardi, a forensic scientist from the Ohio Bureau of Criminal Identification and Investigation (BCI), testified that upon testing the knife found at the scene, she determined that the blood found on the blade of the knife belonged to Kegley. Earl Gliem, also a forensic scientist from BCI, testified that upon testing the same knife, he found that a fingerprint on the knife blade belonged to Frasca.

{¶12} The defense presented Frasca's mother, Warner, as its sole witness. Warner testified that Frasca lived in her home during both incidents. Regarding the incident that occurred on April 5, she explained that Sample came into the home, woke her, and told her that Kegley was choking Frasca. Upon running outside, she saw Kegley on top of Frasca, with Frasca in a "head lock." She explained that Kegley was sitting on his neck and choking him. She unsuccessfully attempted to get Kegley off of Frasca. She stated that she thought Frasca "was going to die."

{¶13} Subsequent to the conclusion of Frasca's case, his counsel argued that a self-defense instruction should be given to the jury. The court found that there was not

sufficient evidence to support such an instruction and did not allow the instruction to be given to the jury. Frasca also requested that an instruction be given on the lesser included offense to Abduction, Unlawful Restraint. This instruction was given to the jury.

{¶14} On June 22, 2011, the jury found Frasca guilty of Felonious Assault and Abduction.

{¶15} On July 7, 2011, Frasca filed a Motion for a New Trial. In his Motion, he argued that the trial court erred by failing to give a self-defense jury instruction. He also asserted that the guilty verdict on the Abduction charge was against the manifest weight of the evidence. This Motion was denied by the trial court.

{¶16} A sentencing hearing was held in this matter on October 6, 2011. At the hearing, the court stated that Frasca had "one of the most extensive records" that it had seen and noted various arrests for similar crimes, including Assault. The court noted that the victim in the present matter had been injured "pretty severely" and explained that the sentence was based on Frasca's criminal record.

{¶17} The trial court entered a Judgment Entry on Sentence on October 26, 2011, stating that the trial court had considered the relevant sentencing criteria and sentenced Frasca to a prison term of five years for Felonious Assault and two years for Abduction. These terms were ordered to be served consecutively, for a total prison term of seven years. The Entry stated that "the Court finds that the offender's criminal history shows that consecutive terms are needed to protect the public."

{¶18} Frasca timely appeals and raises the following assignments of error:

{¶19} "[1.] The Trial Court erred, to the detriment of Defendant-Appellant, by refusing to give the jury a self-defense instruction.

{¶20} "[2.] The Trial Court erred, to the detriment of Defendant-Appellant, in giving an Abduction jury charge to the jury.

{¶21} "[3.] The Trial Court erred, to the detriment of Appellant, by sentencing the Appellant to consecutive sentences without following statutory guidelines."

{¶22} In his first assignment of error, Frasca argues that the trial court erred by denying his request to charge the jury with a self-defense instruction. He asserts that he presented sufficient evidence as to each element of self-defense, therefore warranting a jury instruction.

{¶23} The State argues that Frasca failed to establish the three elements required for a self-defense instruction to be given to the jury and emphasized that he failed to show that he was not at fault for starting the fight.

{¶24} An appellate court can only reverse a trial court's failure to give a defendant's requested jury instruction upon a showing of an abuse of discretion. (Citations omitted.) *State v. Jeffries*, 182 Ohio App.3d 459, 2009-Ohio-2440, 913 N.E.2d 493, ¶ 74 (11th Dist.); *State v. Strickland*, 11th Dist. No. 2005-T-0002, 2006-Ohio-2498, ¶ 24 (it is within a trial court's "sound discretion" to determine whether the evidence presented at trial warrants a particular jury instruction).

{¶25} "[I]n order to be entitled to an instruction on self-defense, a defendant is required to present some evidence as to each of the following three elements: '(1) that the defendant was not at fault in creating the situation giving rise to the affray; (2) that the defendant had a bona fide belief that he was in imminent danger of death or great

bodily harm and that his only means of escape from such danger was in the use of such force; and (3) that the defendant did not violate any duty to retreat or avoid the danger.'" *State v. Kovacic*, 11th Dist. No. 2010-L-065, 2012-Ohio-219, ¶ 22, citing *State v. Barnes*, 94 Ohio St.3d 21, 24, 759 N.E.2d 1240 (2002). The elements of self-defense are "cumulative" and the failure to prove any of the three elements results in the defendant's inability to demonstrate that he acted in self-defense. *State v. Cassano,* 96 Ohio St.3d 94, 2002-Ohio-3751, 772 N.E.2d 81, ¶ 73.

{¶26} "A trial court must instruct the jury on self-defense * * * only where the defendant presents sufficient evidence at trial to warrant such an instruction." *Kovacic* at ¶ 18. "Evidence is sufficient where a reasonable doubt of guilt has arisen based upon a claim of self-defense." *State v. Melchior*, 56 Ohio St.2d 15, 20, 381 N.E.2d 195 (1978). "If the evidence generates only a mere speculation or possible doubt, such evidence is insufficient to raise the affirmative defense, and submission of the issue to the jury will be unwarranted." *Id.* "[T]he trial judge is in the best position to gauge the evidence before the jury and is provided the discretion to determine whether the evidence adduced at trial was sufficient to require an instruction." *State v. Fulmer*, 117 Ohio St.3d 319, 2008-Ohio-936, 883 N.E.2d 1052, ¶ 72.

{¶27} Regarding the first element, the trial court found that there was no evidence showing that Kegley initiated the fight and that the only evidence pointed to Frasca as the aggressor. This finding is supported by the evidence presented at trial. The testimony of the witnesses present during the fight supported only a finding that Frasca began the fight. Kegley testified that Frasca started the fight, first by using obscenities addressed toward Kegley, then by pushing him. Sample testified that the

first physical action she saw between the two men was Frasca "head-butting" Kegley. The only evidence present in the record to support a finding that Frasca was not the aggressor was Officer Miketa's testimony that Frasca, at the scene, denied starting the fight. Frasca did not testify as to this or give a written statement regarding the incident, nor was there any evidence of injuries that he might have sustained had Kegley been the aggressor.

{¶28} Frasca contends that since there was some evidence supporting that he was not the aggressor, the trial court should have submitted the issue to the jury. We emphasize that the existence of a piece of evidence in favor of Frasca does not automatically warrant submitting the matter to the jury, especially if it raises only a mere possibility of doubt. The defendant's statement alone, not sworn to but given through the testimony of Officer Miketa, without any additional testimony or evidence, is not sufficient to establish the first element of self-defense, that Frasca did not start the fight. *See State v. Voss*, 12th Dist. CA2006-11-132, 2008-Ohio-3889, ¶ 56 (where there was no evidence in the record, other than the defendant's own self-serving statements that she was acting in self-defense, to support the elements of a self-defense claim, the trial court did not err by failing to give a jury instruction). Given that the trial judge was in the best position to consider this evidence and there was not enough evidence to raise more than possible doubt, we cannot find that the trial court abused its discretion in finding that this element was not met. *Fulmer*, at ¶ 72.

{¶29} Even if the first element was met by Frasca, however, he also failed to show that there was sufficient evidence that he had a bona fide belief that he was in imminent danger of bodily harm, such that stabbing Kegley was necessary.

{¶30} As the Ohio Supreme Court has explained, "the second element of self-defense is a combined subjective and objective test." (Citation omitted.) *State v. Thomas*, 77 Ohio St.3d 323, 330, 673 N.E.2d 1339 (1997). A defendant must *reasonably* believe he is in imminent danger to satisfy the objective standard, and to satisfy the subjective standard, the defendant must have had an *honest* belief that he was in imminent danger. *Id.*; *State v. Fink*, 11th Dist. No. 2007-A-0073, 2008-Ohio-1503, ¶ 23. Regarding the subjective portion of the test, the Ohio Supreme Court has held that a defendant's state of mind is crucial to this element of self-defense. *State v. Koss*, 49 Ohio St.3d 213, 215, 551 N.E.2d 970 (1990).

{¶31} There is no evidence in the present matter to indicate that Frasca was in fear at any time. Although his mother testified that she was in fear and there was testimony that Kegley was larger than Frasca, such testimony goes to the objective portion of the test, whether Frasca reasonably believed he was in danger. There was no evidence that he subjectively felt afraid, through either his own testimony, statements, or the testimony of any other witnesses. The only testimony as to this element was that Frasca and Kegley were friends and that, according to Kegley, Frasca "bragged" after cutting him and stated, "ha, ha, ha, I cut you." *See State v. Parnell*, 10th Dist. No. 11AP-257, 2011-Ohio-6564, ¶ 14 (where the appellant did not testify at trial, did not make a statement as to whether he felt threatened or in danger, and there was no other evidence about his honest beliefs, there was not sufficient evidence for a jury instruction to be given).

{¶32} Frasca expressed concern that, as a criminal defendant, he cannot be compelled to testify in order to prove that he had an honest, subjective belief that he

was in imminent danger. While we agree that a defendant is not required to testify in order to satisfy this element, it can be proven through the introduction of other evidence, such as 911 calls or medical records showing injuries. As outlined above, no such evidence was presented to support Frasca's assertion that he was in fear of imminent danger.

{¶33} Since all three elements must be supported by sufficient evidence to prevail on a claim of self-defense, we cannot find that the trial court abused its discretion in failing to give a self-defense instruction to the jury.

{¶34} The first assignment of error is without merit.

{¶35} In his second assignment of error, Frasca asserts that the trial court erred in giving an Abduction jury instruction because the Abduction charge was not supported by the evidence. He also asserts that the manifest weight of the evidence did not support a conviction for Abduction.

{¶36} Although Frasca's assignment of error indicates that the jury instruction was given in error, Frasca's argument appears to relate to whether there was sufficient evidence to submit the Abduction count to the jury. Frasca sets forth no specific error as to the jury instruction and counsel did not object to the instruction during the trial. Failure to object to a jury instruction waives all but plain error. *State v. Jackson*, 107 Ohio St.3d 300, 2006-Ohio-1, 839 N.E.2d 362, ¶ 114. Since Frasca submitted no error related specifically to the charge itself, showing that the instruction was improper, we cannot find that the trial court erred in giving the Abduction instruction to the jury.

{¶37} The main argument raised by Frasca actually relates to whether there was sufficient evidence to submit the case to the jury as to the Abduction count.

{¶38} The Ohio Rules of Criminal Procedure provide that a defendant may move the trial court for a judgment of acquittal "if the evidence is insufficient to sustain a conviction." Crim.R. 29(A). "'[S]ufficiency' is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury," i.e., "[w]hether the evidence is legally sufficient to support the jury verdict as a matter of law." *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997), quoting Black's Law Dictionary (6 Ed.1990), 1433. Essentially, "sufficiency is a test of adequacy," that challenges whether the state's evidence has created an issue for the trier of fact to decide regarding each element of the offense. *Id.*

{¶39} "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). In reviewing the sufficiency of the evidence to support a criminal conviction, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *Id.*

{¶40} Weight of the evidence, in contrast to its sufficiency, involves "the inclination of the greater amount of credible evidence." (Citation omitted.) (Emphasis deleted.) *Thompkins* at 387. Whereas the "sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, * * * weight of the evidence addresses the evidence's effect of inducing belief."

State v. Wilson, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25 (citation omitted). "In other words, a reviewing court asks whose evidence is more persuasive -- the state's or the defendant's?" *Id.* The reviewing court must consider all the evidence in the record, the reasonable inferences, and the credibility of the witnesses, to determine whether, "in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶41} There was sufficient evidence to submit this case to the jury. In order to convict Frasca of Abduction, the State had to prove, beyond a reasonable doubt, that Frasca, without privilege to do so, knowingly "[b]y force or threat, restrain[ed] the liberty of another person under circumstances that create[d] a risk of physical harm to the victim or place[d] the other person in fear." R.C. 2905.02(A)(2).

{¶42} In the present matter, the testimony of Sample indicated that Frasca, after a fight occurred and she attempted to leave his home, grabbed her arms and pulled her inside. After attempting to leave a second time, Frasca grabbed Sample by the hair and pulled her inside again. This establishes that Frasca used force to restrain Sample from leaving his home. According to Sample, he also threatened to kill her family to prevent her from telling police about what was occurring when they arrived at the home in response to a call, further preventing her from being able to leave. Sample indicated in her testimony that she was in fear during this time, due to the threats and use of force, satisfying the element that threat or force was used and created a risk of harm or placed Sample in fear. *See State v. Jaryga*, 11th Dist. No. 2003-L-023, 2005-Ohio-352, ¶ 105

(where the victim was pushed up against her car, was in fear because she did not know what appellant was going to do to her, and testimony of a witness indicated that shortly after the incident, the victim was crying and shaken, there was sufficient evidence to find the victim was in fear and to support a conviction for Abduction).

{¶43} Regarding the restraint of liberty element, this court has found that it "may be proven by evidence that the defendant has 'limit[ed] one's freedom of movement in any fashion for any period of time.'" (Citation omitted.) *State v. Totarella*, 11th Dist. No. 2009-L-064, 2010-Ohio-1159, ¶ 118. In the present matter, Sample was prevented from leaving the house on two occasions, during which Frasca grabbed her by the arms and the hair. This satisfies the restraint of liberty element. *Id.* at ¶ 119 (the act of grabbing the victim by her ear and pulling her toward the backseat of a vehicle constituted a restraint of her liberty).

{¶44} The conviction was also supported by the manifest weight of the evidence. The weight of the testimony established each of the elements and was not contradicted by any conflicting testimony or evidence presented. Although there was no physical evidence of injuries, the testimony of Officer Miketa corroborated Sample's story, to the extent that when Sample ran up to the police car, she seemed frantic and upset. Although Sample may have later sent a text message to Frasca to say "Happy Father's Day," we cannot find that this alone outweighed Sample's statements about the events that occurred on June 9, especially when considered with Sample and Warner's testimony that Sample and Frasca, although they had been dating, no longer saw each other after that night. The credibility of such testimony was for the trier of fact to decide. *State v. Awan*, 22 Ohio St.3d 120, 123, 489 N.E.2d 277 (1986).

{¶45} The second assignment of error is without merit.

{¶46} In his third assignment of error, Frasca argues that the court failed to make all of the factual findings necessary to sentence him to consecutive sentences under the newly amended R.C. 2929.14.

{¶47} The State argues that the trial court is not required to make findings of fact when imposing consecutive sentences. The State, however, does not address the issue of the applicability of R.C. 2929.14 as amended by House Bill 86.

{¶48} Subsequent to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, appellate courts have applied a two step approach in reviewing felony sentences. First, courts "examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court's decision in imposing the term of imprisonment is reviewed under the abuse-of-discretion standard." *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 26.

{¶49} We initially note that H.B. 86, enacting the consecutive sentencing provisions referred to by Frasca, took effect on September 31, 2011. Frasca was sentenced on October 6, 2011. Therefore, the new provisions are applicable to the present matter.

{¶50} Prior to the enactment of H.B. 86, the Ohio Supreme Court held that "there is no mandate for judicial fact-finding in the general guidance statutes." *Foster* at ¶ 42. *Foster* struck down R.C. 2929.14(E)(4), governing the imposition of consecutive sentences, as unconstitutional, for requiring judicial fact-finding. However, the basis for this part of *Foster*'s holding was undercut by the United States Supreme Court's

decision in *Oregon v. Ice,* 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517 (2009). As was acknowledged by the Ohio Supreme Court in *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768, "[a]fter *Ice*, it is now settled law that * * * the jury-trial guarantee of the Sixth Amendment to the United States Constitution does not preclude states from requiring trial court judges to engage in judicial fact-finding prior to imposing consecutive sentences." *Id.* at ¶ 19.

{¶51} The court further held that *Ice* did not revive the former consecutive sentencing statutory provisions held unconstitutional in *Foster* and concluded that "[t]rial court judges are not obligated to engage in judicial fact-finding prior to imposing consecutive sentences unless the General Assembly enacts new legislation requiring that findings be made." *Id.* at paragraphs two and three of the syllabus.

{¶52} Subsequent to *Hodge*, in 2011, H.B. 86 re-enacted the consecutive sentencing provisions of former R.C. 2929.14(E)(4) requiring fact-finding as they existed prior to *Foster*, although the provisions have been renumbered:

{¶53} "If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

{¶54} * * *

{¶55} (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).

{¶56} Subsequent to this amendment in the consecutive sentencing law after *Hodge*, courts have noted that R.C. 2929.14(C)(4) now requires trial courts to make factual findings when imposing consecutive sentences. *State v. Stalnaker*, 11th Dist. No. 2011-L-151, 2012-Ohio-3028, ¶ 15 ("H.B. 86, effective September 30, 2011, * * * amends R.C. 2929.14 and requires fact finding for consecutive sentences"); *State v. Hites*, 3rd Dist. No. 6-11-07, 2012-Ohio-1892, ¶ 11 ("[t]he revisions to the felony sentencing statutes under H.B. 86 now require a trial court to make specific findings when imposing consecutive sentences").

{¶57} While the requirement that fact finding occur was re-enacted by H.B. 86, we note that the requirement that a sentencing court must give reasons for imposing consecutive sentences, which existed under the former 2929.19(B)(2), was not re-enacted. Therefore, Frasca's contention that *State v. Comer,* 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473, is applicable is questionable, since *Comer* held that "when imposing consecutive sentences, a trial court is required to make its statutorily enumerated findings and give reasons supporting those findings at the sentencing hearing." *Id.* at paragraph one of the syllabus. This holding rested on R.C. 2929.14(E)(4) and 2929.19(B)(2)(c), both of which were found unconstitutional in *Foster*. As noted above, R.C. 2929.14(E)(4) has been re-enacted while R.C. 2929.19(B)(2)(c) has not. Thus, a sentencing court is not statutorily required to make a finding that gives its reasons for selecting the sentence imposed.

{¶58} Although we need not consider whether the trial court gave reasoning for imposing consecutive sentencing, we must now determine whether it made the factual findings required by R.C. 2929.19(C)(4). At the sentencing hearing, the trial court made several factual findings. First, it noted Frasca's lengthy criminal record, stating that he had "one of the most extensive records" that the court had seen and that it went on for "page after page." It also found that many of the charges were for Felonious Assault, Menacing, and Aggravated Menacing. The court further stated that the State's request for maximum sentences "would not probably be uncalled for."

{¶59} The court also found that the victim in the Felonious Assault case was cut "pretty severely." The court finally found that "based on your past record, that is the reason I have given the sentence I have." In the Judgment Entry, the court also stated that the "Court finds that the offender's criminal history shows that consecutive terms are needed to protect the public."

{¶60} Frasca argues that the court did not make findings regarding the necessity of protecting the public from future crime. However, the record indicates that the court did consider this. The court noted on the record Frasca's extensive record and this record being the basis for the sentence. It also stated in the Entry that a consecutive sentence was needed to protect the public. Such findings have been found sufficient to satisfy the factual findings requirement under R.C. 2929.19(C)(4). *State v. Jones*, 1st Dist. No. C-110603, 2012-Ohio-2075, ¶ 23 (where the trial court stated during the sentencing hearing that it was ordering the prison terms to be served consecutively because the defendant had an extensive criminal history and the victims had been seriously injured, these statements were sufficient to show that the trial court's

imposition of consecutive sentences was appropriate and complied with R.C. 2929.14(C)(4)); *State v. Johnson*, 8th Dist. No. 97579, 2012-Ohio-2508, ¶ 12 (when the court made findings related to the appellant's specific conduct in the case and his repeated engagement in criminal activity, it properly found that the sentence was not disproportionate to his conduct and threat he posed to society). Although the trial court in the present matter may not have used the exact wording of the statute in reaching these findings, this court has found that, in making findings regarding consecutive sentencing, "a verbatim recitation of the statutory language is not required by the trial court." *State v. Green*, 11th Dist. No. 2003-A-0089, 2005-Ohio-3268, ¶ 26, citing *State v. Grissom*, 11th Dist. No. 2001-L-107, 2002-Ohio-5154, ¶ 21.

{¶61} The third assignment of error is without merit.

{¶62} For the foregoing reasons, the judgment of the Trumbull County Court of Common Pleas, finding Frasca guilty of Felonious Assault and Abduction, and sentencing him to an aggregate prison term of seven years, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.