[Cite as *State v. Blanton*, 2009-Ohio-3311.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2008-09-235
	:	O P I N I O N
- vs -		7/6/2009
	:	
CHEYENNE BLANTON,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2008-05-0898

Robin N. Piper, Butler County Prosecuting Attorney, Michael A. Oster, Jr., Government Services Center, 315 High Street, 11th Fl., Hamilton, Ohio 45011, for plaintiff-appellee

Repper, Pagan, Cook, Ltd., John H. Forg III, 1501 First Avenue, Middletown, Ohio 45044, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Cheyenne Blanton, appeals two convictions for kidnapping and the sentence imposed by the Butler County Court of Common Pleas. We affirm.

{¶2} Appellant is a minor. On February 22, 2008, appellant and her boyfriend broke into a residence in Oxford as part of a scheme to steal a car and run away to New York City. The victim, also a minor and classmate of appellant, lived at the residence. At the time of the

break-in, the victim was in the residence. According to the recitation of facts, the victim was bound by her hands and feet and gagged. She was beaten over her entire body with a baseball bat and fists, as well as being kicked, which caused serious physical harm requiring hospital treatment. They shaved her head and eyebrows, placed her in a cold shower and made her walk in the snow soaking wet and barefoot in the freezing temperatures. They repeatedly humiliated, terrorized and tortured the victim over several hours, including photographing her during the attack. At times the beatings were so severe the victim vomited. They stole personal property and jewelry. They smashed or destroyed furnishings and property throughout the residence. They brandished a knife repeatedly, threatening to slit the victim's throat and kill her.

{¶3} The couple planned to rob the victim's mother of her car keys by stomping on the victim's foot, so that she would cry out, and lure her mother inside the residence when she arrived home from work. The boyfriend intended to render the mother unconscious with the baseball bat when she entered the home. When the victim's mother returned home, appellant stomped on the victim's foot, causing her to scream. However, the mother ran next door to call the police. Appellant and her boyfriend were later arrested.

{¶4} Appellant was initially charged in juvenile court, but the case was bound over to the common pleas court. The grand jury returned a seven-count indictment for aggravated burglary in violation of R.C. 2911.11(A)(1), aggravated robbery in violation of R.C. 2911.01(A)(1), conspiracy to commit aggravated robbery in violation of R.C. 2911.01(A)(1) and R.C. 2923.01(A)(1), felonious assault in violation of R.C. 2903.11(A)(1), kidnapping in violation of R.C. 2905.01(A)(2), kidnapping in violation of R.C. 2905.01(A)(3), and vandalism in violation of R.C. 2909.05(A). Appellant entered a plea of guilty to each charge and was sentenced to an aggregate term of 44 years in prison. Appellant timely appeals, raising three assignments of error.

{¶5} Assignment of Error No. 1:

{¶6} "THE INDICTMENT CHARGING BLANTON WITH TWO, SEPARATE COUNTS OF KIDNAPPING FAILED TO CHARGE A MENS REA ELEMENT, AN ESSENTIAL ELEMENT OF THAT CRIMINAL CHARGE AND HENCE HER CONVICTION ON SAID CHARGE IS VOID AB INITIO."

{¶7} In her first assignment of error, appellant argues that the two counts of kidnapping failed to charge the requisite mens rea of "recklessness," the defect deprived the trial court of subject-matter jurisdiction over the charges, and, as a result, her convictions were void ab initio.

{¶8} Appellant's argument is unpersuasive. Appellant was charged with, and entered guilty pleas to, two separate counts of kidnapping; one count under R.C. 2905.01(A)(2) and the other under R.C. 2905.01(A)(3).

{¶9} "Kidnapping" under those sections is defined as, "[n]o person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall remove another from the place where the other person is found or restrain the liberty of the other person, for any of the following purposes:

{¶10} "(2) To facilitate the commission of any felony or flight thereafter;

{¶11} "(3) To terrorize, or to inflict serious physical harm on the victim or another."

{¶12} Both sections clearly specify a culpable mental state, namely that the act was done purposefully. *State v. Parker*, Cuyahoga App. No. 90256, 2008-Ohio-3681, ¶38, quoting, *State v. Maurer* (1984), 15 Ohio St.3d 239, 270 (In terms of a culpable mental state, "[k]idnapping involves a *purposeful* removal or restraint"). Specifically, R.C. 2905.01(A)(2) requires that the act was committed for the purpose of facilitating the commission of a felony or flight thereafter; while, under R.C. 2905.01(A)(3), the act is committed for the purpose to terrorize or inflict serious physical harm.

{¶13} Appellant's indictment mirrored the language of the Revised Code, alleging the requisite mental state. Accordingly, we find that no defect existed in the indictment. See *State v. Riddle*, Cuyahoga App. No. 90999, 2009-Ohio-348, ¶19.

{¶14} Appellant's first assignment of error is overruled.

{¶15} Assignment of Error No. 2:

{¶16} "THE 44-YEAR AGGREGATE SENTENCE IMPOSED BY THE TRIAL COURT IS DISPROPORTIONATE TO SENTENCES IMPOSED BY OTHER COURTS FOR SIMILAR OFFENSES AND THEREBY DEVIATES FROM THE PURPOSE AND PRINCIPLES OF SENTENCING SET FORTH IN R.C. 2929.11(B)."

{¶17} In her second assignment of error, appellant argues that the 44-year sentence is disproportionate to the severity of the crime. Appellant urges her sentence is contrary to law because it is not proportionate to "similar crimes committed by similar offenders" in violation of R.C. 2929.11(B). Appellant notes that she is a juvenile and cites several cases which she claims are similar, but the sentences are significantly shorter.

{¶18} Appellate review of felony sentencing is controlled by the two-step procedure recently outlined by the Ohio Supreme Court in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912. Under *Kalish*, this court must (1) 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, and (2) review the sentencing court's decision for an abuse of discretion. Id. at ¶4.

{¶19} Trial courts "have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences." *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, ¶100. "In addition, the sentencing court must be guided by statutes that are specific to the case itself." *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, ¶38.

In reviewing whether a sentence is clearly and convincingly contrary to law, "the appellate court must ensure that the trial court has adhered to all applicable rules and statutes in imposing the sentence." *Kalish* at ¶15.

{¶20} Appellant's basic contention challenges the aggregate sentence of a 44-year prison term due to the trial court's imposition of consecutive sentences. However, appellant's sentence in this case was within the permissible statutory range. Specifically, the trial court sentenced appellant to nine-year terms of imprisonment for the aggravated burglary, aggravated robbery, and conspiracy charges; a seven-year term of imprisonment for the felonious assault; and a ten-year term for kidnapping in violation of R.C. 2905.01(A)(3), with the sentences to run consecutive. Appellant was then given concurrent sentences of nine years for kidnapping in violation of R.C. 2905.01(A)(2) and 11 months for vandalism.

{¶21} Furthermore, the trial court expressly stated that it considered the principles and purposes of sentencing under R.C. 2929.11. This includes the "consistency analysis" under R.C. 2929.11(B). The court also expressly stated that it balanced the seriousness and recidivism factors under R.C. 2929.12. Since the record indicates that the trial court followed all of the applicable rules and statutes, appellant's aggregate sentence is not clearly and convincingly contrary to law. *Kalish* at ¶18.

{¶22} In reviewing the trial court's imposition of sentence for an abuse of discretion, we find that the court gave careful consideration to the relevant statutory considerations. Id. at ¶20. The court considered the serious injuries sustained by the victim over the nine-hour period that the incident occurred. The court also considered appellant's history of violence and discipline problems contained in the presentence psychological evaluation. The court further noted appellant's lack of remorse. With regard to the consistency to similar offenses, the court stated, "[t]he difficulty is I can't think of any cases that are like this one. And it is bizarre and unique in its violence." After considering these factors, the court sentenced

appellant to the aggregate term of 44 years in prison. Nothing in the record indicates that the trial court abused its discretion by acting unreasonably, arbitrarily, or unconscionably in sentencing appellant. Id. at ¶20.

{¶23} Appellant's second assignment of error is overruled.

{¶24} Assignment of Error No. 3:

{¶25} "THE 44-YEAR AGGREGAGE SENTENCE IMPOSED BY THE TRIAL COURT CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT PROHIBITED BY THE EIGHTH AMENDMENT TO THE U.S. CONSTITUTION AND ART. I SEC. 10 OF THE OHIO CONSTITUTION."

{¶26} In her final assignment of error, appellant claims her sentence constitutes cruel and unusual punishment. Appellant states that "while usually invoked in reference to inhumane forms of punishment, such as torture, the prohibition also applies to punishments found to be disproportionate to the crimes actually committed." Appellant claims that the sentence imposed by the trial court was improper because it "divid[ed] a single course of conduct into a series of crimes and impos[ed] the maximum, or near-maximum, consecutive sentences for each, rendering the final sentence so disproportionate to the underlying crimes as to shock one's sense of justice."

{¶27} "The Eighth Amendment to the Constitution of the United States provides: 'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.' Section 9, Article I of the Ohio Constitution is couched in the identical language." *State v. Weitbrecht*, 86 Ohio St.3d 368, 370, 1999-Ohio-113.

{¶28} "It is generally accepted that punishments which are prohibited by the Eighth Amendment are limited to torture or other barbarous punishments, degrading punishments unknown at common law, and punishments which are so disproportionate to the offense as to shock the moral sense of the community." *McDougle v. Maxwell* (1964), 1 Ohio St.2d 68,

69. "As a general rule, a sentence that falls within the terms of a valid statute cannot amount to a cruel and unusual punishment." Id. "[R]eviewing courts should grant substantial deference to the broad authority that legislatures possess in determining the types and limits of punishments for crimes." *Weitbrecht* at 373.[1]

{¶29} Appellant entered guilty pleas to five first-degree felonies, one second-degree felony, and one fifth-degree felony. Statutorily, appellant could have been sentenced to a maximum of 59 years in prison. After review, we find that appellant's sentence is neither grossly disproportionate to the crimes committed nor does it "shock the sense of justice in the community." See *Harmelin v. Michigan* (1991), 501 U.S. 957, 111 S.Ct. 2680; *State v. Chaffin* (1972) 30 Ohio St.2d 13.

{¶30} Appellant's third assignment of error is overruled.

{¶31} Judgment affirmed.

BRESSLER, P.J., and POWELL, J., concur.

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1. **{¶a}** Appellant urges that the appropriate analysis for determining whether a sentence constitutes "cruel and unusual punishment" is the tripartite test enumerated in *Solem v. Helm* (1983), 463 U.S. 277, 103 S.Ct. 3001 ("First, we look to the gravity of the offense and the harshness of the penalty. * * * Second, it may be helpful to compare the sentences imposed on other criminals in the same jurisdiction. If more serious crimes are subject to the same penalty, or to less serious penalties, that is some indication that the punishment at issue may be excessive. * * * Third, courts may find it useful to compare the sentences imposed for commission of the same crime in other jurisdictions"). However, in *Harmelin v. Michigan* (1991), 501 U.S. 957, 111 S.Ct. 2680, the United States Supreme Court called *Solem* and its proportionality test into doubt. Id. at 965. See, also, *Weitbrecht*, 86 Ohio St.3d at 371.

{¶b} Furthermore, despite appellant's contentions, the Ohio Supreme Court in *Weitbrecht* rejected the *Solem* proportionality analysis. Rather, the court sided with Justice Kennedy's concurrence in *Harmelin*, finding that "a comparative analysis within the state where the crime was committed and between jurisdictions (the second and third prongs in *Solem*) is 'appropriate only in the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality.'" *Weitbrecht* at footnote 4.

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