IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-170125 TRIAL NO. B-1502209
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
DRAKKAR HARRIS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Drakkar Harris was a suspect in the murder of Eric Scroggins, who was killed with a .380-caliber handgun. Harris's cousin, Malichi Canady, told police that he had seen Harris 15 minutes after the murder with money and a .380-caliber handgun.

A month after the Canady interview, police brought Harris to the police district from the Hamilton County Justice Center, where he was being held on other charges. After the interview, Harris was informed that he was being charged with the Scroggins murder and was then driven back to the Justice Center. While waiting to enter the secure portion of the facility, Harris got out of the vehicle and attempted to flee. Since he was shackled, he did not get far before he was apprehended.

In addition to the charges relating to the death of Scroggins—aggravated murder with specifications, murder with specifications, aggravated robbery with specifications, and having a weapon while under a disability—Harris was also indicted on one count of escape. After a jury trial, he was acquitted on all charges except the weapons and escape charges. He was sentenced to eight years in prison for the escape, and three years for having a weapon while under a disability. The

terms were ordered to be served consecutively, for a total of 11 years in prison. In four assignments of error, Harris now appeals.

In his first assignment of error, Harris argues that the trial court improperly imposed consecutive sentences. R.C. 2929.14(C)(4) requires the trial court to make certain findings before imposing consecutive sentences. First, the trial court must find that consecutive sentences are necessary either to protect the public from future crime or to punish the offender. The court must then find the imposition of consecutive sentences is not disproportionate to the seriousness of the offender's conduct and the danger he poses to the public. Finally, the court must make one of the findings listed in R.C. 2929.14(C)(4)(a)-(c). The required findings must be incorporated into the sentencing entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus.

The record reflects the trial court complied with R.C. 2929.14(C)(4) and *Bonnell*. The trial court found that consecutive sentences were necessary to protect the public and to punish Harris and were not disproportionate to the seriousness of Harris's conduct and the danger that Harris posed to the public. *See* R.C. 2929.14(C)(4). The trial court also found that the two offenses were committed as part of one or more courses of conduct, and the harm caused by the two 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 Harris's conduct. *See* R.C. 2929.14(C)(4)(b). The trial court also noted that Harris had attempted to escape while awaiting sentencing on two unrelated robbery charges. *See* R.C. 2929.14(C)(4)(a). The trial court incorporated its findings into the sentencing entry. The trial court was not required to make further findings, and the findings it made were supported by the record. We overrule Harris's first assignment of error.

In the second and third assignments of error, Harris argues that his conviction for having a weapon while under a disability was based on insufficient evidence and against the manifest weight of the evidence. In a challenge to the sufficiency of the evidence, the question is whether after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the crime beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. In reviewing a challenge to the weight of the evidence, we sit as a "thirteenth juror." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). We must review the entire record, weigh the evidence, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice. *Id.*

Harris argues that "[n]o one showed that Mr. Harris had a firearm on or about his person or accessible to him or that he had the ability to direct it or control its use." He admits that Canady told police he had seen the gun, but claimed that the statement was coerced and that Canady was high at the time he saw Harris. While Canady recanted his statement during cross-examination, he also said on redirect examination that he had been threated many times about testifying. While Canady's testimony may have been inconsistent, the state also had evidence that gunshot residue had been found on Harris's sweatshirt, and his internet search history indicated he had been looking for sources to purchase .380 ammunition the day after the shooting. Based on this record, Harris's conviction for having a weapon while under a disability was based upon sufficient evidence and was not against the manifest weight of the evidence. We overrule his second and third assignments of error.

In his final assignment of error, Harris claims that the trial court improperly denied his motion to sever the escape count from the other counts. He claims that

the counts should not have been charged together in the same indictment, and that he was unduly prejudiced by having them all tried together.

Under Crim.R. 8(A), two or more offenses may be charged together in a single indictment if the offenses "are of the same or similar character, * * * or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct." In fact, "[t]he law favors joining multiple offenses in a single trial under Crim.R. 8(A) if the offenses charged 'are of the same or similar character.' " *State v. Lott*, 51 Ohio St.3d 160, 163, 555 N.E.2d 293 (1990), quoting *State v. Torres*, 66 Ohio St.2d 340, 343, 421 N.E.2d 1288 (1981). "Joinder is liberally permitted to conserve judicial resources, reduce the chance of incongruous results in successive trials, and diminish inconvenience to the witnesses." *State v. Schaim*, 65 Ohio St.3d 51, 58, 600 N.E.2d 661 (1992). *Accord Torres* at 343.

In a recent case, the Ohio Supreme Court considered the question of whether a defendant was properly indicted for aggravated burglary and witness intimidation for threatening a witness to the aggravated robbery. *State v. Gordon*, Slip Opinion No. 2018-Ohio-259. In that case, the court stated "Gordon's alleged attempt to intimidate Darling from testifying about the robbery connects the robbery-case charges with the intimidation charges. Also, the robbery case and intimidation case together form a course of criminal conduct. Thus, pursuant to Crim.R. 8(A), the crimes could have been charged in the same indictment." *Id.* at ¶ 19.

In this case, Harris attempted to flee after being charged with the murder-related charges. Like the witness intimidation count in *Gordon*, Harris's attempted flight was conduct that was designed to thwart prosecution of the other charges. Thus, the escape charge and the murder-related charges formed the same course of criminal conduct, and the counts were properly charged in the same indictment. *See State v. Palmer*, 7th Dist. Jefferson No. 04-JE-41, 2006-Ohio-749, ¶ 18 (an escape

that occurred several hours after a burglary was "intertwined" with the burglary when the defendant fled from the police station after having been arrested for the burglary charge).

Harris also argues that he was unduly prejudiced by having the escape charge tried with the other offenses. When a defendant claims that he was prejudiced by the joinder of multiple offenses, a court must determine (1) whether evidence of the other crimes would be admissible even if the counts were severed, and (2) if not, whether the evidence of each crime is simple and distinct. *State v. Schaim*, 65 Ohio St.3d 51, 59, 600 N.E.2d 661 (1992), citing *State v. Hamblin*, 37 Ohio St.3d 153, 158-159, 524 N.E.2d 476 (1988). If the evidence of other crimes would be admissible at separate trials, any "prejudice that might result from the jury's hearing the evidence of the other crimes in a joint trial would be no different from that possible in separate trials," and a court need not inquire further. *Schaim* at 59, quoting *Drew v. United States*, 331 F.2d 85, 90 (D.C.Cir.1964).

The Ohio Supreme Court has held that evidence of flight is admissible to show consciousness of guilt. *State v. Taylor*, 78 Ohio St.3d 15, 27, 676 N.E.2d 82 (1997). "[T]he fact of an accused's flight, escape from custody, resistance to arrest, concealment, assumption of a false name, and related conduct, are admissible as evidence of consciousness of guilt, and thus of guilt itself." *State v. Eaton*, 19 Ohio St.2d 145, 160, 249 N.E.2d 897 (1969). Moreover, evidence of a defendant's flight from the jurisdiction does not have to be contemporaneous with the underlying offense to be admissible. *State v. Hand*, 107 Ohio St.3d 378, 2006-Ohio-18, 840 N.E.2d 151, ¶ 169. In fact, "flight on the eve of trial can carry the same inference of guilt as flight from the scene." *Id.*

Harris attempted to flee while being returned to the Justice Center immediately after learning he was being charged with the murder of Scroggins. The jury was permitted to consider his "consciousness of guilt" when considering Harris's

guilt on the murder-related charges. Since his escape would have been admissible in the trial of the murder-related charges, the trial court did not err when it denied the motion to sever that count. *See Palmer* at ¶ 18. We overrule Harris's fourth assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., CUNNINGHAM and **ZAYAS, JJ.**

To the clerk:

Enter upon the journal of the court on March 28, 2018

per order of the court _____.

Presiding Judge