

[Cite as *State v. Thomas*, 2015-Ohio-2379.]

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF SUMMIT    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.     27435

Appellee

v.

DELRICO THOMAS

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.    CR 2013 10 2888 B

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 17, 2015

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HENSAL, Presiding Judge.

{¶1} Delrico Thomas appeals his convictions and sentence for tampering with evidence and obstructing justice in the Summit County Court of Common Pleas. For the following reasons, this Court affirms.

I.

{¶2} On the morning of September 18, 2013, an African-American male wearing a black hat and red hooded sweatshirt and driving a tan Buick Rendezvous shot and killed Alphonso Golden while he was stopped at an intersection. When police spoke to Mr. Golden’s girlfriend after the shooting, she opined that the shooter was likely Mr. Thomas, his cousin Gracshawn, or their friend Chub. It happened that, at the time of the shooting, Gracshawn was driving a tan Buick Rendezvous and wearing a “maroon” hooded sweatshirt in the same area of the city as the shooting. Minutes after the shooting, Gracshawn called Mr. Thomas’s cell phone multiple times while he drove the Rendezvous to the backyard of a house. When Gracshawn

reached the backyard, he immediately began cleaning out the vehicle. Mr. Thomas arrived a short time later and helped his cousin clean the vehicle.

{¶3} A little over a week later, the police filed charges against Gracshawn and began searching for him. Early the next morning, the Rendezvous that he was driving on the morning of the shooting was set on fire. It had also been painted black. Sometime later, the police interviewed Mr. Thomas about the incident. He denied that Gracshawn was in the backyard with him following the shooting. The Grand Jury subsequently indicted Mr. Thomas for tampering with evidence and obstruction of justice. Before trial, Mr. Thomas moved to sever his trial from the trial of his cousin, but the trial court denied his motion. A jury found him guilty of the offenses. The court sentenced him to three years for tampering with evidence and two years for obstructing justice, which it ordered to run consecutively. Mr. Thomas has appealed, assigning three errors.

## II.

### ASSIGNMENT OF ERROR I

#### THE TRIAL COURT ERRED IN FAILING TO GRANT THE MOTION TO SEVER THE DEFENDANTS FILED BY DELRICO THOMAS.

{¶4} Mr. Thomas argues that the trial court incorrectly denied his motion to sever his trial from his cousin's trial. Criminal Rule 14 provides that, "[i]f it appears that a defendant \* \* \* is prejudiced by a joinder \* \* \* of defendants \* \* \*, the court shall \* \* \* grant a severance of defendants \* \* \*." "Joinder of defendants and the avoidance of multiple trials is favored in the law for many reasons." *State v. Thomas*, 61 Ohio St.2d 223, 225 (1980). To prevail on a claim that the trial court erred in denying a motion to sever, the defendant "has the burden of demonstrating three facts." *State v. Schaim*, 65 Ohio St.3d 51, 59 (1992).

He must affirmatively demonstrate (1) that his rights were prejudiced, (2) that at the time of the motion to sever he 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) that given the information provided to the court, it abused its discretion in refusing to separate the charges for trial.

*Id.* An abuse of discretion connotes that a trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶5} At a hearing on his motion to sever, Mr. Thomas argued that his case should be tried separately because the jury would hear evidence about Mr. Golden's murder that was irrelevant to the charges against him. He also argued that some of that evidence, such as the coroner's photographs, would be inflammatory. He also argued that, if the jury believed that Gracshawn killed Mr. Golden, it would affect the jury's ability to fairly assess whether the State had proven all the elements of his offenses. Mr. Thomas further argued that the fact that his cousin was also charged with tampering with evidence prejudiced his case. According to Mr. Thomas, even if Gracshawn was cleaning out the Rendezvous to eliminate evidence of the shooting, it does not mean that he knew that was the reason his cousin requested his help. Mr. Thomas contends that the similarity between his tampering charge and Gracshawn's tampering charge created a situation in which there was a substantial likelihood of juror confusion. He also asserts that his alleged obstruction with justice offense involved completely separate conduct than his cousin's alleged acts.

{¶6} The State may counter a claim of prejudice if the "evidence of each of the crimes joined at trial is simple and direct." *State v. Franklin*, 62 Ohio St.3d 118, 122 (1991). It may also counter a claim of prejudice by showing that it "could have introduced evidence of one offenses in the trial of the other \* \* \*." *Id.* At a hearing on the motion to sever, the State argued that, to prove the tampering and obstruction charges against Mr. Thomas, it had to prove that he

was aware that Gracshawn had committed a murder. To prove that, it would have to prove that a murder occurred, which would require it to present most of the same evidence in Mr. Thomas's case as in Gracshawn's case. The State also argued that the charges against Mr. Thomas were simple and distinct, noting that he was not charged with the murder but only of helping his cousin clean the Rendezvous and later lying to the police. The trial court concluded that, since the State would not be inferring that Mr. Thomas had anything to do with the murder and the evidence about Mr. Thomas's crimes would be straightforward, the jury would be able to segregate the evidence as to each Defendant.

{¶7} Although not all of the evidence that was presented at trial would have been admissible at a separate trial, Mr. Thomas has not demonstrated that the additional evidence was prejudicial. He points to the evidence about the Rendezvous being set on fire as the “[m]ost glaring” evidence that would not have been admissible in a separate trial, but he has not specified how the admission of that evidence prejudiced him. As he has noted, the State did not allege that he was involved in setting the fire. Upon review of the record, we conclude that the trial court did not abuse its discretion when it determined that the considerations favoring joinder outweighed any prejudice to Mr. Thomas. Mr. Thomas's first assignment of error is overruled.

#### ASSIGNMENT OF ERROR II

THE VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. THE STATE OF OHIO FAILED TO ESTABLISH BEYOND A REASONABLE DOUBT WHEN VIEWED BY THE MANIFEST WEIG[H]T OF THE EVIDENCE THAT DELRICO THOMAS EITHER KNEW OF AN INVESTIGATION, OR THE COMMISSION OF, (SIC) A CRIME, AND OR TAMPERED WITH EVIDENCE; THERE IS INSUFFICIENT EVIDENCE TO SUPPORT MR. THOMAS'S CONVICTION OF OBSTRUCTING JUSTICE AS THERE IS INSUFFICIENT HE HAD PURPOSE TO HINDER OR PROTECT GRACSHAWN.

THE COURT ERRED, THEREFORE, IN FAILING TO GRANT DELRICO THOMAS'S RULE 29 MOTION FOR ACQUITTAL.

{¶8} In his second assignment of error, Mr. Thomas argues that the trial court incorrectly denied his Criminal Rule 29 motion and that his convictions are against the manifest weight of the evidence. Under Criminal Rule 29(A), a defendant is entitled to a judgment of acquittal on a charge against him “if the evidence is insufficient to sustain a conviction \* \* \*.” Whether a conviction is supported by sufficient evidence is a question of law, which we review de novo. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). In making this determination, we must view the evidence in the light most favorable to the prosecution:

An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.

*State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. If, on the other hand, a defendant asserts that his conviction is against the manifest weight of the evidence:

[A]n appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses 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.

*State v. Otten*, 33 Ohio App.3d 339, 340 (9th Dist.1986). Weight of the evidence pertains to the greater amount of credible evidence produced in a trial to support one side over the other side. *Thompkins* at 387. An appellate court should only exercise its power to reverse a judgment as against the manifest weight of the evidence in exceptional cases. *State v. Carson*, 9th Dist. Summit No. 26900, 2013-Ohio-5785, ¶ 32, citing *Otten* at 340.

{¶9} Regarding whether there was sufficient evidence to convict Mr. Thomas for tampering, Revised Code Section 2921.12(A)(1) provides that “[n]o person, knowing that an

official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall \* \* \* [a]lter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation[.]” Mr. Thomas argues that there was insufficient evidence to prove that he knew an official proceeding or investigation was in progress or about to begin at the time he helped to clean the Rendezvous. He also argues that there was no evidence presented that the Rendezvous contained any evidence of a crime and, even if it did, that any of the evidence was left by the time he began helping his cousin. He further argues that there was no evidence that he altered, destroyed, or concealed anything to impair its availability as evidence in a proceeding.

{¶10} The State’s tampering with evidence case against Mr. Thomas was based entirely on circumstance evidence, but “[c]ircumstantial evidence and direct evidence inherently possess the same probative value.” *Jenks* at 272. The State presented evidence that one of Mr. Thomas’s cousins was killed nine months earlier. Mr. Golden’s girlfriend testified that, after the incident, Mr. Golden became concerned about encountering Mr. Thomas and began taking safety precautions when he was out in public. On the morning of Mr. Golden’s murder, she went to the scene of the shooting and told officers that the people most likely to be responsible for it were Mr. Thomas, Gracshawn, or their friend Chub. At the time of the shooting, Gracshawn was driving the same make, model, and color vehicle as the shooter in the same part of the city and was wearing a similarly colored sweatshirt. Minutes after the shooting, Gracshawn repeatedly called Mr. Thomas’s cell phone while he drove to a partially-enclosed backyard and immediately began going through the vehicle. Mr. Thomas arrived a short time later and began helping his cousin clean items out of it. A detective testified that, because the person who shot Mr. Golden

fired from inside of the Rendezvous, the gun would have ejected shell casings into the interior of the vehicle.

{¶11} Upon review of the record, we conclude that, viewing the State's evidence in a light most favorable to the prosecution, there was sufficient evidence for the jury to reasonably infer that Gracshawn told Mr. Thomas about shooting Mr. Golden and enlisted him in helping him clean out any evidence of the shooting from the Rendezvous. It can also be reasonably inferred that the reason they cleaned the Rendezvous immediately after the shooting was because they knew there would be an investigation into Mr. Golden's death.

{¶12} Regarding the manifest weight of the evidence pertaining to the tampering offense, Gracshawn testified that he was out driving on the morning of the shooting because he was buying marijuana to sell to others. He had possession of the Rendezvous because his cousin who owned it had been arrested the previous day. According to Gracshawn, after he divided up the marijuana he bought, he placed the bundles in his pocket. When he stopped at a store, however, he realized that some of the bundles had fallen out. That is why he began searching through the Rendezvous after he arrived in the backyard of the house where his cousin wanted to pick it up after posting bail. Gracshawn testified that, because he needed to leave the Rendezvous at the house, he called Mr. Thomas to pick him up. When Mr. Thomas arrived, he offered to help search for the missing marijuana so long as he got a chance to smoke some of it once it was found.

{¶13} Mr. Thomas argues that the mere fact that he spoke to his cousin on the morning Mr. Golden was killed does not mean he conspired to cover up a murder. He also argues that the emotional prejudice of his case being tried at the same time as Gracshawn's led the jury to its unsound reasoning. We note, however, that, when Mr. Thomas was interviewed by the police

about the shooting, he repeatedly strongly denied that he had touched or was inside the Rendezvous that was in the backyard of the house. He also denied that Gracshawn was present, assertions that were disproven by a video of the backyard that was captured by a neighbor's security camera.

{¶14} The Ohio Supreme Court has recognized that lying tends to show consciousness of guilt. *State v. Johnson*, 46 Ohio St.3d 96, 100 (1989). It is clear from the interrogation video that Mr. Thomas knew the officer's questions were in regard to Mr. Golden's death, not the sale of marijuana. In light of the circumstantial evidence suggesting that Mr. Thomas helped clean the Rendezvous to eliminate evidence of the shooting and the consciousness of guilt he exhibited during his questioning, we conclude that the jury did not lose its way when it found him guilty of tampering.

{¶15} Regarding Mr. Thomas's conviction for obstruction of justice, Section 2921.32(A)(5) provides that "[n]o person, with purpose to hinder the discovery, apprehension, prosecution, conviction, or punishment of another for crime or to assist another to benefit from the commission of a crime \* \* \* shall \* \* \* [c]ommunicate false information to any person[.]" Mr. Thomas argues that, even though he made false statements during his interrogation, because Gracshawn had already been apprehended, his statements did not hinder Gracshawn's apprehension, prosecution, conviction, or punishment. He also argues that he simply made the statements to avoid incriminating himself, not to purposely hinder the State's case against Gracshawn. He, therefore, contends that his conviction is not supported by sufficient evidence and is against the manifest weight of the evidence.

{¶16} The video of Mr. Thomas's interrogation establishes that Mr. Thomas knew the questioning was in regard to Mr. Golden's homicide and knew that Gracshawn had been arrested



for the shooting. Nevertheless, he adamantly denied that Gracshawn was present in the backyard with the Rendezvous. The jury could reasonably infer that Mr. Thomas lied about Gracshawn's whereabouts in order to hinder his cousin's prosecution for the shooting. Accordingly, we conclude that his conviction is supported by sufficient evidence.

{¶17} Regarding the manifest weight of the evidence, Mr. Thomas has not explained why he had to lie about Gracshawn being present in the backyard of the house to avoid incriminating himself. As the United States Supreme Court has explained, “[o]ur legal system provides methods for challenging the Government’s right to ask questions—lying is not one of them. A citizen may decline to answer the question, or answer it honestly, but he cannot with impunity knowingly and willfully answer with a falsehood.” (Footnote omitted.) *Bryson v. United States*, 396 U.S. 64, 72 (1969). Upon review of the interrogation video, we conclude that the jury did not lose its way when it found Mr. Thomas guilty of obstructing justice. Mr. Thomas’s second assignment of error is overruled.

### ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED BY IMPOSING CONSECUTIVE SENTENCES IN VIOLATION OF R.C. 2929.14(C)(4), AND R.C. 2929.41(A), WHICH REQUIRES JUDICIAL FACT FINDING TO ESTABLISH FOUNDATION FOR A CONSECUTIVE SENTENCE AND THUS TO PROVIDE APPELLATE REVIEW OF SAID SENTENCE.

{¶18} Mr. Thomas’s third assignment of error is that the trial court incorrectly ordered his sentences to run consecutively. He argues that, although the trial court made the findings required for consecutive sentences under Revised Code Section 2929.14(C)(4), the record was not sufficient to support its findings. According to Mr. Thomas, the court was required to state the reasons for its findings and, thus, provide a foundation for this Court’s review.

{¶19} In *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, the Ohio Supreme Court held that, in order to impose consecutive sentences, “a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry \* \* \* [.]” *Id.* at syllabus. The sentencing court, however, “has no obligation to state reasons to support its findings.” *Id.* We, therefore, reject Mr. Thomas’s argument that the trial court was required to state its reasons for its findings under Section 2929.14(C)(4).

{¶20} With respect to whether the record supports the trial court’s findings, this Court reviews sentences pursuant to the two-step approach set forth in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912.

First, [we] must examine the sentencing court’s compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court’s decision in imposing the term of imprisonment is reviewed under the abuse-of-discretion standard.

*Id.* at ¶ 26. An abuse of discretion implies that the court’s attitude was unreasonable, arbitrary or unconscionable. *Blakemore*, 5 Ohio St.3d at 219.

{¶21} At the sentencing hearing, the prosecutor noted that Mr. Thomas had a past in the criminal justice system. He also argued that, in light of the circumstances of the offenses, Mr. Thomas should receive the maximum sentence. In imposing Mr. Thomas’s sentence, the court explained that it was convinced that Mr. Thomas was “firmly aware of what [he] w[as] doing and what [he] w[as] involved in.” It, therefore, imposed the maximum sentence for his tampering offense. With respect to the obstruction offense, the court noted that it was his cousin who he was trying to protect and it, therefore, gave him only two years instead of the maximum of three for the offense. In determining to run Mr. Thomas’s sentences consecutively, it found

that consecutive sentences were necessary to punish him for the offenses and that they were not disproportionate to the seriousness of his conduct and the offenses. It also found that Mr. Thomas's history of criminal conduct demonstrates that consecutive sentences were necessary to protect the public from future crimes.

{¶22} The prosecutor and trial court made statements at the sentencing hearing indicating that the court had the details of Mr. Thomas's criminal history before it. Mr. Thomas's criminal history, however, does not appear in the record on appeal. This Court has recognized that it is the duty of the appellant to ensure that the record on appeal is complete. *State v. Spurlock*, 9th Dist. Lorain No. 13CA010354, 2013-Ohio-5369, ¶ 8. Without the details of Mr. Thomas's criminal history, we are unable to review whether the trial court abused its discretion when it determined that history demonstrated that consecutive sentences were "necessary to protect the public from future crimes by [Mr. Thomas]." Accordingly, in light of the incomplete record in this case, we conclude that we must presume regularity in the sentencing proceedings. *See State v. D'Amico*, 9th Dist. Summit No. 27258, 2015-Ohio-278, ¶ 10. Mr. Thomas's third assignment of error is overruled.

### III.

{¶23} Mr. Thomas's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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JENNIFER HENSAL  
FOR THE COURT

WHITMORE, J.  
SCHAFFER, J.  
CONCUR.

APPEARANCES:

RICHARD P. KUTUCHIEF, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.