

[Cite as *State v. Sharp*, 2005-Ohio-390.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 84346

STATE OF OHIO	:	
	:	JOURNAL ENTRY
Plaintiff-Appellee	:	
	:	AND
vs.	:	
	:	OPINION
RONALD SHARP	:	
	:	
Defendant-Appellant	:	
	:	
DATE OF ANNOUNCEMENT	:	
OF DECISION	:	<u>February 3, 2005</u>
	:	
CHARACTER OF PROCEEDINGS	:	Criminal appeal from
	:	Common Pleas Court
	:	Case No. CR-445796
	:	
JUDGMENT	:	AFFIRMED.
	:	
DATE OF JOURNALIZATION	:	

APPEARANCES:

For plaintiff-appellee	WILLIAM D. MASON, ESQ. Cuyahoga County Prosecutor By: MEL PLANAS, ESQ. Assistant County Prosecutor The Justice Center, 8th Floor 1200 Ontario Street Cleveland, Ohio 44113
------------------------	--

For defendant-appellant	DAVID P. KRAUS, ESQ. P.O. Box 22154 Beachwood, Ohio 44122
-------------------------	---

RONALD SHARP, pro se
Inmate No. 462-441
MACI
P.O. Box 740

SEAN C. GALLAGHER, J.:

{¶ 1} Appellant Ronald Sharp ("Sharp") appeals his conviction and sentence entered by the Cuyahoga County Court of Common Pleas for gross sexual imposition and kidnapping. For the reasons stated below, we affirm.

{¶ 2} The victims in this case are referred to herein as victim 1, a child who was under the age of thirteen at the time of the offenses; and victim 2, a child who was thirteen at the time of the offenses. Both victims resided in a home with Sharp. The home was owned by Sharp's girlfriend, who was the mother of victim 1. Victim 2's parents also resided in the home.

{¶ 3} Victim 1 testified to an incident that occurred in June 2003, when she was an eleven-year-old. She stated that she and Sharp were in the living room on the couch. Sharp grabbed her, kissed her, put her on his lap and pushed her back and forth on him. Her mother was upstairs sleeping, and the others were outside when this happened. The incident ended when there was a knock at the door and Sharp told victim 1 to unlock it.

{¶ 4} Victim 2 testified that she observed the incident between Sharp and victim 1 through the window. Victim 2 tried to enter the house to get her father some water, but the door was locked. Victim 2's parents then knocked on the door. Victim 1 opened the door and returned to a chair. Victim 2's parents saw Sharp sitting

in the chair with victim 1 sitting on his lap and facing him in the dark. Victim 2 and her parents then went upstairs.

{¶ 5} Later that night, Sharp took victim 1 to a room in the basement with a couch and locked the door. Victim 1 testified that Sharp was kissing her, touching her inappropriately, and pushing her back and forth on his lap.

{¶ 6} Victim 2 observed Sharp take victim 1 to the basement. Victim 2 said she saw victim 1 come upstairs about ten minutes later. Victim 1 was wiping her mouth and crying. Victim 1 told victim 2 what had happened, and victim 2 told her mother. Victim 2's mother had the children sleep in her room that night.

{¶ 7} The next day, the victims told victim 1's aunt what had happened. Victim 1's grandmother and mother were also told, and the police were called. Victim 1 stayed at her grandmother's house for a while and then returned to her mother's home where Sharp still resided. Victim 1 stated she had conversations with Sharp, and there came a time when she told her mother she had lied. She stated she told her mother this because she was afraid that Sharp was going to try to do something. Eventually, victim 1 went back to live with her grandmother. Victim 2 and her parents moved.

{¶ 8} Victim 1 further testified that similar incidents had occurred on a regular basis since she was seven years old, usually in her bedroom or Sharp's bedroom. She stated that she did not tell her mother about the incidents because she was scared. She also stated that on the occasions when Sharp had her on his lap,

she tried to get off of him but he held her too tight. Victim 2 testified to four incidents in which Sharp engaged in similar conduct with her during the time she resided in the home.

{¶ 9} Testimony was also introduced from a child friend of victim 1. In 2001, when the friend was eight years old, she would often spend the night at victim 1's house. The friend's mother testified that at first her daughter enjoyed spending the night, but that attitude changed and her daughter no longer wanted to go over victim 1's house. The friend's mother stated initially her daughter did not say why she did not want to go over, but eventually her daughter confided in her.

{¶ 10} The friend testified that an incident occurred in November 2001. She stated Sharp came into the room where she was sleeping, picked her up and took her to the couch in the dining room. She claimed Sharp then engaged in conduct similar to that described with the victims. The incident with the friend was reported to police, but the matter was ruled unsubstantiated.

{¶ 11} Following the June 2003 incident with victim 1, Sharp was arrested and charged in a twenty-four count indictment. The case proceeded to a jury trial.

{¶ 12} Sharp called three witnesses in his defense. Omar Smith, a friend of Sharp's for fifteen years, testified that there was a studio and lounge area in the basement of the house and people would visit there on a regular basis, twenty-four hours a day. He stated that he was in the studio all night on the day of the

incident in June and that Sharp was never alone with victim 1 in the basement. On cross-examination Smith stated that whatever happened to victim 1, her friend, and victim 2 was not his business. Smith further testified that there was a roundtable discussion with Sharp before his arrest and a conclusion was reached that the girls were lying.

{¶ 13} Floyd Sharp, who is Sharp's brother, testified that he asked victim 1 if the incident really happened, and he learned from the conversation that she lied and that victim 2 and her parents told her to make the accusations. Floyd Sharp also stated that he was at the roundtable discussion that took place before his brother's arrest.

{¶ 14} Megan Harmon, another friend of Sharp's, said she learned of the allegations when Sharp called her. She further stated that she was at Sharp's house after he was released on bond when he received a phone call from a woman named Ruthy. Ruthy then got victim 2's parents on the phone, and a conversation took place on the speaker phone. Harmon stated she learned from the conversation that victim 2 had lied and talked victim 1 into lying.

{¶ 15} Following the jury trial, the jury found Sharp guilty on two counts of gross sexual imposition with a minor under the age of thirteen in violation of R.C. 2907.05(A)(4), two counts of kidnapping in violation of R.C. 2905.01 with a sexual motivation specification pursuant to R.C. 2941.147, and one count of gross sexual imposition in violation of R.C. 2907.05(A)(1).

{¶ 16} The court sentenced Sharp to a prison term of nine years concurrent on each of the kidnapping counts and four years concurrent on each of the remaining counts, with each set of terms to run consecutively. The total aggregate sentence was thirteen years of incarceration. Following a hearing, the trial court also classified Sharp as a sexual predator.

{¶ 17} Sharp has brought this appeal, raising four assignments of error for our review. Sharp's first assignment of error provides:

{¶ 18} "The trial court erred when it allowed unfairly prejudicial and irrelevant other act testimony to be presented to the jury."

{¶ 19} Under Evid.R. 404(B), "evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

{¶ 20} Likewise, R.C. 2945.59 provides:

"In any criminal case in which the defendant's motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing an act is material, any acts of the defendant which tend to show his motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing the act in question may be proved, whether they are contemporaneous with or prior or subsequent thereto, notwithstanding that such proof may show or tend to show the commission of another crime by the defendant."

{¶ 21} The Supreme Court of Ohio has held that "[e]vidence of other acts is admissible if (1) there is substantial proof that the alleged other acts were committed by the defendant, and (2) the evidence tends to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *State v. Lowe*, 69 Ohio St.3d 527, 530, 1994-Ohio-345. Both prongs must be satisfied for the evidence to be admissible. *State v. Echols* (1998), 128 Ohio App.3d 677, 692

{¶ 22} The first prong, whether appellant committed the other acts, may be used to prove identity in two situations. The first situation is where the other acts are inextricably interwoven or related to the alleged criminal act. *Id.* at 692-693. The second situation is where the other acts involve a unique, identifiable plan of criminal activity so as to establish a modus operandi or behavioral fingerprint. *Id.* at 693.

{¶ 23} In this case the second situation is present. The other act shared significant common features sufficient to establish a modus operandi that identified Sharp as the perpetrator.¹ Both the victims and the witness were young girls who described how Sharp would take them to a room in the house, place them on his lap, kiss them, and push them back and forth on his lap.

¹ In the appellant's brief, Sharp argues that the other act evidence was not inextricably related to the alleged criminal acts. This requirement is not necessary where identity is being established through modus operandi. See *Lowe*, 69 Ohio St.3d at 531.

{¶ 24} Nevertheless, Sharp argues that substantial proof of the other act was not established in this case. Substantial proof does not require proof beyond a reasonable doubt. *State v. Wright*, Washington App. No. 00CA39, 2001-Ohio-2473. Further, the substantial proof requirement does not necessitate that independent evidence corroborate the other-acts testimony. *Id.* “[T]he substantial proof requirement is satisfied if at least one witness who has direct knowledge of the other act can testify to the other act. The jury may then fulfill its duty and evaluate the witness's testimony and credibility.” *Id.*

{¶ 25} We conclude that the other-acts evidence in this case was demonstrated by substantial proof. The witness had direct knowledge of the other act. Further, both she and her mother offered credible testimony to substantiate the other act.

{¶ 26} The other-acts evidence also tended to show one of the matters enumerated in Evid.R. 404(B). Evidence establishing motive, intent, scheme, or plan is always material because it tends to show why one version of events should be believed over another. *State v. Crotts*, OH S.Ct. No. 2003-1161, 2004-Ohio-6550.

{¶ 27} In the instant case, the sexual offenses involved a specific pattern of conduct by Sharp. In each incident, Sharp took one of the victims or the witness to a room and engaged in similar sexual behavior with them. This evidence negates Sharp's denial of the accusations and his assertion that he lacked the opportunity to commit the acts without being noticed. The evidence that Sharp

used the same method in committing these sexual offenses proves intent, plan, opportunity and absence of mistake.

{¶ 28} We also note that we have previously recognized that it is not error to allow other child victims of a defendant's sexual abuse to testify concerning his acts with them at a trial for alleged abuse of another child. *State v. Diaz*, Cuyahoga App. No. 81857, 2004-Ohio-3954, citing *State v. Cuevas* (Sept. 18, 1991), Lorain App. No. 91CA005043. Such testimony is admissible because it tends to show defendant's scheme or plan in engaging in inappropriate sexual conduct with young girls. See *Cuevas*, supra.

{¶ 29} In this case, the testimony of the witness regarding Sharp's other act related directly to his scheme or plan, as well as opportunity. Because of the striking similarity between the other act and the acts for which he was charged, the other-acts testimony was properly admitted.

{¶ 30} Sharp's first assignment of error is overruled.

{¶ 31} Sharp's second assignment of error provides:

{¶ 32} "The trial court erred when it sentenced the appellant to serve prison time for both the charges of Gross Sexual Imposition and Kidnapping when the charges were allied offenses."

{¶ 33} R.C. 2941.25, provides that:

"(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 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."

{¶ 34} The Supreme Court of Ohio has set forth a two-tiered test for determining whether two crimes are allied offenses of similar import:

"Courts should assess, by aligning the elements of each crime in the abstract, whether the statutory elements of the crimes 'correspond to such a degree that the commission of one crime will result in the commission of the other.' [*State v. Jones* (1997), 78 Ohio St.3d 12, 14]. And if the elements do so correspond, the defendant may not be convicted of both unless the court finds that the defendant committed the crimes separately or with separate animus."

{¶ 35} *State v. Rance*, 85 Ohio St.3d 632, 635, 1999-Ohio-291.

{¶ 36} Applying the above test, before we reach any determination of whether the crimes were committed with the same animus, as argued by Sharp, we must first determine whether the elements of the two crimes correspond to such a degree that the commission of one crime will result in the commission of the other. See *Id.* A review of the elements of the two offenses of kidnapping and gross sexual imposition with a minor under the age

of thirteen, as charged herein, shows that they do not correspond to such a degree that the commission of one crime will result in the commission of the other. Pursuant to R.C. 2907.05(A)(4), gross sexual imposition prohibits sexual contact with a child under thirteen years of age, as was charged and found here. No restraint, deception, force or threats are required for the commission of this offense. Kidnapping requires restraint or removal as an element of the offense but does not require sexual contact. R.C. 2905.01. Therefore, the commission of the offense of gross sexual imposition will not automatically result in the commission of the offense of kidnapping. As charged in this case, gross sexual imposition and kidnapping are not allied offenses of similar import. See *State v. Mader* (Aug. 30, 2001), Cuyahoga App. No. 78200; *State v. Murphy* (Jul. 30, 1998), Cuyahoga App. No. 71775 (both cases recognized that kidnapping and gross sexual imposition are not allied offenses when a minor victim is involved).

{¶ 37} We also note that under the facts of this case, there was evidence that Sharp took victim 1 to a sequestered room and locked the door before engaging in any sexual conduct with the victim. This evidence further supports a finding that the offenses were not allied.

{¶ 38} Accordingly, Sharp's second assignment of error is overruled.

{¶ 39} Sharp's third and fourth assignments of error provide:

{¶ 40} "The trial court erred when it improperly sentenced appellant to serve consecutive prison terms."

{¶ 41} "The trial court erred when it sentenced the appellant, a first time offender, to serve more than a minimum sentence."

{¶ 42} An appellate court reviews a felony sentence under a clear and convincing evidence standard of review. R.C. 2953.08(G)(2). An appellate court may not modify a felony sentence, including financial sanctions, unless the court "clearly and convincingly finds" that "the record does not support the sentencing court's findings," or that "the sentence is otherwise contrary to law." R.C. 2953.08(G)(2)(a) and (b). "Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established." *State v. Eppinger*, 91 Ohio St.3d 158, 164, 2001-Ohio-247, quoting *Cross v. Ledford* (1954), 161 Ohio St. 469, 477.

{¶ 43} In the case sub judice, there is no dispute that the trial court made the required findings for imposing consecutive sentences under R.C. 2929.14(E)(4) and stated its reasons in support of its findings. Our review of the record also reflects that the trial court complied with the statutory requirements.

{¶ 44} Sharp takes issue with the sentence that was imposed upon him. He argues that he was a first-time felony offender, that the record does not support the findings of the trial court, and that the sentence totaling thirteen years of incarceration is

disproportionate to the facts of the offense and to similarly situated defendants.

{¶ 45} Sharp also claims that it was error for the trial court to sentence him to more than the minimum sentence. Pursuant to R.C. 2929.14(B), if an offender has not previously served a prison term, as is the case herein, a trial court shall impose the shortest prison term available unless "the court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others." This statute does not require a trial court to give its reasons for its finding before it can lawfully impose more than the minimum authorized sentence. *State v. Edmonson*, 86 Ohio St.3d 324, 326, 1999-Ohio-110. Here again, Sharp does not dispute that the trial court made the required finding. Sharp claims that the record does not support a thirteen-year term of incarceration by clear and convincing evidence.

{¶ 46} In this case, the trial court considered the victim impact statements, the presentence investigation report, the nature of the offenses, the age of the victims, and the harm inflicted. The court also considered Sharp's lack of remorse, his juvenile record, and his position of authority over victim 1. The trial court stated its findings and reasons on the record and sentenced Sharp to prison terms within the allowable sentencing range for the crimes of which he was convicted.

{¶ 47} Upon our review of the record, it is our position that the facts of this case sufficiently support the findings and sentencing terms imposed by the trial court. Further, upon review, we cannot find clear and convincing evidence that the record does not support the trial court's findings or that the sentence is otherwise contrary to law.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Common Pleas Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., P.J., AND

JAMES D. SWEENEY, J.*, CONCUR.

SEAN C. GALLAGHER
JUDGE

*Sitting by assignment: Judge James D. Sweeney, retired, of the Eighth District Court of Appeals.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).