[Cite as *State v. Morris*, 2009-Ohio-2396.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 05AP-1139
v.	:	(C.P.C. No. 03CR01-391)
Craig Anthony Morris,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

O P I N I O N

Rendered on May 21, 2009

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Yeura R. Venters, Public Defender, and *Allen V. Adair*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, Craig Anthony Morris, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. For the following reasons, we affirm that judgment.

{¶2} On the evening of December 31, 2002, a group of friends went to a club to celebrate the New Year. They drank and danced. Sometime after midnight, three members of the group, Latoya Crump, Yolanda Pedraza, and Jennifer Miles, left the club. When they got to their car in the parking lot, they noticed the front door of one of their

friend's truck was open. Apparently, someone had broken into the truck. The three women approached two Columbus police officers in the parking lot to tell them about their friend's truck. The officers were working special duty that night at the club. The officers were already talking to two men: appellant and his friend, Peter Fergerson. The men were complaining to the officers that Fergerson had been stabbed inside the club during an altercation. When the women told the police about the break-in, appellant commented that stuff like that happens around here.

{¶3} After the conversation with the police officers, Pedraza called George Hill, a friend who was still inside the club, to report that their friend's truck had been broken into. The three women walked to Pedraza's car, got inside, and waited for their friends. Appellant and Fergerson followed the women and stood outside of Pedraza's car. Fergerson began talking to someone on his cell phone. Pedraza heard him read her license plate number to the person on the phone. Latoya Crump heard him say "[s]hould we do him or should we do the girl?" The three women remained in the car.

{¶4} Eventually, the women's friends came out of the club. This group included Keith Reynolds, whose truck had been broken into, Hill, Wayne Crump (Latoya's brother), Robert Briggs, Cynthia Briggs, and Tamika Jones. The three women got out of Pedraza's car and met the rest of the group in front of Reynolds' truck. Reynolds left the area to talk to the police officers. The rest of the group remained near the truck. However, Pedraza, Latoya Crump, and Miles walked to Pedraza's car to leave. Miles and Latoya sat inside the car while Pedraza talked to a friend outside the car.

{¶5} Moments later, appellant approached the large group of friends in front of Reynolds' truck, pulled out a gun, and pointed it at Wayne Crump. Latoya Crump saw appellant hold the gun up to her brother's head. Appellant then said something to Wayne

Crump, who turned around and saw appellant holding the gun. Wayne immediately grabbed appellant's hand and began wrestling with him. After a short struggle for the gun, Crump's hand slipped from the gun, and he turned to run away from appellant. Appellant then opened fire. Appellant shot four people: Wayne Crump, Robert Briggs, Cynthia Briggs, and Tamika Jones.

{¶6} Reynolds was returning to his truck with Columbus Police Officers James Cummings, and Glenn Bray. They were about 30-40 yards from Reynolds' truck when they heard the shots. Officer Bray saw appellant firing a gun in the vicinity of Reynolds' truck. Officer Bray drew his gun and repeatedly yelled at appellant to drop his gun. Appellant did not immediately drop his gun but stopped shooting and turned toward Officer Bray. After Officer Bray fired several shots, appellant finally dropped the gun, although he did not get down on the ground as directed. Officer Bray approached appellant, pushed him down to the ground, and handcuffed him. Officer Bray did not see any other individual with a gun that night.

{¶7} Detective David Ramey of the Columbus Police Crime Scene Search Unit arrived at the scene of the shooting the next day. He collected three .45 caliber casings from the parking lot, some distance from Reynolds' truck. These casings had been fired from Officer Bray's weapon. Detective Ramey also collected eight 9-millimeter shell casings. He found these shell casings in front of Reynolds' truck, close to where the victims were shot. These shell casings had been fired from appellant's gun.

{¶8} A Franklin County Grand Jury indicted appellant with five counts of felonious assault in violation of R.C. 2903.11.[1] Each count also contained a firearm

[1] Counts 2 through 5 of the indictment were charged as felonies of the second degree, while Count 1 named Officer Bray as the victim and was, therefore, a felony of the first degree. R.C. 2903.11(D).

specification pursuant to R.C. 2941.145. Appellant entered a not guilty plea to the charges and proceeded to a jury trial. At trial, the witnesses and police officers at the scene testified to the version of events described above. Appellant and his friend, Peter Fergerson, both testified to a different version of events.

{¶9} Fergerson explained that he and appellant went to the club with a number of friends. Once inside, Fergerson got into an altercation with some other club patrons and appellant tried to assist him. Club staff escorted those involved in the altercation out of the club. Fergerson approached one of the officers outside of the club. He asked if the officers had seen the people involved in the altercation because one of them had tried to stab him. The officers had not seen anyone. The officers looked for a wound on Fergerson's back but did not see one. Fergerson declined any medical assistance. Fergerson left the officers and started talking on his cell phone to a friend. He then saw a man in the parking lot pointing at him. Fergerson assumed the man had been involved in the fight inside the club, so he walked over to the man and started arguing with him. Fergerson pushed the man in the face. The man backed up, and then Fergerson heard two gunshots. He then heard more shots and, when he looked back, saw appellant firing a gun.

{¶10} Appellant described a similar version of events. According to appellant, he and Fergerson approached police officers in the parking lot after they were kicked out of the club. Fergerson was upset about the fight and appellant tried to calm him down. When the officers provided no assistance, appellant went to his car to wait for their other friends to leave the club. He was sitting in his car when he saw his friend, Fergerson, arguing with some people. Appellant's car was parked a short distance from Reynolds' truck. Fearing that these were the people involved in the fight inside the club, appellant

grabbed his gun, loaded it, put it in his pocket, and walked toward his friend. Appellant saw Fergerson arguing face-to-face with a man. Fergerson pushed the man in the face, and appellant immediately attempted to pull Fergerson away. A split second later, appellant heard two gunshots. Appellant took out his gun and began shooting. Appellant never denied shooting a gun that night, but explained that he only shot in self-defense. Appellant dropped his gun once he heard the police officer yelling at him.

{¶11} The jury rejected appellant's version of events and found him guilty of four counts of felonious assault and the attendant firearm specifications. The jury acquitted him of the felonious assault charge against Officer Bray. The trial court sentenced him accordingly.

{¶12} The day of sentencing, however, appellant's trial counsel filed a motion for mistrial based on juror misconduct.[2] Appellant alleged that a juror had attempted to bribe him in return for a not guilty verdict. Appellant presented an affidavit from an individual named Maceo Biggers in support of the motion. Biggers also appeared before the trial court and testified that a juror contacted friends of his, Tony Harvard and a woman only identified as Nay, and told them that the juror would find appellant not guilty in exchange for $2,000. Harvard called Biggers about the bribe, and Biggers put appellant on the phone. Biggers never talked to the juror. The trial court denied appellant's motion without explanation.

{¶13} Appellant did not originally appeal his convictions. However, he later filed a motion for leave to file a delayed appeal. After this court denied appellant's motion, a federal court granted appellant a conditional writ of habeas corpus, directing the state to reinstate his appeal. In response, the state filed a motion to reopen this appeal. This

court granted the state's motion and reinstated appellant's appeal. Appellant assigns the following errors:

> First Assignment of Error: The court erroneously overruled appellant's challenge for cause of a juror whose views on self-defense made him biased or otherwise unsuitable to serve as a juror within the meaning of Criminal Rule 24(B)(9) and (14).
>
> Second Assignment of Error: The court erroneously sustained the prosecution's objection to appellant'[s] excited utterance at the time he was taken into custody that another individual had a gun.
>
> Third Assignment of Error: Appellant received ineffective assistance of counsel.
>
> Fourth Assignment of Error: Appellant established by a preponderance of the evidence that he acted in self-defense. Consequently[,] his convictions for felonious assault were against the manifest weight of the evidence.
>
> Fifth Assignment of Error: Appellant established he acted in self-defense by a preponderance of the evidence. The defense having been established as a matter of law, the jury's guilty verdicts are not supported by legally sufficient evidence.
>
> Sixth Assignment of Error: The court erroneously overruled appellant's motions for acquittal pursuant to Criminal Rule 29.
>
> Seventh Assignment of Error: Imposition of consecutive sentences based on judicial finding of facts not proven to a jury beyond a reasonable doubt or admitted by the defendant violated appellant's Sixth Amendment rights.

{¶14} Appellant contends in his first assignment of error that the trial court erred by refusing to dismiss a potential juror for cause. We disagree.

{¶15} During voir dire, Jeffrey Lehman was called as a potential juror. During the prosecutor's questioning, Lehman stated that he was willing to follow the law as instructed by the judge and that he could not think of a reason why he could not be fair to both

---

[2] Although captioned as a motion for mistrial, the trial court considered it as a motion for new trial pursuant to Crim.R. 33.

sides. Appellant's counsel then asked Lehman about his views on self-defense. Lehman replied that he would not teach his children to take violent actions to defend themselves. He expressed a passivist belief about violence and an aversion toward guns in the community. He also admitted that there might be some aspects of the case that he could find difficult to understand. Nevertheless, Lehman stated that he would follow the law as instructed by the trial court and that he could be fair to both sides. He further expressed concern that he might even overcompensate in favor of appellant because of his feelings about self-defense. He concluded by saying that he would do his best to be just.

{¶16} Appellant's counsel sought to remove Lehman for cause, due to his "difficulties [with] the concept of self-defense." The trial court refused. Subsequently, appellant used a preemptory challenge to dismiss Lehman.

{¶17} Pursuant to Crim.R. 24(C), potential jurors may be challenged for cause for a number of reasons. As relevant here, that rule provides the following challenges for cause:

> (9) That the juror is possessed of a state of mind evincing enmity or bias toward the defendant or the state; but no person summoned as a juror shall be disqualified by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused, if the court is satisfied, from the examination of the juror or from other evidence, that the juror will render an impartial verdict according to the law and the evidence submitted to the jury at the trial.
>
> * * *
>
> (14) That the juror is otherwise unsuitable for any other cause to serve as a juror.

{¶18} A trial court's ruling on a challenge for cause will not be disturbed on appeal absent an abuse of discretion. *State v. Murphy,* 91 Ohio St.3d 516, 526, 2001-Ohio-112, citing *State v. Wilson* (1972), 29 Ohio St.2d 203, 211. "An 'abuse of discretion' connotes

more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶19} Appellant contends that Lehman's views on self-defense would make it difficult for him to impartially hear the evidence. We disagree. Although Lehman did not agree with self-defense or the use of guns, he explained that he was willing to follow the law as instructed by the trial court and that he knew of no reason why he could not be fair to both sides. He did not express any bias or enmity toward appellant and stated that he would be as fair as he could. In fact, he opined that because of his views on self-defense, he may overcompensate in an attempt to not be biased against appellant.

{¶20} In light of Lehman's own statements that he would follow the law and be fair to both sides, we cannot say the trial court abused it discretion by overruling appellant's challenge for cause. See *State v. Orlandi*, 10th Dist. No. 05AP-917, 2006-Ohio-6039, ¶12 (no abuse of discretion rejecting challenge for cause where juror ultimately stated she could be fair and impartial); *State v. Barnett* (Dec. 16, 1982), 10th Dist. No. 81AP-493 (same). Therefore, we overrule appellant's first assignment of error.

{¶21} Appellant contends in his second assignment of error that the trial court erred by refusing to admit a statement he made while being taken into custody. Specifically, appellant stated that "they had a gun also" when he was arrested by Officer Bray. (Tr. Vol. VII, 91). The trial court refused to allow Officer Bray to repeat appellant's statement during Officer Bray's cross-examination. Appellant claims the statement should have been admitted as an excited utterance.

{¶22} Any error in refusing to admit appellant's hearsay statement during Officer Bray's cross-examination was harmless, because Officer Bray testified in surrebuttal that appellant said "they had a gun also" when he arrested appellant. See *State v. Smith*,

10th Dist. No. 04AP-726, 2005-Ohio-1765, ¶32 (any error excluding hearsay testimony was harmless, as testimony ultimately came before the jury); *State v. Nipps* (1979), 66 Ohio App.2d 17, 26 (any error excluding document was harmless, as contents of documents later testified to). Moreover, other testimony indicated that appellant made this claim shortly after the shootings. Sergeant Dennis Kline testified that appellant told him that night that someone from the other group had stashed a gun underneath the wheel of a car. Appellant also testified that while he was handcuffed, he told an officer that someone pulled a gun on him.

{¶23} The jury heard evidence that at the time of his arrest, appellant claimed to police that someone else had a gun. Therefore, any error in refusing to allow Officer Bray to repeat appellant's statement to that effect during Officer Bray's cross-examination was harmless. We overrule appellant's second assignment of error.

{¶24} We next address appellant's fifth and sixth assignments of error,[3] in which he contends that his convictions were not supported by sufficient evidence because the overwhelming evidence established that he acted in self-defense. We disagree.

{¶25} Self-defense is an affirmative defense. *State v. Calderon*, 10th Dist. No. 05AP-1151, 2007-Ohio-377, ¶30; *State v. Williford* (1990), 49 Ohio St.3d 247, 249. As appellant acknowledges, a review for sufficiency of the evidence does not apply to affirmative defenses, because this review does not consider the strength of defense evidence. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶37; *State v. Harrison*, 10th Dist. No. 06AP-827, 2007-Ohio-2872, ¶23; *State v. Levonyak*, 7th Dist. No. 05 MA 227, 2007-Ohio-5044, ¶38-41. The claim of insufficient evidence challenges the

[3] Review of a denied Crim.R. 29 motion and of the sufficiency of the evidence apply the same standard and, therefore, are properly considered together. *State v. Messer-Tomack*, 10th Dist. No. 07AP-720, 2008-Ohio-2285, ¶7-8.

sufficiency of the state's evidence, which appellant does not contest. Thus, appellant cannot challenge the jury's rejection of his claim of self-defense on the ground of sufficiency of the evidence. *State v. Cooper*, 170 Ohio App.3d 418, 2007-Ohio-1186, ¶15; *State v. Campbell*, 10th Dist. No. 07AP-1001, 2008-Ohio-4831, ¶21. Accordingly, we overrule appellant's fifth and sixth assignments of error.[4]

{¶26} Appellant contends in his fourth assignment of error that his convictions were against the manifest weight of the evidence. A manifest weight of the evidence claim concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *State v. Brindley,* 10th Dist. No. 01AP-926, 2002-Ohio-2425, ¶16. When presented with a challenge to the manifest weight of the evidence, an appellate court, after " '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 jury 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. Thompkins* (1997), 78 Ohio St.3d 380, 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " Id.

{¶27} A defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial. *State v. Raver,* 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶21. The trier of fact is free to believe or disbelieve all or any of the testimony. *State v. Jackson* (Mar. 19, 2002), 10th Dist. No. 01AP-973; *State v.*

---

[4] To the extent appellant argues that his Crim.R. 29 motion for acquittal should have been granted at least as to Count 1, we note that the jury acquitted appellant of this count.

Sheppard (Oct. 12, 2001), 1st Dist. No. C-000553. The trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimony is credible. *State v. Williams,* 10th Dist. No. 02AP-35, 2002-Ohio-4503, ¶58; *State v. Clarke* (Sept. 25, 2001), 10th Dist. No. 01AP-194. Consequently, although an appellate court must act as a "thirteenth juror" when considering whether the manifest weight of the evidence requires reversal, it must also give great deference to the fact finder's determination of the witnesses' credibility. *State v. Covington,* 10th Dist. No. 02AP-245, 2002-Ohio-7037, ¶28; *State v. Hairston,* 10th Dist. No. 01AP-1393, 2002-Ohio-4491, ¶74.

{¶28} Appellant claims that the jury lost its way when it rejected his claim of self-defense. We disagree.

{¶29} To establish self-defense, appellant had the burden to prove (1) that he was not at fault in creating the situation giving rise to the affray; (2) that he had an honest belief that he was in imminent danger of death or great bodily harm and that his only means of escape from such danger was in the use of such force; and (3) that he did not violate any duty to retreat or avoid the danger. *State v. Robbins* (1979), 58 Ohio St.2d 74, at paragraph two of the syllabus. The " 'not at fault' requirement also means that the defendant must not have been the first aggressor in the incident." *State v. Turner,* 171 Ohio App.3d 82, 2007-Ohio-1346, ¶23; *State v. New,* 10th Dist. No. 05AP-262, 2005-Ohio-6471, ¶9 (aggressor of fight cannot rely on self-defense).

{¶30} Appellant's claim of self-defense is based entirely on the premise that he was not the aggressor because he fired his gun only after an unknown individual shot at him and Fergerson. However, there was substantial evidence that there was no other

shooter other than Officer Bray at the scene and that appellant was the aggressor in this incident.

{¶31} The physical evidence at the scene does not support appellant's claim that he fired in self-defense. Sergeant Kline testified that officers searched the entire crime scene for weapons. Appellant's gun was the only gun found at the scene. Additionally, shell casings found at the scene were fired from only two guns: appellant's 9-millimeter gun and Officer Bray's .45 caliber gun. More importantly, no witness other than appellant and Fergerson offered testimony indicating the presence of a shooter other than appellant and Officer Bray in the parking lot that evening. Steven Crump, Pedraza, Latoya Crump, and Tamika Jones testified that they did not see anyone else with a gun that night. Both Officer Cummings and Officer Bray testified that they did not see any person other than appellant and Officer Bray fire a gun in the parking lot.

{¶32} There was also substantial evidence that appellant was the aggressor in this incident. Pedraza and Miles testified that they watched appellant walk up to Steven Crump and pull a gun on him. Robert Briggs testified that his friends were standing around Reynolds' truck, just talking, when he saw appellant approach Wayne Crump from behind and pull out a gun. There was no indication that Fergerson was arguing with Wayne Crump before appellant approached him. In fact, Wayne Crump testified that he had never seen Fergerson before he was shown his picture at trial. Fergerson and appellant could not identify who Fergerson allegedly had the confrontation with in the parking lot just prior to the shooting.

{¶33} A conviction is not against the manifest weight of the evidence simply because the jury believed the prosecution testimony. *State v. Houston*, 10th Dist. No. 04AP-875, 2005-Ohio-4249, ¶38, overruled on other grounds, *In re Ohio Criminal*

Sentencing Statutes Cases, 109 Ohio St.3d 313, 2006-Ohio-2109. The jury heard all of the evidence and chose to believe the victims' version of events over appellant's version. This was within the province of the jury. *State v. Lee,* 10th Dist. No. 06AP-226, 2006-Ohio-5951, ¶14.

{¶34} The jury did not lose its way when it rejected appellant's claim of self-defense. Accordingly, appellant's convictions are not against the manifest weight of the evidence. His fourth assignment of error is overruled.

{¶35} Appellant contends in his third assignment of error that he received ineffective assistance of counsel. Appellant claims his trial counsel failed to investigate the rumors of juror misconduct and to timely file the motion for new trial. We disagree.

{¶36} In order to prevail on an ineffective assistance of counsel claim, appellant must meet the two-prong test enunciated in *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052; accord *State v. Bradley* (1989), 42 Ohio St.3d 136. Initially, appellant must show that counsel's performance was deficient. To meet that requirement, appellant must show counsel's error was so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. Appellant may prove counsel's conduct was deficient by identifying acts or omissions that were not the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. *Strickland* at 690.

{¶37} In analyzing the first prong of *Strickland,* there is a strong presumption that defense counsel's conduct falls within a wide range of reasonable professional assistance. Id. at 689. Appellant must overcome the presumption that, under the

circumstances, the challenged action might be considered sound trial strategy. Id., citing *Michel v. Louisiana* (1955), 350 U.S. 91, 101, 76 S.Ct. 158.

{¶38} If appellant successfully proves that counsel's assistance was deficient, the second prong of the *Strickland* test requires appellant to prove prejudice in order to prevail. Id. at 692. To meet that prong, appellant must show counsel's errors were so serious as to deprive him of a fair trial, "a trial whose result is reliable." Id. at 687. Appellant would meet this standard with a showing "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

{¶39} Trial counsel admitted to hearing rumors of juror impropriety from appellant's mother within 72 hours of the verdict. However, he did not disclose what appellant's mother actually told him. Trial counsel instructed appellant's mother to tell whoever had information about the rumors to come down to his office to sign an affidavit. Neither appellant nor his mother signed affidavits. Apparently, no one was willing to sign an affidavit until the morning of appellant's sentencing, when trial counsel prepared and filed the motion for new trial. We cannot say that trial counsel was deficient for failing to take action until he had some evidence of jury misconduct. Further, it was not unreasonable for trial counsel to delay filing the motion for new trial until he had some specific evidence to support the motion.

{¶40} Moreover, appellant cannot demonstrate that he was prejudiced by counsel's conduct. Appellant claims that if trial counsel had timely investigated the rumors, he could have spoken with Tony Harvard and would have had a basis for a new trial. However, because neither Harvard nor the woman identified as "Nay" provided an

affidavit, appellant's allegations are pure speculation. *State v. Young*, 10th Dist. No.

05AP-641, 2006-Ohio-1165, ¶21.[5] Pure speculation is insufficient to prove prejudice for an ineffective assistance of counsel.

{¶41} Appellant has not demonstrated ineffective assistance of counsel. Accordingly, we overrule his third assignment of error.

{¶42} Finally, appellant contends in his seventh assignment of error that the trial court violated his Sixth Amendment constitutional rights when it imposed consecutive sentences. We disagree.

{¶43} Two years after appellant's sentencing, the Supreme Court of Ohio held that former R.C. 2929.14(E)(4), among other statutes, unconstitutionally required judicial fact-finding in violation of the Sixth Amendment to the United States Constitution and the rule of law articulated in *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531. *State v. Foster,* 109 Ohio St.3d 1, 2006-Ohio-856. As a result, the Court severed the statute from Ohio's sentencing scheme and thereby granted trial courts the discretion to impose consecutive sentences without judicial fact-finding. Id. at ¶99-100.

{¶44} Because the trial court made the factual findings required by former R.C. 2929.14(E)(4) when it sentenced appellant to consecutive sentences, it violated *Blakely-Foster.* However, this court held that *Blakely-Foster* errors are subject to harmless error analysis. See *State v. Peeks,* 10th Dist. No. 05AP-1370, 2006-Ohio-6256, ¶14.

{¶45} In *Peeks*, we reasoned that because former R.C. 2929.14(E) required the trial court to make certain findings before it could impose consecutive sentences, the

[5] At the end of the trial court's hearing on this matter, the trial court noted that it would hold the motion open until the appropriate agencies investigated the matter. The trial court did not deny the motion for three months. In that time, appellant's trial counsel did not file any documents or affidavits in support of the allegations. This implies that no such affidavits were available or forthcoming.

trial court's application of that statute only benefited defendants because the trial court could not impose consecutive sentences unless it made each and every finding. Id. at 15. Thus, because the statute's required findings made it more difficult to impose consecutive sentences, the trial court's error in making the factual findings formerly required by R.C. 2929.14(E)(4) in imposing consecutive sentences benefited appellant and, therefore, was harmless beyond a reasonable doubt. Id. at ¶15; see also *State v. Jeffers*, 10th Dist. No. 06AP-358, 2007-Ohio-3213, ¶46. Accordingly, appellant's seventh assignment of error is overruled.

{¶46} Having overruled appellant's seven assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

FRENCH, P.J., and BRYANT, J., concur.