[Cite as *State v. Muhammad*, 2016-Ohio-8322.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104111

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

KWESI KHARY MUHAMMAD

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED; REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-589278-A

BEFORE: E.A. Gallagher, P.J., Boyle, J., and Blackmon, J.

RELEASED AND JOURNALIZED: December 22, 2016

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EILEEN A. GALLAGHER, P.J.:

{¶1} Defendant-appellant Kwesi Khary Muhammad appeals his convictions and the consecutive sentences imposed by the trial court after a jury found him guilty of two counts of rape and two counts of kidnapping in connection with the abduction and assault of two young boys. Muhammad contends that his convictions were not supported by sufficient evidence and were against the manifest weight of the evidence. He also contends that the trial court failed to make the findings necessary for the imposition of consecutive sentences under R.C. 2929.14(C). For the reasons that follow, we affirm Muhammad's convictions and sentences. However, we remand the matter for the trial court to issue a nunc pro tunc entry identifying the California court and case number for the California sentence to which the sentences imposed by the trial court in this case were ordered to be served consecutively.

Factual and Procedural Background

{¶2} On December 11, 2013, a jury found Muhammad guilty of two counts of rape in violation of R.C. 2907.02(A)(1)(b) and two counts of kidnapping in violation of R.C. 2905.01(A)(4) in connection with the assaults, E.G. and J.C., on September 19, 1994 and December 14, 1995, respectively.

{¶3} On September 19, 1994, E.G., then 11, was walking home from school on Clark Avenue in Cleveland when an African-American male came up to him and asked him to help him find his missing pager. E.G. agreed to help and the man took him

behind a U-Haul building on Clark Avenue where the man said he had lost the pager. E.G. testified that he did not know the man and had never seen him before. The man led E.G. across a set of train tracks into an area of overgrown weeds, put a knife to E.G.'s throat and told him to take off his pants and get down on his hands and knees. E.G. complied and the man anally raped him. After raping E.G., the man told E.G. to lay down until he left and threatened to kill E.G. and his family if he told anyone what had happened. When the man left, E.G. got up and ran to a nearby security shack where he asked the security guard to call his father. E.G.'s father came and took him home. After E.G. told him what had happened, E.G.'s father called the police. Cleveland police officers came to the house, spoke with E.G., collected the clothing he was wearing at the time of the rape and E.G. was taken to MetroHealth Medical Center where a rape kit was administered.

{¶4} E.G. testified that shortly after the incident, he viewed a lineup and was shown photographs by the police in an attempt to identify his attacker but that he did not see the person who attacked him in the lineup or photographs. A week or two before trial — more than 20 years after the incident — police officers again met with E.G., showed him six photographs (one of which was of Muhammad) and asked him if any of the men in the photographs resembled the man who had raped him in 1994. E.G. selected one of the photographs. The photograph he selected was not Muhammad's photograph.

{¶5} On December 14, 1995, J.C., then age 11, was walking home from school following an after-school program at Clark Recreation Center in Cleveland. As he was taking a shortcut through a Kmart parking lot, a car drove up and an African-American male stepped out of the car. The man told J.C. that he was a police officer, showed J.C. a badge and told J.C. he had to "check" him and to turn around. When J.C. turned around, the man put handcuffs on him. The man forced J.C. into the car and drove him a short distance to a set of train tracks behind the Kmart store. When they exited the car, the man grabbed J.C. by the arm and told him to keep walking until he told him to stop. He took J.C. "a little ways down" the train tracks then told J.C. to lay on his stomach and to be quiet and not to scream. J.C. testified that he was afraid and did what he was told. The man then pulled down J.C.'s pants and anally raped him. After raping J.C., he helped him up, took off the handcuffs and told J.C. not to tell anyone what had happened or he would hurt J.C.'s parents. J.C. testified that he did not know the man who had raped him and had never seen him before the incident. J.C. ran to the Kmart, went into the restroom and discovered he was bleeding from his backside. He ran home and told his parents what had happened. His mother called 911 and an ambulance took him to MetroHealth Medical Center, where his clothing was collected and a rape kit was administered.

{¶6} J.C. testified that shortly after the incident, police officers showed him a lineup of "some random guys" but that "none of them happened to be him." Nearly 20 years later, two police detectives met with J.C. and showed him six photographs (one of

which was of Muhammad). He indicated that the detectives told him that the person who attacked him was one of the persons depicted in the photographs and asked him if he could identify his attacker. J.C. testified that he selected one of the photographs but that he was "not quite sure" if the man depicted in the photograph was, in fact, his attacker. J.C. indicated that he would not be surprised if he "didn't pick the right person" because "[i]t's been so long." J.C. testified that the face of the man in the photograph he selected "looked familiar" and that none of the other faces looked familiar. The photograph he selected was not Muhammad's photograph.

{¶7} In 2013, J.C.'s rape kit was sent to the Ohio Bureau of Criminal Investigation ("BCI") for DNA analysis. In November 2013, Cleveland police detective Traci Hill, who was at that time assigned to the sexual assault kit task force, received a notification from BCI that there was a DNA "hit and match" connecting J.C.'s rape kit to Muhammad. Hill testified that she then learned that there had been a similar notification from BCI connecting E.G.'s rape kit to Muhammad in 2004.

{¶8} The case was tried to a jury in December 2015. In addition to testimony from E.G. and J.C., the state presented testimony from a dozen other witnesses, including: the Cleveland police officers who responded to the calls about the rapes; the emergency room physicians at MetroHealth Medical Center who treated the victims and administered the rape kits; the Cleveland police officers who collected the rape kits from MetroHealth Medical Center and transported them to the Second District from which they were transported to the Cleveland Police Department's forensic laboratory; the Cleveland

police officer who transported the evidence from the forensic laboratory to BCI for DNA analysis; the Cleveland police detective who obtained a DNA sample from Muhammad and arranged for the 2015 photo arrays viewed by E.G. and J.C. and those individuals involved in the testing and analysis of the DNA evidence recovered from E.G.'s and J.C.'s rape kits and the comparison of that evidence with the DNA sample obtained from Muhammad.

{¶9} BCI forensic scientist Andrew Sawin conducted a comparison of foreign male DNA found on the evidence in J.C.'s rape kit with Muhammad's DNA standard. He testified that he originally concluded that Muhammad was included in the foreign male DNA found in the sperm fraction on the rectal swabs from J.C.'s rape kit at a frequency of 1 in 10,010,000,000,000 unrelated individuals, i.e., that one would expect to see the profile found one time out of 10,010,000,000,000 unrelated people, in the sperm fraction from unlabeled swabs that were part of J.C.'s rape kit at a frequency of 1 in 48,780,000,000,000,000,000 unrelated individuals and in the sperm fraction from an underwear cutting at a frequency of 1 in 48,780,000,000,000,000,000 unrelated individuals. Following revisions to the FBI's statistical table used by DNA analysts in generating DNA statistics, Sawin later revised these figures to 1 in 10,030,000,000,000, 1 in 49,630,000,000,000,000,000 and 1 in 49,630,000,000,000,000,000, respectively.

{¶10} BCI forensic scientist Heather Bizub conducted a comparison of foreign male DNA found in the sperm fraction on a shirt cutting in E.G.'s rape kit with Muhammad's DNA standard. She testified that she originally concluded that

Muhammad was included in the foreign male DNA on the shirt cutting at a frequency of 1 in 24,740,000,000,000,000. Following revisions to the FBI's statistical table used by DNA analysts in generating DNA statistics, Bizub later revised this figure to 1 in 24,790,000,000,000,000.

{¶11} At the close of the state's case, Muhammad moved for acquittal on all counts of the indictment pursuant to Crim.R. 29(A), arguing that the state had failed to prove Muhammad's guilt beyond a reasonable doubt due to chain of custody issues.

{¶12} No witnesses testified for the defense. After the defense rested, Muhammad renewed his Crim.R. 29(A) motion. The trial court again denied the motion.

{¶13} On December 15, 2015, the jury found Muhammad guilty on all four counts. Three days later, the trial court conducted a sentencing hearing. At the time of his sentencing, Muhammad was serving a sentence of 25 years to life following his conviction in July 2000 in a California case, Case No. SCD150409 in the San Diego County Superior Court, Central Division for forcible lewd act upon a child. After hearing from the state, J.C. and defense counsel, the trial court sentenced Muhammad to 35 years to life on Count 1 (rape of E.G.), 10 years on Count 2 (kidnapping of E.G.), 35 years to life on Count 3 (rape of J.C.) and 10 years on Count 4 (kidnapping of J.C.). The trial court ordered that the sentences on Counts 1 and 2 be served concurrently to each other and that the sentences on Counts 3 and 4 be served concurrently to each other, but consecutively to the sentences on Counts 1 and 2, imposing an aggregate prison term of 70 years to life. The trial court further ordered that the sentences imposed in this case

were to be served consecutively to the sentence Muhammad was serving in the California case. The trial court also imposed five years of postrelease control and found Muhammad to be a sexual predator.

{¶14} Muhammad appealed his convictions and the trial court's imposition of consecutive sentences, raising the following three assignments of error for review:

> Assignment of Error I: The trial court erred by failing to grant a judgment of acquittal, pursuant to Crim.R. 29(a), on the charges, and thereafter entering a judgment of conviction of those offenses as those charges were not supported by sufficient evidence, in violation of defendant's right to due process, as guaranteed by the Fourteenth Amendment to the United States Constitution.
>
> Assignment of Error II: Appellant's convictions are against the manifest weight of the evidence.
>
> Assignment of Error III: The trial court erred by ordering Appellant to serve a consecutive sentence without making the appropriate findings required by R.C. 2929.14 and HB 86.

Law and Analysis

Sufficiency of the Evidence and Manifest Weight of the Evidence

{¶15} A challenge to the sufficiency of the evidence supporting a conviction requires a determination of whether the state met its burden of production. *State v. Hunter*, 8th Dist. Cuyahoga No. 86048, 2006-Ohio-20, ¶ 41, citing *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1977). When reviewing sufficiency of the evidence, an appellate court must determine "'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. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶ 77, quoting *State v. Jenks*, 61

Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. In a sufficiency inquiry, an appellate court does not assess whether the state's evidence is to be believed but whether, if believed, the evidence admitted at trial supported the conviction. *State v. Starks*, 8th Dist. Cuyahoga No. 91682, 2009-Ohio-3375, ¶ 25, citing *Thompkins* at 387; *Jenks* at paragraph two of the syllabus.

{¶16} In contrast to a challenge based on sufficiency of the evidence, a manifest weight challenge attacks the credibility of the evidence presented and questions whether the state met its burden of persuasion. *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 13, citing *Thompkins* at 390. When considering an appellant's claim that a conviction is against the manifest weight of the evidence, the court of appeals sits as a "thirteenth juror" and may disagree "with the factfinder's resolution of * * * conflicting testimony." *Thompkins* at 387, citing *Tibbs v. Florida*, 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982). Weight of the evidence involves "the evidence's effect of inducing belief." *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25, citing at *Thompkins* at 386-387. The reviewing court must examine the entire record, weigh the evidence and all reasonable inferences, consider the witnesses' credibility and determine whether, in resolving 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.'" *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). In conducting such a review, this court remains mindful that the credibility of witnesses and

the weight of the evidence are matters primarily for the trier of fact to assess. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. Reversal on manifest weight grounds is reserved for the "'exceptional case in which the evidence weighs heavily against the conviction.'" *Thompkins* at 387, quoting *Martin* at 175.

{¶17} Muhammad's challenges to his convictions are limited to the element of identity. In his first assignment of error, Muhammad contends that his rape and kidnapping convictions were not supported by sufficient evidence because they were based on the results of DNA testing that occurred nearly 20 years after the incidents occurred. He asserts that "the chain of custody protocol and the procedures utilized" in the case "did not and do not properly establish [his] involvement" in the crimes at issue.

{¶18} In his second assignment of error, Muhammad argues that the jury "lost its way" in convicting him and that his conviction was against the manifest weight of the evidence because (1) both J.C. and E.G. are currently in prison and (2) both J.C. and E.G. failed to positively identify Muhammad as their attacker in any lineup or photo array. Muhammad asserts that his life has been "shattered due to uncorroborated accusations" and that his convictions should, therefore, be reversed. Muhammad's arguments are meritless.

{¶19} Muhammad offers nothing more than conclusory assertions to support his sufficiency challenge. He does not identify what aspect or aspects of the "chain of custody protocol" or "procedures" he contends were deficient or otherwise "did not * * *

properly establish [his] involvement" in these crimes. Likewise, he points to nothing in the record in support of his claims. For this reason alone we could overrule his assignment of error. App.R. 12(A)(2); App.R. 16(A).

{¶20} Even if we were to consider the merits of Muhammad's argument, in this case there is overwhelming competent, credible evidence establishing both the chain of custody of the DNA evidence and the reliability of the DNA test results linking Muhammad to these crimes. Here, the state presented testimony from more than a dozen witnesses (along with related supporting documents) detailing the chain of custody of the relevant evidence from the moment the evidence was collected from the victims in 1994 and 1995 (and from Muhammad in 2015) until DNA analysis was completed on that evidence in 2015. These witnesses included: the Cleveland police officer who collected clothing from E.G.; the emergency room physicians at MetroHealth Medical Center who treated the victims and took rectal samples and clothing from the victims that were then secured in the rape kits; the Cleveland police officers who collected the rape kits from MetroHealth Medical Center and transported them to the Second District where the evidence was locked in the Second District's property room and, thereafter, transported to the Justice Center for secure storage in the Cleveland Police Department's forensic laboratory; the Cleveland police officer who transported the rape kits from the forensic laboratory to BCI for DNA analysis; the DNA analyst from Bode Cellmark Forensics, a private DNA testing laboratory, which tested evidence collected from E.G. for BCI in 2004; the scientific examiner at the Cleveland Police Department's forensic laboratory

who performed serology testing on evidence collected from E.G. in 1994 and from J.C. in late 1995 or early 1996; the Cleveland police detective who obtained a DNA sample from Muhammad in 2015 and the forensic scientists from BCI who compared the foreign male DNA recovered from evidence in E.G.'s and J.C.'s rape kits to the known DNA standard obtained from Muhammad.

{¶21} Each of these witnesses testified in detail as to what he or she did, when he or she did it and the protocols and the procedures followed with respect to the evidence collected in this case. These witnesses also testified as to the conditions under which the DNA evidence was stored, that there were no signs of DNA degradation or evidence tampering and that there was sufficient DNA for testing. The state's witnesses and supporting documentary evidence established, step-by-step, the chain of custody of the evidence, how the DNA results were determined and the measures that were taken to ensure the reliability of the test results. Viewing the evidence in the light most favorable to the prosecution, we cannot say that a rational jury could not have reasonably found that Muhammad was the person who committed these crimes beyond a reasonable doubt. Accordingly, Muhammad's first assignment of error is overruled.

{¶22} Turning to Muhammad's manifest weight challenge, simply because a witness is in prison or has a criminal history does not mean that the witness's testimony cannot be relied upon to convict a defendant. *See, e.g.*, *State v. Nitsche*, 8th Dist. Cuyahoga No. 103174, 2016-Ohio-3170, ¶ 44; *see also State v. Wells*, 8th Dist. Cuyahoga No. 98388, 2013-Ohio-3722, ¶ 130 (credibility of witnesses in murder case was left to the

jury where witnesses admitted they were high on crack cocaine the day of the murder and had "extensive criminal histories"); *State v. Medezma-Palomo*, 8th Dist. Cuyahoga No. 88711, 2007-Ohio-5723, ¶ 36-37 (fact that several of the state's witnesses had criminal records did not preclude the jury from finding their testimony to be credible); *State v. Petty*, 10th Dist. Franklin Nos. 11AP-716 and 11AP-766, 2012-Ohio-2989, ¶ 41 (fact that witnesses had criminal records did not render their testimony unreliable; jury could properly weigh information regarding witnesses' criminal histories in determining how much credibility to give their testimony). The fact that E.G. and J.C. were serving prison sentences was made known to the jury during their direct examinations. The jury was free to judge the credibility of their testimony in light of that information, all of the evidence presented at trial and their personal observation of the witnesses. *State v. Johnson*, 8th Dist. Cuyahoga No. 99822, 2014-Ohio-494, ¶ 54 (indicating that the decision whether, and to what extent, to believe the testimony of a particular witness is "within the peculiar competence of the factfinder, who has seen and heard the witness").

{¶23} Likewise, simply because E.G. and J.C. were unable to identify Muhammad in a lineup or photo array that included his photograph does not mean his convictions are against the manifest weight of the evidence. Although the state must establish beyond a reasonable doubt that it was Muhammad who committed the crimes at issue, there is no requirement that a defendant be specifically identified as the perpetrator of a crime by a witness testifying in court or during a lineup or photo array to uphold the defendant's conviction. *See, e.g., State v. Littlejohn*, 8th Dist. Cuyahoga No. 101549,

2015-Ohio-875, ¶ 37; *State v. Brown*, 8th Dist. Cuyahoga No. 98881, 2013-Ohio-2690, ¶ 30; *State v. Collins*, 8th Dist. Cuyahoga No. 98350, 2013-Ohio-488, ¶ 19, citing *State v. Lawwill*, 12th Dist. Butler No. CA2007-01-014, 2008-Ohio-3592, ¶ 11.[1] Direct or circumstantial evidence is sufficient to establish the defendant as the person who committed the crime. *See, e.g., Littlejohn* at ¶ 37.

{¶24} With respect to the lineups and photo arrays conducted in 1994 and 1995 shortly after the incidents, there is no evidence in the record that Muhammad was part of any lineup or photo array then viewed by E.G. or J.C. With respect to the photo arrays shown the victims shortly before trial (which included a photograph of Muhammad from January 2000 rather than the time of the incidents),[2] it is hardly surprising that the victims were unable to identify their attacker — whom they did not know and had never seen prior to or subsequent to their assaults — nearly 20 years or more after the incidents. Contrary to Muhammad's claims, this is not a case of conviction based on "uncorroborated accusations." Here, there was compelling, competent and credible DNA evidence linking Muhammad to these crimes. Using the statistics most favorable to Muhammad, the DNA evidence established that only one in over 10 trillion unrelated individuals would have the same DNA as the man who kidnapped and raped J.C. and one

[1]Indeed, it does not appear that the victims had an opportunity to make an in-court identification of Muhammad during their testimony in this case because Muhammad apparently chose not to be in the courtroom for most of his trial due to his "religious tenets."

[2]Detective Hill testified that she used a photograph of Muhammad from January 19, 2000 in preparing the photo arrays in 2015 because that was the time period closest to the incidents from which she was able to locate a photograph of him.

in over 24 quadrillion unrelated individuals would have the same DNA as the man who raped and kidnapped E.G. Thus, despite the fact that J.C. and E.G. were unable to identify Muhammad as their attacker, the DNA evidence in and of itself overwhelmingly supported the conclusion that Muhammad was their attacker. *See, e.g., State v. Clark*, 8th Dist. Cuyahoga No. 103324, 2016-Ohio-4561, ¶ 27 (rape and kidnapping convictions were not against the manifest weight of the evidence where DNA evidence "on its own" strongly supported the jury's finding that defendant was the man who kidnapped and raped the victims); *State v. Bandy*, 7th Dist. Mahoning No. 05-MA-49, 2007-Ohio-859, ¶ 85 (DNA evidence alone overwhelmingly supported the conclusion that appellant was victim's attacker even though victim could not identify him). In addition, the two incidents were very similar, involving two young boys of the same age, occurring in a similar location at around the same time under similar circumstances — i.e., a boy walking home from school alone, lured to a secluded location near railroad tracks where he was anally raped, with the perpetrator threatening to harm his family if he told anyone what had happened.

{¶25} This is not the "'exceptional case'" in which the evidence weighs heavily against the defendant's convictions or in which the jury "'clearly lost its way and created such a manifest miscarriage of justice that the convictions must be reversed and a new trial ordered.'" *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541, quoting *Martin*, 20 Ohio App.3d at 175, 485 N.E.2d 717. Muhammad is correct that a "life" (or more likely two lives) was "shattered" by what occurred here but that life was not Muhammad's. Muhammad's second assignment of error is overruled.

Imposition of Consecutive Sentences

{¶26} In his third assignment of error, Muhammad contends that his consecutive sentences should be vacated because the trial court failed to make the requisite findings for the imposition of consecutive sentences under R.C. 2929.14(C)(4).

{¶27} In Ohio, there is a presumption that prison sentences should be served concurrently, unless the trial court makes the findings outlined in R.C. 2929.14(C)(4) to warrant consecutive service of the prison terms. *State v. Primm*, 8th Dist. Cuyahoga No. 103548, 2016-Ohio-5237, ¶ 64, citing *State v. Cox*, 8th Dist. Cuyahoga No. 102629, 2016-Ohio-20, ¶ 3, and R.C. 2929.41(A). Pursuant to R.C. 2929.14(C)(4), in order to impose consecutive sentences, the trial court must find that consecutive sentences are necessary to protect the public from future crime or to punish the offender, that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public and that at least one of the following also applies:

> (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under postrelease control for a prior offense.
>
> (b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.
>
> (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

R.C. 2929.14(C)(4).

{¶28} The trial court must both make the statutory findings required for consecutive sentences at the sentencing hearing and incorporate those findings into its sentencing journal entry. *Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus. To make the requisite "findings" under the statute, "'the [trial] court must note that it engaged in the analysis' and that it 'has considered the statutory criteria and specifie[d] which of the given bases warrants its decision.'" *Id.* at ¶ 26, quoting *State v. Edmonson*, 86 Ohio St.3d 324, 326, 715 N.E.2d 131 (1999). A trial court need not give a "talismanic incantation of the words of the statute" when imposing consecutive sentences, "provided that the necessary findings can be found in the record and are incorporated in the sentencing entry." *Bonnell* at ¶ 37; *see also State v. Thomas*, 8th Dist. Cuyahoga No. 102976, 2016-Ohio-1221, ¶ 16 ("the trial court's failure to employ the exact wording of the statute does not mean that the appropriate analysis is not otherwise reflected in the transcript or that the necessary finding has not been satisfied").

{¶29} In this case, after a lengthy discussion of Muhammad's criminal history and other relevant R.C. 2929.12 factors, the trial court stated with respect to its decision to impose consecutive sentences:

> Now, getting the point of consecutive sentences. The State is requesting that these offenses — the sentences be ordered to run consecutive to each other. Then we were reviewing Section 2929.14. And the — to quote the necessary part, that the Court would find that the consecutive sentence is necessary to protect the public from future crime or to punish the offender, and that the consecutive sentences are not disproportionate to the seriousness of the offense.

I am considering factors under 2929.14 in sections A, B and C. I do believe that consecutive service here — the sentence — the services — the time of prison — the sentence here is necessary to protect the public from future crime or to punish this offender.

The defendant attempted to kidnap a child in early ‘94, is what we’re talking about here.

He then sexually assaulted the two young boys. These were separate incidents; one in ‘94, and then ‘95 here. And then in July of this last summer, while he was awaiting trial in this case, we know he attempted to access child pornography in our jail.

I feel the public would be protected from future crimes by a consecutive sentence. A single prison term is not sufficient to protect the public from the defendant’s future crime. And I do find it is insufficient to punish the defendant for the heinous crimes he has committed.

Consecutive sentences are not disproportionate to the seriousness of the offender’s conduct. The incident case, I agree with the State. This is as serious as it gets. The defendant kidnapped children. He took them off the street and raped them so violently that each of them had notable injuries and were able to be detected at the hospital with trauma to the rectum.

These sexual assaults here reveal the defendant’s course of conduct on the west side — near west side of Cleveland in 1994, ‘95. He targets adolescent boys walking home from school alone. And then uses a ruse to get them behind a building along the railroad tracks and anally rape them.

It was clear from the charge that he’s been convicted of here and accurate to the one that led to the arrest here in Cleveland. In both of the cases that we tried, he threatened the boys not to report these rapes by indicating that he would hurt their families — threatened their families. I do so find that’s what happened here.

It’s the judgment of this Court in Count 1 you be sentenced to a period of time 35 years to life.

And in Count 2, the kidnapping, he’s to be sentenced to 10 years. And that will run concurrent to Count 1.

> And in Count 3, you will be sentenced to 35 years to life to run consecutive to Counts 1 and 2.
>
> And in Count 4 you'll be sentenced to 10 years to run concurrent to Count 3.
>
> Counts 3 and 4 will run consecutive to Count 1 and 2.
>
> Post-release control of five years is part of the sentence. * * *
>
> [THE STATE]: Are you making any finding as to whether the sentence should run consecutive or current to the California sentence?
>
> THE COURT: Yes, I am making that finding. This sentences in Ohio will run consecutive to the California case, which I want to make sure that we have the number. But according to defense counsel it was CD-150409. But my order is that it would be run consecutive to the California case.
>
> [THE STATE]: I think it's SD. And the paperwork I gave you states it.
>
> THE COURT: We'll make sure that's appropriately indicated. * * *
>
> I do want the record to reflect, though, I want to make it clear that I impose those two sentences of 35 years to life to run consecutive. It's the Court's intention that this be 70 years to life.

{¶30} In addition, the trial court's December 21, 2015 sentencing journal entry included the following findings:

> The court imposes a prison sentence at the Lorain Correctional Institution of 70 years to life. Count 1: 35 years to life[.] Count 2: 10 years (Counts 1 and 2 to run concurrent with each other)[.] Count 3: 35 years to life[.] Count 4: 10 years (Counts 3 and 4 to run concurrent with each other)[.] Counts 1 and 2 and Counts 3 and 4 to run consecutive to each other for a total of 70 years to life. This sentence is to run consecutive to California sentence. The court imposes prison terms consecutively finding that consecutive service is necessary to protect the public from future crime or to punish the defendant; that the consecutive sentences are not disproportionate to the seriousness of defendant's conduct and to the danger defendant poses to the public and that at least two of the multiple offenses were committed in this case as part of one or more courses of conduct and the harm caused by said

> multiple 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 seriou[s]ness of defendant's conduct.

{¶31} Muhammad does not indicate which finding or findings required for the imposition of consecutive sentences he contends the trial court failed to make.

{¶32} On the record before us, we find that the trial court satisfied its statutory obligations to make the requisite findings for imposing consecutive sentences under R.C. 2929.14(C)(4) and to incorporate those findings into the sentencing journal entry. The trial court expressly found that consecutive sentences are necessary both to protect the public from future crime and to punish Muhammad. R.C. 2929.14(C)(4). The trial court discussed in detail how Muhammad's history of criminal conduct — from a thwarted kidnapping attempt of an adolescent boy in 1994, his rapes of E.G. and J.C. in 1994 and 1995, his rape of a young boy in California in 1999 and his attempt to access child pornography while in prison awaiting trial in 2015 — demonstrates that "a single prison term is not sufficient to protect the public from the defendant's future crime." The trial court's statements on the record further indicate that it considered proportionality both with regard to the seriousness of Muhammad's conduct and the danger he poses to the public and found that consecutive sentences are not disproportionate to the seriousness of his conduct and the danger he poses to the public. As the trial court stated, "This is as serious as it gets."

{¶33} The trial court also found that the crimes at issue were committed as part of a "course of conduct on the west side — near west side of Cleveland in 1994, '95" in

which the defendant "targets adolescent boys walking home from school alone" and that a single sentence would be "insufficient to punish [Muhammad]" for these "heinous crimes," satisfying the requirements of R.C. 2929.14(C)(4)(a).

{¶34} Accordingly, there is no basis for vacating the trial court's imposition of consecutive sentences under R.C. 2929.14(C)(4). Muhammad's third assignment of error is overruled.

{¶35} At oral argument, Muhammad argued for the first time that the trial court's imposition of consecutive sentences should also be vacated because the trial court's statement in its sentencing journal entry that "this sentence is to run consecutive to California sentence" is ambiguous. Although Muhammad is currently serving only one California sentence, he contends that it is unclear from the trial court's sentencing journal entry to which "California sentence" these sentences are to be served consecutively and that, at a minimum, the trial court should be required to reference the case number from the California case in its sentencing journal entry when imposing consecutive sentences. Muhammad cites no authority in support of his argument. Although we do not agree, under the circumstances here, that the trial court's omission of the California case number in its sentencing journal entry constituted error by the trial court, to avoid any possible confusion in the event Mohammad is hereafter convicted in another California case and receives another California sentence, we remand the matter to the trial court for the issuance of a nunc pro tunc entry that identifies the California court and case number

associated with "the California sentence" to which the sentences imposed by the trial court in this case were ordered to be served consecutively.

{¶36} Judgment affirmed and case remanded for the trial court to issue a nunc pro tunc entry identifying the California court and case number associated with the California sentence to which the sentences imposed by the trial court in this case were ordered to be served consecutively.

It is ordered that appellee recover from appellant 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 Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

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EILEEN A. GALLAGHER, PRESIDING JUDGE

MARY J. BOYLE, J., and
PATRICIA A. BLACKMON, J., CONCUR