[Cite as *State v. Jarmon*, 2018-Ohio-4710.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106727

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JUSTIN JARMON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART,
REVERSED IN PART AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-17-618637-A and CR-17-619143-A

BEFORE: Blackmon, J., McCormack, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: November 21, 2018

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PATRICIA ANN BLACKMON, J.:

{¶1} Defendant-appellant, Justin Jarmon ("Jarmon"), appeals from the sentences imposed in two cases following his guilty pleas for participating in a criminal gang, attempted murder, and other charges. He assigns two errors for our review:

> I. The imposition of consecutive sentences [in these matters] was contrary to law.
>
> II. The trial court erred by imposing multiple consecutive five-year sentences for the drive-by shooting specifications [under R.C. 2941.146(A)] and multiple consecutive three-year sentences for the firearm specifications [under R.C. 2941.145].

{¶2} Having reviewed the record and pertinent law, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion. The apposite facts follow.

{¶3} In Case No. CR-17-618637-A, Jarmon was indicted in a 17-count indictment in connection with a gang-related drive-by shooting that injured two children on October 4, 2016.

In Case No. CR-17-619143-A, Jarmon was indicted for robbery and kidnapping, with criminal gang activity specifications, in connection with an attack on a 76-year-old man on January 3, 2017.

{¶4} Jarmon entered into a plea agreement with the state in both matters. In Case No. CR-17-618637-A, Jarmon pled guilty to three counts of attempted murder, improperly discharging a firearm into a habitation, and improper handling of a firearm in a motor vehicle, all with one-year firearm, three-year firearm, and five-year drive-by shooting specifications, and to one count of participating in a criminal gang. In Case No. CR-17-619143-A, Jarmon pled guilty to one count of robbery, with a criminal gang activity specification.

{¶5} At the December 21, 2017, sentencing hearing, the mother of one of the children injured in the drive-by shooting stated that on the evening of the shooting, the ten-year-old was inside watching television, and she and the four-year-old went outside to her front porch. Moments later, she asked two juveniles to leave her property, and shots rang out from a passing vehicle. According to the state, Jeron High ("High"), a passenger in the car, handed Jarmon a weapon. Jarmon fired five shots toward the juveniles, believing that they were rival gang members. The ten-year-old inside the house was struck in the back, and the four-year-old child on the porch was struck in the head. The ten-year-old has recovered from her bullet wound, but the four-year-old underwent numerous surgeries and was still hospitalized at the time of sentencing. She must wear protective headgear due to her injuries and has a feeding tube. Additionally, the state indicated that Jarmon continued to participate in criminal gang activities after the shooting, and subsequently robbed a 76-year-old man at a rapid station. Jarmon also continued to make gang-related social media posts up until the time of his arrest. Jarmon apologized to the victims for the pain he has caused them.

{¶6} The trial court sentenced Jarmon to a total of 35 years in Case No. CR-17-618637-A. This included six years for participating in a criminal gang, to be served consecutively to concurrent 17-year terms for the attempted murder convictions (eight years for the underlying offenses, plus the three-year firearm specifications, five-year firearm specifications, and one-year gang specifications). These terms were to be served consecutively to a twelve-year term for improperly discharging a firearm at a habitation (three years for the underlying offense, plus the three-year firearm specification, five-year firearm specification, and one-year gang specification). The conviction for improperly handling a firearm in a motor vehicle merged into the conviction for attempted murder.

{¶7} The court also sentenced Jarmon to six years of imprisonment in Case No. CR-17-619143-A, and ordered the terms in Case Nos. CR-17-618637-A and CR-17-619143-A to be served consecutively.

Consecutive Sentences

{¶8} In his first assigned error, Jarmon argues that "the trial court considered the necessary factors for imposing consecutive sentences as between the two cases [but did not do so before] imposing consecutive sentences with respect to the individual counts in CR-17-618637-A."

{¶9} When reviewing felony sentences, we apply the standard of review set forth in R.C. 2953.08(G)(2). *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231. R.C. 2953.08(G)(2) specifies that an appellate court may increase, reduce, modify, or vacate and remand a challenged felony sentence if the court clearly and convincingly finds either that the record does not support the sentencing court's findings or the sentence is otherwise "contrary to law" under the relevant statutes.

{¶10} Under Ohio law, prison terms are to be served concurrently, subject to certain exceptions. R.C. 2929.14(A). However, under R.C. 2929.14(C), 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: (1) consecutive service is necessary to protect the public from future crime or to punish the offender; (2) consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public; and (3) one of three statutory factors set forth in R.C. 2929.14(C)(4)(a)-(c) applies. *Id*. The third set of statutory factors include: (1) the offender committed one or more of the multiple offenses while awaiting trial or sentencing, while under a sanction imposed under R.C. 2929.16, 2929.17, or 2929.18, or while under postrelease control for a prior offense; (2) 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 offenses 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; or (3) the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. R.C. 2929.14(C)(4)(a) - (c).

{¶11} The trial court is required to make the statutory findings required for consecutive sentences at the sentencing hearing, and then incorporate its findings into its sentencing entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus. However, the court is not required to give a talismanic recantation of the words of the statute. *Id.* at ¶ 37. "A word-for-word recitation of the language of the statute is not required, and as 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. *See also State v. Blackburn*, 8th Dist. Cuyahoga Nos. 97811 and 97812, 2012-Ohio-4590, ¶ 34 (a trial court satisfies this statutory requirement when the record reflects that the court has engaged in the required analysis and has selected the appropriate statutory criteria).

{¶12} In determining whether a trial court must make two sets of R.C. 2929.14(C) findings where the trial court first orders an aggregate sentence, consisting of consecutive terms imposed in one case, and then orders this aggregate term to be served consecutively to the sentence imposed in another case, we begin with reviewing the plain language of R.C. 2929.14(C). R.C. 2929.14(C) does not appear to require multiple sets of findings in that situation. Rather, R.C. 2929.14(C) states that "[i]f 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 [makes the findings of R.C. 2929.14(C)(4)]." *Accord State v. Akerman*, 3d Dist. Hancock Nos. 5-99-32 and 5-99-33, 1999-Ohio-929. In *Akerman*, the court rejected the contention that two sets of findings were required and stated:

> The defendant's proposed rule, which would require the trial court to make that finding twice in the same hearing, is not mandated by the sentencing statutes and serves no legitimate sentencing purpose.

Id.

{¶13} Further, in *State v. Jordan*, 8th Dist. Cuyahoga No. 103813, 2016-Ohio-5709, the defendant was sentenced to an aggregate 16-year term in one case (including two consecutive terms), which was ordered to be served consecutively to a 12-month term in another case. He argued that the trial court failed to make a second set of R.C. 2929.14(C)(4) findings before imposing the 12-month consecutive term. This court disagreed, noting, "[t]he trial court's

consecutive sentence findings included facts regarding Jordan's probation violation." *Id*. at ¶ 58.

{¶14} In *State v. Heard*, 12th Dist. Butler Nos. CA2014-02-024, CA2014-02-025, and CA2014-05-118, 2014-Ohio-5394, the trial court's statement "same findings" was sufficient to demonstrate that three cases were to be served consecutively. *Id*. at ¶ 12. *Accord State v. Higginbotham*, 10th Dist. Franklin Nos. 17AP-147 and 17AP-150, 2017-Ohio-7618, ¶ 25. *See also State v. Howard*, 6th Dist. Lucas Nos. L-14-1121, L-14-1130, L-14-1131, 2015-Ohio-557 (one set of findings sufficient where court ordered aggregate five-year term to be served consecutively to two-year term); *State v. Powell*, 2d Dist. Clark Nos. 2016-CA-23 and 2016-CA-24, 2017-Ohio-311 (court made R.C. 2929.14(C) findings and found them applicable to both cases).

{¶15} In this matter, prior to sentencing Jarmon, the court stated as follows:

> THE COURT: It's difficult for me to impose a lengthy prison sentence on anyone. But there are times when we have to do it, and this is certainly one of those because the damage to the individuals involved, the family involved, to the community involved, and to the community at large is so great that I don't see any way out of this.
>
> * * *
>
> My basis — I'm required to state a statutory basis for consecutive sentences, and that is because the damage to the community, the harm to the community, and the nature of your activity is so great that a single sentence would not be sufficient to provide adequate punishment to you or protection for the community. In addition, of course, the two cases are sufficiently different that they present a pattern of criminal activity that one sentence could not possibly be adequate.

{¶16} In accordance with the foregoing, we cannot conclude that the trial court's imposition of consecutive sentences within CR-17-618637-A is contrary to law. The trial court made all of the required consecutive sentence findings and it engaged in the analysis required

under R.C. 2929.14(C)(4). The court's remarks established that consecutive service was necessary to protect the community at large and that a lengthy term had to be ordered in light of the nature of the damage and harm to the community and in order to punish Jarmon for the offenses. The court noted that the lengthy term was necessary given the damage suffered by the individuals, family, and the community. The court also noted that the offenses were part of a pattern of conduct so no one sentence was adequate. Bearing in mind that the trial court was not required to use any particular talismanic language, the record demonstrates that the court's remarks were directed to all the offenses to which Jarmon pled guilty in both indictments, and were given to explain why the court ordered consecutive terms among all of those offenses. The court's findings were applicable to offenses within both Case Nos. CR-17-618637-A and CR-17-619143-A. Moreover, the journal entries for the sentences contain the required findings under R.C. 2929.14(C)(4).

{¶17} The assigned error lacks merit.

Inconsistent and Disproportional Sentencing Claim

{¶18} Jarmon next argues that his sentence is inconsistent with and disproportional to the 18-year sentence that High received following a trial in Case No. CR-17-615612.

{¶19} On review, our inquiry is whether the sentence clearly and convincingly fails to support the trial court's findings or is contrary to law. *Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, at ¶ 9.

{¶20} Inconsistency and disproportionality in sentencing are distinct concepts. *State v. Ware*, 8th Dist. Cuyahoga No. 106176, 2018-Ohio-2294, ¶ 13, citing *State v. Moore*, 2014-Ohio-5135, 24 N.E.3d 1197, ¶ 17, 20 (8th Dist.). Consistency, under R.C. 2929.11(B), relates to the sentences in the context of sentences given to other offenders, but it "is not

synonymous with uniformity." *Moore* at ¶ 18. The court is not required to make express findings that the sentence is consistent with other similarly situated offenders. *State v. Richards*, 8th Dist. Cuyahoga No. 83696, 2004-Ohio-4633, ¶ 10; *State v. Harris*, 8th Dist. Cuyahoga No. 83288, 2004-Ohio-2854, ¶ 23. With regard to consistency among codefendants, this court has stated:

> The courts have not interpreted the notion of consistency to mean equal punishment for codefendants. *State v. Harder*, 8th Dist. Cuyahoga No. 98409, 2013-Ohio-580, ¶ 7. Consistency is not synonymous with uniformity. *State v. Black*, 8th Dist. Cuyahoga No. 100114, 2014-Ohio-2976, ¶ 12. Rather, the consistency requirement is satisfied when a trial court properly considers the statutory sentencing factors and principles. *State v. O'Keefe*, 10th Dist. Franklin Nos. 08AP-724, 08AP-725 and 08AP-726, 2009-Ohio-1563, ¶ 41. "'[C]onsistency is achieved by weighing the factors enumerated in R.C. 2929.11 and 2929.12 and applying them to the facts of each particular case.'" *State v. Wells*, 8th Dist. Cuyahoga No. 100365, 2014-Ohio-3032, ¶ 12, quoting *State v. Lababidi*, 8th Dist. Cuyahoga No. 100242, 2014-Ohio-2267, ¶ 16. Consistency "'requires a trial court to weigh the same factors for each defendant, which will ultimately result in an outcome that is rational and predictable.'" *State v. Georgakopoulos*, 8th Dist. Cuyahoga No. 81934, 2003-Ohio-4341, ¶ 26, quoting *State v. Quine*, 9th Dist. Summit No. 20968, 2002-Ohio-6987, ¶ 12.
>
> Consistency accepts divergence within a range of sentences and takes into consideration the trial court's discretion to weigh statutory factors." *State v. Hyland*, 12th Dist. Butler No. CA2005-05-103, 2006-Ohio-339. *See also State v. Switzer*, 8th Dist. Cuyahoga No. 102175, 2015-Ohio-2954; *State v. Armstrong*, 2d Dist. Champaign No. 2015-CA-31, 2016-Ohio-5263; *State v. Murphy*, 10th Dist. Franklin No. 12AP-952, 2013-Ohio-5599, ¶ 14. "Although the offenses may be similar, distinguishing factors may justify dissimilar treatment." *State v. Dawson*, 8th Dist. Cuyahoga No. 86417, 2006-Ohio-1083, ¶ 31.

State v. Cargill, 8th Dist. Cuyahoga No. 103902, 2016-Ohio-5932, ¶ 11-12.

{¶21} "Proportionality," on the other hand, involves the relationship between the sentence and the defendant's conduct, i.e., is it "commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim," or, in other words, "does the punishment fit the crime." *Id.*, quoting *Moore* at ¶ 17, 20. *Accord State v. Brewster*, 8th Dist. Cuyahoga No. 103789, 2016-Ohio-3070, ¶ 10. "A felony sentence should be proportionate to the severity of the offense committed, so as not to 'shock the sense of justice in the community.'" *State v. Smith*, 8th Dist. Cuyahoga No. 95243, 2011-Ohio-3051, ¶ 66, quoting *State v. Chaffin*, 30 Ohio St.2d 13, 17, 282 N.E.2d 46 (1972).

{¶22} In this case, we find the sentence to be neither inconsistent with High's sentence nor disproportional to Jarmon's offenses. As to consistency, although High received a substantially shorter sentence for his role in the October 4, 2016 drive-by shooting, the record indicates that Jarmon, and not High, was the shooter in this matter. Jarmon fired five shots at the intended targets who were juveniles, allegedly in a rival gang. Jarmon's actual victims were very young children. One of the children was inside her home, but the other was clearly on the porch with her mother at the time Jarmon opened fire. She sustained life-threatening and life-altering injuries. Jarmon also continued his gang-related activities after the shooting, and subsequently robbed a 76-year-old man. He also made gang-related social media posts until his arrest. Overall, Jarmon displayed a lack of remorse and continuing danger to society. These factors justified dissimilar sentences. Moreover, the court properly considered the statutory sentencing factors and principles in R.C. 2929.11 and 2929.12, and fashioned a sentence that was rational and predictable under the circumstances.

{¶23} As to proportionality, the sentence in Case No. CR-17-618637-A was proportionate to the great harm caused by Jarmon's offenses and is not shocking to the community's sense of

justice. Jarmon targeted two juveniles gang-rivals, and opened fire on the porch where others, including a very young child, were present. His shots struck two young children, and have caused extremely life-threatening and life-altering injuries to the four-year-old who happened to be on the porch with her mother. Similarly, the sentence in Case No. CR-17-618637-A was proportionate to the harm caused by the offense, because it manifested Jarmon's continued dangerousness to the community and lack of remorse for the earlier shootings.

{¶24} This claim is therefore without merit.

Imposition of Drive-By Shooting and Firearm Specifications

{¶25} Jarmon next argues that under R.C. 2929.14(B)(1)(c)(iii), the trial court erred in imposing two five-year drive-by specifications. He also complains that under R.C. 2929.14(B)(1)(g), the offense of discharging a firearm into a habitation is not one of the offenses that allows for the imposition of multiple three-year firearm specifications, so the three-year firearm specification for this offense is erroneous.

{¶26} Turning to the issue of the five-year specification, R.C. 2929.14(B)(1)(c)(iii) provides:

> A court shall not impose more than one additional prison term on an offender under division (B)(1)(c) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (B)(1)(c) of this section relative to an offense, the court also shall impose a prison term under division (B)(1)(a) of this section relative to the same offense, provided the criteria specified in that division for imposing an additional prison term are satisfied relative to the offender and the offense.

{¶27} R.C. 2929.14(B)(1)(c)(iii) mandates that the trial court impose any three-year firearm specification and five-year drive-by shooting specification relative to the same offense. However, R.C. 2929.14(B)(1)(c)(iii) limits imposing a single five-year sentence on the "drive-by" specification and provides that they must merge with the same five-year firearm specification in other counts "for felonies committed as part of the same act or transaction." *See State v. Sheffey*, 8th Dist. Cuyahoga No. 98944, 2013-Ohio-2463, ¶ 28. The Supreme Court of Ohio has defined "the same act or transaction" as a "series of continuous acts bound by time, space and purpose, and directed toward a single objective." *State v. Wills*, 69 Ohio St.3d 690, 691, 635 N.E.2d 370 (1994).

{¶28} The state maintains that the shootings were not part of the same transaction. However, the record indicates that Jarmon "rolled down the window and fired over five shots towards [the alleged rival gang members]." Accordingly, we conclude that the multiple shots fired at the rival gang members were the same transaction. *Accord State v. Phillips*, 8th Dist. Cuyahoga No. 96329, 2012-Ohio-473, ¶ 41 (multiple shots fired into a vehicle were the same transaction). Therefore, the trial court was permitted to impose one five-year firearm specification. By imposing two five-year firearm specifications in this matter (one for the attempted murder convictions in Counts 2-5, and one for the offense of improperly discharging firearm at a habitation in Count 16), the court violated the limitation imposed in R.C. 2929.14(B)(1)(c)(iii).

{¶29} This portion of the assigned error is well-taken.

{¶30} Turning to the issue of the three-year firearm specifications, in Case No. CR-17-618637-A, Jarmon was convicted of three-year firearm specifications pursuant to R.C. 2941.145 in connection with the attempted murder convictions and the discharging a weapon into

a habitation conviction. Pursuant to R.C. 2929.14(B)(1)(b), a trial court shall not impose more than one such prison term for felonies committed as part of the same act or transaction. However, R.C. 2929.14(B)(1)(g) creates an exception to the general rule that a trial court may not impose multiple firearm specifications for crimes committed as part of the same transaction. *State v. Young*, 8th Dist. Cuyahoga No. 102202, 2015-Ohio-2862, ¶ 9; *State v. Vanderhorst*, 8th Dist. Cuyahoga No. 97242, 2013-Ohio-1785, ¶ 10. Under R.C. 2929.14(B)(1)(g):

> If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (B)(1)(a) of this section in connection with two or more of the felonies, the sentencing court shall impose on the offender the prison term specified under division (B)(1)(a) of this section for each of the two most serious specifications of which the offender is convicted or to which the offender pleads guilty and, *in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.* (Emphasis added.)

{¶31} This court has construed R.C. 2929.14(B)(1)(g) to mean that in cases where a defendant was found guilty of two or more felonies, including aggravated murder, aggravated robbery, and attempted murder, and the felony counts contained firearm specifications, the trial court is required to impose prison terms for the two most serious specifications and also has discretion to impose a sentence for any other specification. *State v. Nitsche*, 2016-Ohio-3170, 66 N.E.3d 135, ¶ 53 (8th Dist.), *State v. James*, 2015-Ohio-4987, 53 N.E.3d 770, ¶ 41 (8th Dist.).

{¶32} In this case, Jarmon's conviction for improper discharge into a habitation is not within the exception under R.C. 2929.14(B)(1)(g). However, Jarmon was convicted of three counts of attempted murder, so the trial court was required to impose prison terms for the two most serious specifications and could also, in its discretion, impose a sentence for any other

specification. *Accord Nitsche*; *James*; *Sheffey*, 2013-Ohio-2463, at ¶ 28; *State v. Cassano*, 8th Dist. Cuyahoga No. 97229, 2012-Ohio-4047, ¶ 34.

{¶33} Therefore, this portion of the assigned error is without merit.

{¶34} The second assigned error is well-taken in part.

{¶35} Judgment is affirmed in part, reversed in part, and remanded. The case is remanded for vacation of one of the five-year drive-by specifications.

It is ordered that appellant and appellee share the 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.

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

PATRICIA ANN BLACKMON, JUDGE

TIM McCORMACK, P.J., CONCURS;
SEAN C. GALLAGHER, J., CONCURS
IN JUDGMENT ONLY WITH SEPARATE OPINION

SEAN C. GALLAGHER, J., CONCURRING IN JUDGMENT ONLY:

{¶36} I concur in judgment only with the decision to reverse the imposition of multiple prison terms for the type of specifications described in R.C. 2941.146. I believe I am bound by the most recent precedent in this district. *See State v. Phillips*, 8th Dist. Cuyahoga No. 96329, 2012-Ohio-473. I write separately to address concerns regarding the review of such sentences.

{¶37} In this case, the state argues that the multiple prison terms imposed for two specifications under R.C. 2941.146 are statutorily permissible because Jarmon's conduct resulted in harm to and crimes against multiple victims. According to the state, separate victims and harms demonstrate that the felonies were not committed as part of the same transaction for the purposes of R.C. 2929.14(B). This misses the point. It would be erroneous for a court to apply the merger analysis from R.C. 2925.41 and *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, in determining the trial court's authority to impose more than one of the additional five-year specifications under R.C. 2941.146. The firearm specifications are limited by the circumstances of the event.

{¶38} R.C. 2929.14(B)(1)(b), (B)(1)(c)(iii), and (B)(1)(d) prohibit the imposition of more than one additional prison term "*for felonies committed* as part of the same act or transaction." (Emphasis added.) The only notable exception is limited to the specifications of the type described in R.C. 2941.141, 2941.144, or 2941.145. *See, e.g.,* R.C. 2929.14(B)(1)(g) (describing when multiple prison terms for those firearm specifications may be imposed). Further, the firearm specifications can only be imposed after a prison term is imposed on the underlying felony. *See, e.g.,* R.C. 2929.14(B)(1)(c)(i). Therefore, a trial court considers whether it has the statutory authority to impose multiple prison terms on the firearm specifications only after it has been determined that the individual felony offenses constitute separate offenses for the purposes of R.C. 2941.25. The plain language of R.C. 2929.14(B)(1) indicates a defendant can be convicted of separate crimes, arguably even with separate harms and separate victims, but a court is limited to imposing one prison term on multiple firearm specifications if these felonies were committed as part of the same act or transaction.

{¶39} As a result, although the state's separate-victim analysis demonstrates that the multiple felonies, for which Jarmon was convicted, do not merge under R.C. 2941.25, the analysis under R.C. 2929.14(B) is separate and distinct. Two or more offenses are of dissimilar import for the purposes of R.C. 2941.25 if the offenses involve separate victims. *Ruff* at paragraph two of the syllabus. R.C. 2929.14(B) did not incorporate the dissimilar-import language from R.C. 2941.25. Instead, R.C. 2929.14(B) speaks in terms of the "same act or transaction." If the legislature had intended for the allied-offense analysis to control the trial court's authority to impose multiple prison terms for the firearm specifications, there would have been no need to separately delineate the circumstances under which multiple prison terms on the firearm specifications were authorized.

{¶40} If the felonies were committed with the same act or, if they were committed with separate acts and that series of acts was committed as part of the same transaction, the trial court is authorized to impose one prison term on the firearm specifications described in R.C. 2941.146. In this case, the five shots fired in rapid succession from the motor vehicle were part of the same transaction, if not committed as a single act — the act of shooting from a motor vehicle. There is no indication that the General Assembly intended for courts to painstakingly parse facts that describe a single "drive-by shooting" event for the purpose of imposing multiple prison terms on the specifications described in R.C. 2941.146. With this clarification in mind, I concur in judgment only.