[Cite as *State v. Edmonds*, 2015-Ohio-2733.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-03-045
	:	O P I N I O N
- vs -		7/6/2015
	:	
SHERMAN EDMONDS,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 14CR29752

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

Bryan Scott Hicks, P.O. Box 359, Lebanon, Ohio 45036 and Fred S. Miller, Baden & Jones Bldg., 246 High Street, Hamilton, Ohio 45011, for defendant-appellant

HENDRICKSON, J.

{¶ 1} Defendant-appellant, Sherman Edmonds, appeals from his conviction and sentence in the Warren County Court of Common Pleas for escape. For the reasons stated below, we affirm the decision of the trial court.

{¶ 2} On October 3, 2013, Edmonds was arrested for theft and was taken to the

Warren County Jail.[1] While Edmonds was incarcerated, his mother passed away and Edmonds requested a furlough to attend his mother's funeral. Edmonds was granted a one-day furlough on October 29, 2013 from 10:00 a.m. to 4:30 p.m. The order granting the furlough stated that a failure to return to the jail would result in escape charges being filed. On October 29, 2013, Edmonds left the jail for his furlough but did not return. Edmonds was found on December 26, 2013 by the Dayton police and returned to the jail.

{¶ 3} On January 27, 2014, Edmonds was indicted with escape, in violation of R.C. 2925.03(A)(2). Edmonds was appointed counsel and the case was scheduled to proceed to a jury trial. While the case was pending, Edmonds filed a motion to represent himself. On March 19, 2014, the trial court held a hearing regarding Edmonds' request to proceed pro se. The trial court questioned Edmonds regarding this decision, found Edmonds was waiving his right to counsel knowingly, intelligently, and voluntarily, and permitted Edmonds to represent himself. Edmonds then signed a written waiver of his right to counsel.

{¶ 4} On March 20, 2014, Edmonds' case proceeded to a jury trial. During trial, the stated called Ginger Idle, the judicial clerk for the trial court that granted the temporary furlough, to testify. Edmonds objected, complaining the state's written witness list did not contain Idle's name. The trial court permitted Edmonds to conduct an interview of Idle outside the presence of the jury. After the interview, Idle testified that she spoke with Edmonds regarding the furlough and the consequences of a failure to return.

{¶ 5} After the conclusion of the evidence, the jury convicted Edmonds of escape. The trial court sentenced Edmonds to serve 30 months in prison and refused to give Edmonds any jail-time credit, explaining that jail-time credit would instead be given for the theft charge. At the time of sentencing, Edmonds had been in jail continuously since he was

1. The case in regards to the theft charge was *State v. Edmonds*, Warren County Case No. 2013CR29514.

captured by the Dayton police on December 26, 2013. The next day, the state dismissed Edmonds' theft charge.

{¶ 6} Edmonds now appeals, asserting four assignments of error

{¶ 7} Assignment of Error No. 1:

{¶ 8} THE DEFENDANT WAS IMPROPERLY DENIED CREDIT FOR TIME IN JAIL PENDING TRIAL.

{¶ 9} Edmonds argues he was improperly denied jail-time credit for his escape conviction. As discussed above, Edmonds proceeded pro se at trial and the parties dispute whether Edmonds sufficiently raised the issue of jail-time credit to preserve the matter on appeal. A defendant's failure to file a motion for jail-time credit or object to a trial court's failure to include jail-time credit in sentencing waives all but plain error on appeal. *State v. Stefanopoulos*, 12th Dist. Butler No. CA2011-10-187, 2012-Ohio-4220, ¶ 57. Nevertheless, this court has found that a trial court's failure to properly calculate an offender's jail-time credit and to include the amount of jail-time credit in the body of the offender's sentencing judgment amounts to plain error. *Id*.

{¶ 10} The Equal Protection Clause requires that all time spent in jail prior to trial and prior to commitment must be credited to the prisoner's sentence. *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, ¶ 7. The Ohio Legislature codified this principle within R.C. 2967.191, which states that a prison term shall be reduced "by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced, including confinement in lieu of bail while awaiting trial * * *." R.C. 2967.191; *see* R.C. 2949.08. The trial court makes the factual determination as to the number of days of confinement that a defendant is entitled to have credited toward his sentence. *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003-Ohio-2061, ¶ 7.

{¶ 11} In *Fugate*, the Ohio Supreme Court found a defendant should have been given jail-time credit when the court imposed concurrent sentences for his burglary, robbery, and probation violation convictions. *Fugate* at ¶ 22. The defendant's burglary and theft convictions constituted the probation violation and the defendant was sentenced for all of his convictions at the same hearing. *Id.* at ¶ 2-4. The court reasoned that "when concurrent prison terms are imposed, courts do not have the discretion to select only one term from those that are run concurrently against which to apply jail-time credit." *Id.* at ¶ 12. It stated, "R.C. 2967.191 requires that jail-time credit be applied to all prison terms imposed for charges on which the offender has been held." *Id.*

{¶ 12} Despite the Ohio Supreme Court's holding in *Fugate*, this court and others have found that an offender is not entitled to jail-time credit for any period of incarceration that arose from facts which are *separate* and *apart* from those on which his current sentence is based. *State v. Chasteen*, 12th Dist. Butler No. CA2013-11-204, 2014-Ohio-3780, ¶ 8-9, citing *State v. DeMarco*, 8th Dist. Cuyahoga No. 96605, 2011-Ohio-5187, ¶ 10. *See, e.g., State v. Rios*, 2d Dist. Clark No. 10CA0059, 2011-Ohio-4720, ¶ 53. This principle is reflected in R.C. 2967.191 which requires jail credit be given only for the time the prisoner was confined for any reason *arising out of the offense* for which he was sentenced. *State v. Marini*, 5th Dist. Tuscarawas No. 09-CA-6, 2009-Ohio-4633, ¶ 15. R.C. 2967.191 does not entitle a defendant to jail-time credit for any period of incarceration which arose from distinct circumstances. *Id.* "This means that there is no jail-time credit for time served on unrelated offenses, even if that time served runs concurrently during the pre-detention phase of another matter." *State v. Maddox*, 8th Dist. Cuyahoga No. 99120, 2013-Ohio-3140, ¶ 31.

{¶ 13} Therefore, the Second District found a defendant was not entitled to credit for the time he spent in jail for a murder charge, when it arose from facts separate from a vandalism charge, even though the time the defendant spent in jail awaiting trial on the

murder charge overlapped the time he spent in jail prior to trial on his vandalism charge. *Rios* at ¶ 58. The two charges were separate and unrelated matters and even if the vandalism charge would have been dismissed, the defendant would have continued to be held for the murder charge. *Id*.

{¶ 14} Edmonds was indicted for escape on January 27, 2014 in Case No. 14CR29752. An arrest warrant was issued on that indictment and served upon Edmonds, and returned on January 28, 2014. At that time, Edmonds was being held in jail for a felony theft charge in Case No. 13CR29514. Throughout the pendency of escape case, Edmonds continued to be held in the jail on both the theft and escape charges.

{¶ 15} At sentencing, the trial court denied giving Edmonds any credit for time served for his escape sentence because he was also being held on his theft charge. The court reasoned that he will receive the jail-time credit in the theft case and therefore will get "zero days of jail time credit in this case."

{¶ 16} We find that the trial court did not err in refusing to give Edmonds any jail-time credit in his escape sentence. Edmonds was being held in jail for the escape charge at the same time he was being held for the prior theft charge. The theft charge did not arise from the same facts that gave rise to the escape charge, but instead from separate, unrelated matters. Even had the escape charge been dismissed, Edmonds would continue to be held in jail on the theft charge. Therefore, Edmonds was not entitled to jail-time credit against the sentence imposed on the escape conviction for the time he spent in jail awaiting trial. While the time Edmonds spent in jail awaiting trial on the theft charge overlaps the time spent in jail on the escape charge, the two charges do not arise from the same facts on which his sentence for escape is based. *See Rios*, 2011-Ohio-4720 at ¶ 58; *State v. Marini*, 5th Dist. Tuscarawas No. 09-CA-6, 2009-Ohio-4633, ¶ 23 (no requirement courts arrange sentences imposed at separate times that are only partly concurrent to maximize concurrency).

{¶ 17} Edmonds' first assignment of error is overruled.

{¶ 18} Assignment of Error No. 2:

{¶ 19} THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT DENIED HIM THE RIGHT TO COUNSEL.

{¶ 20} Edmonds argues he did not knowingly, intelligently, and voluntarily waive his right to counsel. Edmonds maintains his waiver was not valid because the trial court failed to discuss possible defenses and mitigating circumstances, and did not inform Edmonds that self-representation would preclude an ineffective assistance of counsel argument on appeal.

{¶ 21} The Sixth and Fourteenth Amendments to the United States Constitution guarantee a criminal defendant the right to represent himself at trial. *State v. Johnson*, 112 Ohio St.3d 210, 2006-Ohio-6404, ¶ 89, citing *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525 (1975). However, the Constitution requires that any waiver of the right to counsel be knowing, voluntary, and intelligent. *Iowa v. Tovar*, 541 U.S. 77, 87-88, 124 S.Ct. 1379 (2004); *see also* Crim.R. 44(A). To establish an effective waiver of counsel, the trial court must make sufficient inquiry to determine whether the defendant fully understands and intelligently waives this right. *State v. Gibson*, 45 Ohio St.2d 366 (1976), paragraph two of the syllabus.

{¶ 22} In *Johnson*, the Ohio Supreme Court set forth several principles in determining whether a sufficient inquiry was made by the trial court to determine whether a defendant fully understands and intelligently waives his right to counsel. The court noted there is not a prescribed '"formula or script to be read to a defendant who states that he elects to proceed without counsel.'" *Johnson* at ¶ 101, quoting *Tovar* at 88. Instead, '"[t]he information a defendant must possess in order to make an intelligent election * * * will depend on a range of case-specific factors, including the defendant's education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding.'" *Id*.

{¶ 23} The Ohio Supreme Court has noted that when a trial court inquiries into a defendant's waiver of the right to counsel, "[a] defendant electing to represent himself 'should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing.'" *Johnson* at ¶ 100, quoting *Faretta* at 835. Additionally, a waiver to the right to counsel must be made with an apprehension of "'the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses, mitigation, or other facts essential to a broad understanding of the whole matter.'" *Id.* at ¶ 91, quoting *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, ¶ 40; *see Gibson* at 377.

{¶ 24} In determining whether a defendant's waiver of his right to counsel was knowingly, intelligently, and voluntarily made, this court has outlined specific information a trial court should advise a defendant. *State v. Doyle*, 12th Dist. Brown No. CA2005-11-020, 2006-Ohio-5373. While this district usually recognizes that reviewing courts examine a waiver to counsel under the totality of the circumstances, we have also required that a trial court "*must* ask the defendant if he knows the nature of the charges against him, the statutory offenses included within them, the range of allowable punishments thereunder, and possible defenses to the charges and circumstances in mitigation thereof." (Emphasis sic.) *Id.* at ¶ 24, citing *Gibson* at 377. We also have stated,

> In addition, the defendant should also be advised of the following: (1) self-representation would be detrimental; (2) the defendant will be held to the same standards as an attorney; (3) thus, the defendant must follow all technical rules of substantive, procedural, and evidentiary law; (4) a defendant's lack of knowledge of evidentiary and procedural rules will not prevent the court from enforcing them; (5) the defendant's lack of knowledge of these rules may result in waiving review of certain issues on appeal; (6) if the defendant has any difficulty in presenting his defense and complying with procedural rules, the court cannot and will not assist him in the presentation of his case so that it is done properly; (7) the prosecution would be represented by an experienced attorney; (8) the right of

> self-representation is not a license to abuse the dignity of the courtroom; thus, if there is a disruption of the trial, the right to self-representation can be vacated; and (9) whatever else may or may not be open to him on appeal, a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of effective assistance of counsel.
>
> In addition, trial courts should ask the defendant whether (1) he suffers from any physical or mental disease or disability; (2) is under the influence of drugs or alcohol; and (3) is forced to or was promised something in exchange for waiving his right to counsel.

Id. at ¶ 24-25.

{¶ 25} After a careful review of the Ohio Supreme Court's jurisprudence, we find that the information a trial court must convey to a defendant that we have listed in *Doyle* and its progeny is not required in determining whether a waiver of counsel was knowing, voluntary, and intelligent. Notably, in both *Gibson* and *Johnson*, the Ohio Supreme Court found the defendants' waiver was valid even though the defendants were *not* informed of possible defenses and circumstances in mitigation as well as much of the additional information listed in *Doyle. See Gibson* at 372-375 (not informed of possible defenses, mitigation, waiver of ineffective assistance of counsel, experienced prosecutor, no inquiry to drug addiction or mental disability); *Johnson* at ¶ 81-104 (not informed of nature of charges, statutory offenses, punishments, defenses, mitigation).[2]

{¶ 26} Therefore, the sufficiency of the trial court's inquiry will depend on the totality of the circumstances, including the defendant's education, the stage of the proceeding and whether the defendant understood the dangers of self-representation, the nature of the charges, the statutory offenses included within them, the range of allowable punishments

2. The Ninth District has recognized that *Gibson* does not require trial court's to advise defendants regarding the nature of the charge, the statutory offenses included within, the range of allowable punishments, possible defenses, and mitigating circumstances. *State v. Ragle*, 9th Dist. Summit No. 22137, 2005-Ohio-590, ¶ 11-12.

thereunder, possible defenses, or circumstances in mitigation. *See State v. Ragle*, 9th Dist. Summit No. 22137, 2005-Ohio-590, ¶ 11-12.

{¶ 27} In the present case, the day before trial, the court held a hearing regarding Edmonds' request to represent himself. The following exchange took place:

> [COURT]: All right. Mr. Edmonds, first of all, this is a terrible idea.
>
> [EDMONDS]: Yes, I know, Your Honor.
>
> [COURT]: You have the absolute Constitutional right to represent yourself. You also have the absolute Constitutional right to be represented by a lawyer. A jury trial is a complicated thing. A lot of attorneys go their entire lives and don't try a case to a jury. It's very nuance[d], there's a lot of rules, there are a lot of requirements and the law does not allow me to change the rules or requirements simply because you're going to represent yourself. There's only one rule book and you're going to have to follow those rules. [The prosecutor, defense counsel,] and myself, I mean we all went to school for a long time and we've studied these rules and I'm not saying that we know what they all are, but we know how to get evidence in. We know how to keep evidence out, if necessary to question witnesses, to question jurors, to make objections, to make a record, all of the sorts of things that are going to benefit you at the trial that you are not going to be able to do if you represent yourself. Have you thought about the impact that representing yourself may have on your case?
>
> [EDMONDS]: Yes sir, Your Honor, I have, I have thought about it a lot.
>
> [COURT]: Is this what you want to do?
>
> [EDMONDS]: That's what I want to do.

{¶ 28} The trial court then gave Edmonds a written waiver of counsel form, allowed Edmonds to read the form, and went through the form with Edmonds on the record. The court informed Edmonds: (1) he has a right to be represented by a lawyer and if he is unable to afford a lawyer, one will be appointed to him at no cost, (2) representing himself will hurt his case, (3) the state would be represented by an experienced attorney, (4) he will be held

to the same standards and evidentiary and procedures rules as an attorney, (5) his lack of knowledge of the rules would not prevent enforcement of the rules, (6) self-representation would take away certain appellate issues, (7) the court would not help Edmonds present his evidence, (8) self-representation is not a license to abuse the dignity of the courtroom, and (9) if Edmonds disrupts the trial, the court may revoke the waiver.

{¶ 29} Additionally, the court confirmed there were not any threats or promises to induce Edmonds to waive his right to counsel, Edmonds had gone through the 11th grade and could read and write English, Edmonds was not under the influence of drugs, alcohol, or medication, and he was not suffering from any mental disease or defect that would prevent him from representing himself. The court also informed Edmonds he was charged with escape, a third-felony felony that is punishable by up to 36 months in prison with the possibility of postrelease control.

{¶ 30} The court found Edmonds was waiving his right to counsel knowing, voluntary, and intelligently and allowed Edmonds to sign the written waiver. In addition to the information the trial court informed Edmonds during the colloquy, the written waiver also stated Edmonds was aware of possible defenses and he could not claim his own representation was ineffective on appeal. The court then required defense counsel to remain in the courtroom as standby counsel and informed Edmonds he may consult with defense counsel and defense counsel could finish the trial for Edmonds at any time.

{¶ 31} Upon a thorough review of the record, we find the totality of the circumstances establish the trial court made a sufficient inquiry to determine Edmonds knowingly, intelligently, and voluntarily waived his right to counsel. Edmonds clearly requested to proceed pro se and the court informed him of the nature of the charges, the statutory offenses, and the range of allowable possible punishments, warned him of many of the dangers and disadvantages of self-representation, as well as ensuring that he was literate,

had gone through the 11th grade, was not under the influence of drugs or alcohol, and was not suffering from a mental disease or defect. While the trial court failed to inform Edmonds of possible defenses, circumstances in mitigation, or that he could not claim ineffective assistance of counsel on appeal, Edmonds' waiver was valid in light of the other information conveyed to Edmonds and the circumstances of this case. Therefore, the trial court did not err in determining that Edmonds' waiver to counsel was knowing, intelligent, and voluntary.

{¶ 32} Edmonds' second assignment of error is overruled.

{¶ 33} Assignment of Error No. 3:

{¶ 34} THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT PERMITTED A WITNESS TO TESTIFY WHEN THE DEFENDANT HAD NOT BEEN PREVIOUSLY PROVIDED THE NAME OF THAT WITNESS.

{¶ 35} Edmonds challenges the trial court's decision to permit Ginger Idle to testify and in failing to provide Edmonds a continuance when the state did not disclose Idle's name in a written list in discovery. Edmonds argues the court's remedy of allowing Edmonds to interview Idle outside the presence of the jury was an abuse of discretion. Edmonds maintains the remedy did not provide him the opportunity to formulate questions or allow him the time to request jail records to prove he did not communicate with her.

{¶ 36} Crim.R. 16(I) provides: "Each party shall provide to opposing counsel a written witness list, including names and addresses of any witness it intends to call in its case-in-chief, or reasonably anticipates calling in rebuttal or surrebuttal." Therefore, Crim.R. 16(I) imposes an equal duty on each party to disclose the list of witnesses that will be called at trial. 2010 Staff Note, Crim.R. 16(I).

{¶ 37} If a party fails to comply with discovery requirements under Crim.R. 16, a trial court "may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may make

such other order as it deems just under the circumstances." Crim.R. 16(L). When deciding whether to impose a sanction, a trial court must inquire into the circumstances surrounding a discovery rule violation. *State v. Bellamy*, 12th Dist. Butler No. CA2013-09-170, 2014-Ohio-5187, ¶ 24. It is within the trial court's sound discretion to decide what sanction to impose for a discovery violation. *State v. Davis*, 12th Dist. Butler No. CA2010-06-143, 2011-Ohio-2207, ¶ 20.

{¶ 38} The trial court "'must impose the least severe sanction that is consistent with the purpose of the rules of discovery.'" *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, ¶ 42, quoting *City of Lakewood v. Papadelis*, 32 Ohio St.3d 1 (1987), paragraph two of the syllabus. In evaluating the trial court's exercise of discretion as to the sanction imposed for a discovery violation committed by the state, the following factors are considered: (1) whether the failure to disclose was a willful violation of Crim.R. 16, (2) whether foreknowledge of the undisclosed material would have benefited the accused in the preparation of a defense, and (3) whether the accused was prejudiced. *Id.* at ¶ 35, citing *State v. Parson*, 6 Ohio St.3d 442 (1983), syllabus.

{¶ 39} During trial, the state called Ginger Idle, the judicial clerk for the trial court, to testify that she spoke with Edmonds via telephone regarding his furlough and informed him a failure to return to the jail constitutes escape. When the state called Idle to the stand, Edmonds complained he was not aware she would testify and disputed defense counsel's claim that he was informed about her testimony. The state acknowledged its written witness list did not contain Idle's name but stated it orally communicated to defense counsel Idle may be called as a rebuttal witness. The trial court then provided Edmonds with the opportunity to conduct a discovery interview with Idle outside the presence of the jury before Idle's testimony.

{¶ 40} We find the trial court did not abuse its discretion in permitting Idle to testify

and providing Edmonds an opportunity to question Idle outside the presence of the jury instead of granting a continuance. While the state recognized it failed to include Idle in its written witness list, we cannot conclude this was a willful violation of Crim.R. 16. The state orally disclosed Idle might be called as a rebuttal witness to defense counsel and defense counsel acknowledged the state provided this communication. While Edmonds denied he was aware that Idle would be testifying, defense counsel stated he told Edmonds about Idle.

{¶ 41} Additionally, Edmonds has failed to prove knowledge of Idle's testimony prior to trial would have benefited him. The trial court's remedy provided Edmonds the opportunity to conduct a discovery interview and ameliorate any surprise Edmonds may have faced as a result of allegedly not being informed that Idle would testify. Edmonds has failed to prove he was prejudiced by the court's remedy. Idle's testimony that she spoke with Edmonds regarding the furlough and the consequences of a failure to return was duplicative of the other evidence presented by the state. The trial court's order granting Edmonds a furlough stated that a failure to return to the jail would result in escape charges being filed and the order indicated that it was copied to Edmonds.

{¶ 42} Accordingly, the trial court did not abuse its discretion in granting Edmonds an opportunity to question Idle outside the presence of the jury and subsequently permitting Idle to testify. Edmonds' third assignment of error is overruled.

{¶ 43} Assignment of Error No. 4:

{¶ 44} THE DEFENDANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 45} Edmonds argues his escape conviction was against the manifest weight of the evidence. Specifically, Edmonds maintains the state did not prove he purposefully failed to return to jail because there was no evidence Edmonds knew the consequences of not returning.

{¶ 46} A manifest weight of the evidence challenge examines the "inclination of the greater amount of credible evidence, offered at a trial, to support one side of the issue rather than the other." *State v. Barnett*, 12th Dist. Butler No. CA2011-09-177, 2012-Ohio-2372, ¶ 14. To determine whether a conviction is against the manifest weight of the evidence, the reviewing court must look at the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving the conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *State v. Graham*, 12th Dist. Warren No. CA2008-07-095, 2009-Ohio-2814, ¶ 66. However, "[w]hile appellate review includes the responsibility to consider the credibility of witnesses and weight given to the evidence, 'these issues are primarily matters for the trier of fact to decide[.]'" *State v. Barnes*, 12th Dist. Brown No. CA2010-06-009, 2011-Ohio-5226, ¶ 81, citing *State v. Walker*, 12th Dist. Butler No. CA2006-04-085, 2007-Ohio-911, ¶ 27. An appellate court, therefore, will overturn a conviction due to the manifest weight of the evidence only in extraordinary circumstances when the evidence presented at trial weighs heavily in favor of acquittal. *State v. Morgan*, 12th Dist. Butler Nos. CA2013-08-146 and CA2013-08-147, 2014-Ohio-2472, ¶ 34.

{¶ 47} Edmonds was convicted of escape, in violation of R.C. 2921.34(A)(1), which provides,

> No person, knowing the person is under detention * * * shall * * * purposefully fail to return to detention, either following temporary leave granted for a specific purpose or limited purpose * * *.

R.C. 2921.34(A)(1).

Escape is a third-degree felony when the offense for which the person was under detention is a third, fourth, or fifth-degree felony. R.C. 2921.34(C)(2)(b). A person acts purposefully

when "it is his specific intention to cause a certain result or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature." R.C. 2901.22(A).

{¶ 48} At trial, Major Barry Riley, the jail administrator for the Warren County Sheriff's Office, testified Edmonds was incarcerated on October 3, 2013 for theft, a fifth-degree felony. Major Riley explained that during Edmonds' incarceration, Edmonds filed a motion petitioning the trial court for a furlough to attend his mother's funeral. On October 24, 2013, the trial court entered an "Order Granting Temporary Furlough" which provided Edmonds a "temporary furlough to attend the funeral of his mother." The order went on to provide,

> The defendant is **ORDERED** released at 10:00 a.m. on Tuesday, October 29, 2013 and is **ORDERED** to return to the Warren County Jail by 4:30 p.m. on October 29, 2013.
>
> **DEFENDANT'S FAILURE TO RETURN TO THE WARREN COUNTY JAIL WILL RESULT IN ESCAPE CHARGES BEING FILED.**

The bottom of the order indicates it was copied to the assistant prosecutor, the jail, and Edmonds.

{¶ 49} Major Riley testified Edmonds was released for his furlough on October 29th and did not return. When Edmonds did not return, the sheriff's office tried to contact Edmonds, began the process of a "manhunt," and notified the media and local law enforcement. Edmonds was not found until December 26, 2013, when he was identified during a traffic stop in Dayton, Ohio. Thereafter, Edmonds was returned to the jail.

{¶ 50} Next, Idle testified she drafted the order which granted Edmonds the temporary furlough. Idle also stated she called the jail and spoke with Edmonds because making contact with defendants who are granted furlough is her standard practice. She explained to Edmonds the furlough had been granted, the timeframe that he needed to return to the jail,

and if he failed to return, he would be charged with escape.

{¶ 51} After a thorough review of the record, we find Edmonds' conviction for escape was not against the manifest weight of the evidence. The evidence established that while Edmonds was incarcerated for theft, a fifth-degree, he was granted a temporary furlough, and he purposefully failed to return to the jail after the time period for his furlough expired. While Edmonds argues he did not receive notice that a failure to return to the jail would result in escape charges, the prosecution put forth several pieces of evidence that indicate otherwise. The trial court's order granting the furlough stated in bold, capitalized letters that a failure to return to the jail would result in escape charges being filed and the order indicated that it was copied to Edmonds. Additionally, Idle stated she spoke with Edmonds via the telephone and informed him of the consequences of failing to return to the jail. As this court has consistently stated, a conviction is not against the manifest weight of the evidence simply because the jury believed the prosecution testimony. *See State v. Blair*, 12th Dist. Butler No. CA2014-01-023, 2015-Ohio-818, ¶ 47. Consequently, we do not find the jury lost its way and created such manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. Edmonds' fourth assignment of error is overruled.

{¶ 52} Judgment affirmed.

PIPER, P.J., concurs in judgment only.

RINGLAND, J., concurs separately.

RINGLAND, J., concurring separately.

{¶ 53} I concur with the majority's decision in the resolution of Edmonds' assignments of error and write separately only to expand upon my reasoning in regards to Edmonds' second assignment of error, whether a defendant's waiver to his right to counsel was

knowing, intelligent, and voluntary. Our decision today does not change the fact that a trial court is free to inform the defendant of all the information listed in *Doyle*, 2006-Ohio-5373, ¶ 24-25, and this information may certainly be helpful in a defendant's understanding of his waiver to counsel. A recitation of the *Doyle* factors also may be the better practice of the trial court. However, as stated in *Johnson*, 112 Ohio St.3d 210, 2006-Ohio-6404, and *Gibson*, 45 Ohio St.2d 366, this information is not required to be provided to a defendant in order for the defendant's waiver of counsel to be valid. Instead, our review will turn on the particular facts of each case and whether under the totality of the circumstances, a defendant's waiver to his right to counsel was knowing, intelligent, and voluntary.

{¶ 54} Additionally, I write to clarify that our decision in *State v. Roland*, 12th Dist. Butler No. CA2012-05-104, 2013-Ohio-1382, finding the defendant's right to counsel was not knowing, voluntary, and intelligently was based on the particular circumstances of that case. Under the totality of the circumstances, the trial court failed to make a sufficient inquiry into the defendant's waiver to his right to counsel.

{¶ 55} Accordingly, I agree with the majority's decision that Edmonds' waiver to counsel was knowingly, intelligently, and voluntarily made and agree that Edmonds' second assignment of error is overruled. I concur in all other respects with the majority's decision.