

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-190178
	:	TRIAL NO. B-1605413
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ANTONIO SAWYER,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Antonio Sawyer appeals his convictions, after a jury trial, for improperly discharging a firearm into a habitation, felonious assault with specifications, carrying a concealed weapon, and improperly handling firearms in a motor vehicle. In two assignments of error, Sawyer contends that the convictions were based on insufficient evidence, that his convictions were against the manifest weight of the evidence, that the trial court erred by imposing multiple sentences on allied offenses, and the trial court erred in imposing consecutive sentences and not considering the purposes and principles of sentencing. For the following reasons, we affirm the judgment of the trial court.

Sawyer first argues that the state failed to prove that he was the individual who fired the shots. In a challenge to the sufficiency of the evidence, the question is whether, after viewing the evidence in the light most favorable to the state, any rational

trier of fact could have found all the essential elements of the crime proved beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

“Weight of the evidence [involves] the inclination of the greater amount of credible evidence offered in a trial, to support one side of the issue rather than the other.” *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). “In other words, a reviewing court asks whose evidence is more persuasive — the state’s or the defendant’s?” *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25. We review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice. *Thompkins* at 387. “Because the trier of fact sees and hears the witnesses and is particularly competent to decide whether, and to what extent, to credit the testimony of particular witnesses, we must afford substantial deference to its determinations of credibility.” (Citations omitted.) *State v. Glover*, 1st Dist. Hamilton No. C-180572, 2019-Ohio-5211, ¶ 30.

The uncontested testimony of Charles Davenport was that after shots were fired, he went to the door and looked outside to see who was shooting. He saw Sawyer, whom he had known since high school, standing outside reloading a weapon. He spoke to Sawyer and told him to stop shooting because his grandmother was in the house. At that point, Sawyer began shooting at him, and he ran into the house and told his mother, Mary Wilkens, and grandmother to hide. Wilkens testified that she had a video surveillance system around the home. She reviewed the video of the shooting and recognized Sawyer as the shooter due to his posture. Construing this evidence and all

reasonable inferences in the light most favorable to the state, any rational trier of fact could have found that the state proved that Sawyer fired the gun at the house.

Next, Sawyer contends that the state failed to prove he knowingly attempted to harm the three occupants of the house because no one was actually injured, and he was unaware that anyone was in the house. However, a person acts knowingly “when the person is aware that the person’s conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.” R.C. 2901.22(B). Felonious assault “does not require that a defendant intend to cause ‘serious physical harm,’ but that the defendant acts with an awareness that the conduct probably will cause such harm.” *State v. Anderson*, 10th Dist. Franklin No. 10AP-302, 2010-Ohio-5561, ¶ 13.

Here, Davenport testified that he ran out of the house and spoke with Sawyer. He told Sawyer that his grandmother was in the home, and Sawyer watched as Davenport reentered the home. Sawyer had previously lived in the home and knew that Wilkens resided there with her mother. Wilkens’s car was parked in the driveway, and the front door of the home was opened. Viewing this evidence in a light most favorable to the state, the jury could reasonably have found that the state proved that Sawyer was aware that his conduct of firing a gun toward Davenport and into the residence was likely to cause serious physical harm. *See id.*

Sawyer argues that the state failed to prove he carried a concealed weapon because there was no evidence that the gun was concealed, ready-at-hand, or loaded. Officer Camardo, who found the gun in the car, testified that the gun was almost completely concealed by clothing in the front passenger seat, he could barely see the gun, and the butt of the gun was visible through a small hole that remained uncovered. Camardo also testified that the gun was within reach of the driver of the vehicle, and

that the gun was loaded. Based on this testimony, any rational trier of fact could have found that the state proved that Sawyer had carried a concealed weapon.

Finally, Sawyer contends that the evidence was insufficient to prove that he improperly handled a firearm in a motor vehicle. Again, based on Camardo's testimony, any rational trier of fact could have found that the state proved that Sawyer had carried a concealed weapon in his car.

Sawyer argues that improperly discharging a firearm into a habitation and felonious assault are allied offenses. However, these offenses are of dissimilar import because the harm caused by each offense is dissimilar. *See State v. Grayson*, 2017-Ohio-7175, 95 N.E.3d 1025, ¶ 24-25 (8th Dist.). As the *Grayson* court explained, the harm caused by the improper discharge of a firearm into a habitation is to the home itself while the harm caused by the felonious assaults were to the victims in the home. *Id.*

Next, he argues that all of the felonious-assault convictions should merge. However, "When a defendant's conduct victimizes more than one person, the harm for each person is separate and distinct, and therefore, the defendant can be convicted of multiple counts." *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, ¶ 26.

Finally, he claims that his convictions for carrying a concealed weapon and improper handling of a firearm in a vehicle should have merged. It is well-settled law that the offenses are committed by different conduct, and therefore, are not allied offenses. *See State v. Walker*, 2d Dist. Montgomery No. 23302, 2010-Ohio-2125, ¶ 21 (concluding that "[b]ecause each offense may be committed without committing the other offense, the offenses of CCW as proscribed by R.C. 2923.12(A)(2) and Improper Handling in violation of R.C. 2923.16(B) are not allied offenses of similar import.");

State v. Campbell, 6th Dist. Wood No. WD-18-035, 2019-Ohio-1174, ¶ 12-14 (finding that improper handling of a firearm and carrying a concealed weapon are not allied offenses).

Sawyer also claims the trial court erred by imposing consecutive sentences. First, he contends the court failed to make the requisite findings to impose consecutive sentences. However, the record shows that the trial court made the required findings. Additionally, the court announced its findings at the sentencing hearing and incorporated them into the sentencing entry. *See State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus.

Sawyer further argues that the court erred by imposing consecutive sentences on the gun specification for the improperly-discharging-a-firearm conviction and the gun specifications related to the felonious-assault convictions. Sawyer acknowledges that the trial court had the authority to impose multiple specifications under R.C. 2929.14(B)(1)(g), but argues that the court abused its discretion in doing so. Sawyer suggests that the sentence was an improper trial tax, but points to nothing in the record to support the allegation. We therefore cannot conclude that the trial court erred by ordering him to serve a third consecutive firearm-specification sentence. *See State v. Boyd*, 2d Dist. Clark No. 2018-CA-68, 2019-Ohio-1902, ¶ 35.

Sawyer next argues that the trial court erred by failing to consider the purposes and principles of sentencing. While a trial court is required to consider the purposes and principles of sentencing, it is not required to make specific findings. *See State v. Hendrix*, 1st Dist. Hamilton Nos. C-150194 and C-150200, 2016-Ohio-2697, ¶ 51. Sawyer does not make any showing that the court failed to consider the statutory factors, and the trial court expressly stated it had considered the statutory factors.

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Therefore, Sawyer failed to demonstrate that the sentences were clearly and convincingly contrary to law.

Accordingly, we overrule the assignments of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., ZAYAS and BERGERON, JJ.

To the clerk:

Enter upon the journal of the court on April 8, 2020
per order of the court _____.

Presiding Judge