

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 115806
	:	
v.	:	
	:	
PHOENIX BROWN,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 17, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-25-700674-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Kristin M. Karkutt, Assistant Prosecuting Attorney, *for appellee*.

Gregory T. Stralka, *for appellant*.

EILEEN T. GALLAGHER, P.J.:

{¶ 1} Defendant-appellant Phoenix Brown (“Brown”) appeals his convictions and claims the following errors:

1. The appellant was denied his right to a fair trial when the trial court failed to bifurcate two separate offenses and created a misjoinder of factually distinct crimes.

2. The jury's decision finding the appellant guilty of aggravated robbery is against the manifest weight of the evidence.

{¶ 2} We find that because the evidence relating to the two separate cases was simple and direct, the trial court properly joined them for trial. We also find there is competent, credible evidence supporting Brown's convictions and that his aggravated-robbery conviction is not against the manifest weight of the evidence. We, therefore, affirm the trial court's judgment.

I. Facts and Procedural History

{¶ 3} Brown was indicted with multiple charges in two separate cases. In Cuyahoga C.P. No. CR-25-698632-A, Brown was charged with two counts of aggravated murder, four counts of murder, four counts of felonious assault, one count of receiving stolen property, one count of tampering with evidence, and one count of having weapons while under disability. The charges were brought in connection with the shooting deaths of two teenagers, K.W. and J.B., on January 14, 2025.¹ The State subsequently dismissed the tampering-with-evidence charge alleged in Count 12, and Brown executed a jury waiver as to the having-weapons while-under-disability charge alleged in Count 13.

{¶ 4} In Cuyahoga C.P. No. CR-700674-A, Brown was charged with three counts of aggravated robbery, one count of grand theft of a firearm, and one count of possession of a fentanyl-related compound. The charges alleged that Brown

¹ Pursuant to Loc.App.R. 13.2(B)(1)(c), we refer to the juvenile victims in this case by their initials and other generic terms in order to protect their privacy.

robbed a teenager, S.D., of a 9 mm Ruger Security-9 handgun and that he possessed illegal drugs.

{¶ 5} Shortly after the second indictment was filed, the State moved to join the two cases for trial. The implication was that Brown used the firearm he stole from S.D. to murder K.W. and J.B. Brown, through counsel, opposed the motion for joinder. Following a hearing, the court granted the motion for joinder, and the cases proceeded to a joint jury trial.

{¶ 6} S.D. testified that in early January 2025, he made plans to spend time with Brown and another individual he referred to as “Chris.”² Brown and Chris were driving a KIA and got S.D. (Tr. 561.) S.D. brought his grandfather’s Ruger Security-9 pistol with him without his grandfather’s permission because he was “[t]rying to look cool.” (Tr. 562-563.)

{¶ 7} After driving around for a while, they stopped, and someone walked past the car. Chris noticed that S.D. put his hand on the gun in his pocket as the person passed. Chris pointed a gun at S.D. and demanded that S.D. give him his gun. (Tr. 566.) S.D. complied. Thereafter, both Chris and Brown exited the car, walked over to the front passenger’s seat where S.D. was sitting, and told S.D. to give them his phone and his hoodie. (Tr. 567.)

{¶ 8} S.D. testified that Brown “asked for my property one time and I gave it up.” (Tr. 570.) He also stated that Brown told Chris to take his phone and his hoodie.

² The indictment alleges that the aggravated robbery occurred on January 3, 2025.

S.D. felt he had to comply because Chris was pointing a gun at him. (Tr. 570.) Consequently, S.D. exited the car and placed the items on the passenger's seat of the car, and Chris and Brown drove off with S.D.'s property, leaving S.D. behind. (Tr. 568.) S.D. testified that he had fake "motion picture" money in a pocket of his hoodie that was stolen.

{¶ 9} S.D. walked to his grandmother's house, which happened to be nearby. He then told his grandfather that the gun was stolen and told him to report his gun stolen. (Tr. 571.) S.D. and his grandfather, who also testified at trial, identified the gun in open court as the gun that Brown and Chris took from S.D. that day.

{¶ 10} On January 14, 2025, Cleveland police responded to the scene of a single car accident at the corner of Warner Road and Jeffries Avenue in Cleveland. A 2020 black KIA Soul had crashed into a pole. Upon arrival, police found K.W. and J.B. slumped over inside the car with gunshot wounds to their heads. Dr. David Dolinak ("Dr. Dolinak"), a deputy medical examiner in the Cuyahoga County Medical Examiner's Office, concluded that both juveniles died from fatal gunshot wounds to their heads and that the manner of each death was homicide. During the autopsies, Dr. Dolinak removed two projectiles from J.B.'s head and one projectile from K.W.'s head. These projectiles were collected and subsequently sent to ballistics for analysis.

{¶ 11} Officer Nicholas Reid ("Officer Reid"), of the Cleveland Police Department, testified that he responded to a 911 call for the single car accident. He explained that as he approached the KIA, he observed two males walking away from

the crash. Officer Reid learned that the KIA had been reported stolen. After learning that two people had been killed in the car, he secured the scene and began an investigation. (Tr. 588 and 596.) Officer Reid spoke with the 911 caller at the scene and based on her statements, police focused their attention on the two males he had seen walking away from the crash.

{¶ 12} Officer Jair Sydney (“Officer Sydney”) also responded to the crash, which he approached as a homicide. (Tr. 614-615.) He approached the two males Officer Reid had seen walking away and asked them if they had seen or heard anything related to the crimes. When officers asked to pat the males down for weapons, one of them, later identified as Brown, ran away. The other individual cooperated with police.

{¶ 13} Officer Sydney chased Brown but was unable to catch him. He provided a description of his appearance to other officers, and the police used Real Time Crime Cameras to track Brown’s movements. Officer Sean Kergan (“Officer Kergan”) eventually caught up with him and attempted to make contact with Brown, but Brown ran again. (Tr. 650 and 653.) Officer Kergan noticed that Brown was holding something in his waistband as he fled.

{¶ 14} Officer Eric Thompson (“Officer Thompson”) chased Brown and attempted to grab him. At that moment, Brown dropped a gun in the snow. Before Officer Thompson could cuff him, Brown grabbed the gun by the barrel and continued running. (Tr. 713.) At that point, Officer Thompson “backed off” to avoid the potential need for deadly force. (Tr. 713.)

{¶ 15} Officer Kergan's partner, Officer Daniel Gaviria-Bueno, testified that they and other zone cars established a perimeter around Brown and were ultimately able to arrest him. (Tr. 963.) Brown was unwell and vomited in the zone car. Police called 911, and EMS transported Brown to a nearby hospital.

{¶ 16} Police questioned Brown at the hospital, but he refused to disclose his identity or any other information. An officer from the University Heights Police Department brought a fingerprint scanner to the hospital, scanned his fingers, and was able to identify Brown for Cleveland police. (Tr. 965.) Meanwhile, a nurse located a bag of suspected narcotics in Brown's belongings and gave it to police. (Tr. 969.) Brown was soon released from the hospital and transported to the Cleveland police homicide unit. The bag of suspected narcotics was subsequently tested and determined to contain 18.46 grams of heroin and fentanyl. (Tr. 815.)

{¶ 17} Crime-scene detectives who investigated the crime scene found a fired 9 mm cartridge casing inside the KIA. (Tr. 770-771.) Dr. Joshua Williams ("Williams"), a firearms examiner in the Cuyahoga County Forensic Science Laboratory, determined that the cartridge casing found in the KIA as well two projectiles removed from J.B.'s head and one projectile removed from K.W.'s head were all fired from the Ruger Security-9 mm pistol Brown was carrying when he was arrested. (State's exhibit No. 308; tr. 990-995.) Brown's DNA was also found on the pistol. (Tr. 1052.)

{¶ 18} Detective Shane Bauhof, a homicide detective with the Cleveland Police Department, testified that he traced the Ruger Security-9 pistol to the original

purchaser, who led him to S.D.'s grandfather and S.D. (Tr. 1116.) S.D. and his grandfather verified that the firearm police obtained from Brown was the firearm that S.D. had taken from his grandfather without his permission and that Brown and Chris had taken from him.

{¶ 19} At the close of the State's case-in-chief, Brown moved for acquittal pursuant to Crim.R. 29. The State opposed the motion but conceded that the two counts of aggravated robbery pertaining to K.W. and J.B. warranted dismissal, and those charges were dismissed. Thereafter, the jury returned a guilty verdict as to all remaining counts and specifications, and the court found Brown guilty of the having-weapons-while-under-disability charge. The court sentenced Brown to consecutive 30-year-to-life sentences. This appeal followed.

II. Law and Analysis

A. Joinder

{¶ 20} In the first assignment of error, Brown argues the trial court violated his constitutional right to fair trial by combining his two criminal cases together for a joint trial. Brown contends the joinder allowed the State to introduce otherwise inadmissible character evidence that was unfairly prejudicial to him.

{¶ 21} We review the trial court's ruling on joinder for an abuse of discretion. *State v. Reed*, 2026-Ohio-1174, ¶ 23. An abuse of discretion occurs when a court exercises its judgment in an unwarranted way regarding a matter over which it has discretionary authority. *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35. However, "a trial 'court does not have discretion to misapply the law.'" *Morgan v. Greater*

Cleveland Regional Transit Auth., 2025-Ohio-1655, ¶ 64 (8th Dist.), quoting *Johnson* at ¶ 38. “Thus, an abuse of discretion also occurs when a court ‘applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact.’” *Id.*, quoting *Thomas v. Cleveland*, 2008-Ohio-1720, ¶ 15 (8th Dist.), quoting *Berger v. Mayfield*, 265 F.3d 399 (6th Cir. 2001).

{¶ 22} Under Crim.R. 8(A), two or more offenses may be joined together for trial if the offenses “are of the same or similar character . . . or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct.”

{¶ 23} “The law favors joining multiple offenses in a single trial under Crim.R. 8(A) if the offenses charged are of the same or similar character.” *State v. Lott*, 51 Ohio St.3d 160, 163 (1990), quoting Crim.R. 8. “Joinder is liberally permitted to conserve judicial resources, reduce the chance of incongruous results in successive trials, and diminish inconvenience to the witnesses.” *State v. Schaim*, 65 Ohio St.3d 51, 58 (1992), citing *State v. Torres*, 66 Ohio St.2d 340, 343 (1981).

{¶ 24} However, Crim.R. 14 requires separate trials when joinder will result in prejudice. Crim.R. 14 states: “If it appears that a defendant or the state is prejudiced by a joinder of offenses . . . in an indictment, information, or complaint, or by such joinder for trial together of indictments, informations or complaints, the court shall order an election or separate trial of counts . . . or provide such other relief as justice requires.”

{¶ 25} A defendant claiming error in the joinder of multiple indictments bears the burden of affirmatively showing that his or her rights were prejudiced. *Reed*, 2026-Ohio-1174, at ¶ 21, citing *Torres* at 343. To prevail on a claim that the trial court erred in joining multiple indictments, the defendant must affirmatively demonstrate that (1) the defendant’s rights were prejudiced; (2) at the time of the motion to sever or the objection to joinder, the defendant provided the trial court with sufficient information so that it could weigh the considerations favoring joinder against the defendant’s right to a fair trial; and (3) given the information provided to the court, it abused its discretion in refusing to separate the charges for trial. *Schaim*, 65 Ohio St.3d at 59, citing *Torres* at syllabus.

{¶ 26} The State may rebut a defendant’s claim of prejudicial joinder in two ways. First, a defendant is not prejudiced by joinder if the evidence would have come in as other acts evidence under Evid.R. 404(B). *Lott*, 51 Ohio St.3d at 163. Under the second method, the State is not required to meet the stricter “other acts” admissibility test; it is simply required to show that evidence of each crime joined at trial is simple and direct. *Id.*, citing *State v. Roberts*, 62 Ohio St.2d 170, 175 (1980). A defendant is not prejudiced by joinder where the joined offenses are “simple and direct, so that a jury is capable of segregating the proof required for each offense.” *State v. Ferrell*, 2014-Ohio-4377, ¶ 39 (8th Dist.), quoting *State v. Fletcher*, 2004-Ohio-4517, ¶ 41 (2d Dist.). *See also Lott* at 163.

{¶ 27} The evidence presented in this case was simple and direct. There were two separate incidents: the aggravated robbery of S.D. on or about January 3, 2025,

and the murders and thefts that occurred on January 14, 2025. Each incident involved different victims, locations, witnesses, and physical evidence.

{¶ 28} Regarding the first incident, S.D. testified that in early January 2025, Brown and Chris got him while they were driving a KIA and drove around. A short time later, Chris held S.D. at gunpoint and demanded that S.D. turn over S.D.'s grandfather's gun. S.D. complied and gave Chris the gun.

{¶ 29} While S.D. was being held at gunpoint, Brown exited the car, walked over to S.D., and demanded S.D.'s phone and hoodie. After taking S.D.'s belongings, Chris and Brown drove off, leaving S.D. on the street. (Tr. 568.) As a result of these actions, Brown was charged with aggravated robbery. Although Brown did not use a firearm during the robbery, the jury was instructed on complicity, which allowed the jury to hold Brown responsible for the criminal acts of his accomplice, Chris. R.C. 2923.03(F) (Whoever conspires with another to commit an offense and/or aids and abets in the commission of an offense "shall be prosecuted and punished as if he were a principal offender.").

{¶ 30} The second incident occurred on January 14, 2025. On that day, Brown was observed fleeing the scene of a double murder with a firearm in his possession. S.D. was not a victim in this incident. Indeed, there was no evidence that S.D. was present during the events of January 14, 2025. (Tr. 699.) Nevertheless, subsequent investigation revealed that the firearm in Brown's possession was not only used to commit the double murder, it was also the same firearm taken from S.D. several days earlier. Thus, the two incidents are connected

by the firearm, but the evidence related to each incident was separate and distinct from each other.

{¶ 31} Moreover, evidence of Brown’s conduct during the aggravated robbery of S.D. in early January would have been admissible in a separate trial for the double murder that occurred on January 14, 2025, because such evidence would have been admissible to prove the perpetrator’s identity. Evidence that a defendant committed a crime other than the one for which he or she is on trial is generally not admissible for purposes of establishing that the accused has a propensity to commit crimes or that the defendant acted in conformity with bad character. *State v. Williams*, 2012-Ohio-5695, ¶ 15. However, evidence of other crimes, wrongs, or acts may be admissible “for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Evid.R. 404(B); *Williams* at ¶ 19.

{¶ 32} In *Williams*, the Ohio Supreme Court set forth the following three-step analysis for determining whether other acts evidence is admissible:

The first step is to consider whether the other acts evidence is relevant to making any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Evid.R. 401. The next step is to consider whether evidence of the other crimes, wrongs, or acts is presented to prove the character of the accused in order to show activity in conformity therewith or whether the other acts evidence is presented for a legitimate purpose, such as those stated in Evid.R. 404(B). The third step is to consider whether the probative value of the other acts evidence is substantially outweighed by the danger of unfair prejudice. *See* Evid.R. 403.

Williams at ¶ 20.

{¶ 33} Following the murders, Brown led Cleveland police on a foot chase. Police observed him discarding the firearm shortly before they apprehended him, and Brown’s DNA was found on the weapon. Ballistic evidence showed that Brown used the firearm to murder J.B. and K.W. on January 14, 2025. S.D. and his grandfather identified the firearm at trial as the weapon Brown stole from S.D. approximately ten days earlier. Therefore, evidence of the aggravated robbery of S.D. would have been admissible in a separate murder trial for the legitimate purpose of identifying Brown as the perpetrator of the double homicide. Although such evidence would have been prejudicial, it would not have been unfairly prejudicial because it would have been offered for the legitimate purpose of establishing Brown’s identity as the shooter. Therefore, the trial court properly allowed the two indictments to be tried together in a single trial.

{¶ 34} The first assignment of error is overruled.

B. Manifest Weight of the Evidence

{¶ 35} In the second assignment of error, Brown argues his aggravated-robbery conviction is against the manifest weight of the evidence.³

{¶ 36} When reviewing a manifest-weight challenge, “the appellate court must weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice

³ As previously mentioned, the aggravated-robbery charges related to K.W. and J.B. were dismissed before the case was submitted to the jury, leaving only one count of aggravated robbery against S.D. for deliberations.

that the judgment must be reversed and a new trial ordered.” *In re Z.C.*, 2023-Ohio-4703, ¶ 14, citing *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 12. *See also State v. Reillo*, 2026-Ohio-2701, ¶ 26. A reversal on the basis that a verdict is against the manifest weight of the evidence may be granted “only in the exceptional case in which the evidence weighs heavily against the conviction.” *State v. Thompson*, 78 Ohio St.3d 380, 387 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172 (1st Dist. 1983), paragraph three of the syllabus. *See also Reillo* at ¶ 26.

{¶ 37} Brown argues the evidence established that he was not involved in the aggravated robbery of S.D. In support of his argument, he cites the trial transcript where S.D. states that Brown “wasn’t having nothing to do with it,” and that Brown told Chris “to stop doing that and give me my gun back.” (Appellant’s brief p. 16, quoting tr. 577.) However, Brown takes this testimony out of context and when S.D.’s testimony is read as a whole and considered with all the other evidence, it is clear that S.D. identified Brown as one of two individuals who robbed him at gunpoint.

{¶ 38} Brown was convicted of aggravated robbery in violation of R.C. 2911.01(A)(1), which states:

No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall . . . [h]ave a deadly weapon on or about the offender’s person or under the offender’s control and either display the weapon, brandish it, indicate that the offender possesses it, or use it[.]

{¶ 39} As previously stated, S.D. testified that Brown “asked for my property one time and I gave it up.” (Tr. 570.) He also stated that Brown told Chris to take

his phone and his hoodie. S.D. felt he had to comply because Chris was pointing a gun at him. (Tr. 570.) Thus, S.D. exited the car and placed the items on the passenger's seat of the car, and Chris and Brown drove off with S.D.'s property. (Tr. 568.)

{¶ 40} Brown was found guilty of aggravated robbery under an accomplice theory of criminal liability. R.C. 2923.03 governs accomplice liability and states, in relevant part:

(A) No person, acting with the kind of culpability required for the commission of an offense, shall . . . [a]id or abet another in committing the offense; [or] . . . [c]onspire with another to commit the offense in violation of section 2923.01 of the Revised Code[.]

{¶ 41} R.C. 2923.01 governs conspiracies to commit certain crimes, including aggravated robbery. R.C. 2923.03(F) provides that “[w]hoever violates this section is guilty of complicity in the commission of an offense, and shall be prosecuted and punished as if he [or she] were a principal offender.” Therefore, although it was Chris and not Brown who brandished the firearm, Chris’s act of brandishing the firearm was imputed to Brown under the complicity statute.

{¶ 42} S.D.’s testimony that Chris and Brown acted together to rob him of his hoodie and his phone was enough to find Brown guilty of aggravated robbery under the complicity statute. Moreover, Brown was in possession of S.D.’s firearm and “motion picture” money at the time of his arrest, further establishing that he took possession of S.D.’s property without S.D.’s permission. The jury believed S.D.’s testimony, and we find nothing in the record that contradicts S.D.’s testimony.

Therefore, we cannot say that the jury lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered.

{¶ 43} Accordingly, the second assignment of error is overruled.

{¶ 44} 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 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.

EILEEN T. GALLAGHER, PRESIDING JUDGE

EMANUELLA D. GROVES, J., and
EILEEN A. GALLAGHER, J., CONCUR