[Cite as *State v. Reed*, 2004-Ohio-1881.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. RONNELL L. REED Appellant	C .A. No. 21614 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR 2003 03 0875

DECISION AND JOURNAL ENTRY

Dated: April 14, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

WHITMORE, Judge.

{¶1} Defendant-Appellant Ronnell L. Reed has appealed from a decision of the Summit County Court of Common Pleas that adjudicated him a sexual predator. This Court affirms in part, and reverses and the matter is remanded.

I

{¶2} On April 3, 2003, Appellant was indicted by the Summit County Grand Jury on one count each of attempted burglary, in violation of R.C. 2923.02 and 2911.12(A)(2); voyeurism, in violation of R.C. 2907.08; and aggravated

menacing, in violation of R.C. 2903.21. In two supplemental indictments, Appellant was further charged with one count of rape, in violation of R.C. 2907.02(A)(2); three counts of telephone harassment, in violation of R.C. 2917.21(A)(5); one count of assault, in violation of R.C. 2903.13(A); two counts of menacing by stalking, in violation of R.C. 2903.211(A); one count of aggravated menacing, in violation of R.C. 2903.21; one count of criminal trespass, in violation of R.C. 2911.21(A)(1); one count of attempted rape, in violation of R.C. 2923.02 and 2907.02(A)(2); and one count of attempted burglary, in violation of R.C. 2923.02 and 2911.12(A)(2).

{¶3} Appellant initially pleaded not guilty to the crimes as charged, but he later entered a plea of guilty to the charges of: rape, assault, telephone harassment, and attempted burglary. The remaining charges were dismissed. On June 11, 2003, Appellant was sentenced accordingly. A sexual predator hearing was held and Appellant was adjudicated a sexual predator. Appellant filed the instant appeal on June 25, 2003, asserting two assignments of error.[1]

II

Assignment of Error Number One

[1] While this appeal was pending, Appellant filed a pro se motion to withdraw his guilty plea. The trial court granted the motion on September 4, 2003, and Appellant was allowed to withdraw his guilty plea. The trial court, however, vacated its order on January 26, 2004, stating: "[T]he Court finds that it does not have jurisdiction due to the status of the case on appeal to the Ninth District Court of Appeals, and vacates all orders after September 3, 2003."

> "THE TRIAL COURT ERRED IN CLASSIFYING [] APPELLANT AS A SEXUAL PREDATOR BECAUSE [] APPELLEE PRESENTED INSUFFICIENT EVIDENCE TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT [] APPELLANT WOULD COMMIT AN ADDITIONAL SEXUAL OFFENSE IN THE FUTURE. IN ADDITION, SUCH A FINDING IS AGAINST THE WEIGHT OF THE EVIDENCE PRESENTED BY [] APPELLEE. FINALLY, IN ADJUDICATING [] APPELLANT AS A SEXUAL PREDATOR THE TRIAL COURT CLEARLY LOST ITS WAY AND CREATED SUCH A MANIFEST MISCARRIAGE OF JUSTICE THAT THE ADJUDICATION MUST BE REVERSED."

{¶4} In Appellant's first assignment of error, he has argued that the evidence presented during the sexual predator hearing was insufficient to show by a clear and convincing standard that he is a sexual predator and the classification was against the manifest weight of the evidence.

{¶5} In reviewing the trial court's decision, this Court must apply the clearly erroneous standard. *State v. Unrue*, 9th Dist. No. 21105, 2002-Ohio-7002, at ¶6, appeal denied (2003), 98 Ohio St.3d 1540, 2003-Ohio-1946. When applying the clearly erroneous standard of review to sexual predator adjudications, this Court must determine whether there exists some competent, credible evidence in the record that would clearly and convincingly support a conclusion that a defendant is likely to commit another sexual offense. *Unrue*, 2002-Ohio-7002, at ¶10. This Court explained:

> "[The clearly erroneous standard of review] is highly deferential and even 'some' evidence is sufficient to sustain the judgment and prevent reversal. *** Thus, this Court is guided by a presumption that the findings of a trial court are correct, since the trial court is best able to view the witnesses and observe their demeanor, gestures

> and voice inflections, and use those observations in weighing the credibility of the proffered testimony." Id. at ¶9, quoting *Spinetti v. Spinetti* (Mar. 14, 2001), 9th Dist. No. 20113, at 7-8.

{¶6} A reviewing court should not substitute its judgment for that of the trial court where competent and credible evidence supports the trial court's findings. *State v. Clark*, 9th Dist. No. 21167, 2003-Ohio-94, at ¶5, citing *Wisintainer v. Elcen Power Strut Co.* (1993), 67 Ohio St.3d 352, 355.

{¶7} R.C. 2950.01 et seq. governs the classification of a defendant as a sexual predator. In order to be classified a sexual predator (1) a person must be convicted of a sexually oriented offense and (2) the state must prove by clear and convincing evidence that the defendant is likely to be a repeat sexual offender. R.C. 2950.01(E)(1). The clear and convincing standard "is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal." *State v. Eppinger* (2001), 91 Ohio St.3d 158, 164, quoting *Cross v. Ledford* (1954), 161 Ohio St. 469, 477; see, also, *State v. Williams* (2000), 88 Ohio St.3d 513, 533, certiorari denied (2000), 531 U.S. 902, 121 S.Ct. 241, 148 L.Ed.2d 173, quoting *State v. Ward* (1999), 130 Ohio App.3d 551, 569. Appellant does not contend that he was not convicted of a sexually oriented offense. Therefore, the only issue to be resolved by this Court is whether the state failed to prove by clear and convincing evidence that Appellant is likely to commit another sexually oriented offense.

{¶8} Appellant has contended that his designation as a sexual predator is against the manifest weight of the evidence because the trial court relied only on testimony presented by Detectives Vincent Felber and Bernita King "who offered the trial court information which was not relevant as to whether or not [Appellant] would likely commit a sexual crime in the future." This Court finds no merit in Appellant's arguments.

{¶9} In determining whether an offender is likely to commit another sexually oriented offense, i.e., is a sexual predator, R.C. 2950.09(B)(3) requires the trial court to consider all relevant factors including, but not limited to:

> "(a) The offender's *** age;
>
> "(b) The offender's *** prior criminal *** record regarding all offenses, including, but not limited to, all sexual offenses;
>
> "(c) The age of the victim of the sexually oriented offense for which sentence is to be imposed ***;
>
> "(d) Whether the sexually oriented offense for which sentence is to be imposed *** involved multiple victims;
>
> "(e) Whether the offender *** used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;
>
> "(f) If the offender *** previously has been convicted of or pleaded guilty to *** a criminal offense, whether the offender *** completed any sentence *** imposed for the prior offense *** and, if the prior offense *** was a sex offense or a sexually oriented offense, whether the offender *** participated in available programs for sexual offenders;
>
> "(g) Any mental illness or mental disability of the offender ***;

> "(h) The nature of the offender's *** sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;
>
> "(i) Whether the offender ***, during the commission of the sexually oriented offense for which sentence is to be imposed ***, displayed cruelty or made one or more threats of cruelty;
>
> "(j) Any additional behavioral characteristics that contribute to the offender's *** conduct."

{¶10} At the sentencing hearing, Detective Felber testified that his involvement with Appellant began in 1992. The detective explained that at that time he "worked Car 8 which includes Valdes, Hawkins, Copley area" and he "took numerous calls about [Appellant] being a voyeur with young ladies listing him -- seeing him looking, peering through their windows." Detective Felber further explained that "[i]t was extremely well known among all the officers over there that [peering into women's windows] was one of the things [Appellant] enjoyed doing, one of the things that he did a lot." The detective further stated:

> "One of the disarming things about [Appellant] is he can come across as being extremely calm, relaxed. When you first talk to him he acts like what he's done is no big deal. He's very disarming in that sense and I know from when -- back then when I would talk to him he just seemed harmless. It was not big deal. Well, since then he's moved on from the voyeur, to harassing to burglary, B & E."

{¶11} Detective Felber also provided details of a burglary that Appellant committed in 1998, in which a woman awoke to find Appellant standing over her. Appellant told the woman he was looking for her son and then he left. The

detective explained that Appellant gained access to the women's home through a window and that he did not know the woman's son. The detective felt that Appellant was "well known in the department and he's one of the most dangerous individuals in the City of Akron as far as the other officers and detectives are concerned."

{¶12} Detective King testified that she became involved with Appellant when one of his victims called the police department and filed a report. In that case, the victim was preparing to take a bath and she was nude. As the victim was going to her kitchen to get some clothing, she observed Appellant looking in through the front door of her house. Detective King stated that as a result of that report, the police department ran an article in the Akron Beacon Journal concerning Appellant. According to the detective, sixty-one women responded to the article by calling the Akron Police Department with stories concerning harassing telephone calls Appellant had made and one woman even reported gross sexual imposition and a rape. Detective King further explained that:

> "Most of the women [that responded to the article] said they had no idea who [Appellant] was and he would call them and say 'Oh, you know who I am.'
>
> "He would even use the name Mike or actually use the name Ronnell.
>
> "And a lot of the women said [Appellant] would tell them that he got like $1.3 million and he was looking for a good woman.
>
> "***

> "Some of the phone calls were sexual in nature. [Appellant] would ask them out on dates, they would refuse.
>
> "They would also ask him how did you get my phone number and he would say 'Oh, a friend of yours gave it to me' or 'you gave it to me in a club' and it was always the same type of call, every single woman had the exact same thing."

{¶13} Detective King also testified to Appellant's prior criminal history. The detective stated that Appellant's criminal history spanned from 1986 to 2003 and "range[d] from -- his first report was him exposing himself when he was 14, that was in 1986." Also admitted into evidence to corroborate the detective's testimony regarding Appellant's prior criminal history was an arrest record. Reading from that record, Detective King stated that Appellant was previously convicted for gross sexual imposition in 1993; burglary in 1994; corruption of a minor in 1996, at which point he was labeled a sexually oriented offender; attempted burglary in 1999 and 2002; telephone harassment in 2001, 2002 and 2003; and aggravated menacing in 2002.

{¶14} The detective also discussed the details of Appellant's 1993 gross sexual imposition conviction and his 1996 conviction for corruption of a minor. With regard to the conviction for gross sexual imposition that occurred in 1993, Detective King testified that Appellant's victim was 14 years old and the victim stated that Appellant "forced his way into her apartment and forced himself on top of her in the living room area and there was a struggle on the glass table and she had to fight him off of her and she had to run to a neighbor's house for help." The

conviction for corruption of a minor involved another 14 year old girl. In that case:

> "The victim opened the door to see who it was and before she could close the door the suspect was inside the door asking if anyone else was at home. *** The victim told him no one [else was home] and after [Appellant] walked into the victim's kitchen after hearing a noise, he came back into the living room, threw the victim on the couch saying 'Come on, baby, we can do this.' The victim kept on telling him no. He continued to pull the victim's dress and had intercourse with the victim. That was corruption of a minor."

{¶15} Detective King also discussed the details of Appellant's other prior convictions. She stated that the convictions "were all very similar about him calling, making the victims think they knew who he was and when some of the victims told him not to call again, that's when they got called names and they were even threatened and he threatened some of the [victims'] children." Detective King testified that some of the calls were sexual in nature. In several of the calls, Appellant "had asked them what they looked like, about their performance in bed, about his performance and the kind of things that he wanted to do."

{¶16} On cross-examination, Detective King stated that she believed Appellant was someone who was likely to commit telephone harassment again. She also stated that, based on Appellant's two sexually oriented offenses in 1993 and 1996, Appellant engaged in a pattern of "constant sexual -- sexually oriented offenses[.]"

{¶17} Based upon the detectives' testimony, in addition to a copy of Appellant's arrest record and a letter written by Detective Felber outlining

Appellant's criminal history, the trial court found Appellant to be a sexual predator. Citing to R.C. 2950.09(B)(3)(j), the trial court found the telephone harassment was relevant and it stated:

> "I think what's interesting is this [d]efendant cannot listen to the word no. He is told no when he calls on the telephone. He's told no when he comes in and rapes women and sexually assaults them and he doesn't listen on the telephone. He doesn't listen when he comes in and assaults them. Every single one of these convictions has to do with women and preying on women and the fact that he will not listen when they tell him to stop. Also always for his sexual gratification."

{¶18} The trial court also looked at R.C. 2950.09(B)(3)(b), Appellant's prior criminal history. Citing to R.C. 2950.09(B)(3)(b), the trial court explained that "[c]ertainly of most import is the fact that [Appellant] has corruption of a minor and a [conviction for gross sexual imposition], but it is very clear that the statute requires that I look at the number and the type of other charges and in this case the burglaries, the attempted burglaries, the telephone harassments, in the Court's opinion, all relate to a preying on women." The trial court also expressly cited to R.C. 2950.09(B)(3)(d) and (f) and found that Appellant was "one dangerous individual."

{¶19} Based on the record as a whole, this Court finds that the state met its burden of proving by clear and convincing evidence that Appellant was likely to commit another sexually oriented offense. Consequently, we find that the trial court did not err in adjudicating Appellant a sexual predator. Appellant's assignment of error is without merit.

Assignment of Error Number Two

"THE TRIAL COURT ERRED IN LABELING [] APPELLANT AS A SEXUAL PREDATOR BECAUSE IT DID NOT COMPLY WITH THE STATUTORY REQUIREMENTS CONTAINED WITHIN R.C. 2950.09(B)(4) AND (E)(2)."

{¶20} In Appellant's second assignment of error, he has argued that the trial court did not comply with the statutory requirements of R.C. 2950.09(B)(4) and (E)(2). Specifically, Appellant has contended that: (1) R.C. 2950.09(B)(4) requires a trial court to specify in its journal entry of sentencing that Appellant was a sexual predator pursuant to R.C. 2950.09(B); and (2) R.C. 2950.09(E) requires a trial court to make a determination regarding Appellant's status as a habitual sex offender. This Court agrees.

{¶21} R.C. 2950.09(B)(4) provides, in relevant part:

> "After reviewing all testimony and evidence presented at the hearing conducted [R.C. 2950.09(B)(1)] and the factors specified in [R.C. 2950.09(B)(3)], the court shall determine by clear and convincing evidence whether the subject offender *** is a sexual predator. If the court determines that the subject offender *** is not a sexual predator, the court shall specify in the offender's sentence and the judgment of conviction that contains the sentence *** that the court has determined that the offender *** is not a sexual predator. *If the court determines by clear and convincing evidence that the subject offender *** is a sexual predator, the court shall specify in the offender's sentence and the judgment of conviction that contains the sentence *** that the court has determined that the offender *** is a sexual predator and shall specify that the determination was pursuant to [R.C. 2950.09(B)]*. In any case in which the sexually oriented offense in question is an aggravated sexually oriented offense, *** the court shall specify in the offender's sentence and the judgment of conviction that contains the sentence that the offender's offense is an aggravated sexually oriented offense. ***." (Emphasis added.)

{¶22} Pursuant to R.C. 2950.09(B)(4) when the trial court finds, by clear and convincing evidence, that the defendant is a sexual predator the court must specify in its journal entry that the defendant is a sexual predator and that said determination was made pursuant to R.C. 2950.09(B). We find that the trial court complied with the requirements of R.C. 2950.09(B)(4) when it checked the box marked "There IS CLEAR AND CONVINCING EVIDENCE that the Defendant is a Sexual Predator pursuant to R.C. Section 2950.09(B), and THEREFORE, the Defendant is hereby classified as a SEXUAL PREDATOR for purposes of sex offender registration and notification in accordance with [R.C. Chapter 2950]" located on the journal entry dated June 17, 2003.

{¶23} With respect to Appellant's argument that the trial court also failed to comply with R.C. 2950.09(E), we find merit in Appellant's argument because the judgment entry of sentencing does not comply with the statutory requirements of that section. R.C. 2950.09(E)(1)(a) provides, in pertinent part:

> "If a person is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense, the judge who is to impose sentence on the offender shall determine, prior to sentencing, whether the offender previously has been convicted of or pleaded guilty to *** a sexually oriented offense and is a habitual sex offender. ***"

{¶24} This Court has previously held that "[w]hen an individual has been convicted of or [pleaded] guilty to a sexually oriented offense, [R.C. 2950.09(E)] specifically requires the trial court to make a finding regarding an offender's status as a habitual sex offender." (Alterations added.) *State v. Gopp* (2003), 154 Ohio

App.3d 385, 389, citing *State v. Rhodes*, 7th Dist. No. 99 BA 62, 2002-Ohio-1572, at ¶41. A finding as to offender's status as a habitual sex offender must be expressly made regardless of whether the offender was already adjudicated as a sexual predator for the commission of the sexually oriented offense. *Gopp*, 154 Ohio App.3d at 389, quoting *Rhodes*, 2002-Ohio-1572, at ¶41. The court in *Rhodes* explained that "[w]hile we acknowledge that making a habitual sex offender finding after the court has already stated that the offender is a sexual predator will have no impact on registration requirements, the statute still mandates this finding." *Rhodes*, 2002-Ohio-1572, at ¶41. Here, the trial court failed to expressly determine Appellant's status as a habitual sex offender. As such, we find that the trial court failed to comply with the requirements of R.C. 2950.09(E). Consequently, Appellant's assignment of error is well taken.

III

{¶25} Appellant's first assignment of error is overruled and his second assignment of error is sustained. The judgment of the trial court is affirmed in part, reversed in part and the matter is remanded to the trial court with instructions to specifically determine Appellant's habitual sex offender status. See R.C. 2950.09(E).

Judgment affirmed in part,
reversed in part
and cause remanded.

CARR, P. J., and SLABY, J., concur.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to both parties equally.

Exceptions.

BETH WHITMORE
FOR THE COURT

APPEARANCES:

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