[Cite as *State v. Abshear*, 2004-Ohio-1322.]

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 03CA0012

vs. : T.C. CASE NO. 02CR0280

KEITH ABSHEAR : (Criminal Appeal from Common Pleas Court)

Defendant-Appellant :

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O P I N I O N

Rendered on the 19th day of March, 2004.

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GRADY, J.

{¶1} On April 29, 2002, the Defendant, Keith Abshear, was indicted on charges of aggravated burglary, rape, felonious assault, kidnapping, fleeing and eluding, and two counts of domestic violence. These charges arose from an incident wherein the Defendant broke into the home of his ex-wife, bound her hands in tape and forced her to engage in sexual intercourse. Shortly thereafter, the victim escaped and fled from the Defendant in her car. The Defendant gave chase and eventually

ran the victim's car off of the road. The Defendant then forced the victim into his car and drove off with her. The police were notified of the abduction by a passerby. The police located the Defendant's vehicle and a lengthy chase ensued, finally culminating when the police disabled the Defendant's vehicle.

{¶2} On May 16, 2002, the Defendant entered a plea of not guilty on all counts of the indictment. On January 10, 2003, the Defendant withdrew his not guilty plea and entered negotiated pleas of guilty. In exchange for the Defendant's guilty plea to the crimes of felonious assault, R.C. 2903.11, kidnapping, R.C. 2905.01, and fleeing and eluding, R.C. 2921.331(B), the State agreed to dismiss the remaining charges in the indictment.

{¶3} A sentencing hearing was held on February 7, 2003. The trial court heard testimony from the Defendant's psychologist, heard a lengthy statement from the victim, and heard a statement from the Defendant. After hearing all of the testimony and statements, the trial court imposed a sentence of four years on the felonious assault charge, eight years on the kidnaping charge, and five years on the fleeing and eluding charge. The trial court ordered all three sentences to be served consecutively, for a total of seventeen years.

{¶4} The Defendant filed a timely notice of appeal.

FIRST ASSIGNMENT OF ERROR

{¶5} "THE TRIAL COURT ERRED IN IMPOSING A SENTENCE IN EXCESS OF THE MINIMUM ON A FIRST TIME OFFENDER WITHOUT MAKING THE FINDINGS REQUIRED BY R.C. 2929.14(B)"

{¶6} Felonious Assault is a felony of the second degree. R.C. 2903.11(D). The trial court could have imposed a definite term of imprisonment of two, three, four, five, six, seven, or eight years. R.C. 2929.14(A)(2). The court imposed a term of four years.

{¶7} Kidnapping is a felony of the first degree. R.C. 2905.01(C). The court could have imposed a definite term of imprisonment of three, four, five, six, seven, eight, nine, or ten years. R.C. 2929.14(A)(1). The court imposed a term of eight years.

{¶8} Fleeing and Eluding is a felony of the third degree when, as here, it creates a substantial risk of harm to persons or property. R.C. 2921.331(A)(5). The court could have imposed a definite term of imprisonment of one, two, three, four, or five years. R.C. 2929.14(A)(3). The court imposed a maximum sentence of five years.

{¶9} R.C. 2929.14(B)(2) states that a court shall impose the shortest prison term authorized for a felony offense unless "[t]he court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others."

{¶10} R.C. 2929.14(C) states that a court imposing a sentence upon an offender for a felony may impose the longest prison term authorized for the offense only upon offenders who committed the worst forms of the offense, upon offenders who pose the greatest

likelihood of committing future crimes, upon certain drug offenders, and upon certain repeat violent offenders.

{¶11} The court imposed the maximum sentence of five years on the fleeing and eluding charge. The court did not make the express finding required by R.C 2929.14(B)(2) in order to exceed the minimum sentence, but did make the requisite 2929.14(C) finding to impose the maximum sentence. Specifically, it found that the Defendant committed "the most serious form of the offense." (Tr. 60).

{¶12} This court has previously held that "if a maximum sentence is properly imposed under R.C. 2929.14(C), findings about a minimum sentence under R.C. 2929.14(B) are not required." *State v. Schlecht*, Champaign App. No.2003-CA-3, 2003-Ohio-5336 (citation omitted).[1] We reasoned that "[i]f a maximum sentence is properly imposed, rejection of a minimum sentence is inherent in the findings used to justify the maximum sentence." *Id.* That rule applies here.

{¶13} On the felonious assault charge, the trial court sentenced the Defendant to four years in prison. This sentence was more than the minimum two year authorized prison sentence but less than the eight year maximum authorized prison sentence. The trial court made the requisite R.C. 2929.14(B)(2) findings to support its imposition of more then the minimum sentence. It found "that a minimum term would demean the seriousness of the

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[1]This issue is currently pending before the Ohio Supreme Court. See *State v. Evans*, 98 Ohio St.3d 1508, 2003-Ohio-5336.

offense." (Tr. 58).

{¶14} On the kidnapping charge, the trial court sentenced the Defendant to eight years in prison. This sentence was more than the minimum three year prison sentence but less than the maximum ten year prison sentence for that offense. The trial court did not make the requisite R.C. 2929.14(B)(2) findings to support its imposition of more than the minimum sentence. However, it did find that Defendant committed "perhaps, the worst form of the offense and that it did endanger the victim's life." This finding satisfies the more stringent R.C. 2929.14(C) requirement for maximum sentences.

{¶15} We believe that the rationale of *State v. Schlecht* likewise applies in this circumstance. The minimum/maximum findings that R.C. 2929.14(B)(2) and R.C. 2929.14(C), respectively, require the court to make involve the same dual issues; the defendant's blameworthiness and the risk to the public that the prospect of his recidivism presents. The particular standards the two sections impose with respect to those matters differ only in degree. Therefore, the findings which R.C. 2929.14(C) requires the court to make with respect to maximum sentences, if made, permit the court also to avoid the minimum, even if a sentence less than the maximum actually is imposed.

{¶16} Finally, Defendant argues that the trial court's use of the term "perhaps" in connection with its worst form of the offense finding portrays an equivocation that undermines the finding or its purpose, or both. We do not agree. While

"perhaps" can imply a speculative proposition, its more specific meaning is by means of, "per" chance or fortune, from the Old Norse word "hap." It thus indicates the random origin of an act or circumstance more than it did about the nature of the results achieved.

{¶17} The Defendant's first assignment of error is overruled.

SECOND ASSIGNMENT OF ERROR

{¶18} "BECAUSE THE TRIAL COURT DID NOT STATE ITS REASONS FOR IMPOSING CONSECUTIVE SENTENCES, THE DEFENDANT'S SENTENCE IS CONTRARY TO THE LAW AND CONSTITUTES AN ABUSE OF DISCRETION."

{¶19} Two sections of the Revised Code impose requirements which a court must satisfy when it imposes consecutive sentences for multiple offenses. R.C. 2929.14 E(4) provides:

{¶20} "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:

{¶21} "* * *

{¶22} "(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."

{¶23} R.C. 2929.19(B)(2)(c) requires the sentencing court to state its reasons for the findings it made in order to impose a consecutive sentence pursuant to R.C. 2929.14. *State v. Edmonson* (1999), 86 Ohio St.3d 324. The Supreme Court has interpreted R.C. 2929.14(E) and R.C. 2929.19(B)(2) to require the trial court to enumerate its findings and give reasons supporting those findings on the record at the sentencing hearing. *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165.

{¶24} Addressing these several requirements in *State v. Rothgeb*, Champaign App. No. 02CA7, 2003-Ohio-465, we stated:

{¶25} "The preferred method of compliance with these requirements is to set out each finding that R.C. 2929.14(E)(4) requires the court to make, and in relation to each the particular reason or reasons for making the finding that R.C. 2929.19(B)(2)(c) contemplates. An unrelated 'laundry list' of reasons that doesn't correspond to the statutory findings the court makes presents a difficult puzzle to solve, and requires an appellate court to try to surmise what the trial court's reasons were."

{¶26} The trial court did not follow the "outline" format we suggested in *Rothgeb*, and instead pronounced its findings in a narrative recitation from the bench. The State, in a supplemental memorandum, has confessed error on the trial court's part for failing to comply with *Rothgeb.* However, the "preferred method" we described there is only that, a preference, not a rule

of law. Therefore, there is no basis to reverse on that account, and none at all so long as the trial court complied with the requirements of *Edmonson* and *Comer*. We find that it did.

{¶27} The trial court found that consecutive sentences were necessary to protect the public and to punish the Defendant for his actions. (Tr. 60). It found that imposing consecutive sentences was not disproportionate to the Defendant's conduct and to the danger that the defendant poses. (Tr. 60). Finally, the trial court found that running the sentences consecutively was appropriate because the harm caused by the offender was so great or unusual that a single term would not adequately reflect the seriousness of the Defendant's conduct. (TR. 60).

{¶28} Though the trial court failed to carefully relate its findings to the reasons that support them, the transcript of the sentencing hearing does contain the reasons that support the trial court's imposition of consecutive sentences.

{¶29} In giving its reasons for imposing a total seventeen-year sentence, the trial court found that "[t]he victim clearly suffered both physical and psychological harm and of long duration." (Tr. 57). It found that when the Defendant kidnaped the victim, he endangered her life and that the victim "felt in fear for her life by [the Defendant's] statements of obtaining a gun and going to a motel . . ." (Tr. 59). The trial court stated that it was "convinced that [the victim] felt her life would end or at least certainly was placed in danger by [the Defendant's] conduct." (Tr. 59). The trial court further found that the victim will undergo long lasting effects as a result of

her forcible kidnapping. (Tr. 59). It also stated that the Defendant's actions endangered "the victim [and] the many police agencies that were involved in the high speed chase." (Tr. 60). It further found that the fleeing and eluding brought great risk "to the users of the highway should any of them enter into the path of this fleeing and eluding. Their lives were, indeed, in jeopardy; and it doesn't appear that any rational person could have proceeded in that manner without realizing the harm and danger created by his conduct." (Tr. 60).

{¶30} We believe that all of the aforementioned reasons provided by the trial court support the trial court's findings. Therefore, we find that the trial court's imposition of consecutive sentences was appropriate in this case.

{¶31} The Defendant's second assignment of error is overruled. The judgment from which the appeal was taken will be affirmed.

FAIN, P.J. and YOUNG, J., concur.