[Cite as *State v. Holland*, 2021-Ohio-705.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 109416
v.	:	
CARL HOLLLAND, III,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: March 11, 2021

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-18-634400-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Kevin R. Filiatraut, Assistant Prosecuting Attorney, *for appellee.*

Buckeye Law Office and P. Andrew Baker, *for appellant.*

LARRY A. JONES, SR., J.:

{¶ 1} Defendant-appellant Carl Holland, III ("Holland") appeals his convictions, rendered after a jury trial, for murder, felonious assault, discharge of a firearm on or near prohibited premises, and tampering with evidence. He also

challenges his sentence that included consecutive terms. For the reasons set forth below, we affirm.

Factual Background

The Shooting

{¶ 2} The victim in this case was Robert Harrell ("Harrell"), who, in October 2017, was shot in the head in his car as he arrived at a child's birthday party after his shift as an RTA bus driver. The trial testimony showed that Harrell was a longtime friend of Tiffany Locke ("Tiffany"), who was throwing the party for her son who was turning five years old. The party was at Tiffany's house on Whitcomb Road in Cleveland, and the guests included various adult and child family members and friends.

{¶ 3} One of the guests at the party was John Neely ("Neely"). He came to the party with two other males: defendant Holland and a man named William Taylor ("Taylor"). Neely was a friend of Tiffany's mother, Clarissa Locke ("Clarissa"), and Tiffany's aunt, Henrietta Edwards ("Henrietta"). Clarissa and her other daughter, Monique Locke ("Monique"), and Henrietta, and her son, Deangelo Edwards ("Deangelo"), were all at the party. The record demonstrates that Henrietta and Deangelo knew defendant Holland, because they had all previously lived on the same street. No one testified that they invited Holland to the party though. Rather, he seemingly just "tagged along" with Neely.

{¶ 4} Monique testified that she saw defendant Holland, Neely, and Taylor smoking some type of cigarette or blunt in front of the house; according to

Monique, whatever they were smoking had a strange smell to it, like metal. After they finished smoking, they went into the backyard. Monique testified that she saw defendant Holland "pacing the yard." She saw the victim, Harrell, arrive in his car and park it in front of the house.

{¶ 5} Monique then went inside the house and within five seconds, heard a "pow." Upon hearing the noise, she went back outside and saw defendant Holland at the front of Harrell's car. Monique then saw defendant Holland walking toward the front of the house with a gun; it appeared to her that he was going to shoot.

{¶ 6} Meanwhile, Deangelo had remained outside. He testified that he saw defendant Holland shoot at victim Harrell. His attention then immediately turned to securing the safety of his two-year-old daughter who was outside, as well as with the safety of some of the other children who were also outside. He brought the children inside the house and informed everyone of what was happening. Deangelo went back outside and saw defendant Holland across the street shooting again. Defendant Holland then ran toward St. Clair Avenue. When he reached St. Clair Avenue, he ran left on St. Clair Avenue, toward Stevenson Road. Tiffany, Monique, and Henrietta also testified that, after hearing the initial shot, they saw defendant Holland across the street shooting more and then run away.

{¶ 7} One of the guests had called the police and they arrived on the scene. Initially, no one, including the police, realized that victim Harrell had actually been shot. One of the responding officers, Michael Cox ("Officer Cox"), was the one who

discovered Harrell in his car with a gunshot wound; the officer had walked by Harrell's car two or three times before he noticed him. Officer Cox testified that there was no defect in the driver's side window or to the frame of the car. The driver's side window was lowered approximately six to eight inches, and Harrell was slumped over the steering wheel, bleeding.

{¶ 8} Upon discovering Harrell, the nature of the police's investigation, and the mood of the partygoers, quickly pivoted. The police began scouring the area for spent shell casings and found one under Harrell's car. No weapon was found in Harrell's car. Harrell was transported by ambulance to the hospital, where he was pronounced dead. The police conducted gunshot residue tests that evening on Taylor, Neely (the two who came to the party with defendant Holland), and a third individual; they all tested negative.

The Investigation

{¶ 9} The day following the shooting, the police received a phone call from a homeowner on Stevenson Road. The homeowner informed the police that a man left a gun on her back porch the previous evening. The police went to the house and retrieved the gun, which had one magazine and seven live rounds.

{¶ 10} An autopsy was performed on victim Harrell and the forensic scientist who supervised it testified. The manner of death was classified as a homicide, caused by a gunshot wound that entered Harrell's forehead, fractured the bone, went through his let frontal temporal and parietal lobes, tore a hole, and exited the left back of his head. It was determined that the bullet traveled from

front to back, slightly upward without deviation, and broke apart. Most of the bullet exited Harrell's body, but some fragments remained and were recovered. The forensic scientist testified that there was stippling[1] present within two and a half inches of the entrance wound and that, based on that, she concluded the gun would have been anywhere from one to three feet away from Harrell when it was fired; she opined that it was closer to one foot.

{¶ 11} A trace evidence scientist from the medical examiner's office tested Harrell's hands for gunshot residue. The test was positive, which meant one of three things: (1) Harrell fired a gun, (2) Harrell was in close proximity to the discharge of a fired gun, or (3) there was transfer of primer residue from some surface onto Harrell's hands. The trace evidence scientist also testified that he was not surprised that Harrell had gunshot residue on his hands and stippling on his face given the way Harrell was found and the condition of the car. In other words, Harrell could have been shot at a close range so as to hit him, but not damage the opened window or the frame of his car.

{¶ 12} Kristin Koeth ("Koeth"), a firearm and tool mark analyst in the Cuyahoga County Regional Forensic Science Laboratory, testified as an expert in firearms and toolmark examination without objection from the defense. She testified about the various tests she performed on the gun retrieved from the Stevenson Road home, the spent shell casing recovered from the scene of the

[1]Stippling is a secondary effect of the discharge surrounding an entrance wound and presents as a blackening of the skin edges.

shooting, and the bullet fragments recovered from Harrell during the autopsy. She test fired the gun and it was operable. She compared a spent casing from the test fire to the spent casing found on the scene and determined, to a reasonable degree of scientific certainty, that the spent casing found on the scene was fired from the recovered gun. Koeth was unable to make any determination relative to the bullet fragments recovered from the autopsy, however.

{¶ 13} DNA testing was also performed as part of the investigation in this case; it was performed by Jeffrey Oblock ("Oblock"), a DNA analyst at the Cuyahoga County Regional Forensic Science Laboratory. Oblock tested a DNA standard from defendant Holland and swabs taken from the recovered gun. He confirmed that there was blood on the gun and the DNA from it was 1.7 nonillion[2] times more probable a match to Holland, who is African-American, than a coincidental match to an unrelated African-American person. Thus, Oblock was of the opinion that the blood on the gun came from defendant Holland.

{¶ 14} The lead detective on the case was Tim Entenok ("Detective Entenok"). After interviews with Neely, Taylor, Clarissa, Tiffany, and Monique, Detective Entenok obtained an arrest warrant for defendant Holland. He presented a photo array lineup to Henrietta, Monique, and Deangelo. Henrietta and Deangelo identified Holland as the shooter. Monique identified another person in the lineup, saying he looked like the shooter.

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[2]A nonillion is a 1 followed by 30 zeroes.

The Indictment, Flight Instruction, Verdict, and Sentence

{¶ 15} A Cuyahoga County Grand Jury returned the following eight-count indictment against Holland: Count 1, murder of Harrell under R.C. 2903.02(A); Count 2, murder of Harrell under R.C. 2903.02(B); Count 3, felonious assault of Harrell; Count 4, discharge of a firearm on or near prohibited premises, with Harrell as the victim; Count 5, attempted murder of Deangelo; Count 6, felonious assault of Deangelo; Count 7, discharge of a firearm on or near prohibited premises, with no named victim; and Count 8, tampering with evidence. With the exception of Count 8, all the counts contained one- and three-year firearm specifications.

{¶ 16} Count 5, attempted murder of Deangelo was dismissed pursuant to the defense's Crim.R. 29 motion for judgment of acquittal. The trial court gave the jury a flight instruction.

{¶ 17} After its deliberations, the jury returned not guilty verdicts on Count 1, murder of Harrell under R.C. 2903.02(A); Count 6, felonious assault of Deangelo; and Count 7, discharge of a firearm on or near prohibited premises, with no named victim. The jury found Holland guilty of Count 2, murder of Harrell under R.C. 2903.02(B); Count 3, felonious assault of Harrell; Count 4, discharge of a firearm on or near prohibited premises, with Harrell as the victim; and Count 8, tampering with evidence. The jury also found Holland guilty of the firearm specifications attendant to Counts 2, 3, and 4.

{¶ 18} At sentencing, the state conceded that Count 2, murder of Harrell, Count 3, felonious assault of Harrell, and Count 4, discharge of a firearm on or near prohibited premises, with Harrell as the victim, merged; the trial court agreed and merged the counts. The state elected to proceed to sentencing on Count 2, murder; the other remaining count for sentencing was Count 8, tampering with evidence. The trial court sentenced Holland on the murder charge to life imprisonment with parole eligibility after 15 years, with three years for the firearm specification. The court also sentenced Holland to 36 months on Count 8, tampering with evidence. The court ordered the sentences on Counts 2 and 8 to be served consecutively. Thus, Holland was sentenced to a total sentence of life with the possibility of parole after 21 years. This appeal ensues.

Assignments of Error

I. The trial court erred when it allowed state's witnesses to make improper conclusions which unfairly invaded the province of the jury.

II. The trial court erred by providing the jury with a flight instruction.

III. The trial court erred in imposing consecutive sentences.

IV. Defendant-Appellant's conviction was against the manifest weight of the evidence.

Law and Analysis

Improper Conclusions by State's Witnesses

{¶ 19} In his first assignment of error, Holland contends that the state improperly questioned Detective Entonek about conclusions made by Koeth (the firearms expert) and Oblock (the DNA analyst). Detective Entonek took the stand

after both Koeth and Oblock gave their testimonies. On cross-examination of the detective, defense counsel questioned him as follows:

> Q. Well, let me ask you this, Detective. In your experience it's not unusual for you to go to a crime scene and find spent shell casings that have absolutely nothing to do with the focus of your investigation?
>
> A. Correct.
>
> Q. I mean, unfortunately, in the world we're living in, you could walk down a street in Cleveland and find syringes, spent shell casings, packages for heroin, whatever, just sitting on the ground?
>
> A. Right.

{¶ 20} Defense counsel also cross-examined Detective Entonek about the fact that the bullet fragments recovered from Harrell during the autopsy were not able to be matched to the gun. After the state's redirect-examination of the detective, defense counsel recrossed the detective on whether it was possible that Harrell had been arguing with someone prior to his death and whether it was possible that someone removed a gun from Harrell's car without anyone noticing.

{¶ 21} The admission or exclusion of relevant evidence is a matter left to the sound discretion of the trial court. Absent an abuse of discretion resulting in material prejudice to the defendant, a reviewing court should be reluctant to interfere with a trial court's decision in this regard. *State v. Hymore*, 9 Ohio St.2d 122, 128, 224 N.E.2d 126 (1967).

{¶ 22} Evid.R. 701 affords the trial court considerable discretion in controlling the opinion testimony of lay witnesses. *State v. Harper*, 5th Dist. Licking No. 07 CA 151, 2008-Ohio-6926, ¶ 37, citing *Urbana ex rel. Newlin v.*

Downing, 43 Ohio St.3d 109, 113, 539 N.E.2d 140 (1989), and *State v. Kehoe*, 133 Ohio App.3d 591, 603, 729 N.E.2d 431 (12th Dist.1999). "If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue." Evid.R. 701. Lay opinion, inferences, impressions, or conclusions are therefore admissible if they are those that a rational person would form on the basis of the observed facts and if they assist the jury in understanding the testimony or delineating a fact in issue.

{¶ 23} Detective Entonek testified as a lay, not expert, witness. The state sought the testimony Holland now complains about to clarify what the testimony up to that point, as well as his own investigation, demonstrated — that is, that Holland's DNA was on the gun. Oblock, the expert, testified to that, and the state's questioning of the detective about it was to debunk the defense's theory that some random unknown person shot Harrell. The trial court did not abuse its discretion by allowing the testimony.

{¶ 24} In light of the above, the first assignment of error is without merit and overruled.

Flight Instruction

{¶ 25} For his second assignment of error, Holland contends that the trial court erred in giving the jury an instruction on flight. The court's instruction was as follows:

> Flight from the scene of the crime. There may be evidence in this case to indicate that the Defendant fled from the scene of the crime. Flight does not, in and of itself, raise the presumption of guilt, but it may show consciousness of guilt or a guilty connection with the crime. If you find the Defendant did flee from the scene of the crime, you may consider this circumstance in your consideration of the guilt or innocence of the Defendant.

{¶ 26} A flight instruction on consciousness of guilt based on the flight of the accused is appropriate if there is sufficient evidence presented at trial that the defendant attempted to avoid apprehension. *State v. Hill*, 8th Dist. Cuyahoga No. 98366, 2013-Ohio-578, ¶ 49. However, a defendant's mere departure from the scene of the crime does not warrant a flight instruction where there is no evidence of deliberate flight to avoid detection. *State v. Jackson*, 8th Dist. Cuyahoga No. 100125, 2014-Ohio-3583, ¶ 48. Accordingly, to warrant a flight instruction, it must be clear the defendant took affirmative steps to avoid detection and apprehension beyond simply leaving the scene of the crime. *Id.* at ¶ 46. "Flight in this context requires the defendant to appreciate that he [or she] has been identified as a person of interest in a criminal offense and is taking active measures to avoid being found." *State v. Ramos*, 8th Dist. Cuyahoga No. 103596, 2016-Ohio-7685, ¶ 28.

{¶ 27} The evidence in this case was sufficient to warrant a flight instruction. Several of the state's witnesses testified that they saw Holland running from the scene after the shooting. In contrast, the two friends he came to the party with, Neely and Taylor, initially remained on the scene. Not only did Holland run, but he also ran to a house on a nearby street and dumped his gun on the back porch of the house.

{¶ 28} The instruction given allowed the jury to make its own conclusion regarding whether Holland fled the scene and to consider his motivations for doing so. The instruction correctly advised the jury not to consider evidence of Holland's departure from the scene if they found it was not motivated by a consciousness of guilt. *See State v. Austin*, 8th Dist. Cuyahoga Nos. 106215 and 106530, 2018-Ohio-3048, ¶ 59; *State v. Hill*, 8th Dist. Cuyahoga No. 99186, 2013-Ohio-3245, ¶ 31.

{¶ 29} There was no error in the court's instruction to the jury on flight. Holland's second assignment of error is therefore overruled.

Consecutive Sentences

{¶ 30} Holland's third assignment of error challenges the imposition of consecutive sentences.

{¶ 31} Felony sentences are reviewed under the standard provided in R.C. 2953.08(G)(2). *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 16. A reviewing court may overturn the imposition of consecutive sentences only if it clearly and convincingly finds that either (1) "the record does not support the sentencing court's findings under * * * [R.C. 2929.14(C)(4)]," or (2) "the sentence is otherwise contrary to law." R.C. 2953.08. Before a trial court may impose consecutive sentences, the court must make specific findings mandated by R.C. 2929.14(C)(4) and then incorporate those findings in the sentencing entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37. The trial court is not required to give a rote recitation of the statutory

language. *Id.* "[A]s long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld." *Id.* at ¶ 29.

{¶ 32} R.C. 2929.14(C)(4) authorizes the court to order consecutive service of multiple sentences if consecutive service (1) is necessary to protect the public from future crime or to punish the offender; (2) is not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public; and additionally (3) that (a) the offender committed the offense while awaiting trial or sentencing, under community control monitoring, or under postrelease control for a prior offense; (b) at least two of the offenses caused harm so great and unusual that no single term for any offense adequately reflects the seriousness of the offender's conduct; or (c) the offender's history of criminal conduct demonstrates the necessity of consecutive sentences to protect the public from future crime. *State v. Smeznik*, 8th Dist. Cuyahoga Nos. 103196 and 103197, 2016-Ohio-709, ¶ 6.

{¶ 33} In imposing consecutive terms, the trial court stated the following:

> Now, in applying this sentence the court finds there's no discernible reason or understanding for this crime and, therefore, consecutive sentences are necessary to protect the public. The court further finds that consecutive sentences are not disproportionate to the defendant's conduct and the danger he represents to the public. The court further finds that a single prison term does not adequately reflect the seriousness of the defendant's conduct in this case. Therefore, counts 2 and 8 shall be served consecutively to each other less credit for time served.

{¶ 34} Holland contends that the trial court erred in imposing consecutive terms because the discovery of the gun assisted the state in prosecuting this case and because he did not have a significant prior criminal history. The discovery of the gun was not a mitigating factor in Holland's favor. Simply, Holland had nothing to do with its discovery; rather, it was the conscientious homeowner who alerted the police to it.

{¶ 35} In regard to Holland's relative lack of a prior criminal history, that was but one of the three considerations for the trial court under the third prong of consecutive-sentence findings. The court did not make a finding relative to Holland's prior criminal history; rather, it found that a single prison term would not adequately reflect the seriousness of Holland's conduct. Thus, the trial court made all the statutorily mandated findings for the imposition of consecutive sentences.

{¶ 36} We also find that the record supports the sentence. This truly was a tragic, senseless case. There is no indication in the record that defendant Holland and victim Harrell knew each other, or even had "words" prior to the shooting. Rather, the record demonstrates that Holland, after smoking a strange-smelling cigarette or blunt, went up to Harrell's car as he arrived at the party and shot him in the head at close range. These facts support the trial court's finding that a single prison term would not adequately reflect the seriousness of Holland's conduct.

{¶ 37} In light of the above, Holland's third assignment of error is overruled.

Manifest Weight of the Evidence

{¶ 38} Finally, Holland contends that his convictions were against the manifest weight of the evidence. We disagree.

{¶ 39} "[A] manifest weight challenge questions whether the state met its burden of persuasion." *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 13.

> The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [fact finder] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.

State v. Thompkins, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 40} This is not an "exceptional case in which the evidence weighs heavily against the conviction." The forensic and testimonial evidence demonstrated that Holland shot Harrell at close range for no apparent reason. Holland then fled the scene and got rid of the murder weapon. His murder and tampering with evidence convictions are supported by the weight of the evidence.

{¶ 41} The fourth assignment of error is not well taken and is overruled.

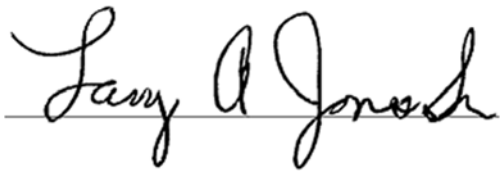
{¶ 42} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's convictions having been affirmed, any bail pending 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.



LARRY A. JONES, SR., JUDGE

ANITA LASTER MAYS, P.J., and
EMANUELLA D. GROVES, J., CONCUR