[Cite as *State v. Morris*, 2004-Ohio-5505.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO		:	JUDGES:
		:	John W. Wise, P.J.
	Plaintiff-Appellee	:	Julie A. Edwards, J.
		:	John F. Boggins, J.
-vs-		:	
		:	Case No. 2003 CA 44
SEAN MORRIS		:	
		:	
	Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Criminal Appeal From Fairfield County Court of Common Pleas Case 03-CR-0058
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	October 4, 2004

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
DAVID LANDEFELD Prosecuting Attorney 201 South Broad Street Lancaster, OH 43130	ANDREW T. SANDERSON 21 West Church Street Suite 201 Newark, OH 43055

Edwards, J.

{¶1} Defendant-appellant Sean Morris appeals from his conviction and sentence in the Fairfield County Court of Common Pleas on one count of rape, one count of kidnapping, one count of abduction and one count of gross sexual imposition. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On February 21, 2003, Sean Morris [hereinafter appellant] was indicted on the following felony counts: two counts of rape, in violation of R.C. 2907.02(A), one count of kidnapping, in violation of R.C. 2905.01(A)(4), one count of abduction, in violation of R. C. 2905.02(A)(2), and one count of gross sexual imposition, in violation of R.C. 2907.02(A)(1). The indictment was based upon the following allegations.

{¶3} On February 15, 2003, appellant and a woman [hereinafter the victim] met at J. D. Hendersons, a bar in Lancaster, Ohio. The two became acquainted while chatting, drinking, and socializing. At one point, appellant asked the victim to go to his hotel room. The victim declined. The victim did agree to give appellant her home phone number and name, which she wrote down on a bar napkin and gave to appellant. Around 2:30 a.m., now February 16, 2003, the victim left the bar.

{¶4} Appellant followed the victim to the parking lot. According to the victim, appellant asked her for a ride to his truck and she agreed to drive him. Once in the victim's car, the two kissed. After the kiss, appellant grabbed the victim around her head and pulled her over to the passenger side of the car. Appellant then forced her to engage in oral sex by pulling her head down into his groin. Appellant then forcibly put his hand down the back of the victim's pants and put his finger in her rectum by force.

After the victim told appellant to stop, appellant told her that he was going to continue to do that until she "gave him head."

{¶5} After the victim said no, appellant took his hands out of her pants and covered the victim's mouth and nose with his hand until the victim was gasping for air. Appellant told the victim that "she was either going to give him head or was going to die, shake her head yes or no." The victim shook her head yes. Appellant then took his hand off the victim's mouth and nose and grabbed her by the throat. Appellant moved his hand from her throat and put it on the back of her head and pushed her head towards his exposed penis. While appellant's hand was still on the back of the victim's head, appellant forcefully put his penis in her mouth. Appellant told her to suck it harder or suck it until he came. The victim complied until appellant ejaculated into her mouth. After the assault, appellant let go of the victim's head and said "he couldn't believe that just happened and didn't know what came over him." The victim told him to get out of her car. According to the victim, appellant claimed he wanted a hug and grabbed her and hugged her before he exited the car.

{¶6} After appellant left, the victim got out of her car and spit appellant's ejaculation onto the ground beside the car. The victim immediately spoke with Rick Cox, whose van was parked near the victim's car. Mr. Cox happened to be standing on the sidewalk. The victim told Mr. Cox that appellant just forced her to give him head in her car. Mr. Cox, his son and another man immediately left to try to find appellant, leaving the victim with Mr. Cox's girlfriend, Angela Linley. The victim told Angela what had just happened. The two pounded on the bar door until the bartender, Jeff Scott, opened the door. The bartender called the police. The police arrived immediately.

{¶7} The victim was taken to a local hospital. At the hospital, the victim told Terri Lehman, a registered nurse in the emergency room, what had happened. Ms. Lehman described the victim as tearful and angry and claimed that the victim occasionally had to stop as she was giving her history because she was crying and asking "why did this happen?" or "why did he do this?"

{¶8} There was a hair in her mouth that had not been in her mouth before she was forced to perform oral sex on appellant. Ms. Lehman collected the hair, a pubic hair, from the victim's mouth.

{¶9} Later that same morning, Detective Rod Sandy of the Lancaster Police Department interviewed appellant. Appellant agreed to give a voluntary statement. Appellant acknowledged going to J.D. Hendersons and talking to a woman, later identified as the victim. Appellant initially claimed that while the victim was standing by her car, appellant left by himself, went back to his hotel and passed out. When asked more questions, appellant admitted to being in the victim's car but denied kissing the victim, saying only that he might have kissed her on the cheek. Appellant also denied having consensual sex with the victim and said he didn't have sex with her or anybody that night. When asked to explain why the victim had dry sperm on her hand and a hair in her mouth, appellant stated that he did not know. When confronted with the fact that a napkin with the victim's name and phone number was found in the back of the victim's car, appellant was asked if the victim ever performed oral sex on him. Appellant responded he did not remember and thought he would remember "stuff" like that.

{¶10} After a few more minutes, appellant changed his story substantially. Appellant admitted that he was in the victim's car for maybe 20 minutes, that they

kissed and that the victim did give him a “blow job”. Appellant also acknowledged ejaculating in the victim’s mouth, but denied forcing himself on anybody. Appellant could not tell the detective whether he stuck his finger in her vagina or rectum. Appellant stated that the reason for the initial denials of his behavior was that he was scared.

{¶11} The matter proceeded to a jury trial on May 6, 2003, and May 7, 2003. The jury returned verdicts of guilty on one count of rape, one count of kidnapping, one count of abduction and one count of gross sexual imposition. The jury returned a verdict of not guilty on one count of rape.

{¶12} On June 13, 2003, appellant appeared before the trial court for sentencing. The trial court merged the kidnapping and abduction convictions for purposes of sentencing. In addition, the trial court merged the convictions of rape and kidnapping for purposes of sentencing. Accordingly, appellant was sentenced to a period of ten years on the rape/kidnapping/abduction convictions and 18 months on the gross sexual imposition conviction, to be served consecutively.

{¶13} It is from this conviction and sentence that appellant appeals, raising the following assignments of error:

{¶14} “I. THE CONVICTION OF THE DEFENDANT-APPELLANT IS NOT SUPPORTED BY SUFFICIENT EVIDENCE TO PROVE THE CHARGES BEYOND A REASONABLE DOUBT.

{¶15} “II. THE TRIAL COURT COMMITTED HARMFUL ERROR IN SENTENCING THE DEFENDANT-APPELLANT TO MAXIMUM, CONSECUTIVE SENTENCES HEREIN.”

I

{¶16} In the first assignment of error, appellant contends that the evidence was insufficient to support the conviction. Appellant acknowledges that there is no doubt that appellant and the victim engaged in sexual conduct together. However, appellant argues that there was insufficient evidence that the sexual conduct was forced, as opposed to consensual. [1] We disagree.

{¶17} Our standard of review on the issue of sufficiency of the evidence was established in *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, in which the Court held as follows: "The relevant inquiry is whether, after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt…. " *Jenks*, at paragraph 2 of the syllabus.

{¶18} In this case, the victim testified in detail about appellant's conduct. The victim's testimony was that the sexual conduct was not consensual. This court also notes that in a prosecution such as this, a victim need not prove resistance to the offender. R.C. 2907.02(C).

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[1] Specifically, appellant presents the following argument:
"What is claimed by the victim is that after a night of drinking and dancing, where she danced on a bar in only her bra, she was compelled through threats of violence to perform oral sex on a may [sic] she had minutes before provided with her name and home phone number. This 'forced' encounter resulted in no physical harm to her person and no physical injuries that could be observed during a rape examination conducted by a trained professional only hours after the alleged offense. The 'forced' encounter occurred in a vehicle mere feet away from the alleged victim's friends who were outside the car where she was being forced to engage in sexual activity. None of these friends saw or heard anything out of the ordinary and took no actions to rescue the alleged victim from her attacker. The 'forced' encounter occurred when the victim was not physically retrained [sic], was – by her own admission - - given the opportunity to escape and/or call for help and without any indication of a 'fight' from the alleged victim to resist her attacker." Appellant's Merit Brief, pg. 7.

{¶19} Further, there is evidence in the record that supports and corroborates the victim's testimony and account of events. Terry Lehman, the registered nurse, testified that appellant gave her a statement of what appellant did to her. While giving this statement, the victim was crying and alternately angry and afraid. Ms. Lehman further testified that while the victim had no physical injuries immediately following the attack, it is not uncommon for a bruise to manifest itself a day or two after the injury is received.

{¶20} Detective Rod Sandy, of the Lancaster Police Department, testified that on February 18, 2003, he received a call from the victim. The victim wanted to meet with him. When they met at the Lancaster Police Department, the victim has a bruise on her neck. Detective Sandy photographed the bruise on her neck.

{¶21} Jeffrey Scott, the bartender, saw appellant both before and after the assault. Mr. Scott testified that after the assault, the victim was "completely hysterical." She was crying and shaking violently. Mr. Scott testified that she was not in that condition when she left the bar and that he had never seen her like that ever before. Mr. Scott also testified that the victim told him that appellant had forced her to have oral sex with him, including choking her and telling her she either had to do it or she was going to die.

{¶22} Last, although appellant concedes that sexual conduct occurred between the victim and appellant, at the time he was first interviewed by Detective Sandy, appellant initially denied any sexual conduct. Eventually, appellant changed his story and admitted to the sexual conduct but claimed it was not forced.

{¶23} Upon review of the evidence in a light most favorable to the prosecution, we find that a rational trier of fact could have found the essential elements of the crime

proven beyond a reasonable doubt. Accordingly, we find that the conviction is supported by sufficient evidence.

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

II

{¶25} In the second assignment of error, appellant asserts that the trial court erred when it sentenced appellant to maximum, consecutive sentences. We disagree.

{¶26} In order to impose consecutive sentences, a trial court must comply with R.C. 2929.14(E)(4) and R.C. 2929.19(B)(2)(c). Revised Code 2929.14(E)(4) states as follows: "If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive sentence is necessary to protect the public from future crime or to punish the offender and that the consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

{¶27} "(a) The offender committed one or more multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to Sections 2929.16, 2929.17, 2929 .18 of the Revised Code, or was under post-release control for a prior offense.

{¶28} "(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.

{¶29} "(c) The offender's history of criminal conduct demonstrates the consecutive sentences are necessary to protect the public from future crimes by the offender."

{¶30} Revised Code 2929.19(B)(2)(c) requires that a trial court state its reasons for imposing consecutive sentences.

{¶31} In order to impose a maximum sentence, a trial court must comply with R.C. 2929.14(C) and R.C. 2929.19(B)(2)(d). Pursuant to R.C. 2929.14(C), a trial court may impose the maximum sentence under the following conditions:

{¶32} "[t]he court imposing a sentence upon an offender for a felony may impose the longest prison term authorized for the offense pursuant to division (A) of this section only upon offenders who committed the worst forms of offense, upon offenders who pose the greatest likelihood of committing future crimes, upon certain major drug offenders under division (D)(3) of this section, and upon certain repeat violent offenders in accordance with division (D)(2) of this section."

{¶33} Revised Code 2929.19(B)(2)(d) requires that the trial court provide its reasons for imposing a maximum sentence.

{¶34} Last, in *State v. Comer,* 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473, the Ohio Supreme Court held that when imposing maximum or consecutive sentences, a trial court is required to make its statutorily enumerated findings and give reasons supporting those findings at the sentencing hearing.

{¶35} In this case, the trial court stated the following at the sentencing hearing:

{¶36} “The Court imposes for the gross sexual imposition a period of incarceration in a penal institution in the State of Ohio of 18 months, and for the rape, a

period of ten years. These are the maximum sentences allowed by law for each of these two offenses.

{¶37} "The Court finds - - and before imposing maximum terms of imprisonment in a state penal institution, under Ohio Revised Code 2929.14(C), the Court has to find at least one of the following: That the offense or offenses committed were the worst forms of the offense. In this case, Mr. Morris, with respect to both the gross sexual imposition and the - - and the rape, the Court finds that this was the worst form of offense, not only one of the worst forms of offense that one human being can commit against another, but also, that as they were committed, are some of the worst forms of the offense committed, both the gross sexual imposition and the rape.

{¶38} "I also find that with regard to both of these offenses of gross sexual imposition and rape, that you pose a great likelihood of recidivism. The evidence that was presented here today, the argument that was made here today, you previously have been convicted of a sexually oriented offense, a kidnapping, that resulted in sexual conduct, although not convicted of rape in 1993, but it involved - - it certainly involved sexual contact with a victim of the kidnapping. And you served nine years in a penal institution in the State of Ohio as a result of that activity. You engaged in sex education treatment, both while at the institution and following release from incarceration. And roughly a year and a half after being released from prison, you commit another very similar act. So I find that in your situation, Mr. Morris, that you pose the greatest likelihood of recidivism.

{¶39} "I also find that the sentences for both the rape and the gross sexual imposition should be served consecutively to each other and consecutively to the term

of incarceration imposed by the Franklin County Court of Common Pleas in your 1993 kidnapping case. I make that determination under Ohio Revised Code 2929.14(E)(3), because I find that you were under community control at the time of this current - - this rape and gross sexual imposition offenses being committed; that the harm caused in this case was great. Again, I find that the offenses that you committed against Ms. McGill are some of the most - - some of the most heinous offenses, both psychologically and physically, that one human being can commit against another human being.

{¶40} "I find also that your criminal history requires it. The evidence presented is that this would be third time that you would have been involved in major criminal activity, and that you are likely to repeat the activity.

{¶41} "I also find that consecutive sentences are necessary to fulfill the requirements of Ohio Revised Code 2929.11 and those requirements are to punish offenders and protect the public from future crimes. It's clear that in order to represent any form of punishment in this case, that the Court is almost required to impose - - not that it would otherwise not be unwilling to do so, but is almost required to impose the maximum sentence because you have previously served a nine-year sentence for similar activity. To impose that length of incarceration in a penal institution or less would not only be, in this Court's opinion, a punishment, but it would not protect the public from future crime. I'm considering factors of incapacitation, and I believe that you need to be incapacitated; in other words, out of society, Mr. Morris, because you pose a great danger to society.

{¶42} "I find that in order to - - whatever deterrent effect there may be on you, it is necessary to impose the sentences that I'm imposing, and also to deter other people from committing similar offenses.

{¶43} "I find that considering the factor of rehabilitation, that that's been attempted. I'm not saying I've just totally discounted that factor, but at this point, it's highly unlikely that - - based on the evidence before the Court, that you have been rehabilitated at this time or that you will likely be rehabilitated in the near future.

…

{¶44} "The Court finds that the consecutive sentences are not disproportionate to the seriousness of the offenses; that the Defendant's conduct was, again, some of the worst form that one person can commit against another person; and that no single term of incarceration - - no single term of incarceration can adequately protect the public from future crime and punish you for these offenses." Transcript of Sentencing, pgs. 48-52.

{¶45} In this case, we find that the trial court made all of the required findings to impose maximum, consecutive sentences and stated its reasons for doing so. A review of the record demonstrates that the trial court explicitly made all of the required findings except the finding that consecutive sentences are not disproportionate to the danger the offender poses to the public. However, the trial made this finding indirectly when it discussed the need to incapacitate appellant due to the great danger posed by appellant to society.

{¶46} Accordingly, appellant's second assignment of error is overruled.

{¶47} The judgment of the Fairfield County Court of Common Pleas is affirmed.

By: Edwards, J.

Wise, P.J. and

Boggins, J. concur

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JUDGES

JAE/0701

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
SEAN MORRIS	:	
Defendant-Appellant	:	CASE NO. 2003 CA 44

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Fairfield County Court of Common Pleas is affirmed. Costs assessed to appellant.

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JUDGES