[Cite as *State v. Fields*, 2015-Ohio-1345.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-03-025
	:	O P I N I O N
- vs -		4/6/2015
	:	
KEITH MICHAEL FIELDS,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2013-CR-0573

D. Vincent Faris, Clermont County Prosecuting Attorney, Nicholas Horton, 76 South Riverside Drive, 2nd Floor, Batavia, Ohio 45103, for plaintiff-appellee

Michael P. Kelly, 108 South High Street, Mt. Orab, Ohio 45154, for defendant-appellant

HENDRICKSON, J.

{¶ 1} Defendant-appellant, Keith Michael Fields, appeals from his sentence in the Clermont County Court of Common Pleas for aggravated robbery and felonious assault. For the reasons set forth below, we affirm.

{¶ 2} On September 24, 2013, appellant was indicted on one count of aggravated robbery in violation of R.C. 2911.01(A)(1), a felony of the first degree (count one), one count of aggravated robbery in violation of R.C. 2911.01(A)(3), a felony of the first degree (count

two), one count of felonious assault in violation of R.C. 2903.11(A)(1), a felony of the second degree (count three), and one count of felonious assault in violation of R.C. 2903.11(A)(2), a felony of the second degree (count four). All four counts were accompanied by a firearm specification pursuant to R.C. 2941.145. The charges arose out of allegations that appellant and Britton Armstrong approached the victim, Charles Ruhstaller, in the early morning hours on March 29, 2013, and demanded money from him. After demanding money from Ruhstaller, Armstrong began hitting the victim with a baseball bat that Armstrong had in his possession. Appellant later shot Ruhstaller in the thigh with a shotgun appellant had in his possession. Appellant and Armstrong then fled the scene.

{¶ 3} A jury trial on the charges was held in February 2014. At trial, the state called 11 witnesses whose testimony established that sometime after 1:00 a.m. on March 29, 2013, Ruhstaller took his dog for a walk around his apartment complex in Union Township, Clermont County, Ohio. While walking his dog, Ruhstaller was accosted by two men dressed in all back who were wearing masks and gloves. One of the men, later identified as Armstrong, was carrying a baseball bat and the other man, later identified as appellant, was carrying a stolen shotgun. Appellant pointed the shotgun at Ruhstaller and demanded money. Armstrong then began beating Ruhstaller with the bat. Ruhstaller attempted to block the bat's blows, while telling the men that he did not have any money on him. At some point, Ruhstaller was able to get ahold of the bat, and appellant then struck him with the gun. Ruhstaller continued to state that he did not have any money on him and eventually began to argue with appellant. At some point, appellant "snapped" and asked Armstrong, "Do you want me to blast him? Do you want me to blast him?" Armstrong ran off while mumbling something to appellant, who began messing with the shotgun. Appellant stuck his finger in the trigger and pointed the gun directly at Ruhstaller's chest. Ruhstaller was able to grab onto the gun and roll with it, moving the gun's position before it was fired. Ruhstaller was

shot in the left thigh. Appellant immediately fled the scene.

{¶ 4} Ruhstaller's wife, Gloria, heard the gun shot inside her home, and she came outside looking for her husband. Gloria called 9-1-1 after learning Ruhstaller had been shot. Officers from the Union Township Police Department arrived on the scene and a canine unit was dispatched to track Armstrong and appellant. Although the canine unit was able to locate a discarded baseball bat and shotgun in a nearby wooded-area that appellant and Armstrong had fled through, the canine unit lost Armstrong and appellant's scent and was unable to track the two men any further.

{¶ 5} Weeks later, appellant was apprehended after police officials received a tip from Jason Isbel, an inmate at the Clermont County Jail. Isbel had shared a pod with appellant at the Clermont County Jail following appellant's arrest on unrelated charges. While housed in the same pod, appellant told Isbel about the shooting, stating that he shot Ruhstaller "for fun."

{¶ 6} A friend of appellant's, Kyle Deardorff, testified at trial that appellant had contacted him on the day of the shooting and asked him to try to recover the shotgun that had been abandoned in the woods. During this conversation, appellant told Deardorff that while he and Ruhstaller were fighting over the gun, appellant decided to shoot Ruhstaller "so [Ruhstaller] wouldn't get a hold of the weapon."

{¶ 7} Following the presentation of the state's case-in-chief, appellant rested his defense without calling any witnesses or submitting any exhibits. The matter was submitted to the jury, who found appellant guilty on all counts and specifications alleged in the indictment. The trial court scheduled sentencing for February 26, 2014, and informed the parties that it would consider the issue of allied offenses at that time. Prior to the sentencing hearing, both the state and appellant filed briefs addressing whether the offenses should be merged as allied offenses of similar import.

{¶ 8} At the February 26, 2014 sentencing hearing, the state conceded that the two counts for aggravated robbery (counts one and two) merged into one another and that the two counts for felonious assault (counts three and four) merged into one another. The state elected to proceed on counts one and three. Appellant argued that these two counts, including the firearm specifications, were also subject to merger. The trial court disagreed and imposed a separate sentence for count one and count three, as well as separate sentences for each firearm specification. With respect to count one, the trial court imposed an eight-year prison term for aggravated robbery and a three-year mandatory prison term on the firearm specification. The prison terms were ordered to be served consecutively to one another for a total of 11 years on count one. With respect to count three, the trial court imposed an eight-year prison term for felonious assault and a three-year mandatory prison term on the firearm specification. The prison terms were ordered to be served consecutively to one another for a total of 11 years on count three. The court further ordered that the total sentence for count three be served consecutively to the total sentence for count one, for a total prison term of 22 years. This 22-year prison term was then ordered to be served consecutively to sentences previously imposed on appellant in Clermont County Court of Common Pleas Case Nos. 2013-CR-0318 and 2013-CR-0402.

{¶ 9} Appellant timely appealed his sentence, raising two assignments of error.

{¶ 10} Assignment of Error No. 1:

{¶ 11} THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT BY RULING THAT THE TWO OFFENSES ON WHICH DEFENDANT-APPELLANT WAS FOUND GUILTY DID NOT MERGE AND, ALSO, THAT THE GUN SPECS [sic] ATTACHED TO EACH OFFENSE DID NOT MERGE.

{¶ 12} In his first assignment of error, appellant argues that the trial court erred by failing to merge counts one and three. Appellant contends that the aggravated robbery and

felonious assault offenses were the "result of a single course of conduct and a single animus" and that the offenses should have therefore been merged for purposes of sentencing. He further contends that the two firearm specifications should have been merged pursuant to R.C. 2929.14(B)(1)(b).

Merger of Felonious Assault and Aggravated Robbery

{¶ 13} An appellate court applies a de novo standard of review in reviewing a trial court's merger determination. *State v. Williams*, 134 Ohio St.3d 482, 2012-Ohio-5699, ¶ 28; *State v. Kinsworthy*, 12th Dist. Warren No. CA2013-06-053, 2014-Ohio-1584, ¶ 74.

{¶ 14} Pursuant to R.C. 2941.25, Ohio's multiple-count statute, the imposition of multiple punishments for the same criminal conduct is prohibited. *State v. Brown*, 186 Ohio App.3d 437, 2010-Ohio-324, ¶ 7 (12th Dist.). Specifically, R.C. 2941.25 provides:

> (A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.
>
> (B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

Accordingly, R.C. 2941.25(A) allows only a single conviction for conduct that constitutes "allied offenses of similar import." However, pursuant to R.C. 2941.25(B), a defendant charged with multiple offenses may be convicted of all the offenses if any one of the following is true: (1) the conduct constitutes offenses of dissimilar import, (2) the conduct shows that the offenses were committed separately, or (3) the conduct shows that the offenses were committed with a separate animus. *State v. Ruff*, Slip Opinion No. 2015-Ohio-995, ¶ 13, citing *State v. Moss*, 69 Ohio St.2d 515, 519 (1982).

{¶ 15} The Ohio Supreme Court has recently clarified the test a trial court and a

reviewing court should employ in determining whether offenses are allied offenses that merge into a single conviction under R.C. 2941.25(A). *Ruff* at ¶ 25. In determining whether offenses are allied, courts are instructed to consider three separate factors—the conduct, the animus, and the import. *Ruff* at paragraph one of the syllabus. Offenses do not merge and a defendant may be convicted and sentenced for multiple offenses if *any* of the following are true: "(1) the conduct constitutes offenses of dissimilar import, (2) the conduct shows that the offenses were committed separately, or (3) the conduct shows that the offenses were committed with separate animus." *Id.* at paragraph three of the syllabus and ¶ 25. With respect to the first factor, "[t]wo or more offenses of dissimilar import exist * * * when the defendant's conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable." *Id.* at paragraph two of the syllabus.

{¶ 16} In the present case, appellant was convicted of aggravated robbery in violation of R.C. 2911.01(A)(1), which states that

> [n]o person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall * * * [h]ave a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it.

Appellant was also convicted of felonious assault in violation of R.C. 2903.11(A)(1), which states that "[n]o person shall knowingly * * * [c]ause serious physical harm to another."

{¶ 17} Applying *Ruff* to the facts of the present case, we find that the two offenses are not allied offenses of similar import as the offenses were committed separately and with separate animus.

{¶ 18} The testimony presented at trial established that the aggravated robbery was complete before the felonious assault occurred. Once appellant pointed the shotgun at Ruhstaller and demanded money, the aggravated robbery was complete. The felonious

assault did not occur until later, after the victim had indicated he had no money to hand over. Appellant was acting with a different animus when he asked, "Do you want me to blast him? Do you want me to blast him?" before shooting Ruhstaller. Testimony from Isbel and Deardorff demonstrated that appellant's purpose in shooting Ruhstaller was not in furtherance of the robbery. Rather, appellant shot Ruhstaller "for fun" and to prevent Ruhstaller from getting a hold of the weapon. As we have previously recognized, if one offense is completed before the other begins, the offenses are considered separately for sentencing purposes even though the two offenses may have been committed in close proximity in time. *Lane*, 2014-Ohio-562 at ¶ 16; *see also State v. Williams*, 11th Dist. Trumbull No. 2012-T-0053, 2013-Ohio-5076 (holding that the offenses of aggravated robbery and felonious assault are not allied offenses of similar import although committed in close proximity in time); *State v. DeWitt*, 2d Dist. Montgomery No. 24437, 2012-Ohio-635 (holding that the offenses of aggravated robbery, aggravated burglary, felonious assault, and involuntary manslaughter are not allied offenses of similar import although committed in close proximity in time). As the aggravated robbery offense was complete before the felonious assault offense occurred, we find that the trial court did not err when it imposed separate sentences for the two offenses.

Merger of the Firearm Specifications

{¶ 19} Appellant also argues that the trial court erred in sentencing him on multiple firearm specifications because the specifications were related to a single transaction.

{¶ 20} Appellant was convicted of firearm specifications under R.C. 2941.145 relating to his offenses for felony aggravated robbery and felonious assault. R.C. 2941.145 carries a three-year mandatory prison term where a jury finds that "the offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the

firearm, or used it to facilitate the offense." R.C. 2941.145(A); R.C. 2929.14(B)(1)(a)(ii); *State v. White*, Slip Opinion No. 2015-Ohio-492, ¶ 30. According to R.C. 2929.14(B)(1)(b), a court may not impose multiple firearm specifications for felonies that were committed as part of the same act or transaction *unless* R.C. 2929.14(B)(1)(g) applies. R.C. 2929.14(B)(1)(g) provides:

> If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (B)(1)(a) of this section in connection with two or more of the felonies, *the sentencing court shall impose* on the offender the prison term specified under division (B)(1)(a) of this section *for each of the two most serious specifications of which the offender is convicted* or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.

(Emphasis added.)

{¶ 21} The record is clear that appellant was convicted of multiple felonies, to wit: aggravated robbery and felonious assault. The trial court was required by R.C. 2929.14(B)(1)(g) to sentence appellant to the two most serious firearm specifications that accompanied his felony convictions for aggravated robbery and felonious assault. "[R]egardless of whether [a defendant's] crimes were a single transaction, when a defendant is sentenced to more than one felony, including [aggravated robbery] and felonious assault, the sentencing court 'shall impose' the two most serious gun specifications." *State v. Isreal*, 12th Dist. Warren No. CA2011-11-115, 2012-Ohio-4876, ¶ 71. *See also State v. Ayers*, 12th Dist. Warren No. CA2011-11-123, 2013-Ohio-2641, ¶ 20-25; *State v. Cassano,* 8th Dist. Cuyahoga No. 97228, 2012-Ohio-4047, ¶ 32-34. We therefore find that the trial court did not err in concluding that the firearm specifications accompanying the aggravated robbery and felonious assault convictions were not subject to merger pursuant to R.C. 2929.14(B).

{¶ 22} Accordingly, for the reasons set forth above, we find that the offenses of aggravated robbery and felonious assault are not allied offenses of similar import and that the firearm specifications accompanying each felony offense do not merge pursuant to R.C. 2929.14(B)(1)(g).

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

{¶ 24} Assignment of Error No. 2:

{¶ 25} THE TRIAL COURT ERRED BY IMPOSING CONSECUTIVE SENTENCES FOR EACH OF DEFENDANT'S OFFENSES RESULTING IN AN EXCESSIVE AND DISPROPORTIONATE TERM OF INCARCERATION.

{¶ 26} In his second assignment of error, appellant argues the trial court erred by ordering that his sentence for felonious assault be served consecutively to his sentence for aggravated robbery and further erred by ordering that the three-year mandatory sentences imposed on the gun specifications be run consecutively. He also argues the court erred by ordering that the 22-year sentence imposed in the present case be served consecutively to sentences previously imposed in Clermont County Case Nos. 2013-CR-0318 and 2013-CR-0402. Appellant contends that the record does not support the trial court's findings that the harm caused by appellant's multiple offenses was so great or unusual that no single prison term adequately reflected the seriousness of his conduct or that consecutive sentences were necessary to protect the public.

{¶ 27} We review the imposed sentence under the standard of review set forth in R.C. 2953.08(G)(2), which governs all felony sentences. *State v. Crawford*, 12th Dist. Clermont No. CA2012-12-088, 2013-Ohio-3315, ¶ 6. "When considering an appeal of a trial court's felony sentencing decision under R.C. 2953.08(G)(2), '[t]he appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing.'" *Id*. at ¶ 7,

quoting R.C. 2953.08(G)(2). However, an appellate court's review of an imposed sentence is not whether the sentencing court abused its discretion. *Id.*; *State v. Moore*, 12th Dist. Clermont No. CA2014-02-016, 2014-Ohio-5191, ¶ 6. Rather, an appellate court may take any action authorized by R.C. 2953.08(G)(2) only if the court "clearly and convincingly finds" that either (1) "the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;" or (2) "[t]hat the sentence is otherwise contrary to law." R.C. 2953.08(G)(2)(a)-(b). An appellate court will not find a sentence clearly and convincingly contrary to law where the trial court considers the principles and purposes of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, properly imposes postrelease control, and sentences appellant within the permissible statutory range. *Moore* at ¶ 6; *State v. Setty*, 12th Dist. Clermont Nos. CA2013-06-049 and CA2013-06-050, 2014-Ohio-2340, ¶ 107. However, where a trial court fails to make the sentencing findings required by R.C. 2929.14(C)(4) before imposing a consecutive sentence, an appellate court will find the sentence contrary to law. *See State v. Marshall*, 12th Dist. Warren No. CA2013-05-042, CA2013-05-042, 2013-Ohio-5092, ¶ 8.

{¶ 28} Pursuant to R.C. 2929.14(C)(4), a trial court must engage in a three-step analysis and make certain findings before imposing consecutive sentences. *State v. Dillon*, 12th Dist. Madison No. CA2012-06-012, 2013-Ohio-335, ¶ 9; *see also State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, syllabus. First, the trial court must find that the consecutive sentence is necessary to protect the public from future crime or to punish the offender. R.C. 2929.14(C)(4). Second, the trial court must find that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. *Id.* Third, the trial court must find that one of the following applies:

(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).

{¶ 29} "A trial court satisfies the statutory requirement of making the required findings when the record reflects that the court engaged in the required analysis and selected the appropriate statutory criteria." *Setty*, 2014-Ohio-2340 at ¶ 113. In imposing consecutive sentences, the trial court is not required to provide a word-for-word recitation of the language of the statute or articulate reasons supporting its findings. *Bonnell*, 2014-Ohio-3177 at ¶ 27-29; *Setty* at ¶ 113. Nevertheless, the record must reflect that the trial court engaged in the required sentencing analysis and made the requisite findings. *Id.* The court's findings must thereafter be incorporated into its sentencing entry. *Bonnell* at ¶ 37.

{¶ 30} Here, the record reflects that the trial court made the findings required by R.C. 2929.14(C)(4) before ordering appellant's sentence be served consecutively. Specifically, the trial court made the following findings at the sentencing hearing:

> THE COURT: The sentences I believe were clearly necessary under 2929.14(C)(4)(a) through (c) to be served consecutively to one another. The sentences are within the proper penalties allowed. It is not the total maximum sentence.
>
> I could have given you 11 years on Count 1. It is undoubtedly, in my mind, necessary to protect the public from future crime and to punish you. And sometimes the aspect of punishment gets overlooked, and, you know, it's – the offenses are just so serious

> that punishment is necessary to I think fully satisfy the seriousness of these offenses.
>
> I do not believe they're disproportionate to the seriousness of your conduct, nor the danger that you pose to the public. I think you are incredibly - - I think you are amoral. I don't believe that you have any - - I believe your character is such that you don't really care about anybody or anything other than yourself, and you will do whatever you want to do to satisfy your own personal urges or needs irrespective of any harm that may cause to any other person.
>
> And I think given the juvenile record and within months of becoming an adult you embarked on an incredible crime spree in this county for - - that lasted about two months. And I'm sure had there not been some superb police work there would be more charges given your - - your conduct.
>
> Again, these are separate offenses. All of these cases involve separate individuals, separate homes, separate victims, separate animuses [sic] on each and every one of these, and your criminal history I think is such that the consecutive structure is warranted.

The trial court later memorialized these findings within its sentencing entry.

{¶ 31} From the trial court's statements at the sentencing hearing and the language utilized in the sentencing entry, it is clear that the trial court complied with the dictates of R.C. 2929.14(C)(4). *See Bonnell* at ¶ 37; *Crawford*, 2013-Ohio-3315 at ¶ 17. It is also clear that the record supports the trial court's findings that the harm caused by appellant's multiple offenses was so great or unusual that no single prison term adequately reflected the seriousness of his conduct and that consecutive sentences were necessary to protect the public. Though appellant attempts to downplay the seriousness of his offenses by contending that it is possible that the shotgun "went off by accident" when he and the victim were struggling over the weapon, the record demonstrates that appellant indicated his desire to "blast" Ruhstaller and pointed the weapon at Ruhstaller's chest. The trial court found appellant's actions to be "one of the coldest and most brutal acts I have seen," and it stated, "but for the grace of God, quite frankly, and Mr. Ruhstaller's amazing ability to just collect

himself enough to deflect the barrel of that riffle, * * * [appellant] would have been represent[ed] * * * on a death penalty case."

{¶ 32} Further, the record demonstrates that appellant has had a long history of criminal conduct, including juvenile adjudications for attempted breaking and entering, burglary, theft, disorderly conduct, and drug abuse as well as felony convictions for burglary, grand theft of a firearm, and grand theft of a motor vehicle. Appellant's juvenile detentions, his substance abuse treatment, and the care he received at Child Focus failed to rehabilitate appellant's conduct. As the trial court stated, "treatment was offered, treatment was available, alternative lifestyles were clearly available to you, and you simply chose, I believe, not to do that and not to follow a law-abiding life." Appellant's continued criminal conduct resulted in great harm to Ruhstaller. Testimony from trial indicates Ruhstaller underwent multiple surgeries to try and repair his leg, but he continues to suffer nerve damage. His leg is numb from the knee down, he feels constant pain, and he has lost control of his foot. For the rest of his life, Ruhstaller will be required to wear a brace and use a cane in order to walk.

{¶ 33} We therefore conclude that the information presented at trial and at the sentencing hearing, as well as the information contained within the presentence investigation report, supports the trial court's findings under R.C. 2929.14(C)(4) and the court's imposition of consecutive sentences. The trial court's decision to run appellant's sentence for felonious assault consecutive to appellant's sentence for aggravated robbery was not clearly and convincingly contrary to law. Further, the trial court's decision to run appellant's sentence in the present case consecutively to the prison sentences imposed in Clermont County Case Nos. 2013-CR-0318 and 2013-CR-0402 was not clearly and convincingly contrary to law.

{¶ 34} We also conclude that the trial court did not err in ordering that appellant's mandatory three-year sentences on the two gun specifications be served consecutively. As we have previously recognized, sentences for multiple firearm specifications should be run

consecutively to each other pursuant to R.C. 2929.14(B)(1)(g). *State v. Isreal*, 2012-Ohio-4876 at ¶ 72. In *Isreal*, we stated the following:

> While the General Assembly did not include the word "consecutive" in R.C. 2929.14(B)(1)(g), it nonetheless carved out an exception to the general rule that a trial court may not impose multiple firearm specifications for crimes committed within a single transaction. The mandatory language of the statute ("the court shall impose") also indicates the General Assembly's intention that the defendant serve multiple sentences for firearm specifications associated with the enumerated crimes, such as [aggravated robbery] or felonious assault. Had the Legislature intended a *per se* rule that sentences for firearm specifications must be served concurrent with one another, it could have stated as much. Or, the Legislature could have chosen not to codify R.C. 2929.14(B)(1)(g), which serves as an exception to the rule that multiple firearm specifications must be merged for purposes of sentencing when the predicate offenses were committed as a single criminal transaction.

Id. at ¶ 73. We therefore find that the trial court did not err by imposing consecutive sentences on the gun specifications set forth in counts one and three.

{¶ 35} Accordingly, for the reasons set forth above, we find that the imposition of consecutive sentences was not clearly and convincingly contrary to law. Appellant's second assignment of error is overruled.

{¶ 36} Judgment affirmed.

S. POWELL, P.J., and RINGLAND, J., concur.