[Cite as *State v. Williams*, 2015-Ohio-1267.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

State of Ohio — Court of Appeals No. OT-14-014

Appellee — Trial Court No. 13CR036

v.

Steven Williams, Jr. — **DECISION AND JUDGMENT**

Appellant — Decided: March 31, 2015

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and
Emily M. Gerber, Assistant Prosecuting Attorney, for appellee.

Michael W. Sandwisch, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Ottawa County Court of Common Pleas that found appellant Steven Williams, Jr. guilty of one count of felonious assault and three counts of child endangering and imposed an aggregate sentence of 16 years imprisonment. For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} The undisputed facts relevant to the issues raised on appeal are as follows.

{¶ 3} On February 28, 2013, a 10-week-old infant was taken to Bay Park Hospital by her mother, Megan Kruse, and father, appellant Steven Williams. The couple reported that the child had been in appellant's care for approximately eight hours the previous day while Kruse was at work. According to their routine established since mother returned to work after maternity leave two weeks earlier, the child was taken by mother to her sister's home for two hours on February 27, 2013. After that, appellant picked the child up and took her to the home he shared with mother until mother's return from work. When Kruse returned home from work at about 2:30 a.m. on February 28, she noticed that the child was crying in an unusual manner and squirming in her baby swing as if she was uncomfortable. She also noticed that the child's eyes were moving from side to side and that she appeared unable to focus. When Kruse picked her daughter up to comfort her, the baby's head kept falling to the side. When questioned, appellant told Kruse he did not know what was wrong with the child. After unsuccessful attempts to comfort the child throughout the night, the parents took her to the hospital.

{¶ 4} Upon examination at the hospital, doctors thought the child was experiencing a seizure. Further exams revealed moderate bleeding on the brain and fractured ribs, some of which appeared to be least 10 days old. The child was then transported to Toledo Hospital's Pediatric ICU.

{¶ 5} Later that day, Detective Amanda Grimm, with the Ottawa County Sheriff's Office, received a call from Deputy M. Nye, who was investigating the case as a child

abuse complaint. Detective Grimm and her supervisor, Detective Amy Harrell, responded to the hospital at approximately 7:00 p.m. on February 28 to investigate the complaint and were met by a children's services caseworker and the on-duty nurse. Detective Grimm interviewed Kruse, appellant and nurse Brandi Kayne. Nurse Kayne reported that the child had experienced two seizures, for which she was given medication, and had a right parietal brain hemorrhage, rib fractures, visible petechiae on her torso and a red mark on her back and sternum.

{¶ 6} Upon completion of her interview with appellant, Detective Grimm informed him that he would have to leave the hospital and would not be permitted to return or be around the child until the investigation was complete. Appellant stated that he understood and left the hospital.

{¶ 7} Detective Grimm also interviewed appellant's mother, Kruse's sister Amy Caseman (who frequently cared for the child), and Kruse's parents. Prior to leaving the hospital, Grimm spoke to nurse Kayne again for an update on the child's condition. Kayne explained that examinations thus far showed multiple rib fractures, both old and fresh brain bleeds, and bloodshot eyes. The child was on a ventilator at that time.

{¶ 8} The child was released from the hospital on March 15, 2013, with a prognosis of possible blindness and mental disability due to the brain injury.

{¶ 9} On March 19, 2013, appellant was indicted on seven felony counts: one count of cruelty to animals in violation of R.C. 959.13(A)(1)[1]; two counts of felonious assault in violation of R.C. 2903.11(A)(1); two counts of child endangering in violation of R.C. 2919.22(B)(1) and two counts of child endangering in violation of R.C. 2919.22(B)(2). All charged offenses are felonies of the second degree. Counts 2, 3 and 4 were alleged to have occurred on February 14, 2013; Counts 5, 6 and 7 on February 27 or 28. Appellant entered pleas of not guilty and the case proceeded to a four-day jury trial on January 21, 2014. The jury found appellant guilty of one count of felonious assault and three counts of child endangering (one count in violation of R.C. 2919.02(B)(2), torturing or cruelly abusing a child, and two counts in violation of R.C. 2919.02(B)(1), abusing a child). The felonious assault conviction arose from acts that occurred on February 27 or 28, 2013; the three child endangering convictions arose from acts that occurred on February 14 and 27 or 28, 2013. At sentencing on March 27, 2014, the trial court merged Counts 5, 6 and 7 (the felonious assault and two child endangering convictions that occurred on February 27 or 28, 2013). The court proceeded to sentencing on Counts 7 and 3 (the child endangering conviction that occurred on February 14, 2013). As to Count 3, appellant was sentenced to a term of eight years; as to Count 7, a term of eight years. The sentences were ordered to be served consecutively for a total period of incarceration of 16 years.

[1] On the day of trial, this count was severed upon request of appellant.

{¶ 10} Appellant sets forth the following assignments of error:

1. The Trial Court erred to the prejudice of the Defendant in allowing the admission of the State's child abuse expert's testimony where a proper foundation was not laid pursuant to Evidence Rule 703 by the admission into evidence of all records relied upon by the expert, and where the State's expert gave an opinion as to the veracity (lack thereof) of the Defendant's alleged statements to the child's mother which constitutes egregious, prejudicial, reversible error and constitutes ineffective assistance of counsel when counsel fails to object to such testimony, and without such inadmissible evidence the jury's verdict was not supported by the remaining evidence as there was no direct or circumstantial evidence to prove either "recklessness" or "knowingly" beyond a reasonable doubt.

2. The Trial Court erred to the prejudice of the Defendant and abused its discretion in imposing maximum consecutive sentences against the Defendant contrary to law.

{¶ 11} We note first that although appellant's first assignment of error claims in part that trial counsel was ineffective for failing to object to the expert's testimony, appellant does not refer to that issue or argue it at any point in his brief. In light of our findings below as to the admissibility of the expert testimony and pursuant to App.R. 16(A)(7), we decline to review the issue.

{¶ 12} In partial support of his first assignment of error, appellant argues that the testimony of the state's child abuse expert, Dr. Randall Schlievert, should have been stricken pursuant to Evid.R. 703 because medical records upon which the doctor's testimony was based were never admitted. This court has reviewed the complete record from the trial court, including the transcript of trial testimony and the various exhibits admitted into evidence, and we find that appellant's argument is without merit.

{¶ 13} Evid.R. 703 provides that "[t]he facts or data in the particular case upon which an expert bases an opinion or inference *may be those perceived by the expert* or admitted in evidence at the hearing." (Emphasis added.)

{¶ 14} The record reflects that prior to trial the state and the defense stipulated to the authenticity of the child's medical records, which were voluminous. Defense counsel acknowledged that Dr. Schlievert had reviewed the medical records and agreed that admission of over 1,800 pages of records would be unnecessary and could possibly confuse the jury.

{¶ 15} Dr. Schlievert testified at length as to his review of the child's case after he received a consultation request from the child's surgical team at Toledo Hospital. On March 4, 2013, Schlievert examined the child, spoke with a social worker and met with the child's mother for a medical history. He then reviewed the CAT scans, x-rays and the radiologist's report, and discussed the findings with mother and the medical team. The doctor's observations and findings were communicated to the Ottawa County children's services office and documented in a written report which was admitted into evidence.

The doctor's report detailed his review of the care provided the child to that date as well as his own observations of the child and her status. The doctor's written "impressions/ recommendations" noted "severe life-threatening to permanently disabling injuries due to repeated abusive head trauma." He continued, "1st event likely around event described on Valentine's Day. Second event likely after babysitter gave to dad and before child 'changed' from normal to abnormal." The doctor concluded, "There is NO accident here."

{¶ 16} The doctor's trial testimony expanded upon his written findings as summarized above. Facts or data upon which Schlievert relied had been observed by the doctor when he examined the child; further, the authenticity of the medical records was stipulated to by the defense prior to trial. Schlievert also based his opinion on statements made directly to him by the nurse, doctors, the child's babysitter and her mother.

{¶ 17} Appellant also asserts that Schlievert should not have testified as to statements the child's mother made to the doctor regarding the baby's injuries. Relevant to this argument, the doctor testified "mom had told me that dad had supposedly dropped the baby loud enough that he had heard a thud." The record reflects that mother's statement was made during the doctor's attempt to acquire the child's medical history as well as a history of any injuries. The doctor testified that dropping a baby would not result in the type of injuries the child suffered and stated, "Either it was not a true story or if it did happen, it certainly didn't lead to this level of injury."

{¶ 18} Upon consideration, we find that the state satisfied the requirements of Evid.R. 703 in that the facts necessary to support Dr. Schlievert's expert opinions were contained in the record through his notes and report and through the testimony of other witnesses and were therefore an appropriate basis for his opinion testimony. The "facts or data" upon which Dr. Schlievert based his opinions were those "perceived by the expert" and therefore in compliance with Evid.R. 703. Accordingly, appellant's arguments as to the admissibility of Dr. Schlievert's testimony are without merit.

{¶ 19} Appellant also claims in his first assignment of error that without the "inadmissible evidence" his conviction was not supported by the evidence. However, as we have found that the doctor's testimony was admissible, this argument is also without merit.

{¶ 20} Accordingly, appellant's first assignment of error is not well-taken.

{¶ 21} In his second assignment of error, appellant asserts that his sentence is contrary to law. He also asserts that the trial court abused its discretion in imposing maximum consecutive sentences because at the time of the offenses he was gainfully employed, had no prior criminal history, had no history of either mental illness, substance abuse or acts of violence, and because Dr. Schlievert was not able to give a prognosis for recovery.

{¶ 22} We note first that, other than listing the facts above, appellant sets forth no legal authority in support of his argument against his sentence, other than to state that the sentences were erroneous pursuant to two Ohio cases which he does not discuss.

{¶ 23} With respect to the imposition of maximum sentences, a second-degree felony is punishable by a prison term of "two, three, four, five, six, seven, or eight years." R.C. 2929.14(A)(2). Consequently, the sentences imposed by the trial court are not contrary to law.

{¶ 24} The standard of review for an appeal of a sentence is not abuse of discretion as appellant suggests. *State v. Tammerine*, 6th Dist. Lucas No. L-13-1081, 2014-Ohio-425, ¶ 11; *State v. McCormick*, 2014-Ohio-2433, 13 N.E.3d 740 (6th Dist.).

{¶ 25} An appeals court hearing a statutory felony sentence appeal must review the record, including the findings underlying the sentence. This court has reviewed the entire record from the trial court.

{¶ 26} The trial court found that,

> consecutive service of said sentences is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the sentences of the offender's conduct and to the danger that the offender poses to the public. The Court further finds that at least 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.

{¶ 27} These findings are consistent with those required for the imposition of consecutive sentences by R.C. 2929.14(C)(4)(b) and (c). Upon our examination of the

record, we conclude that these findings are supported. Accordingly, the trial court did not err in imposing maximum, consecutive sentences and appellant's second assignment of error is not well-taken.

{¶ 28} On consideration whereof, the judgment of the Ottawa County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
CONCUR.
JUDGE