**[Cite as *State v. Hartley*, 2020-Ohio-1211.]**

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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| STATE OF OHIO<br><br>Plaintiff-Appellee<br><br>-vs-<br><br>LAWRENCE A. HARTLEY<br><br>Defendant-Appellant | JUDGES:<br>Hon. W. Scott Gwin, P. J.<br>Hon. John W. Wise, J.<br>Hon. Craig R. Baldwin, J.<br><br>Case No. 19 CA 000017<br><br>O P I N I O N |

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| CHARACTER OF PROCEEDING: | Criminal Appeal from the Court of Common Pleas, Case No. 18 CR 362 |
| JUDGMENT: | Affirmed |
| DATE OF JUDGMENT ENTRY: | March 26, 2020 |

APPEARANCES:

| For Plaintiff-Appellee | For Defendant-Appellant |
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| STEPHANIE ANDERSON<br>SPECIAL PROSECUTING ATTORNEY<br>OFFICE OF THE OHIO AG<br>615 West Superior Avenue, 11th Floor<br>Cleveland, Ohio 44113 | PETER GALYARDT<br>ASSISTANT STATE PD<br>250 East Broad Street<br>Suite 1400<br>Columbus, Ohio 43215 |

*Wise, J.*

**{¶1}** Defendant-Appellant Lawrence A. Hartley appeals his convictions and sentence on three counts of Rape, four counts of Sexual Battery, and one count of Aggravated Burglary entered in the Guernsey County Court of Common Pleas following a jury trial.

**{¶2}** Plaintiff-Appellee is the State of Ohio.

## STATEMENT OF THE FACTS AND CASE

**{¶3}** On December 20, 2018, a Guernsey County Grand Jury charged Appellant Lawrence A. Hartley in an 8-count indictment alleging three (3) counts of Rape, each a felony of the first degree, in violation of R.C. §2907.02(A)(1)(c); three (3) counts of Rape, each a felony of the first degree, in violation of R.C. §2907.02(A)(2); one (1) count of Sexual Battery, a felony of the third degree, in violation of R.C. §2907 .03(A)(3), and one (1) count of Aggravated Burglary, a felony of the first degree, in violation of R.C. §2911.11(A)(1).

**{¶4}** The charges arose following events which occurred on August 11, 2018. The relevant facts, as presented at the March 26, 2019, trial, are as follows:

**{¶5}** The victim, C.L. testified that she went to the house of her neighbors, Sonja and Bill Niehaus, where she spent the evening chatting on the front porch with Sonja and another neighbor named Teresa. (T. at 181, 241-242). She stated that the Niehauses often have bonfires during the summer, and that Bill Niehaus spent much of that night tending to the fire pit. (T. at 181, 240). C.L. recalled that she remained on the porch with Sonja and Teresa and consumed a half of a cocktail and two (2) Jell-o shots. (T. at 182-183, 212, 244). C.L. admitted that she was not sure of the type of alcohol that was in

each drink she consumed. *Id*. She stated that she does not drink much due to multiple medical issues and possible interactions with her medication. (T. at 183, 219). She testified that she left and went home at approximately 9:30 p.m. to 10:00 p.m. because she felt nauseous and dizzy, and that after saying goodbye to Sonja, she walked straight home. (T. at 188-189, 247). According to Sonja, C.L. was a little "wobbly" when she left. (T. at 248).

**{¶6}** Once she was home, C.L. recalled sitting on her couch, petting her dogs. (T. at 188-191). The next thing she remembers is waking up with the Appellant on top of her, engaging in intercourse. (T. 188-191). C.L. stated that she did not know Appellant, but that she recognized him from the bonfire earlier that night. (T. at 195). C.L. testified that although she had seen Appellant earlier that night, she never spoke to him. (T. at 247).

**{¶7}** When C.L. awoke to find Appellant on top of her, he was engaging in vaginal intercourse with her. (T. at 192). She noticed that she was no longer on the couch where she recalled sitting when she came home, but was now in a different living room but could not remember how she got into the room. (T. at 193). C.L. testified that she was afraid and that she tried to push Appellant off of her, but she kept going in and out of consciousness. (T. at 193-195, 226). She recalled that she asked him to stop, but that Appellant continued having sex with her. (T. at 193). C.L. explained that she did not scream because she was afraid of what else Appellant might do to her. (T. at 194). She testified that at no time did she consent for Appellant to be in her home or engage in sexual intercourse with her. (T. at 195-196).

**{¶8}** It was only when Appellant's phone continued to ring that he finally got dressed and left the victim's home. (T. at 197). C.L. stated that she waited to get up until she heard the door shut, fearing that Appellant would hear her when she got up *to* look for her phone. (T. at 197-198). C.L. then called her friend, Malinda, between 2:30 and 3:00 in the morning. (T. at 198, 371-372, 376).

**{¶9}** Malinda testified that after she spoke with C.L. she called the police because C.L. was so distraught. (T. at 373). Upon arrival, Malinda led the police to the campground. (T. at 375). The campground is gated and locked, so they parked their cars outside the gates and ran to the victim's home. (T. at 200, 262, 375). When they reached C.L.'s home, the police and Malinda could hear a woman crying inside. (T. at 263). Malinda stayed outside while the police went inside. (T. at 376).

**{¶10}** C.L. briefly told the police what happened before she was transported by ambulance to the hospital. (T. at 201, 313). Officers remained behind to photograph and collect evidence and attempt to identify the man who broke into C.L.'s home and raped her. (T. at 267-276).

**{¶11}** Upon transporting the victim to the hospital, Paramedic Alicia Hinson recalled the victim being "wobbly" when she walked around. (T. at 314). Ms. Hinson recalled that she felt the need to stand near C.L. to make sure she didn't fall and strike her head. (T. at 314). Once at the hospital, C.L. underwent a sexual assault examination (SANE). (T. at 201-202, 325).

**{¶12}** Tishia Steed, R.N., performed the exam. (T. at 325). C.L. recounted to the medical providers how the Appellant entered her home without permission and forcibly raped her. (T. at 202, 317, 328-331, 334). C.L. also told her medical providers how her

neck was injured during the course of the attack. (T. at 202-203). The samples collected at the hospital were turned over to the Guernsey County Sheriff's Department, who later submitted the samples in the SANE kit to the Ohio Bureau of Criminal Investigation (BCI) for forensic analysis. (T. at 364).

**{¶13}** After C.L. was transported to the hospital, the officers at the scene located Appellant at another Seneca Lake residence, approximately 75 yards away from C.L.'s home. (T. at 276). Appellant told Guernsey County Sheriff's Deputy Morris that earlier in the evening, he chatted with C.L. at a party near her home and that she told him that he could come to her house later that night. (T. at 280). Appellant initially said that he went over to her home, knocked on the door and the door just opened. (T. at 280-281). He claimed that C.L.'s dogs were barking and making a lot of noise when he yelled for C.L. (T. at 281). Appellant claimed that he became concerned when he received no response, so he let himself in to C.L.'s home. (T. at 281). Appellant claimed that C.L. was laying on the couch, talking or texting on her phone. (T. at 282). Appellant told Dep. Morris that the two talked and then had sex. (T. at 282). Later in his conversation with Dep. Morris, Appellant stated that he had to shake C.L. numerous times to wake her up. (T. at 282). Appellant admitted to Dep. Morris more than once that C.L. was in very bad shape and had a lot to drink at the party. (T. at 283, 285-286). Appellant admitted that he did not know C.L. and acknowledged that she was incapacitated. (T. at 286-287).

**{¶14}** Lt. Sam Williams assisted Dep. Morris with the investigation. (T. at 406-407). Lt. Williams interviewed Appellant and also obtained a DNA sample from him. (T. at 420). Prior to beginning his interview, he reviewed Dep. Morris' bodycam footage and the statements Appellant made to Dep. Morris. (T. at 419). Appellant told Lt. Williams that

he saw C.L. on the porch with Sonja and that she appeared to be drinking heavily and was intoxicated. (T. at 421-422). Appellant admitted that he had not been introduced to C.L. that night. (T. at 422). He told Lt. Williams that after C.L. went home, Appellant's wife also went home, but that he stayed behind at the bonfire. (T. at 422-423). At the end of the night, Appellant returned to Shawn's house but was unable to sleep so he got up and went for a walk. (T. at 424). Appellant admitted to Lt. Williams that C.L. had not invited him to her house but that he went over anyway. (T. at 424-425). He claimed he checked in on C.L. because she was in bad shape from drinking too much. (T. at 425). Appellant claimed that when he knocked on C.L.'s door, it simply popped open. (T. at 426). Appellant stated that he entered the house and calmed the dogs down before observing C.L. sleeping on the couch. (T. at 426). Appellant told Lt. Williams that he found C.L. passed out, so he began to shake her to try to wake her up. (T. at 429). From the time that he walked into the residence, found C.L. passed out, to the time he began engaging in intercourse with C.L., Appellant indicated that probably only one minute had passed. (T. at 430). Appellant said that he engaged in penis/vaginal intercourse and then indicated that he performed oral sex on C.L. (T. at 430-431).

**{¶15}** Lt. Williams received the BCI results sometime after January 3, 2019.

**{¶16}** Logan Schepeler was the forensic scientist assigned to the case. (T. at 359-366). According to the testimony from Mr. Schepeler, Appellant's DNA from sperm was found in the vaginal sample taken from C.L. (T. at 365-366).

**{¶17}** Appellant testified at trial. (T. at 452-512). He stated that he was introduced to C.L. but that he did not speak with her extensively. (T. at 458, 460). He recalled that he saw C.L. doing shots that night. (T. at 460-461). He further testified that on the night

in question, he consumed 12-13 beers over the course of about 12 hours. (T. at 456, 458-459). After spending several hours around the bonfire with Bill and Shawn, Appellant stated that he left around 12:30 a.m. to return to Shawn and Heather Hill's home, where he and his wife went to bed. (T. at 463, 465). Appellant stated that he has "Restless Leg Syndrome" (RLS) which awoke him at approximately 2:30 a.m., and that he decided to go for a walk through the Seneca Lake Resorts. (T. at 465-466). Appellant further testified that "I ended up at [C.L.'s] place because I seen all the lights were on in the house and the dogs were carrying on like crazy." (T. at 467). Appellant stated that he rang the doorbell three to four times, called out and then knocked on the door, which popped opened as he knocked. (T. at 467-468). Appellant admitted that he entered the home without invitation. (T. at 468). Appellant stated that he found C.L. lying on the couch and that he nudged her shoulders, shook her a little and got her attention. (T. at 469). Appellant explained that he was trying to comfort her and check on her well-being. (T. at 469-470). He testified that he then began rubbing her shoulders, that "one thing led to another" and that about a minute later he initiated sexual activity with C.L. (T. at 470-471). He stated that he removed her clothing. (T. at 471, 473). He testified that the two of them engaged in foreplay for a couple of minutes, but admitted that C.L. did not touch him. (T. at 473). He then testified that he performed oral sex on her, and then engaged in vaginal intercourse. (T. at 474). Appellant stated that there was no discussion throughout the entire encounter. (T. at 474).

**{¶18}** During cross-examination, Appellant admitted to contradictory statements during police interviews. (T. at 480-482). Appellant admitted that he told Deputy Morris, the initial officer on scene, that C.L. invited him to her house but then told Lt. Williams that

C.L. did not invite him to her house. (T. at 482). When speaking to Officer Morris initially, Appellant stated that when he arrived at C.L.'s home, she was awake and on her phone but then later when speaking with Officer Morris, Appellant admitted that he had to shake C.L. a few times to wake her up. (T. at 483, 485). Appellant even admitted on cross-examination that he told Lt. Williams that C.L. was passed out. (T. at 483-484). Appellant also admitted that he did not know C.L., and that he simply entered her home without invitation and found her passed out or sleeping on the couch. (T. at 486-489). Appellant also admitted that he witnessed C.L. "drinking way too much" earlier in the evening. (T. at 493).

**{¶19}** In response to his claims that he entered C.L.'s house out of concern for her well-being, Appellant admitted that he could have called 911 upon finding her passed out on the couch, but that he chose not to. (T. at 488). Appellant admitted that C.L never consented to Appellant walking into her house or to Appellant touching her while she was asleep. (T. at 506).

**{¶20}** C.L. testified that ever since this incident, she has been afraid to stay at her home by herself. (T. at 204-206). She testified that she stayed with her friend Malinda for approximately 4-6 weeks after the attack before she could go back to her house where she now stays with her daughter and daughter's boyfriend. (T. at 205-206, 378).

**{¶21}** At the conclusion of the trial, on March 28, 2019, the jury returned the following verdicts: As to Count 1, guilty of the offense of Rape as well as guilty of the lesser included offense of sexual battery; Count 2, guilty of the offense of Rape as well as guilty of the lesser included offense of sexual battery; Count 3, guilty of the offense of Rape as well as guilty of the lesser included offense of sexual battery; Count 4, guilty of

the lesser inferior offense of sexual battery; Count 5, guilty of the inferior degree of sexual battery; Count 6, guilty of the inferior degree of sexual battery; Count 7, guilty of sexual battery; and Count 8, guilty of the Aggravated Burglary and the lesser included offense of Burglary .

**{¶22}** On April 5, 2019, the trial court held a sentencing hearing. The court merged the convictions for Counts 4, 5, and 6 into Counts 1, 2 and 3 of the Indictment. The State merged Count 7, Sexual Battery into Counts 1, 2 and 3 of the Indictment and proceeded to sentence Appellant under Counts 1, 2, 3 and 8. (Sent. T. at 11). The trial court sentenced Appellant to 5 years for each Count of Rape and 5 years for Aggravated Burglary for an aggregate term of 20 years and $700 in Restitution. (Sent. T. at 28).

**{¶23}** Appellant now appeals, raising the following assignments of error on appeal:

**ASSIGNMENTS OF ERROR**

**{¶24}** "I. PROSECUTORIAL MISCONDUCT DEPRIVED LAWRENCE HARTLEY OF HIS DUE-PROCESS AND FAIR-TRIAL RIGHTS. FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS, UNITED STATES CONSTITUTION; ARTICLE I, SECTIONS 10 AND 16, OHIO CONSTITUTION.

**{¶25}** "II. LAWRENCE HARTLEY'S DEFENSE COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE. FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS, UNITED STATES CONSTITUTION; ARTICLE I, SECTIONS 10 AND 16, OHIO CONSTITUTION.

**{¶26}** "III. LAWRENCE HARTLEY'S AGGREGATE SENTENCE IS CLEARLY AND CONVINCINGLY UNSUPPORTED BY THE RECORD."

**I.**

**{¶27}** In his first assignment of error, Appellant argues that he was denied his right to a fair trial due to prosecutorial misconduct. We disagree.

**{¶28}** Specifically, Appellant argues the State improperly bolstered and vouched for the victim's credibility by telling the jury during closing argument that certain statements she made were inherently reliable.

**{¶29}** Appellant did not object to these comments at trial, thus waiving all but plain error. *State v. White*, 82 Ohio St.3d 16, 22, 1998–Ohio–363, 693 N.E.2d 772, quoting *State v. Slagle*, 65 Ohio St.3d 597, 604, 605 N.E.2d 916 (1992). We therefore review Appellant's allegations under the plain-error standard.

**{¶30}** "For plain error to apply, the trial court must have deviated from a legal rule, the error must have been an obvious defect in the proceeding, and the error must have affected a substantial right. *E.g., State v. Barnes,* 94 Ohio St.3d 21, 27, 2002 Ohio 68, 759 N.E.2d 1240 (2002).

**{¶31}** The test for prosecutorial misconduct is whether the prosecutor's remarks and comments were improper and if so, whether those remarks and comments prejudicially affected the substantial rights of the accused. *State v. Lott*, 51 Ohio St.3d 160, 555 N.E.2d 293 (1990), cert. denied, 498 U.S. 1017, 111 S.Ct. 591, 112 L.Ed.2d 596 (1990). In reviewing allegations of prosecutorial misconduct, we must review the complained-of conduct in the context of the entire trial. *Darden v. Wainwright*, 477 U.S. 168, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986).

**{¶32}** During closing argument, the Prosecutor made the following statements:

> … However, you are able to receive evidence from Tishia Steed, the nurse from the hospital, and you are able to receive the evidence that when she reported or went to the hospital and received medical treatment, the additional sexual conduct including oral sex and digital penetration, and you are able to receive that because those are statements made for the purpose of medical diagnosis and treatment because there is inherent reliability to those statements.
>
> If they were not reliable, the Judge would not have allowed you to receive it as evidence, but they are reliable. It's because she was seeking medical help, medical treatment. Had she gone to the hospital to report a crime, you wouldn't be able to get it. Had she gone to the hospital to say I need charges brought against him, you would not have been able to receive that evidence, but it is because of the inherent reliability.

**{¶33}** (T. at 568).

**{¶34}** First, in examining the nature of these remarks, we note that the challenged comment was stated in closing arguments, which jurors are instructed not to consider as evidence. The trial court instructed the jury that the evidence in Appellant's case does not include the indictment, opening statements, or the closing arguments. Moreover, the trial court told the jury that they were the sole judges of the facts, the credibility of the witnesses, and the weight of the evidence. We presume that the jury followed the court's instructions. *State v. Loza* (1994), 71 Ohio St.3d 61, 79, 641 N.E.2d 1082.

**{¶35}** Upon review, we find that while the comments of the prosecutor in the case at bar may have raised objection, we cannot conclude that they were so outside the latitude generally granted the prosecution such that they comprise plain error.

**{¶36}** Further, Appellant's trial counsel's decision to not object to these comments and thus bring more attention to them can be viewed as a reasonable trial strategy, which cannot serve as the basis for error.

**{¶37}** Based on the foregoing, we find no plain error and hereby overrule Appellant's first assignment of error.

**II.**

**{¶38}** In his second assignment of error, Appellant argues he was denied the effective assistance of counsel. We disagree.

**{¶39}** To prevail on a claim of ineffective assistance of counsel, a defendant "must satisfy a two-prong test." *State v. Kennard*, 10th Dist. No. 15AP-766, 2016-Ohio-2811, ¶ 14, citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Under the first prong, a defendant must "demonstrate that his trial counsel's performance was deficient." *Id.* If a defendant "can show deficient performance, he must next demonstrate that he was prejudiced by the deficient performance." *Id.* A defendant's "failure to make either showing defeats a claim of ineffective assistance of counsel." *Id.*, citing *State v. Bradley*, 42 Ohio St.3d 136, 143, 538 N.E.2d 373 (1989), quoting *Strickland* at 697, 104 S.Ct. 2052.

**{¶40}** In order to demonstrate deficient performance by counsel, a defendant "must show that his counsel committed errors which were so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.*

at ¶15 (Quotations omitted). Further, a defendant "must overcome the strong presumption that defense counsel's conduct falls within a wide range of reasonable professional assistance." *Id.*, citing *Strickland* at 689. In order to show prejudice, a defendant "must establish there is a reasonable probability that, but for his counsel's unprofessional errors, the result of the trial would have been different." *Id.*, citing *Strickland* at 689.

**{¶41}** Appellant herein argues that his counsel was ineffective because he failed to object to the prosecutor's statements during closing arguments.

**{¶42}** Upon review, we find no prejudice to Appellant with regard to the trial court's allowance of said testimony. As set forth above, the statements of the prosecutor did not rise to the level of misconduct. We therefore find defense counsel was not deficient in failing to object to said statements.

**{¶43}** Accordingly, we find Appellant's second Assignment of Error not well-taken and hereby overrule same.

**III.**

**{¶44}** In his third assignment of error, Appellant argues his aggregate sentence is not supported by the record. We disagree.

**{¶45}** We review felony sentences using the standard of review set forth in R.C. §2953.08. *State v. Marcum*, 146 Ohio St.3d 516, 2016–Ohio–1002, 59 N.E.3d 1231, ¶ 22*; State v. Howell,* 5th Dist. Stark No. 2015CA00004, 2015-Ohio-4049, ¶ 31.

**{¶46}** In *State v. Gwynne,* a plurality of the Supreme Court of Ohio held that an appellate court may only review individual felony sentences under R.C. §2929.11 and R.C. §2929.12, while R.C. §2953.08(G)(2) is the exclusive means of appellate review of

consecutive felony sentences. ___ Ohio St.3d ___, 2019-Ohio-4761, ¶16-18; *State v. Anthony,* 11th Dist. Lake No. 2019-L-045, 2019-Ohio-5410, ¶60.

**{¶47}** R.C. §2953.08(G)(2) provides we may either increase, reduce, modify, or vacate a sentence and remand for resentencing where we clearly and convincingly find that either the record does not support the sentencing court's findings under R.C. §2929.13(B) or (D), 2929.14(B)(2)(e) or (C)(4), or 2929.20(I), or the sentence is otherwise contrary to law. *See, also, State v. Bonnell*, 140 Ohio St.3d 209, 2014–Ohio–3177, 16 N.E.2d 659, ¶ 28; *State v. Gwynne,* ¶16.

**{¶48}** Clear and convincing evidence is that evidence "which will provide in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford,* 161 Ohio St. 469, 120 N.E.2d 118(1954), paragraph three of the syllabus. *See also*, *In re Adoption of Holcomb*, 18 Ohio St.3d 361 (1985). "Where the degree of proof required to sustain an issue must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *Cross,* 161 Ohio St. at 477 120 N.E.2d 118.

**{¶49}** "In order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry[.]" *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, ¶37. Otherwise, the imposition of consecutive sentences is contrary to law. *See Id*. The trial court is not required "to give a talismanic incantation of the words of the statute, provided that the necessary findings can be found in the record and are incorporated into the sentencing entry." *Id*.

**{¶50}** R.C. §2929.14(C)(4) concerns the imposition of consecutive sentences, and provides:

> 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 service is necessary to protect the public from future crime or to punish the offender and that 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:
>
> (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.
>
> (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.
>
> (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

**{¶51}** In Ohio, there is a statutory presumption in favor of concurrent sentences for most felony offenses. R.C. §2929.41(A). The trial court may overcome this

presumption by making the statutory, enumerated findings set forth in R.C. §2929.14(C)(4). *State v. Bonnell,* 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶23. This statute requires the trial court to undertake a three-part analysis. *State v. Alexander,* 1st Dist. Hamilton Nos. C–110828 and C–110829, 2012-Ohio-3349, 2012 WL 3055158, ¶15.

**{¶52}** Thus, in order for a trial court to impose consecutive sentences the court must find that consecutive sentences are necessary to protect the public from future crime or to punish the offender. The court must also find that consecutive sentences are not disproportionate to the offender's conduct and to the danger the offender poses to the public. Finally, the court must make at least one of the three additional findings. *See, State v. White*, 5th Dist. Perry No. 12-CA-00018, 2013-Ohio-2058, ¶36.

**{¶53}** In this case, the record supports a conclusion that the trial court made all of the findings required by R.C. §2929.14(C)(4) at the time it imposed consecutive sentences.

**{¶54}** According to the Ohio Supreme Court, "the record must contain a basis upon which a reviewing court can determine that the trial court made the findings required by R.C. 2929.14(C)(4) before it imposed consecutive sentences." *Bonnell*, ¶28. "[A]s long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld." *Id*. at ¶29.

**{¶55}** Upon review, we find that the trial court's sentencing on the charges complies with applicable rules and sentencing statutes. The maximum sentence in this case was forty-four (44) years. The trial court imposed a sentence of twenty (20) years. The sentence therefore was within the statutory sentencing range.

**{¶56}** Further, the record contains evidence supporting the trial court's findings under R.C. §2929.14(C)(4). Therefore, we have no basis for concluding that it is contrary to law.

**{¶57}** Here, the trial court found that consecutive sentences were necessary to punish Appellant and to protect the public from future crime not disproportionate to the seriousness of the conduct and the danger posed by the Appellant. (Sent. T. at 26-27). The trial court also found that the harm caused to the victim was so great or unusual that a single prison term would not adequately reflect the seriousness of the conduct. (Sen. T. at 27). In making this finding, the court determined that the victim was suffering from a substantial impairment from the alcohol that she consumed together with her prescribed medication such that she was in a state where she was unable to conduct herself or appreciate what was occurring to her. (Sent. T. at 24). Additionally, the trial court found that the victim suffered serious psychological harm as a result of Appellant's actions. (Sent. T. at 25).

**{¶58}** Upon review, we find that the trial court's sentencing on the charge complies with applicable rules and sentencing statutes. Here, the maximum sentence in Appellant's case was forty-four (44) years. The trial court imposed an aggregate sentence of twenty (20) years. Appellant's sentence was therefore well within the statutory sentencing range. Further, the record contains evidence supporting the trial court's findings under R.C. §2929.14(C)(4). Therefore, we have no basis for concluding that it is contrary to law.

**{¶59}** Accordingly, we find Appellant's third Assignment of Error not well-taken and hereby overrule same.

**{¶60}** For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Guernsey County, Ohio, is hereby affirmed.

By: Wise, J.

Gwin, P. J., and

Baldwin, J., concur.

JWW/d 0317