

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-08-110
	:	
- vs -	:	<u>OPINION</u>
	:	6/15/2015
	:	
MICHAEL J. WATSON,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 13CR29716

David P. Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

Thomas G. Eagle, 3386 North State Route 123, Lebanon, Ohio 45036, for defendant-appellant

HENDRICKSON, J.

{¶ 1} Defendant-appellant, Michael Watson, appeals his conviction in the Warren County Court of Common Pleas for murder, aggravated robbery, kidnapping, and tampering with evidence. For the reasons discussed below, we affirm.

{¶ 2} Adam Patrick and Michael Geldrich arranged a plan to have a drug dealer post one of his "dope boys" in Geldrich's home. Under this arrangement, Geldrich agreed to allow

a street level drug dealer to stay in his house and sell drugs. In exchange, Patrick and Geldrich would receive a commission on the drug sale, which they accepted in the form of heroin. On November 30, 2013, Patrick and Geldrich drove to Dayton in Geldrich's black truck and picked up Dione Payne, the victim, and dropped him off at Geldrich's home so he could sell drugs. Meanwhile, Geldrich and Patrick began formulating a plan to rob Payne of the money and drugs that he had in his possession. Because Patrick did not want to be directly involved with the robbery, Geldrich enlisted the help of appellant.

{¶ 3} During the late evening hours of November 30, 2013 and into the early morning hours of December 1, 2013, a number of persons entered Geldrich's home, including appellant, Geldrich, Payne, Patrick, and Patrick's girlfriend, Kim Ferguson. Around 6:30 or 7:00 am, Patrick and Ferguson left Geldrich's home. At the time, Payne was asleep on Geldrich's couch and unharmed. Patrick stated that he left his black truck with Geldrich so that they could continue to use it to sell drugs.

{¶ 4} Geldrich and appellant then stepped out of Geldrich's home and discussed a plan to rob Payne of his drugs and money. When they returned, Geldrich struck Payne on the chin with a table leg several times, placed a pillowcase over his head, and bound his arms and legs with duct tape. With his arms and legs bound, Geldrich forced Payne onto the floor and placed him in a chokehold while appellant kicked and punched Payne. Appellant then straddled Payne's back and questioned him about the location of the drugs and money. When Payne did not immediately respond, appellant slammed Payne's head into the floor approximately 10 times. Suspecting that Payne may have hidden the drugs in his anal cavity, Geldrich then pulled down Payne's pants and examined his anus with a dowel rod. Thereafter, Geldrich and appellant continued to brutally attack the restrained victim.

{¶ 5} Payne eventually passed out and became nonresponsive. Appellant then found Payne's wallet containing \$260 and nine capsules of heroin and cocaine. While still in

the house, Payne began to move and appellant kicked him in the head an additional two to three times and struck him in the stomach with a table leg. Appellant then got on Payne's back and continued to inquire about additional drugs and money. When Payne did not respond, appellant continued to kick and strike Payne in the head and stomach. At around 9:18 am on December 1, 2013, approximately one hour after the attack started, Geldrich went outside and called Patrick to inform him that Payne was "fucked up."

{¶ 6} Geldrich went back inside and sat with appellant at the kitchen table where they noticed a still unresponsive Payne making a gurgling sound. After noticing this sound and Payne's prolonged unresponsiveness, Geldrich and appellant discussed whether they should take Payne to the hospital or whether they should dump his body near a local park. Ultimately, appellant and Geldrich decided to drop Payne off at the hospital. Geldrich and appellant then placed Payne in Patrick's black truck and drove him to the nearest hospital. When they arrived, appellant obtained a wheel chair and wheeled Payne into the emergency room where he informed medical staff that he "found [Payne] like this" and did not know him. Appellant then immediately fled the scene with Geldrich. Payne ultimately died as a result of the injuries he sustained during the attack. Payne's official cause of death was listed as blunt force trauma to the head, homicide.¹

{¶ 7} Thereafter, Geldrich and appellant returned to Geldrich's home where they cleaned up and removed their blood stained clothing and placed them into a trash bag, which they subsequently disposed of in a gas station dumpster near the Dayton Mall on their way to purchase more heroin.

{¶ 8} After Payne was dropped off at the emergency room, medical personnel notified the Middletown Police Department who sent Detective Dunham and Detective

1. Payne was 16 years old at the time of his death.

Stewart to investigate. During the course of their investigation, Detectives Dunham and Stewart discovered surveillance photographs and video taken from the hospital. The discovery of those images led the detectives to identify Geldrich and appellant. In addition, the truck was also identified as one typically driven by Patrick who informed authorities that he had loaned the truck to Geldrich. Based upon the information provided, Detective Stewart obtained a search warrant for Geldrich's home. In executing the search warrant, Detective Stewart found both Geldrich and appellant present inside. Appellant and Geldrich were subsequently arrested and transported to the City of Franklin Police Department. After being advised of his *Miranda* rights, appellant consented to an interview with Detective Dunham where he admitted to his participation in the planned robbery and the attack on Payne. In addition, appellant stated that he "pretty much" knew that Payne was "gone" when they went to the hospital.

{¶ 9} Appellant was subsequently indicted for one count of aggravated murder in violation of R.C. 2903.01(B), one count of aggravated robbery in violation of R.C. 2911.01(A)(3), two counts of kidnapping in violation of R.C. 2905.01(A)(2) and (A)(3), one count of rape in violation of R.C. 2907.02(A)(2), and one count of tampering with evidence in violation of R.C. 2921.12(A)(1). Thereafter, appellant filed two separate motions to suppress, which the trial court denied. Following a jury trial, appellant was convicted of murder as a lesser included offense of aggravated murder, aggravated robbery, both counts of kidnapping, and tampering with evidence. Appellant was acquitted of rape. The trial court sentenced appellant to a prison term of 15-years-to-life on the murder conviction and eight years on the aggravated robbery conviction and ordered that those sentences be served consecutively. The remaining convictions were merged or ordered to be served concurrently for an aggregate sentence of 23-years-to-life. Appellant now appeals, raising four assignments of error for review.

{¶ 10} Assignment of Error No. 1:

{¶ 11} THE TRIAL COURT ERRED IN DENYING THE APPELLANT'S MOTION TO SUPPRESS.

{¶ 12} In his first assignment of error, appellant argues the trial court erred when it denied his motion to suppress because there was no probable cause to arrest him.

{¶ 13} Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Gray*, 12th Dist. Butler No. CA2011-09-176, 2012-Ohio-4769, ¶ 15. "When considering a motion to suppress, the trial court, as the trier of fact, is in the best position to weigh the evidence in order to resolve factual questions and evaluate witness credibility." *State v. Harsh*, 12th Dist. Madison No. CA2013-07-025, 2014-Ohio-251, ¶ 9. In turn, the appellate court must accept the trial court's findings of fact so long as they are supported by competent, credible evidence. *Gray* at ¶ 15. "An appellate court, however, independently reviews the trial court's legal conclusions based on those facts and determines, without deference to the trial court's decision, whether as a matter of law, the facts satisfy the appropriate legal standard." *Harsh* at ¶ 10.

{¶ 14} For a warrantless arrest to be lawful, the arresting officer must have probable cause that the individual had committed an offense. *State v. Willis*, 12th Dist. Butler No. CA2012-08-155, 2013-Ohio-2391, ¶ 25; *State v. Voelker*, 12th Dist. Warren No. CA2007-05-064, 2008-Ohio-1481, ¶ 10. Probable cause is viewed under an objective standard and is present where, under the facts and circumstances within an officer's knowledge, a reasonably prudent person would believe that the arrestee has committed a crime. *State v. Christopher*, 12th Dist. Clermont No. CA2009-08-041, 2010-Ohio-1816, ¶ 16. Information need not unequivocally establish the accused's involvement, but must only show a probability or substantial chance that he engaged in criminal activity. *Voelker* at ¶ 10. In making this determination, a court reviews the totality of facts and circumstances surrounding the arrest.

Id.

{¶ 15} In the present case, appellant was arrested at Geldrich's home as detectives were executing a search warrant on the premises. Appellant argues the trial court erred in denying his motion to suppress because his arrest was without probable cause that he had committed any crime. In so doing, appellant alleges "[a]t worst, the evidence was that [appellant] had only brought an injured person to a hospital, maybe lied about prior contact with [the victim]." Appellant further explains that "[m]erely having information about a crime * * * is not probable cause that someone committed a crime." As a result, appellant claims that his arrest was illegal and unconstitutional and all fruits of that illegal arrest are subject to suppression.

{¶ 16} After review, we find the surrounding facts and circumstances provided officers with probable cause to arrest appellant without a warrant. Here, the trial court held a hearing on appellant's motion to suppress and heard testimony from Detective Dunham and Detective Stewart. Detectives Dunham and Stewart testified about their initial investigation, which included the discovery of surveillance video at the hospital. Photograph and video evidence taken from those surveillance cameras captured Geldrich and appellant wheeling a severely injured Payne into the emergency room and then quickly returning to their vehicle and fleeing the scene. Detective Stewart testified that appellant informed the medical personnel that "he had found the boy this way and didn't know who he was."

{¶ 17} After identifying the black truck as belonging to Patrick, Detective Dunham testified that he contacted Patrick and requested an interview with him. During the investigation, Patrick confirmed that he had left his black truck with Geldrich the night before and acknowledged that Geldrich and appellant had used it to take Payne to the hospital. Furthermore, Detective Dunham testified that Patrick informed him of interactions with Geldrich who stated that Payne was "fucked up." In addition, Patrick also informed Detective

Dunham that he was concerned that Geldrich and appellant "did something bad to [Payne]."

{¶ 18} Based on our review of the evidence, we find a reasonably prudent person would believe that appellant committed a crime and could therefore be subject to a warrantless arrest. Appellant's assertion that he merely had knowledge of a crime is without merit as the record defies appellant's contentions. The information available at the time showed, at the very least, a probability or substantial chance that appellant had engaged in the robbery and violent attack on Payne that ultimately led to Payne's death. Accordingly, the trial court did not err in denying appellant's motion to suppress. Appellant's first assignment of error is without merit.

{¶ 19} Assignment of Error No. 2:

{¶ 20} THE TRIAL COURT ERRED IN CONVICTING WATSON OF TAMPERING WITH EVIDENCE.

{¶ 21} In his second assignment of error, appellant argues that the state's evidence was not sufficient to support his conviction for tampering with evidence.

{¶ 22} In reviewing the sufficiency of the evidence underlying a criminal conviction, an appellate court examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. DeBorde*, 12th Dist. Butler No. CA2013-04-058, 2014-Ohio-761, ¶ 10. Accordingly, "[t]he 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. Dixon*, 12th Dist. Clermont No. CA2007-01-012, 2007-Ohio-5189, ¶ 13, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus.

{¶ 23} Tampering with evidence is defined under R.C. 2921.12, which provides "no person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following: alter, destroy, conceal, or remove any

record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation."

{¶ 24} The Ohio Supreme Court recently acknowledged that there are three elements to tampering with evidence: "(1) the knowledge of an official proceeding or investigation in progress or likely to be instituted; (2) the alteration, destruction, concealment, or removal of the potential evidence; and (3) the purpose of impairing the potential evidence's availability or value in such proceeding or investigation." *State v. Straley*, 139 Ohio St.3d 339, 2014-Ohio-2139, ¶ 11.

{¶ 25} In *Straley*, two plainclothes narcotic detectives stopped the defendant's car for erratic driving. *Id.* at ¶ 2. Although the detectives noticed the defendant showed signs of alcohol impairment, they decided not to charge her. *Id.* However, the detectives would not let her drive home. *Id.* at ¶ 2-3. As the officers tried to arrange a ride for her, the defendant announced she had to urinate and subsequently "trotted 20 to 30 feet away to the corner of a building, saying, 'I'm not running; I just gotta pee. I don't care if you have to arrest me; I gotta pee.'" *Id.* at ¶ 3. After the defendant relieved herself, one of the detectives walked to the area where she had gone and saw a clear cellophane baggie covered with urine containing what appeared to be crack cocaine. *Id.* at ¶ 4.

{¶ 26} The defendant was later convicted of possession of cocaine, trafficking in cocaine, and tampering with evidence, but the Second Appellate District reversed the tampering-with-evidence conviction. *Id.* at ¶ 7. The Supreme Court affirmed the appellate court's decision, holding that "[a] conviction for tampering with evidence pursuant to R.C. 2921.12(A)(1) requires proof that the defendant intended to impair the value or availability of evidence that related to an existing or likely official investigation or proceeding." *Id.* at syllabus. It added that "[l]ikelihood is measured at the time of the act of alleged tampering." *Id.* at ¶ 19. As applied to the facts, the court in *Straley* stated:

There is nothing in the record to suggest that the officers were conducting or likely to conduct an investigation into trafficking or possession of cocaine when Straley discarded the baggie. The baggie of cocaine did not relate to either an ongoing investigation of driving while under the influence of alcohol or driving without a license and had no evidentiary value to a likely investigation of public urination, and thus the record does not support a conviction for tampering with evidence.

Id.

{¶ 27} The facts present in this case are distinguishable from those in *Straley* and illustrate a textbook example of a tampering with evidence conviction. In the present case, Payne was found brutally assaulted after having been dropped off at the hospital by previously unknown persons. The state presented evidence that appellant had participated in the robbery and violent attack, which ultimately resulted in Payne's death. When appellant entered the hospital he was wearing bloodstained clothes that were later placed in a trash bag and disposed of at a gas station near the Dayton Mall.

{¶ 28} While appellant argues that his conviction was not based on sufficient testimony because he was not the specific focus of any pending or likely investigation at the time he tampered with the evidence, we find that argument to be unconvincing. The critical determination in our analysis is whether the evidence tampered with is connected to a pending or likely investigation. Here, the evidence shows that appellant was aware of Payne's condition at the time he dropped him off at the hospital. Despite his involvement in the attack, appellant told emergency personnel that he did not know the victim and "found him this way." Thereafter, appellant immediately fled the scene and disposed of his bloody clothing. A rational trier of fact could find that appellant disposed of his bloody clothes to impair the investigation relevant to the violent attack on Payne. Accordingly, appellant's conviction for tampering with evidence is supported by sufficient evidence.

{¶ 29} In addition to his claim that his tampering with evidence conviction is not based

on sufficient evidence, appellant also argues that his trial counsel was ineffective for failing to bring the holding in *Straley* to the trial court's attention. Appellant alleges that he should have been acquitted of the tampering count based on the precedent set in *Straley*. However, as noted above, appellant's assertion is incorrect as his conviction was supported by sufficient evidence. Appellant's trial counsel was not ineffective for failing to raise this matter before the trial court as, contrary to appellant's suggestion, it would not "have resulted in acquittal on the tampering count." Accordingly, appellant's second assignment of error is without merit.

{¶ 30} Assignment of Error No. 3:

{¶ 31} THE TRIAL COURT ERRED IN CONVICTING AND SENTENCING DEFENDANT FOR KIDNAPPING.

{¶ 32} Appellant next alleges the trial court erred in sentencing him on both aggravated robbery and kidnapping because the offenses are allied offenses of similar import. Appellant argues that the aggravated robbery and kidnapping convictions should merge because the amount of restraint involved was no more than necessary for the commission of the aggravated robbery, and therefore the conduct giving rise to the kidnapping conviction was merely incidental to the aggravated robbery conviction.

{¶ 33} R.C. 2941.25, Ohio's multiple-count statute, prohibits the imposition of multiple punishments for the same criminal conduct. *State v. Craycraft*, 12th Dist. Clermont Nos. CA2009-02-013 and CA2009-02-014, 2011-Ohio-413, ¶ 8. The statute provides:

(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

{¶ 34} The Ohio Supreme Court has recently clarified the test for allied offenses in *State v. Ruff*, Slip Opinion No. 2015-Ohio-995. The *Ruff* court noted that the trial court or reviewing court must "first take into account the conduct of the defendant." *Id.* at ¶ 25.

If any of the following is true, the offenses cannot merge and the defendant may be convicted and sentenced for multiple offenses: (1) the offenses are dissimilar in import or significance—in other words, each offense caused separate, identifiable harm, (2) the offenses were committed separately, and (3) the offenses were committed with separate animus or motivation.

Id.; *State v. Horna*, 12th Dist. Butler No. CA2013-11-210, 2015-Ohio-1697, ¶ 15

{¶ 35} Appellant was convicted of both aggravated robbery in violation of R.C. 2911.01(A)(3) and kidnapping in violation of R.C. 2905.01(A)(2).² In establishing whether kidnapping and another offense of the same or similar kind are committed with a separate animus, the Ohio Supreme Court has adopted the following guidelines:

Where the restraint or movement of the victim is merely incidental to a separate underlying crime, there exists no separate animus sufficient to sustain separate convictions; however, where the restraint is prolonged, the confinement is secretive, or the movement is substantial so as to demonstrate a significance independent of the other offense, there exists a separate animus as to each offense sufficient to support separate convictions;

Where the asportation or restraint of the victim subjects the victim to a substantial increase in risk of harm separate and apart from that involved in the underlying crime, there exists a separate animus as to each offense sufficient to support separate convictions.

State v. Whitaker, 12th Dist. Preble No. CA2012-10-013, 2013-Ohio-4434, ¶ 67, quoting *State v. Logan*, 60 Ohio St.2d 126 (1979), syllabus.

{¶ 36} Although in some cases aggravated robbery and kidnapping can constitute

2. The trial court's sentencing entry merged appellant's conviction for R.C. 2905.01(A)(3) with his conviction for R.C. 2905.01(A)(2) and imposed a six-year concurrent prison term.

allied offenses of similar import, the restraint imposed on Payne here was more than merely incidental to an aggravated robbery. In the present case, Payne was restrained for more than an hour while appellant and Geldrich took turns beating him and separately searching Payne for drugs and money. After appellant and Geldrich assaulted Payne and took his money and drugs, the two sat at the kitchen table smoking cigarettes and discussing their options while Payne remained restrained and unresponsive. After Geldrich and appellant heard Payne "gurgling," they remained in Geldrich's house with the restrained victim and discussed the merits of taking Payne to the hospital for medical care or whether they should leave him in a nearby park. Ultimately, Geldrich and appellant chose the former and loaded Payne into Patrick's black truck and drove him to the hospital. In sum, the record reflects and supports the finding that the acts constituting aggravated robbery and kidnapping were independently significant and not amenable to merger. In addition, Payne's prolonged restraint after the completion of the robbery subjected him to greater risk or harm due to the delay in obtaining medical treatment. Accordingly, we find appellant's third assignment of error is without merit.

{¶ 37} Assignment of Error No. 4:

{¶ 38} THE TRIAL COURT ERRED IN SENTENCING WATSON.

{¶ 39} In his fourth assignment of error, appellant argues the trial court erred in its sentencing decision because it had already pre-determined his sentence prior to allowing appellant the right of allocution. Appellant also argues that his sentence is contrary to law because there was disparity between the sentence imposed on his co-defendant, Geldrich, and the sentence he received. Finally, appellant claims that his trial counsel was ineffective for failing to inform the trial court about the disparity between his sentence and that imposed on Geldrich.

{¶ 40} Appellant first argues the trial court erred by denying him the right to allocution

prior to sentencing. According to Crim.R. 32(A)(1),

Sentence shall be imposed without unnecessary delay. Pending sentence, the court may commit the defendant or continue or alter the bail. At the time of imposing sentence, the court shall do all of the following:

Afford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.

{¶ 41} "The purpose of allocution is to permit the defendant to speak on his own behalf or present any information in mitigation of punishment." *State v. Short*, 129 Ohio St.3d 360, 2011-Ohio-3641, ¶ 85. Although not considered a constitutional right, "the right of allocution is firmly rooted in the common-law tradition." *State v. Bonner*, 12th Dist. Butler No. CA2012-09-195, 2013-Ohio-3670, ¶ 18. This right is "both absolute and not subject to waiver due to a defendant's failure to object." *Id.*

{¶ 42} Following the jury's verdict, the trial court proceeded directly to sentencing and properly provided appellant an opportunity to exercise his allocution rights and address the court, which he did. On appeal, appellant argues that his right to allocution was nothing more than an "empty ritual" because the trial court had already determined the length of his sentence prior to his exercise of that right. As support, appellant cites to a statement made by the trial court in denying his request for a PSI:

Okay. Well, I don't see what the purpose of a pre-sentence investigation would serve. He's got mandatory time he has to serve, a mandatory life sentence on the murder charge. There's nothing a pre-sentence investigation is going to change on that. Quite frankly, I don't want to have to go through bringing this family and all these people who have shown an interest in this case back on a different day.

I've had five days to think about this as we've proceeded. I don't need any more time to think about what I'm going to do. I'm basically -- well, I know what I'm going to do whether it's now or in five weeks.

Thereafter, the trial court denied appellant's request for a PSI and proceeded with sentencing.

{¶ 43} After review, we find appellant's assignment of error is without merit. Appellant was provided an opportunity to exercise his right to allocution. While appellant claims that his right of allocution was nothing more than an "empty ritual," there is no evidence in the record to support this assertion. The language that appellant refers to in his appellate brief does not support his contentions, as the trial court was plainly referring to the denial of appellant's request for a PSI. Furthermore, the trial court did not impose sentence or enter any judgment entry into the record prior to allocution. In fact, the trial court's sentencing decision even included a discussion about the statements made by appellant during allocution. In conclusion, appellant was not denied his right to allocution and was not prejudiced. See *State v. Frye*, 125 Ohio St.3d 163, 2010-Ohio-1017 (the Ohio Supreme Court declined to reverse a trial court's sentencing decision where the trial court imposed sentence prior to allocution, but permitted the defendant to address the court and the trial court did not subsequently modify its entry). Accordingly, we find no error in the trial court's decision with respect to appellant's allocution rights.

{¶ 44} Next, appellant argues that his sentence is contrary to law because his prison term is longer than the term imposed on his co-defendant, Geldrich. Appellant argues that his 23-year-to-life sentence is disproportionate to Geldrich's 22-years-to-life sentence based in part on the fact that Geldrich was convicted of aggravated murder, as opposed to his conviction for the lesser included offense of murder.³ Appellant complains that this disparate treatment essentially amounts to an impermissible "trial tax."

3. Appellant's co-defendant, Geldrich, received a prison term of 22 years to life after pleading guilty to single counts of aggravated murder, aggravated robbery, kidnapping, and tampering with evidence. *State v. Geldrich*, 12th Dist. Warren No. CA2014-08-112, 2015-Ohio-1706.

{¶ 45} We review felony sentences pursuant to the standard of review set forth in R.C. 2953.08(G)(2) to determine whether the imposition of those sentences is clearly and convincingly contrary to law. *State v. Stamper*, 12th Dist. Butler No. CA2012-08-166, 2013-Ohio-5669, ¶ 9. A sentence is not clearly and convincingly contrary to law where the record supports the trial court's findings under R.C. 2929.14(C)(4) and where the trial court considers the purposes and principles of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, properly applies postrelease control, and sentences appellant within the permissible statutory range. *Id.*

{¶ 46} While R.C. 2929.11(B) specifies that felony sentences be consistent with sentences imposed for similar crimes committed by similar offenders, as this court has previously acknowledged, consistency in sentencing does not mean uniformity. *State v. Micomonaco*, 12th Dist. Butler No. CA2011-07-139, 2012-Ohio-5239, ¶ 49; *State v. Hall*, 10th Dist. Franklin No. 10AP-302, 2009-Ohio-5712, ¶ 10. "A consistent sentence is not derived from a case-by-case comparison, but from the trial court's proper application of the statutory sentencing guidelines." *Micomonaco* at ¶ 49. "In other words, a defendant claiming inconsistent sentencing must demonstrate that the trial court failed to properly consider the statutory sentencing factors and guidelines found in R.C. 2929.11 and 2929.12." *State v. Lang*, 12th Dist. Brown No. CA2011-03-007, 2011-Ohio-5742, ¶ 25.

{¶ 47} After review, we find appellant's prison term is not contrary to law. Although appellant's co-defendant, Geldrich, received a shorter possible prison term than appellant, that fact alone does not require a finding that the trial court erred in its sentencing decision. See *State v. Lee*, 12th Dist. Butler No. CA2012-09-182, 2013-Ohio-3404, ¶ 13 ("[a] sentence is not contrary to law because the trial court failed to impose a sentence that is the same as another offender who committed similar conduct"); *State v. Israel*, 12th Dist. Butler No. CA2010-07-170, 2011-Ohio-1474, ¶ 73. In this case, the record reflects the trial court

properly considered all relevant sentencing factors including the purposes and principles of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, and the trial court's sentence was within the permissible statutory range for the offense. Accordingly, appellant's sentence is not contrary to law.

{¶ 48} Finally, appellant again adds that his trial counsel was ineffective for failing to raise this issue at his sentencing hearing. In other words, appellant claims that his trial counsel should have informed the trial court that his co-defendant had received a 22-year-to-life prison term. However, as noted above, the trial court was not obligated to impose identical sentences and appellant's sentence was not contrary to law. Accordingly, appellant's fourth assignment of error is overruled.

{¶ 49} Judgment affirmed.

PIPER, P.J., and M. POWELL, J., concur.