

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 108674
v.	:	
	:	
AARON SMITH,	:	
	:	
Defendant-Appellant.	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: April 16, 2020**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-18-630500-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Sarah J. Denney, Assistant Prosecuting Attorney, *for appellee*.

Susan J. Moran, *for appellant*.

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant Aaron Smith brings the instant appeal challenging his eight-year prison sentence. Smith argues that the trial court erred in imposing consecutive sentences because the consecutive-sentence findings are not supported by the record. After a thorough review of the record and law, this court affirms.

## I. Factual and Procedural History

{¶ 2} Smith was charged in two criminal cases for his involvement in two robberies of pizza delivery drivers.

### Cuyahoga C.P. No. CR-18-631748

{¶ 3} The first incident occurred on October 31, 2016, and involved the robbery of a Pizza Hut delivery driver on Easton Avenue in Cleveland, Ohio. The driver arrived at the residence and was surrounded by approximately five individuals. The individuals proceeded to push the driver to the ground, shove his face into the cement, and rummaged through his pockets, stealing his cell phone and cash. One of the individuals was armed with a rifle. This individual pointed the rifle at the driver and pulled the trigger; however, the rifle did not discharge a bullet. The individuals dragged the driver behind a house and drove off in the driver's vehicle. The victim's vehicle was subsequently located and processed. A set of fingerprints obtained from a cologne bottle inside the driver's vehicle were entered into the Automated Fingerprint Identification System ("AFIS") in December 2016, but no match was obtained.

### Cuyahoga C.P. No. CR-18-630500

{¶ 4} The second incident occurred on June 24, 2018, and involved the robbery of a Georgio's Pizza delivery driver near an abandoned house on Carton Avenue in Cleveland, Ohio. When the driver arrived at the abandoned house, Smith and two codefendants drove up in a vehicle, exited the vehicle, and approached the

driver. One of the individuals was holding a firearm. The driver realized that the individuals were going to rob him.

{¶ 5} The driver dropped the pizza and attempted to flee on foot. The individual with the firearm fired several shots at the driver as he was running away. The driver sustained gunshot wounds to his right hand and arm. The individuals drove off in the driver's vehicle. Smith took a credit card from the driver's wallet that was inside the vehicle, and used the credit card multiple times at several locations following the robbery. Investigators identified Smith through his phone number, which had been used to place the pizza order. Investigators also obtained surveillance footage of Smith making purchases with the driver's credit card.

{¶ 6} Smith was arrested on July 6, 2018, for his involvement in the June 24, 2018 robbery. Smith was indicted on July 13, 2018, with two counts of aggravated robbery, robbery, two counts of felonious assault, discharging a firearm on or near prohibited premises, grand theft, two counts of theft, receiving stolen property, and misuse of credit cards. The aggravated robbery, robbery, felonious assault, and discharging a firearm on or near prohibited premises counts contained one- and three-year firearm specifications.

{¶ 7} After Smith was arrested for his involvement in the second robbery in June 2018, Smith's fingerprints were entered into AFIS. Investigators discovered that Smith's fingerprints matched the fingerprints from the cologne bottle inside the driver's car from the October 31, 2016 robbery. Smith was indicted in relation to the October 2016 robbery on September 6, 2018, with aggravated robbery, robbery,

grand theft, and theft. The aggravated robbery and robbery counts contained one- and three-year firearm specifications.

{¶ 8} The parties reached a plea agreement during pretrial proceedings. On November 28, 2018, Smith pled guilty in both criminal cases. First, regarding the October 2016 robbery, Smith pled guilty to fourth-degree felony receiving stolen property (Count 2). The remaining counts and specifications were nolle. Second, regarding the June 2018 robbery, Smith pled guilty to second-degree felony robbery with a one-year firearm specification (Count 2); first-degree felony discharging a firearm on or near prohibited premises with a three-year firearm specification (Count 6); fifth-degree felony receiving stolen property (Count 10); and first-degree misdemeanor misuse of credit cards (Count 11). The remaining counts and specifications were nolle.

{¶ 9} The trial court held a sentencing hearing on January 16, 2019, during which it sentenced Smith in both criminal cases. First, regarding the October 2016 robbery, the trial court sentenced Smith to a prison term of one and one-half years on the receiving stolen property count.

{¶ 10} Second, regarding the June 2018 robbery, the trial court merged the robbery and discharging a firearm on or near prohibited premises counts. The state elected to sentence Smith on the discharging count. The trial court imposed an aggregate prison sentence of eight years: four years on the discharging count, consecutive to the three-year firearm specification; one year on the receiving stolen property count; and six months in jail on the misuse of credit cards count. The trial

court ordered the seven-year sentence on the discharging count to run consecutively with the one-year sentence on the receiving stolen property count. The trial court ordered the six-month jail term on the misuse of credit cards count to run concurrently. The trial court ordered Smith's one and one-half year sentence for the 2016 robbery to run concurrently to his eight-year sentence for the 2018 robbery.

{¶ 11} On June 14, 2019, Smith filed the instant appeal challenging his eight-year prison sentence. He assigns one error for review:

I. The trial court erred in imposing consecutive sentences which were not supported by the record.

## II. Law and Analysis

{¶ 12} In his sole assignment of error, Smith argues that the trial court erred in imposing consecutive sentences.

{¶ 13} We review felony sentences under the standard set forth in R.C. 2953.08(G)(2). *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 16. R.C. 2953.08(G)(2) provides that when reviewing felony sentences, a reviewing court may overturn the imposition of consecutive sentences where the court “clearly and convincingly” finds that (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.”

{¶ 14} R.C. 2929.14(C)(4) provides that in order to impose consecutive sentences, the trial court must find that consecutive sentences are (1) necessary to protect the public from future crime or to punish the offender, (2) that such

sentences would not be disproportionate to the seriousness of the conduct and to the danger the offender poses to the public, and (3) that one of the following 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.

{¶ 15} Conformity with R.C. 2929.14(C)(4) requires the trial court to make the statutory findings at the sentencing hearing, which means that “the [trial] court must note that it engaged in the analysis’ and that it ‘has considered the statutory criteria and specific[d] which of the given bases warrants its decision.” *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 26, quoting *State v. Edmonson*, 86 Ohio St.3d 324, 326, 715 N.E.2d 131 (1999). To this end, a reviewing court must be able to ascertain from the record evidence to support the trial court's findings. *Bonnell* at ¶ 29. “A trial court is not, however, required to state its reasons to support its findings, nor is it required to [recite verbatim] the statutory language, ‘provided that the necessary findings can be found in the record and are incorporated in the sentencing entry.” *State v. Sheline*, 8th Dist. Cuyahoga No. 106649, 2019-Ohio-528, ¶ 176, quoting *Bonnell* at ¶ 37.

{¶ 16} In the instant matter, Smith appears to argue that the trial court merely read the language of R.C. 2929.14(C)(4) rather than making substantive findings based on the facts of the case. Smith's argument is misplaced and unsupported by the record. Although the trial court is required to make the requisite findings under R.C. 2929.14(C)(4), the trial court is not obligated to specify reasons in support of its findings. *See State v. Mondie*, 8th Dist. Cuyahoga No. 108030, 2019-Ohio-5337, ¶ 35; *State v. Welch*, 8th Dist. Cuyahoga No. 99349, 2014-Ohio-695, ¶ 14. The record reflects that the trial court made the requisite findings and complied with R.C. 2929.14(C)(4).

{¶ 17} Smith challenges the trial court's second finding, also known as the proportionality finding. He argues that nothing about the offense of receiving stolen property was so great or unusual to warrant consecutive sentences, and that there is no evidence that the harm caused by the receiving stolen property offense was so great to warrant consecutive sentences. We disagree.

{¶ 18} During the sentencing hearing, the trial court heard statements from the prosecutor, the detective assigned to the case, and defense counsel.

{¶ 19} Defense counsel filed a sentencing memorandum that was provided to the trial court prior to sentencing. Smith did not personally address the court, but defense counsel read a letter to the trial court on Smith's behalf in which Smith expressed remorse for committing the crimes. Finally, the trial court considered the presentence investigation report and the victim impact statements.

**{¶ 20}** In making the first two findings, the trial court stated, “I do believe that consecutive sentences are necessary and are appropriate pursuant to 2929.19(B)(2)(b) and 2929.14(C)(4). The Court finds that it is necessary to punish the offender, to protect the public from future crime, and is not disproportionate to the seriousness of the conduct and danger posed by [Smith.]” (Tr. 39.) Regarding the third finding, the trial court stated,

one or more of the offenses were committed while the offender was awaiting trial, on community control sanctions, or post-release control, or two or more of the offenses are part of one or more courses of conduct and the harm caused is so great or unusual that a single prison term would not adequately reflect the seriousness of the conduct. And that’s certainly true here.

(Tr. 39.) The trial court incorporated these findings into its sentencing journal entry.

**{¶ 21}** Smith challenges the third finding, arguing that there is no evidence in the record that he committed the offenses while awaiting trial, on community control sanctions, or on postrelease control. Although we agree that there is no evidence in the record indicating that R.C. 2929.14(C)(4)(a) applies, the trial court determined that R.C. 2929.14(C)(4)(b) applies. The record contains ample evidence supporting the trial court’s finding under R.C. 2929.14(C)(4)(b).

**{¶ 22}** After review, we cannot clearly and convincingly find that the record does not support the trial court’s consecutive-sentence findings. The two robberies that Smith participated in were of a calculated and violent nature, and both



robberies involved firearms. The June 2018 robbery was even more violent than the October 2016 robbery because the victim sustained gunshot wounds.

{¶ 23} The prosecutor informed the trial court that the driver involved in the June 2018 incident sustained permanent and extensive damage to his hand. The driver lost part of the middle finger on his right hand, and has limited range of motion in his other fingers. The driver underwent surgery as a result of his injuries. The prosecutor explained that the driver and his wife continue to live in fear due to the June 2018 incident.

{¶ 24} The detective that was assigned to the case also addressed the trial court. The detective spoke about the impact that the June 2018 incident had on the driver:

[The driver was] scared for his life, being shot at over a pizza, and then having conversations with his wife and just the fear that she felt for her husband and just their safety at their home being that their information on the credit cards and everything was now out there and, you know, just caused continual fear for both of the victims.

(Tr. 29.)

{¶ 25} Although Smith expressed remorse in his letter that defense counsel read at sentencing, his actions during and after the June 2018 robbery indicated otherwise. The trial court emphasized that after the robbery itself, and after the driver had been shot and fled the area, Smith proceeded to steal the driver's credit card and use the credit card multiple times at multiple locations. The trial court explained,

The guy is just trying to go to work and you essentially ruined his life, over \$200 and some pizza. And what I find most disturbing is that had you not known that the other individual was going to use a firearm, or that there was a firearm present, which I don't believe, so we're clear, you then [decided to] rummage through that man's stuff, and then you go and use his credit cards.

You felt so bad about this guy getting shot at that you guys decided, let's go to the beverage store, and you rang up \$91 at the beverage store; and then on two separate occasions you went to the gas station and rang up charges. That's how bad you felt about it, you went and used his credit card. You didn't feel bad about it. You feel bad you got caught. That to me is not as bad as the shooting, but that erases any remorse in my mind.

(Tr. 34-35.)

**{¶ 26}** The record reflects that Smith's involvement in the 2018 robbery caused (1) emotional harm to the victims, causing them to live in fear, (2) physical harm, causing permanent and extensive damage to the victim's hand, and (3) financial harm.

**{¶ 27}** For all of the foregoing reasons, we find that the trial court did not err in imposing consecutive sentences. The trial court made the requisite findings during the sentencing hearing, and incorporated its findings into the sentencing journal entry. The record before this court clearly and convincingly supports the trial court's consecutive-sentence findings, and consecutive sentences are not contrary to law.

**{¶ 28}** Smith's sole assignment of error is overruled.

**{¶ 29}** 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 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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FRANK D. CELEBREZZE, JR., JUDGE

MARY J. BOYLE, P.J., and  
MARY EILEEN KILBANE, J., CONCUR