[Cite as *State v. Overman*, 2010-Ohio-6486.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 10-CA-21
Plaintiff-Appellee	:	
	:	Trial Court Case No. 09-CR-218
v.	:	
	:	
JASON M. OVERMAN	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 29th day of December, 2010.

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FAIN, J.

{¶ 1} Defendant-appellant Jason Overman appeals from his conviction and sentence, following a guilty plea, upon one count of Child Endangering, in violation of R.C. 2919.22(B)(1). Overman contends that the trial court abused its discretion when it imposed the maximum, eight-year sentence for the offense. We conclude

that the trial court did not abuse its discretion. Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 2} Overman was charged by indictment with one count of Felonious Assault, in violation of R.C. 2903.11(A)(1); one count of Child Endangering, in violation of R.C. 2919.22(B)(1); and one count of Child Endangering, in violation of R.C. 2919.22(A). All three charges involved the same victim, the four-month-old daughter of the woman he was then dating. The Child Endangering counts included a specification of serious physical harm. Overman ultimately pled guilty to one count of Child Endangering, in violation of R.C. 2919.22(B)(1), including the specification of serious physical harm, and the other charges were dismissed.

{¶ 3} The trial court ordered a pre-sentence investigation. The report of that investigation is in the record of this appeal. At the sentencing hearing, the child's aunt made a statement, the prosecutor made a statement, defense counsel made a statement, and Overman made a statement. The trial court imposed a sentence of eight years, the maximum possible sentence for the offense, which, as a result of the specification, constituted a felony of the second degree.

{¶ 4} From the sentence, Overman appeals.

II

{¶ 5} Overman's sole assignment of error is as follows:

{¶ 6} "THE TRIAL COURT ABUSED ITS DISCRETION IN IMPOSING THE

MAXIMUM SENTENCE ON APPELLANT."

{¶ 7} Overman first contends that the trial court failed to mention, and failed to consider, the purposes and principles of felony sentencing, set forth in R.C. 2929.11, and the factors set forth in 2929.12.

{¶ 8} As the State notes, the trial court did make the following statement before imposing sentence:

{¶ 9} "And in looking at the overriding purposes of the sentencing code, to punish the offense [sic] and to protect the community from further violations by the Defendant and others, the Court does find the maximum sentence is required."

{¶ 10} In making this statement, the trial court summarized the purposes and principles of felony sentencing set forth in R.C. 2929.11:

{¶ 11} "(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

{¶ 12} "(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

{¶ 13} "(C) A court that imposes a sentence upon an offender for a felony shall not base the sentence upon the race, ethnic background, gender, or religion of the offender."

{¶ 14} More importantly, the trial court recited, in its judgment entry, that it considered the principles and purposes of sentencing under R.C. 2929.11, and that it balanced the seriousness and recidivism factors set forth in R.C. 2929.12. As the State notes in its brief, a court speaks through its journal entries. *State v. King* (1994), 70 Ohio St.3d 158, 163.

{¶ 15} Overman notes in his brief that several of Ohio's courts of appeals, including this one, have held that where the record is silent, there is a presumption that a sentencing court will have properly considered the relevant statutory factors. *State v. Slone*, Greene App. Nos. 2005 CA 79, 2006 CA 75, 2007-Ohio-130, ¶ 20. But Overman cites *State v. Wiley*, 180 Ohio App.3d 475, 2009-Ohio-109, a decision of the Fourth District Court of Appeals for the contrary proposition. In that case, the court noted that the trial court did not mention R.C. 2929.11 or R.C. 2929.12 at the sentencing hearing, but had referred, in its sentencing entry, to R.C. 2929.11. The trial court had not referred to R.C. 2929.12 in its sentencing entry. Because the court of appeals was "left to guess whether the trial court properly considered R.C. 2929.12 prior to imposing sentence," the sentence was reversed, and the cause was remanded for re-sentencing.

{¶ 16} In the case before us, unlike in *State v. Wiley*, supra, we are not left to guess whether the trial court considered R.C. 2929.11 and R.C. 2929.12; the trial court tells us, in its sentencing entry, that it considered both sections of Chapter

2929.

{¶ 17} We conclude that the record does not exemplify Overman's contention that the trial court failed to consider the purposes and principles of felony sentencing, or the factors set forth in R.C. 2929.12.

{¶ 18} Overman also contends that the trial court could not impose more than the minimum sentence without having made the finding required by R.C. 2929.14(B). But this part of Ohio's felony sentencing statutes has been severed, as in violation of the United States Constitution, under the authority of *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. Overman cites *Oregon v. Ice* (2009), 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517, as calling into question the continuing vitality of *State v. Foster*, supra. But *Oregon v. Ice* was concerned with a statutory provision requiring a trial judge to make certain findings before imposing *consecutive* sentences, and it noted that the decision whether to make sentences run consecutively has traditionally been reserved for the sentencing judge, not the factfinder. We conclude that the holding in *Oregon v. Ice* has no application to sentencing decisions involving the length of the sentence to impose for a single offense.

{¶ 19} Finally, Overman contends that the trial court abused its discretion by imposing the maximum sentence in his case.

{¶ 20} The injury inflicted upon the four-month old victim in this case was as a result of the victim's arm being scalded in a pan of scalding hot water. Overman first told the police that the victim must have burned her arm on a space heater. Later, he said that he had been cooking some ramen noodles, while holding the victim, when he bent down to pick up something from the floor. According to him, the

victim's arm then went into the pan of water.

{¶ 21} Based upon the pre-sentence investigation report, the trial court disbelieved Overman's explanation for the injury, concluding that the injury was intentionally inflicted. The PSI report includes a letter from the doctor who initially evaluated the victim at Dayton Children's Medical Center, the crux of which is as follows:

{¶ 22} "[The victim] was diagnosed with second degree burns to her right hand extending onto her wrist as a direct result of inflicted, abusive injury. The burn pattern noted was circumferential, involving the entire ventral and dorsal (front and back) surfaces of [the victim's] hand and wrist, interdigital areas (between fingers), and with a sharp line of demarcation ('cut off') between burned and normal skin. This burn pattern would *not* be expected to result from an 'accidental' immersion burn as described in the written statement per the defendant indicating that [the victim's] hand 'slipped in a pan' while she was reportedly being held by the defendant next to a stove on which rested a pan with hot water. Furthermore, review of a photograph of the scene of the reported incident further demonstrates the implausibility of the defendant's explanation given the placement of the pan in which the hot water was reportedly noted and the manner in which the defendant would have needed to have bent over to reach a drawer containing 'trash bags' while holding [the victim]. It is also worthwhile to note that on initial presentation to DCMC, [the victim's] biological mother shared that the defendant reportedly informed her that [the victim] sustained the noted burns from a 'space heater.' This contradicts the written statement the defendant later provided.

{¶ 23} "It is my medical opinion that [the victim] sustained the previously diagnosed second degree burns to her hand and wrist as a result of an immersion burn due to physical maltreatment." (Emphasis in original.)

{¶ 24} The seriousness of the victim's injury was related in her aunt's statement to the court at the sentencing hearing:

{¶ 25} "When we first got to the hospital, our beautiful baby girl was lying there in the bed whimpering with fear. Our 12-pound baby angel was connected to all kinds of machinery. The left side of her face was all bruised up with Jason's hand print, and her right hand and arm were entirely wrapped up. * * * .

{¶ 26} "When looking at the photos of what Jason did to her tiny hand, it was like watching a horror film. This was the most traumatic time of my life. The posttraumatic stress was inescapable. I tried going to work, but I would break down. I was off work initially for a week. I found myself breaking down all the time, no matter how hard I tried to keep it together. I would cry in the shower, cry myself to sleep at night, and most often when I was cooking. I couldn't boil water without breaking down for months.

{¶ 27} " * * * *

{¶ 28} "Because of [the victim's] demanding medical requirements, the decision was made for my parents to take her home from the hospital to care for her. Fortunately, my mom was able to stay home with her.

{¶ 29} " * * * *

{¶ 30} "For quite a while, [the victim] did not feel relaxed or comfortable. When you would hold her, she was so stiff when all you wanted was for her to feel

safe and to bury her little head in you shoulder like she used to. You could tell she was so confused, especially when my mom would do her therapy three times a day. [The victim] would scream and shake in terror. She didn't understand why people she loved and who loved her were hurting her. When I would help my mom put on her medical glove, there would not be a dry eye in the room. It was terrible to see her in so much pain.

{¶ 31} "[The victim's four-year-old brother] is so confused. He asks questions about what happened to his baby sister all the time. I never seem to have the right answers. How can a 4-year-old process this when adults can barely process that someone could do such an evil thing to anyone, let alone a baby who's completely helpless.

{¶ 32} "[The victim] has so much more pain and suffering ahead of her. Her hand is sensitive to hot and cold temperatures, and she will pick at her burn like she is trying to pick it off. I often wonder how will we answer her questions, how will we protect her from the cruelness of society. Recently my mom and I took [the victim's four-year-old brother and the victim] to the Fairfield Mall and the kids were playing in the play area by the food court. A couple of girls noticed [the victim's] hand and said, 'Mommy, Mommy, look at her big boo-boo on her hand.' And [the victim] just stood there in a stare."

{¶ 33} The trial court noted that Overman has a record of one juvenile offense, a probation violation as a juvenile, and, as an adult, one OMVI conviction, one Unauthorized Use of a Motor Vehicle conviction, and four probation violations. The PSI report does not indicate the nature of the probation violations.

{¶ 34} We conclude that the trial court did not abuse its discretion when it imposed the maximum sentence. The offense to which Overman pled guilty only requires recklessness. The trial court found that the injury was intentionally inflicted. The injury was both painful and long-term, if not permanent. And the injury was inflicted upon a helpless, four-month-old baby girl.

{¶ 35} Overman's sole assignment of error is overruled.

III

{¶ 36} Overman's sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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BROGAN and GRADY, JJ., concur.

Copies mailed to:

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