[Cite as *State v. Rogers*, 2004-Ohio-531.]

COURT OF APPEALS
THIRD APPELLATE DISTRICT
VAN WERT COUNTY

STATE OF OHIO **CASE NUMBER 15-03-10**

PLAINTIFF-APPELLEE

v. **O P I N I O N**

JOHN F. ROGERS

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court.

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: February 9, 2004

ATTORNEYS:

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CUPP, J.

{¶1} Appellant, John F. Rogers (hereinafter "Rogers"), appeals the judgment of the Van Wert Court of Common Pleas, classifying him as a sexual predator pursuant to R.C. 2950.09(B).

{¶2} The facts and procedural history are as follows. In February of 1988 Rogers and the alleged victim were living together, although they did not share a romantic relationship. At this time Rogers was thirty years old and the victim was eighteen years old.

{¶3} On the evening of February 14, 1988, the victim was out of the house visiting a friend. When she returned, the light outside the residence was out. Upon entering the residence, the victim noticed a video camera set up and aimed toward the living room. The victim also discovered that the telephone was not working.

{¶4} According to the police report, the victim tried to open the front door to the residence when a masked man entered. The intruder was wearing heavy leather gloves and a grey sweatsuit. The victim recognized this man as Rogers. The intruder then held a knife to the victim's throat and blindfolded her.

{¶5} The man then directed the victim to take off all of her clothes. He then turned on the video camera and told the victim to lie on her back. The man performed vaginal and anal intercourse on the victim and forced her to perform fellatio on him at knifepoint.

{¶6} The assault lasted for approximately forty-five minutes. The intruder then drove the victim away from the house and told her to get out. The victim removed her blindfold and went to a nearby home to call for help.

{¶7} The police obtained a search warrant for the Rogers residence and recovered the videotape of the sexual assault. Rogers told police that he thought he would scare the victim when she came home, so he waited until she went inside, then put on a ski mask and pulled open the front door. Rogers stated that he and the victim began wrestling in the living room. Rogers went on to state that he could not remember anything that happened after he and the victim began wrestling.

{¶8} Rogers was subsequently arrested. He was indicted on February 21, 1989, on five counts of rape and one count of kidnapping. Rogers pled no contest to one count of rape, in violation of R.C. 2907.02(A)(2), an aggravated first degree felony. He was sentenced to a term of imprisonment of not less than ten years or more than twenty years.

{¶9} On May 29, 2003, Rogers appeared in court for a sexual offender classification hearing pursuant to R.C. 2950.01. On July 28, 2003, the court, by way of a judgment entry, found Rogers to be a sexual predator pursuant to R.C. 2950.09(B)(3).

{¶10} It is from this decision that Rogers appeals, setting forth one assignment of error for our review.

ASSIGNMENT OF ERROR NO. I

Defendant-Appellant's due process rights were violated when the court labeled him a sexual predator, in the absence of clear and convincing evidence to support that label.

{¶11} The issue presented to the trial court at a sexual offender classification hearing is whether the defendant is likely to commit future sexually oriented offenses. *State v. Eppinger* (2001), 91 Ohio St.3d 158, 166. In deciding the likelihood of recidivism, a court must consider all relevant factors, including those listed in R.C. 2950.09(B)(3). *State v. Thompson* (2001), 92 Ohio St.3d 584, 587.

{¶12} R.C. 2950.09(B)(3) provides for the adjudication of an offender as a sexual predator. Pursuant to this statute, the trial court that is to impose sentence on a person who is convicted of, or pleads guilty to, a sexually oriented offense shall conduct a hearing to determine whether the offender is a sexual predator. R.C. 2950.09(B)(1)(a). In making this determination, the court shall consider "all relevant factors, including, but not limited to, all of the following:" the offender's age; the offender's prior criminal record; the age of the victim; whether the sexually oriented offense involved multiple victims; whether the offender used drugs or alcohol to impair the victim or to prevent the victim from resisting; if the offender has been previously convicted of a sexually oriented offense, whether the offender participated in available programs for sexual offenders; any mental illness of the offender; the nature of the offender's sexual conduct with the victim; whether the offender displayed cruelty during the commission of the sexually

oriented offense; and any other behavioral characteristics that contribute to the offender's conduct. R.C. 2950.09(B)(3)(a)-(j).

{¶13} Rogers argues that his classification as a sexual predator by the trial court was in error, as the requisite degree of proof was not met. He specifically argues that the trial court did not consider all of the statutory factors of R.C. 2950.09(B)(3). His basis for this argument is that the trial court failed to discuss its specific findings of each factor as listed in R.C. 2950.09(B)(3) in its judgment entry. Rogers asserts that the trial court must make findings on the record for each of the factors set forth in R.C. 2950.09(B)(3) to adequately protect offenders' individual rights.

{¶14} After looking at all of the evidence and applying the statutory factors of R.C. 2950.09(B)(3), the trial court must make a determination of whether the sexual predator label is supported by clear and convincing evidence. R.C. 2950.09(B)(4); *State v. Eppinger* (2001), 91 Ohio St.3d 158, 163. Clear and convincing evidence is an intermediate degree of proof, it requires more than a mere preponderance of the evidence, but it is less demanding than a finding beyond a reasonable doubt. *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74, citing *Cross v. Ledford* (1954), 161 Ohio St. 469, 477. A reviewing court must examine the entire record to determine whether the manifest weight of the evidence satisfies this clear and convincing standard. *Schiebel*, 55 Ohio St.3d at 74.

{¶15} The trial court is not required to list all of the factors contained in R.C. 2950.09(B)(3). See *State v. Eppinger* (2001), 91 Ohio St.3d 158, 166.

Neither is a trial court required to find that a majority of the factors set forth in R.C. 2950.09(B)(3) apply to an offender before it can determine that he is a sexual predator. *State v. Dukes*, Lake App. No. 2001-L-127, 2002-Ohio-5155, ¶ 12.

{¶16} We note that while a court is not required to enumerate those factors considered in determining that a particular defendant is a sexual predator, it is required to provide a general discussion of the factors so that the substance of the determination can be properly reviewed for purposes of appeal. *State v. Randall* (2001), 141 Ohio App.3d 160, 165-166. The trial court must reference the relevant factors in the judgment entry or on the record, but need not delineate the underlying reasons why it found certain factors applicable. *State v. Swank*, Lake App. No. 98-L-049, 2001-Ohio-8833. The record should, however, include the particular evidence relied upon by the trial court in deciding an offender is a sexual predator. *State v. Eppinger* (2001), 91 Ohio St.3d 158, 166.

{¶17} A trial court may rely on one factor more than others in determining if an offender qualifies as a sexual predator. *State v. King* (Dec. 29, 2000), Geauga App. No. 99-G-2237. Even if only one or two statutory factors are present, the trial court may find the offender to be a sexual predator if the totality of the relevant circumstances provides clear and convincing evidence that the offender is likely to commit a sexually oriented offense in the future. *State v. Dukes*, Lake App. No. 2001-L-127, 2002-Ohio-5155, ¶ 12.

{¶18} In the case sub judice, the trial court's judgment entry does contain a discussion of the factors contained in R.C. 2950.09(B)(3)(a) through (j).

Moreover, the judgment entry reflects that the trial court enumerated the relevant statutory factors and a discussion of those factors.

{¶19} The trial court specifically relied on R.C. 2950.09(B)(3)(c), (i) and (j), i.e. the age of the victim, whether the offender displayed cruelty during the sexually oriented offense and additional behavioral characteristics that contributed to the offender's conduct, in determining that Rogers should be classified as a sexual predator. The trial court found that the victim was eighteen years old at the time of the offense. The trial court found that from the exhibits presented and the videotape of the crime that Rogers displayed extreme cruelty toward the victim during the commission of the crime, threatening her with a knife, as well as blindfolding and handcuffing her. The trial court found that the Psycho-Sexual Evaluation of Rogers indicated he is at an extremely high risk of re-offending in the future, considering the degree of planning the offense and his "blatant disregard for the victim." The court further found that Rogers displayed anger and resentment toward the victim and exhibited a need to exercise complete power and control over her, demonstrated by his adjusting the angle of the camera and the victim's position during the assault to "orchestrate the 'scene' down to the fine details."

{¶20} Upon review of the record, we do not find that the classification of Rogers as a sexual predator was against the manifest weight of the evidence. Furthermore, we reject Rogers' argument that the record must include a discussion of *all* the R.C. 2950.09(B)(3) factors in adjudicating one a sexual predator.

Consequently, we are satisfied that the adjudication of Rogers as a sexual predator was supported by clear and convincing evidence.

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

{¶22} Having found no error prejudicial to appellant herein, in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment affirmed.

SHAW, P.J., and BRYANT, J., concur.