[Cite as *State v. Christinger*, 2009-Ohio-3610.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91984

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

QUINCY CHRISTINGER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-498981

BEFORE: Boyle, P.J., Sweeney, J., and Jones, J.

RELEASED: July 23, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) 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(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY J. BOYLE, P.J.:

{¶ 1} Defendant-appellant, Quincy Christinger, appeals his conviction and sentence. Finding no merit to the appeal, we affirm.

{¶ 2} On July 24, 2007, the grand jury indicted Christinger on seven counts: Count 1, felonious assault, in violation of R.C. 2903.11(A)(1); Count 2, felonious assault, in violation of R.C. 2903.11(A)(2); Count 3, aggravated burglary, in violation of R.C. 2911.11(A)(2); Count 4, improperly discharging firearm at or into habitation, in violation of R.C. 2923.161(A)(1); Count 5, felonious assault, in violation of R.C. 2903.11(A)(2); and Counts 6 and 7, endangering children, in violation of R.C. 2919.22(A). Counts 1 through 5 also had one- and three-year firearm specifications attached. Christinger entered a plea of not guilty to the charges, and the case proceeded to a bench trial.

{¶ 3} Christinger and one of his codefendants, Michael Young, were tried together. The following facts titled, "Revenge Mission," were set forth in *State v. Young*, 8th Dist. No. 91321, 2009-Ohio-1598, ¶2-9.

{¶ 4} "Andrew Franklin testified at trial that he, his brother Brian Franklin, his sisters Lydia Franklin and Lisa Franklin, and his friends Charles Finley and Monique Wynn went to a house party in Cleveland late in the evening on June 10, 2006. They saw Quincy Christinger, the father of Lydia Franklin's two children, at the party.

Brian Franklin argued with Christinger and then hit him in the face. Christinger ran off, and the Franklin entourage immediately left the party and went home.

{¶ 5} "According to Lisa Franklin, as they were riding home, Christinger repeatedly called Lydia on her cell phone and told her that he was coming to their house to 'f-- you all up.'

{¶ 6} "Andrew testified that the entourage arrived at their home in South Euclid around 3 a.m. According to Andrew, as he, Finley, and a neighbor sat outside drinking, a van pulled up, and three or four males, including Young (who is Christinger's brother), got out of the van 'looking for Brian.' As Christinger screamed, 'Where Brian at?' Young tried to kick in the front door of the home. As Andrew pulled Young away from the front door, he heard gunshots, turned, and saw Christinger holding a gun. Although Andrew testified at trial that he did not see Young with a gun, he admitted that in his written statement to police given only an hour or two after the incident, he stated that he saw more than one male carrying a gun and wrote, 'the boys were all shooting to kill us.'

{¶ 7} "Finley testified that five or six guys got out of the van and 'rushed us.' According to Finley, 'at least' three of the males had guns. Finley testified that he and an unidentified male struggled, but after hearing a gunshot, the male let him go and he crawled around to the back of the house. Although Finley testified at trial that he was shot in the calf when the gun in his assailant's waistband went off accidentally, he admitted that shortly after the incident, he identified Christinger from a photo array as the man who had shot him.

{¶ 8} "Lisa Franklin testified that she was inside the house when she heard yelling outside and then a gunshot. She ran downstairs and saw a man standing at the front door. As she ran to the back of the house, she heard another shot, so she went outside to see what was happening. She saw Christinger shooting into the house and saw Young standing in the front yard. She screamed, 'It's Quincy,' and either Christinger or Young replied, 'Yeah, it's us.' As she turned to run back into the house, Young ran after her. Monique shut the door on Young as Lisa ran in. Once inside the house, Lisa called the police and told them that Christinger, Young and a male known as 'Brother' were 'shooting up' their house. When she went back outside, she saw the van driving away.

{¶ 9} "South Euclid police officer Chris Khoenle testified that he arrived on the scene only minutes after the dispatch. Brian and Andrew Franklin told him that the incident had begun earlier at the party when Brian punched Christinger and Christinger told him, 'Okay, we'll settle this on Hinsdale.' Khoenle testified that Brian and Andrew told him that Christinger had shot Finley, and Monique told him that during the incident, Young 'was trying to kick in the front door *** trying to get to Brian.'

{¶ 10} "As Khoenle was interviewing the Franklins, Doris Franklin – Andrew, Brian, Lydia, and Lisa's mother and owner of the South Euclid home – answered a cell phone and became agitated. She told Khoenle that the caller was Christinger

and he was threatening to go to the hospital where Finley had been taken and shoot him in the head.

{¶ 11} "Khoenle and another officer recovered three shell casings in the driveway by the front of the house. They found a bullet hole in the front window of the house and, upon further inspection, found the bullet from this hole lodged in the freezer in the kitchen directly behind the window. Another bullet had gone through the downspout and lodged in the aluminum siding of the home. The officers also found bullet fragments in a car parked in the driveway. Analysis of the shell casings by the Bureau of Criminal Identification and Investigation indicated they were Remington brand .380 caliber cartridge cases all fired from the same gun. The bullet fragments were also from a .380 semiautomatic pistol."

{¶ 12} In addition to the facts set forth in *Young*, the following facts are relevant to Christinger's case. Doris Franklin testified that Christinger's and Lydia Franklin's two minor children, ages six and two, were inside the house during the shooting. Detective Richard Gorski confirmed this statement.

{¶ 13} After only three of eight witnesses had testified, Christinger failed to appear at trial, despite being aware of it (according to his defense counsel). The trial court issued a capias for his arrest, and the case proceeded without him through the rendering of the verdict.

{¶ 14} At the close of the state's case, Christinger moved for a Crim.R. 29 acquittal on all counts. The trial court granted it with respect to Count 5, felonious assault against Andrew Franklin. It denied it regarding all other counts, but did state

that it would consider the lesser included offense of attempted aggravated burglary for Count 3. Christinger rested and renewed his Crim.R. 29 motion for the remaining counts, which was also denied.

{¶ 15} The trial court found Christinger guilty of Counts 1 and 2, felonious assault against Finley; not guilty of attempted aggravated burglary in Count 3, but guilty of the lesser included offense of breaking and entering; guilty of Count 4, improperly discharging firearm into habitation; and guilty of Counts 6 and 7, endangering children. The trial court also found him guilty of all of the firearm specifications. Christinger was still not present when the trial court rendered its verdict, despite his defense counsel informing him of the hearing.

{¶ 16} On July 22, 2008, Christinger appeared for sentencing. The trial court merged Counts 1 and 2, the felonious assault convictions, for purposes of sentencing, as well as the firearm specifications. It then sentenced him to eight years on the felonious assault conviction, 12 months on Count 3 (breaking and entering), and eight years on Count 4 (discharging a firearm into habitation). It ordered that Counts 3 and 4 be served concurrent to one another, but consecutive to the sentence imposed for felonious assault. It then sentenced Christinger to 180 days in the county jail for each of Counts 6 and 7, and ordered that they be served consecutive to one another, but concurrent to the felony offenses (Counts 1 through 4). The trial court also sentenced Christinger to three years on the firearm specifications, and ordered that it be served consecutive and prior to all other

counts. Thus, the trial court sentenced Christinger to an aggregate sentence of 20 years in prison and five years of postrelease control upon his release.

{¶ 17} It is from this judgment that Christinger appeals, raising the following eight assignments of error for our review.

{¶ 18} "[1.] Appellant's counsel's failure to make a timely objection to the violation of Appellant's right to a speedy trial denied appellant his constitutional right to effective assistance of counsel.

{¶ 19} "[2.] Appellant was denied his constitutional right to effective assistance of counsel and his defense was prejudiced by counsel's deficient performance in violation of his constitutional rights.

{¶ 20} "[3.] The trial court erred in overruling appellant's motion for directed verdicts of acquittal when the state failed to present sufficient evidence to sustain a conviction.

{¶ 21} "[4.] Appellant's conviction was against the manifest weight of the evidence.

{¶ 22} "[5.] The trial court erred in sentencing appellant to consecutive and maximum sentences without making the appropriate findings.

{¶ 23} "[6.] The trial court erred when it, contrary to law, enhanced appellant's sentence by improperly punishing him for going capias during trial.

{¶ 24} "[7.] The trial court erred by imposing a sentence of 20 years' imprisonment because the sentenced [sic] imposed was inconsistent with the sentences imposed on similarly situated offenders.

{¶ 25} "[8.] The sentence of 20 years' imprisonment imposed upon appellant by the trial court violated the Eight [sic] Amendment to the United States Constitution."

Effective Assistance of Counsel

{¶ 26} Within his first and second assignments of error, Christinger raises several ineffective-assistance-of-counsel arguments and thus, we will address them together.

A. *Failure to Preserve Speedy Trial Rights*

{¶ 27} Christinger argues that his constitutional right to effective assistance of counsel was violated because his trial counsel did not preserve his statutory speedy trial rights. Christinger does not argue that the state failed to prosecute him within the statutory time frame of 270 days. Rather, he maintains that it was his counsel's deficient performance of "requesting long continuances of pretrials and trial dates" that "extended [his] trial date beyond the 270 days in which [he] was supposed to be brought to trial."

{¶ 28} In *Strickland v. Washington* (1984), 466 U.S. 668, the Supreme Court of the United States set forth the two-pronged test for ineffective assistance of counsel. It requires that the defendant show (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defense. The first prong "requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. The second prong "requires showing that

counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is unreliable." Id. See, also, *State v. Bradley* (1989), 42 Ohio St.3d 136 (adopting *Strickland*).

{¶ 29} An attorney properly licensed in Ohio is presumed competent. *State v. Lott* (1990), 51 Ohio St.3d 160, 174. The defendant has the burden of proof and must overcome the strong presumption that counsel's performance was adequate or that counsel's action might be sound trial strategy. *State v. Smith* (1985), 17 Ohio St.3d 98, 100. "Ultimately, the reviewing court must decide whether, in light of all the circumstances, the challenged act or omission fell outside the wide range of professionally competent assistance." *State v. DeNardis* (Dec. 29, 1993), 9th Dist. No. 2245, citing *Strickland* at 690.

{¶ 30} The record reveals that Christinger's trial counsel requested three continuances prior to trial. The decision to seek a continuance is generally a matter of trial tactics. *State v. Altman*, 5th Dist. No. 06 CA 117, 2007-Ohio-6761, _27, citing *State v. Samatar*, 152 Ohio App.3d 311, 2003-Ohio-1639. Tactical or strategic decisions, even if ultimately unsuccessful, will not substantiate a claim of ineffective assistance of counsel. *State v. Garrett* (1991), 76 Ohio App.3d 57, 61, abrogated on other grounds by *State v. Delmonico*, 11th Dist. No. 2003-A-0022, 2005-Ohio-2902.

{¶ 31} Christinger's argument is analogous to an argument that a defendant's trial counsel was ineffective because he or she waived a defendant's speedy trial

rights. Here, Christinger is essentially arguing that his counsel waived his speedy trial rights by filing the continuances.

{¶ 32} In *State v. Shepherd*, 11th Dist. No. 2003-A-0031, 2004-Ohio-5306, _31, the court stated:

{¶ 33} "The waiver of the right to a speedy trial, including a motion for a continuance, can be considered trial strategy, see *State v. Patterson* (1997), 123 Ohio App.3d 237, 246, citing *State v. Dumas* (1996), 75 Ohio St.3d 455, 1996-Ohio-29. As such, we can presume that the waiver is sound trial strategy, *Strickland,* 466 U.S. at 688 (citation omitted), especially when the purposes of the waiver are for trial preparation. Thus, as long as the defendant is brought to trial within a reasonable time and is not prejudiced by the delay, counsel's request for a continuance does not render counsel's assistance ineffective. *State v. Hamblin* (1988), 37 Ohio St.3d 153, 156."

{¶ 34} Here, there is nothing in the record that overcomes the strong presumption of competency Christinger's trial counsel is entitled to with respect to the three continuances. Christinger does not allege that his counsel sat by and did nothing to prepare for trial. Indeed, the record reflects that his trial counsel did much to prepare for trial. In addition to the three continuances, his trial counsel filed many other pretrial motions, including a request for bill of particulars, a motion for discovery, a motion for the prosecution to elect, or in the alternative, to dismiss, and a motion for separate trial from codefendants.

{¶ 35} Thus, without more than bald allegations, Christinger did not meet the first prong under *Strickland* and overcome the strong presumption that his trial counsel performance in moving for the continuances was sound strategy.

B. *Failure to Subpoena Witnesses; Failure to Investigate State's Ballistic Evidence*; *Failure to Move for Separate Trials*

{¶ 36} In his second assignment of error, Christinger argues that his trial counsel was ineffective because (1) he failed to investigate witnesses and subpoena Lydia Franklin to testify at trial; (2) he failed to investigate the state's ballistic evidence so that he could properly cross-examine the state's evidence on the path of the bullet; and (3) he failed to move for separate trials from his codefendants.

{¶ 37} With respect to the first two claims, we agree with the state that Christinger "offers nothing in support of this claim." We cannot presume that his trial counsel did not interview Lydia Franklin or did not investigate the ballistic evidence. In fact, without more, we must presume the opposite. Accordingly, with respect to these claims, Christinger failed to meet his burden showing that his trial counsel was deficient.

{¶ 38} Lastly, Christinger argues that his trial counsel was ineffective for failing to move for separate trials because Detective Gorski testified as to Young's statements to him. Thus, Christinger maintains that an issue arose under *United States v. Bruton* (1968), 391 U.S. 123.

{¶ 39} First, we note that the record reveals that his trial counsel did in fact move for separate trials approximately one month prior to trial. The court never

ruled on the motion and there is nothing in the record to indicate why Christinger and Young were ultimately tried together. But without more, again, we cannot presume that Christinger's trial counsel's performance in this matter was deficient.

{¶ 40} Even if we were to presume that his trial counsel was deficient in this matter, Christinger has failed to meet the second prong of *Strickland*. First, this was a bench trial. The trial court told the detective before he testified that he could not testify as to any statements Young made regarding Christinger. The detective then testified only as to what Young stated implicating himself.

{¶ 41} Christinger, however, contends that "[a]lthough the court claimed that it had not read [Young's statement], from the detective's testimony, an inference can be made that the appellant was present with his brother [Young] at the Hinsdale house and acted in concert with him." That may be so, but in light of the overwhelming evidence presented at trial, it is unlikely that Christinger was prejudiced by the officer's testimony regarding Young's statements. There were several other witnesses, including Andrew and Lisa Franklin, as well as Charles Finley, establishing that Christinger and Brian Franklin had gotten into an altercation earlier in the evening, and that Christinger, Young, and a third man later went to the Franklins' home looking for revenge. Andrew Franklin testified that he saw Christinger holding a gun. Lisa Franklin stated that she saw Christinger shooting the gun. These people were not strangers. Christinger had two children with Lydia Franklin who were sleeping in the home during the shooting. Thus, even if Detective

Gorski had not testified at all at trial, let alone as to Young's statements, it is unlikely that the outcome of the trial would have been different.

{¶ 42} Christinger's first and second assignments of error are overruled.

Sufficiency and Weight of the Evidence

{¶ 43} In his third assignment of error, Christinger contends that the state did not present sufficient evidence to convict him of Counts 1 and 2, felonious assault against Charles Finley, as well as for breaking and entering, as the lesser included offense of aggravated burglary. He further argues that all of his convictions were against the manifest weight of the evidence. We disagree.

{¶ 44} A challenge to the sufficiency of the evidence supporting a conviction requires a court to determine whether the state has met its burden of production at trial. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. On review for sufficiency, courts are to assess not whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. Id. The relevant inquiry is whether, after viewing 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. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶ 45} A challenge to the manifest weight of the evidence, however, attacks the credibility of the evidence presented. *Thompkins* at 387. Because it is a broader review, a reviewing court may determine that a judgment of a trial court

is sustained by sufficient evidence, but nevertheless conclude that the judgment is against the weight of the evidence. Id., citing *State v. Robinson* (1955), 162 Ohio St. 486, 487.

{¶ 46} In determining whether a conviction is against the manifest weight of the evidence, the court of appeals functions as a "thirteenth juror," and, after "reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Thompkins* at 387, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175. Reversing a conviction as being against the manifest weight of the evidence and ordering a new trial should be reserved for only the "exceptional case in which the evidence weighs heavily against the conviction." Id.

{¶ 47} After viewing the evidence in a light most favorable to the prosecution, we conclude that any rational trier of fact could have found that the essential elements of felonious assault and breaking and entering were proven beyond a reasonable doubt. We further find, after reviewing the entire record and considering all of the evidence, that Christinger's convictions for felonious assault, breaking and entering, improperly discharging a firearm into habitation, and child endangering were not against the manifest weight of the evidence.

{¶ 48} Felonious assault under R.C. 2903.11(A)(1) and (A)(2) provide that "[n]o person shall knowingly *** [c]ause serious physical harm to another," and "[n]o person shall knowingly *** [c]ause or attempt to cause physical harm *** by means of a deadly weapon or dangerous ordnance."

{¶ 49} Christinger contends that the state failed to present any "direct testimony that he shot Charles Finley." That may be so, but the state did present evidence, that if believed, established (through Lisa Franklin's testimony) that Christinger was shooting into the house. Andrew Franklin further testified that he saw Christinger with a gun. Officer Khoenle also testified that when he arrived at the scene, Brian and Andrew Franklin had told him that Christinger shot Finley. And Finley himself identified Christinger as the man who shot him. This evidence is sufficient to establish beyond a reasonable doubt that Christinger shot Finley, proving both subsections of felonious assault.

{¶ 50} Breaking and entering under R.C. 2911.13(B) provides that "[n]o person shall trespass on the land or premises of another with purpose to commit a felony." Criminal trespass under R.C. 2911.21 occurs when a person "without privilege to do so, *** knowingly enter[s] or remain[s] on the land or premises of another."

{¶ 51} Christinger maintains that the state's evidence only established that Young "approached the door of the house," but that it did not show that Young

trespassed or entered the house. Under breaking and entering, however, the state does have to prove that an offender trespassed into a house; that would be burglary. Breaking and entering only requires that the state prove that an offender trespassed on land with the purpose to commit a felony. The evidence here, if believed, was sufficient to establish beyond a reasonable doubt that Christinger entered the Franklins' land without privilege to do so with the intent to commit a felony. Several witnesses testified that Christinger, Young, and other men arrived at the house with guns, they "rushed" the house, and they were "shooting up" the house. This evidence more than established the elements of breaking and entering beyond a reasonable doubt.

{¶ 52} In addition, after reviewing the record as a whole, weighing the evidence, and considering the credibility of the witnesses, we find that this was not the exceptional case where the fact finder, the trial court here, created such a manifest miscarriage of justice that it should be reversed and a new trial granted. Indeed, we find that the evidence overwhelmingly established that Christinger shot into the Franklins' home and shot Charles Finley, that he committed breaking and entering, and that he endangered his own children who were sleeping in the house at the time.[1] As for Christinger's argument that the witnesses were not credible because they did not like him or because of a

[1]R.C. 2919.22 provides that "[n]o person, who is the parent *** of a child under eighteen years of age *** shall create a substantial risk to the health or safety of the child ***."

familial grudge, we conclude that the judge, as the fact finder, was free to believe their version of the events over his.

{¶ 53} Accordingly, Christinger's third and fourth assignments of error are overruled.

Consecutive Sentences

{¶ 54} In his fifth assignment of error, Christinger argues that the trial court erred when it sentenced him to consecutive maximum terms of imprisonment, without discussing the applicable factors under R.C. 2929.11 and 2929.12. We disagree.

{¶ 55} Appellate courts review sentences by applying a two-prong approach set forth by the Ohio Supreme Court in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912. See *State v. Nolan*, 8th Dist. No. 90646, 2008-Ohio-5595, _8. First, we must determine whether the sentence is clearly and convincingly contrary to law. Id. If it is not contrary to law, then we must decide if the sentencing court abused its discretion when sentencing the defendant. Id. The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶ 56} Prior to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, unless certain findings were made by the trial court, a defendant was entitled to a presumption of the minimum sentence and a presumption of concurrent

sentences. *Foster* at _44, citing R.C. 2929.14(B), (C), and (E). In *Foster*, however, the Ohio Supreme Court declared these statutory subsections unconstitutional. Id. at paragraphs one and three of the syllabus. Post-*Foster*, a court is no longer required to engage in the judicial fact-finding exercise formerly mandated by these statutes; therefore, a defendant is no longer entitled to a presumption of the shortest prison term or concurrent sentences. Id. at paragraphs two and four of the syllabus. Moreover, post-*Foster*, a court is vested with the discretion to sentence a defendant to any sentence allowable by law under R.C. 2929.14(A). Id. at paragraph seven of the syllabus.

{¶ 57} Christinger is correct that even after *Foster*, trial courts must still consider R.C. 2929.11 and 2929.12. It is well settled, however, that "where the trial court does not put on the record its consideration of R.C. 2929.11 and 2929.12, it is presumed that the trial court gave proper consideration to those statutes." *Kalish*, supra, at _18, fn. 1.

{¶ 58} The trial court properly merged Christinger's felonious assault convictions and then sentenced him within the statutory range for each conviction. It then ordered that his sentence for felonious assault be served consecutive to his sentence for Counts 3 and 4, as permitted within the statutory framework. Thus, Christinger's sentence was not contrary to law.

{¶ 59} In the sentencing entry, the trial court noted that it considered "all required factors under law" and found that prison was consistent with the

purposes of R.C. 2929.11. At the hearing, it further took into consideration his prior convictions, as well as a new case that was pending at the time of sentencing. The trial court found it particularly troubling that Christinger shot into the Franklins' home while his two young children were sleeping in it. The trial court stated, "How dare you do that to your children and put them at that kind of risk. It is despicable." Thus, we find that Christinger's sentence was not arbitrary, unreasonable, or unconscionable.

{¶ 60} Accordingly, we find that Christinger's sentence was neither contrary to law nor an abuse of discretion. His fifth assignment of error is overruled.

"Going Capias During Trial"

{¶ 61} In his sixth assignment of error, Christinger argues that the trial court erred when it enhanced his sentence and improperly punished him for "going capias during trial."

{¶ 62} The trial court did chastise Christinger when he appeared for sentencing nearly four months after he was convicted. When it actually sentenced him, however, it never mentioned the capias issue. As we stated in the previous assignment of error, the trial court noted his prior convictions, as well as another pending case that he had. The trial court then reviewed the facts from the bench trial, stating, "[l]et the record reflect that I do recall in great detail the testimony in this case."

{¶ 63} Thus, there is nothing in the record to indicate that the trial court improperly enhanced Christinger's sentence. His sixth assignment of error is overruled.

Disproportionate Sentences

{¶ 64} In his seventh assignment of error, Christinger argues that his sentence "was inconsistent with the sentences imposed on similarly situated offenders."

{¶ 65} R.C. 2929.11(B) states: "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."

{¶ 66} This court has held that in order to support a contention that his or her sentence is disproportionate to sentences imposed upon other offenders, a defendant must raise this issue before the trial court and present some evidence, however minimal, in order to provide a starting point for analysis and to preserve the issue for appeal. *State v. Breeden*, 8th Dist. No. 84663, 2005-Ohio-510, _80, citing *State v. Woods*, 8th Dist. No. 82789, 2004-Ohio-2700, _53-54. Christinger did not raise this issue with the trial court nor did he present any evidence to the trial court. Thus, there is nothing in the record to indicate that his sentence is impermissibly disproportionate to sentences imposed on similar

offenders with similar offenses. Christinger's seventh assignment of error is overruled.

Cruel and Unusual Punishment

{¶ 67} In his eighth assignment of error, Christinger maintains that his 20-year sentence violated the Eighth Amendment of the United States Constitution that prohibits cruel and unusual punishment. Again, Christinger contends the sentence is "so greatly disporportionate to the offense as to shock the sense of justice of the community."

{¶ 68} In *State v. Weitbrecht*, 86 Ohio St.3d 368, 1999-Ohio-113, at 370-371, the Ohio Supreme Court explained:

{¶ 69} "The Eighth Amendment to the Constitution of the United States provides: 'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.' Section 9, Article I of the Ohio Constitution is couched in identical language. Historically, the Eighth Amendment has been invoked in extremely rare cases, where it has been necessary to protect individuals from inhumane punishment such as torture or other barbarous acts. *Robinson v. California* (1962), 370 U.S. 660, 676. Over the years, it has also been used to prohibit punishments that were found to be disproportionate to the crimes committed. In *McDougle v. Maxwell* (1964), 1 Ohio St.2d 68, this court stressed that Eighth Amendment violations are rare. We stated that 'cases in which cruel and unusual punishments have been found are limited to those involving sanctions which under the circumstances would be considered shocking to any reasonable person.' Id. at

70. Furthermore, 'the penalty must be so greatly disproportionate to the offense as to shock the sense of justice of the community.' Id. See, also, *State v. Chaffin* (1972), 30 Ohio St.2d 13, paragraph three of the syllabus."

{¶ 70} As we already determined, Christinger's sentence was within the statutory range and thus, not contrary to law. We further determined that it was not arbitrary, unconscionable, or unreasonable. Moreover, it has been held that a sentence within the range allowed by a valid statute generally is not cruel and unusual. *State v. Hairston*, 118 Ohio St.3d 289, 2008-Ohio-2338, _21. Given the seriousness of Christinger's multiple offenses, including shooting into someone's home, let alone a home where his own children were sleeping, and the potential for serious injury, we cannot say that the penalty was "so greatly disproportionate to the offense as to shock the sense of justice of the community." *Weitbrecht* at 373. Therefore, we overrule his eighth and final assignment of error.

Judgment affirmed.

It is ordered that appellee recover of 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 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.

MARY J. BOYLE, PRESIDING JUDGE

JAMES J. SWEENEY, J., and
LARRY A. JONES, J., CONCUR