

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 11AP-414
	:	(C.P.C. No. 10CR-04-2266)
Anthony L. Sullivan,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 19, 2012

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

Clark Law Office, and *Toki Michelle Clark*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} Defendant-appellant, Anthony L. Sullivan ("appellant"), appeals from a judgment entry of conviction entered by the Franklin County Court of Common Pleas following a bench trial in which he was convicted of one count of having a weapon under disability. For the reasons that follow, we affirm that judgment.

I. Facts and Procedural Background

{¶ 2} On April 9, 2010, appellant was indicted on charges of kidnapping, felonious assault, inducing panic, and tampering with evidence, all of which included firearm specifications, as well as on two counts of having a weapon under disability.¹ The charges stemmed from an incident which occurred between March 27 and 28, 2010, involving Shevon McKnight ("McKnight"), a life-long friend of appellant.

¹ The kidnapping and felonious assault counts also contained repeat violent offender specifications.

{¶ 3} Appellant elected to waive jury on the two weapon under disability counts. A jury waiver was filed on March 4, 2011. On March 7, 2011, a jury trial commenced on the kidnapping, felonious assault, inducing panic, and tampering with evidence charges. Numerous witnesses testified. The most relevant testimony as it relates to the weapon under disability conviction at issue in this appeal is set forth below.

{¶ 4} McKnight testified she had known appellant for many years. On the night of March 27, 2010, she stopped by an apartment on James Road to visit appellant. McKnight drank beer while appellant smoked crack cocaine and also drank beer. The two left the James Road apartment and went to the home of appellant's cousin, where they both drank alcohol and did cocaine. During the course of the night, appellant passed out and/or fell asleep. When he awoke, he realized one thousand dollars was missing. Believing McKnight had stolen the money, appellant became angry. Appellant held McKnight at gunpoint with a big, black gun and forced her to strip off her clothes and perform oral sex on him. While McKnight was performing oral sex, appellant struck McKnight in the head with the gun, causing bleeding. Later, appellant allowed McKnight to put her clothes on and the two went to the home of appellant's sister, where appellant used the bathroom and the two of them stayed for a while.

{¶ 5} Next, appellant and McKnight went to McDonald's with some children who were at appellant's sister's house. McKnight stayed in the car while appellant and the children went inside. McKnight was able to locate a cell phone inside the car and surreptitiously called her fiancée, Chris Sutton ("Sutton"), asking for help. McKnight replaced the cell phone before appellant emerged from the McDonald's with the children and they all returned to his sister's house. Appellant and McKnight then drove to an apartment on James Road.

{¶ 6} McKnight testified that Sutton arrived at the James Road apartment a short time later and was permitted entrance by another resident. Appellant was hiding behind the door and pointed a gun at Sutton. Appellant forced Sutton on to the couch. Appellant told Sutton that McKnight had stolen one thousand dollars from him and he wanted his money back. McKnight denied taking the money, which angered appellant, so appellant struck McKnight with the gun again. Sutton claimed he could get appellant the one thousand dollars and made a phone call to arrange to pick up the money. A little while

later, appellant and Sutton left to get the money. Before leaving, appellant gave a second gun, which was smaller and silver or white-tipped, to his roommate Tim Barnett ("Barnett"), and ordered Barnett to make sure that McKnight and appellant's girlfriend, Jeannette Roberts ("Roberts"), did not leave. Appellant returned to the apartment approximately 20 to 30 minutes later, but Sutton did not enter the apartment with appellant. Within five minutes, the police arrived, banging on the door.

{¶ 7} According to McKnight, appellant was angered by the arrival of the police. Appellant forced McKnight and Roberts into the bathroom. Appellant put the gun to McKnight's head and McKnight believed appellant was going to shoot her. McKnight, Roberts, and appellant spoke to a police hostage negotiator, Detective Dana Farbacher. Eventually, with the help of the SWAT team and the hostage negotiators, everyone was released or rescued unharmed.

{¶ 8} During her testimony, McKnight admitted that she has three prior felony convictions for identity theft and misuse of a credit card and that she was still on probation at the time of the trial. She further admitted that she has lied and been deceitful in the past.

{¶ 9} Sutton testified he received several short phone calls on the morning of March 28, 2010 from McKnight (his fiancée) asking for help. McKnight sounded scared. McKnight said she was with appellant at a McDonald's on Broad Street and he was refusing to let her go. McKnight provided Sutton with a description of the vehicle she was in and informed him they were going back to the home of appellant's sister with appellant's kids. However, McKnight had to hang up the phone because appellant was returning to the vehicle. Sutton attempted to call McKnight back but got no answer. Sutton also attempted to call appellant, but he did not answer.

{¶ 10} Next, Sutton called a relative of appellant's in an effort to get the address of appellant's sister. Sutton went to the house but was unsuccessful in locating appellant or McKnight. Sutton remembered that appellant had an apartment in a complex on James Road, so he drove to that location and saw a burgundy Ford truck like the one McKnight had described. Sutton testified he knocked on the window of the apartment. Barnett eventually came to the main door of the building and Sutton forced his way in to the building. The two men walked down the hallway. Barnett knocked on the apartment

door and they were both admitted into the apartment. Sutton saw McKnight sitting on the couch looking very upset. When the door was shut, Sutton turned around and saw appellant standing behind the door and pointing a gun at him.

{¶ 11} Sutton testified appellant told him to sit down. Sutton asked what was going on. McKnight advised him that appellant believed she had stolen money from him. While Sutton was trying to talk to appellant about the situation, appellant placed the gun on the table and pointed it at Sutton. McKnight was attempting to talk, but appellant repeatedly told McKnight to shut up. When she did not, appellant hit McKnight in the head with the gun and then pointed the gun at Sutton as Sutton tried to move. Appellant threatened to kill Sutton.

{¶ 12} Appellant claimed McKnight had stolen one thousand dollars and one-half a pound of weed from him. Sutton testified he promised to get appellant one thousand dollars. Sutton called a friend and asked the friend to meet him and bring the money to a nearby drive-through. Appellant ordered Sutton to leave the apartment with him. First, however, appellant wanted to confirm that Barnett had a gun, so Barnett flashed his gun. Appellant told Barnett to keep the women in the apartment and to shoot them if they tried to leave. While appellant was tying his shoes, Sutton walked out the apartment door and was able to briefly call 911 and tell the operator that McKnight was being held hostage. Appellant then emerged from the apartment with the gun and forced Sutton into the vehicle.

{¶ 13} While in the vehicle, appellant had the gun visible on his lap. Appellant and Sutton drove a short distance to a house before returning to the apartment complex. As the two men were walking inside the apartment building, Sutton's phone vibrated. Sutton pretended to tie his shoe while appellant went inside the apartment. The caller was the 911 operator who asked Sutton to let the police inside the building. Sutton let the police into the building and was then escorted outside the building and placed in a police cruiser.

{¶ 14} While testifying, Sutton admitted that he had a prior felony conviction for complicity to theft and was recently released from supervision under community control.

{¶ 15} Testimony and evidence was also introduced through various police witnesses regarding a search warrant executed at the James Road apartment following the release and rescue of the hostages. It was established that two handguns were located

in the bathroom of the apartment inside the back of the toilet tank. One was a 9mm Hi-Point and the other was a .25 caliber Raven Arms. A firearms operability expert testified that both weapons were operable. Photographs of those firearms as well as the actual firearms were introduced into evidence.

{¶ 16} The jury was unable to reach a verdict on any of the four counts with which it was charged (kidnapping, felonious assault, inducing panic, and tampering with evidence). The trial court declared a mistrial with respect to those counts.

{¶ 17} Following the mistrial, the parties agreed to stipulate to appellant's prior conviction for a felony offense of violence in 2000, to wit: aggravated robbery, as well as the fact that he was under indictment at the time of the instant offense for a separate felony offense of violence allegedly committed in 2009, to wit: robbery. On March 18, 2011, the trial court found appellant had a prior conviction for aggravated robbery and that he carried and used a firearm during the incident that occurred on March 28, 2010. The trial court determined that because the language in Counts 5 and 6 of the indictment was identical, it was unnecessary to determine which count pertained to which gun. Therefore, the trial court found appellant guilty of having a weapon under disability as charged in Count 5 of the indictment and as it pertained to the larger, black gun. The trial court further found appellant not guilty of having a weapon under disability as charged in Count 6 of the indictment as it pertained to the white-tipped gun.

{¶ 18} A sentencing hearing was held on April 7, 2011. The trial court sentenced appellant to a five-year period of incarceration for the weapon under disability offense and ordered that sentence to run consecutively to a previously imposed sentence on an unrelated matter. At the request of plaintiff-appellee, the State of Ohio ("the State"), the trial court dismissed the four counts on which the jury had previously hung. This timely appeal now follows.

II. Assignments of Error

{¶ 19} Appellant asserts the following six assignments of error for our review:

ASSIGNMENT OF ERROR NO. 1:

THE TRIAL COURT COMMITTED PREJUDICIAL ERROR
IN IMPOSING THE MAXIMUM FIVE-YEAR SENTENCE
FOR THE OFFENSE OF HAVING A WEAPON UNDER

DISABILITY AND RUNNING IT CONSECUTIVE TO APPELLANT'S PRIOR CONVICTION.

ASSIGNMENT OF ERROR NO. 2:

IT IS A VIOLATION OF THE EIGHTH AMENDMENTS OF THE UNITED STATES AND OHIO CONSTITUTIONS TO CONVICT A CRIMINAL DEFENDANT OF HAVING A WEAPON UNDER DISABILITY AFTER A JURY FAILS TO CONVICT OF THE UNDERLYING OFFENSE.

ASSIGNMENT OF ERROR NO. 3:

A TRIAL COURT ERRED AND DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE ONE, SECTION TEN OF THE OHIO CONSTITUTION, AS THE PROSECUTION FAILED TO OFFER SUFFICIENT EVIDENCE TO PROVE BEYOND A REASONABLE DOUBT THAT APPELLANT COMMITTED THE OFFENSE OF HAVING A WEAPON UNDER DISABILITY.

ASSIGNMENT OF ERROR NO. 4:

THE VERDICT OF THE TRIAL COURT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

ASSIGNMENT OF ERROR NO. 5:

APPELLANT'S DECISION TO WAIVE JURY AS TO THE WEAPON UNDER DISABILITY CHARGE WAS NOT KNOWINGLY AND INTELLIGENTLY MADE (WAIVER)[.]

ASSIGNMENT OF ERROR NO. 6:

THE VERDICT MUST BE OVERTURNED WHERE THE TRIAL COURT CONVICTS A DEFENDANT BASED UPON A COUNT IN THE INDICTMENT THAT DOES NOT EXIST. (INDICTMENT)

{¶ 20} Because appellant's first and second assignments of error are intertwined, we shall address them together.

A. First and Second Assignments of Error—Maximum, Consecutive Sentences; Cruel and Unusual Punishment

{¶ 21} In his first assignment of error, appellant claims the trial court erred by imposing a maximum, consecutive sentence without providing a basis for the sentence, in violation of statutory requirements and current case law. Furthermore, although not specifically set forth in his first assignment of error, appellant argues he is "getting a raw deal" because he was convicted by the trial judge when a jury of his peers acquitted him on the same evidence. In his second assignment of error, appellant asserts that the conviction for the weapon under disability offense, in light of his acquittal on the remaining offenses, constitutes cruel and unusual punishment, in violation of the Eighth Amendment of the United States and Ohio constitutions.

{¶ 22} To the extent appellant is arguing that the sentencing court was required to state its reasons or its basis for imposing a maximum, consecutive sentence, we disagree.

{¶ 23} In *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, the Supreme Court of Ohio held certain statutory sentencing provisions, such as the provision in former R.C. 2929.14(E)(4) governing the imposition of consecutive sentences, were unconstitutional. As a result, the court severed the unconstitutional sections. A few years later, in *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, the Supreme Court of Ohio held that "trial court judges are not obligated to engage in judicial fact-finding prior to imposing consecutive sentences unless the General Assembly enacts new legislation requiring that findings be made." *Id.* at ¶ 39. Subsequent to *Hodge*, the General Assembly enacted H.B. No. 86, which reinstated many of the pre-*Foster* sentencing provisions. However, H.B. No. 86 is not applicable here, since it became effective September 30, 2011 and appellant was sentenced April 7, 2011. *See State v. Banks*, 10th Dist. No. 11AP-1134, 2012-Ohio-2328, ¶ 8 (the statutory changes do not state that inmates previously sentenced will benefit from the changes; R.C. 1.58(B) allows those upon whom a sentence has not yet been imposed to benefit from the statutory changes); and *State v. Sutton*, 8th Dist. No. 97132, 2012-Ohio-1054, ¶ 14 (because H.B. No. 86 became effective September 30, 2011, it was not applicable to a defendant sentenced in July 2011).

{¶ 24} Even if H.B. No. 86 were applicable (which it is not), the new legislation requires *findings* before imposing consecutive terms, but not *reasons* for imposing said

terms. Moreover, the trial court here stated it considered all of the factors it was required to consider and did in fact provide a basis for imposing a maximum, consecutive sentence: appellant's extensive criminal record and the trial court's previous repeat violent offender determination.

{¶ 25} Additionally, we find no merit in appellant's claim that he is "getting a raw deal" or that his conviction constitutes cruel and unusual punishment because the trial judge convicted him of the weapon under disability charge, in spite of the fact that the jury was unable to reach a verdict on numerous other charges. The elements which must be proven in order to establish that appellant committed the crime of having a weapon while under disability are very different from the elements to be proven for the offenses of kidnapping, felonious assault, inducing panic, and tampering with evidence.

{¶ 26} In order to prove appellant committed the offense of having a weapon under disability, the State was required to prove that appellant knowingly acquired, had, carried or used a firearm, and he was under indictment for or had been convicted of a felony offense of violence. R.C. 2923.13(A)(2). Having a weapon under disability is an offense in its own right, not a specification, and is not attached to any underlying offense. It is possible for appellant to be charged with other crimes, such as kidnapping, felonious assault, inducing panic, and tampering with evidence, and be acquitted, yet still be found guilty of the offense of having a weapon under disability. There is nothing inconsistent with this scenario. Additionally, appellant has failed to cite to any authority to support his claim that this constitutes cruel and unusual punishment. Furthermore, in the instant case, the jury was hung on the other offenses. It is improper to speculate as to why the jury was unable to reach a decision on those offenses and it is not determinative of whether or not appellant acquired, had, carried or used a firearm.

{¶ 27} Accordingly, we overrule appellant's first and second assignments of error.

B. Third Assignment of Error—Due Process; Sufficiency of the Evidence

{¶ 28} In his third assignment of error, appellant asserts he was deprived of due process of law because the prosecution failed to offer sufficient evidence to prove that he committed the offense of having a weapon under disability. However, appellant's actual argument asserted under this assignment of error is difficult to decipher. Appellant does

not refer to the evidence presented at trial or comment on the sufficiency of such evidence. Instead, appellant appears to argue that the procedural process for trying a weapon under disability offense is a violation of due process. Appellant submits it forces the accused to "walk the plank" and is a "procedural stalemate," since the defendant must chose to either: (1) put the weapon under disability offense, along with the fact of his prior conviction, before the jury, thereby compromising his right to remain silent, or (2) postpone the trial of the weapon under disability for judicial consideration, but risk a higher likelihood of conviction.

{¶ 29} Appellant cites to no authority for this claim and it is unclear what exactly appellant is attempting to argue. We are unaware of any authority which even suggests that this process deprives a defendant of due process or that trying the charges to a trial judge, rather than a jury, is more likely to result in a conviction. Here, appellant signed a jury waiver as to the two weapon under disability counts and acknowledged that he understood he was giving up his constitutional right to have a trial by jury as to those two counts. The trial judge heard evidence from two witnesses that appellant had, carried, used or possessed a weapon on numerous occasions throughout the course of events that took place between March 27 and 28, 2010. Additionally, two operable weapons were recovered from the toilet tank in the bathroom of the apartment where appellant was staying. Finally, appellant stipulated to his prior disqualifying conviction/indictment.

{¶ 30} Based upon the foregoing, we overrule appellant's third assignment of error.

C. Fourth Assignment of Error—Manifest Weight of the Evidence

{¶ 31} In his fourth assignment of error, appellant asserts his conviction for having a weapon under disability is against the manifest weight of the evidence. We disagree.

{¶ 32} While sufficiency of the evidence is a test of adequacy regarding whether the evidence is legally sufficient to support the verdict as a matter of law, the criminal manifest weight of the evidence standard addresses the evidence's effect of inducing belief. *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶ 25, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). Under the manifest weight of the evidence standard, a reviewing court must ask the following question: whose evidence is more persuasive - the state's or the defendant's? *Id.* at ¶ 25. Although there may be legally sufficient evidence to support a judgment, it may nevertheless be against the manifest

weight of the evidence. *Thompkins* at 387; *see also State v. Robinson*, 162 Ohio St. 486 (1955) (although there is sufficient evidence to sustain a guilty verdict, a court of appeals has the authority to determine that such a verdict is against the weight of the evidence); *State v. Johnson*, 88 Ohio St.3d 95 (2000).

{¶ 33} "When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a 'thirteenth juror' and disagrees with the factfinder's resolution of the conflicting testimony." *Wilson* at ¶ 25, quoting *Thompkins* at 387. In determining whether a conviction is against the manifest weight of the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses and determine whether, in resolving any conflicts in the evidence, the trier of fact clearly lost its way and thereby created such a manifest miscarriage of justice that the conviction must be reversed and a new trial must be ordered. *Thompkins* at 387, citing *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983).

{¶ 34} A conviction should be reversed on manifest weight grounds only in the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *Martin* at 175. Moreover, " 'it is inappropriate for a reviewing court to interfere with factual findings of the trier of fact * * * unless the reviewing court finds that a reasonable [fact finder] could not find the testimony of the witness to be credible.' " *State v. Brown*, 10th Dist. No. 02AP-11, 2002-Ohio-5345, ¶ 10, quoting *State v. Long*, 10th Dist. No. 96APA04-511 (Feb. 6, 1997).

{¶ 35} In this assignment of error, appellant repeatedly argues that the testimony of the two key witnesses, McKnight and Sutton, is not credible for a variety of reasons, among them: both witnesses have prior felony convictions; McKnight has admitted to lying and being deceitful in the past; Sutton has motive to lie because he is engaged to McKnight; both witnesses are liars and thieves; and McKnight consumed alcohol and cocaine on the night/morning of the incident and, therefore, her judgment and perceptions were impaired. Simply put, appellant argues that the testimony of these two witnesses is altogether not believable and, therefore, the verdict is against the manifest weight of the evidence.

{¶ 36} "The weight of the evidence concerns 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. Brindley*, 10th Dist. No. 01AP-926, 2002-Ohio-2425, ¶ 16, citing *State v. Gray*, 10th Dist. No. 99AP-666 (Mar. 28, 2000); *see also State v. Chandler*, 10th Dist. No. 05AP-415, 2006-Ohio-2070, ¶ 8. The weight to be given to the evidence, as well as the credibility of the witnesses, are issues which are primarily to be determined by the trier of fact. *State v. Hairston*, 10th Dist. No. 05AP-366, 2006-Ohio-1644, ¶ 20, citing *State v. DeHass*, 10 Ohio St.2d 230 (1967).

{¶ 37} A defendant is not entitled to a reversal on manifest weight grounds simply because there was inconsistent evidence presented at trial. *State v. Raver*, 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶ 21; *State v. Stewart*, 10th Dist. No. 08AP-33, 2009-Ohio-1547, ¶ 17. The trier of fact is in the best position to take into account any inconsistencies, along with the witnesses' demeanor and manner of testifying, and determine whether or not the witnesses' testimony is credible. *Chandler* at ¶ 9, citing *State v. Williams*, 10th Dist. No. 02AP-35, 2002-Ohio-4503, ¶ 58. *Stewart* at ¶ 17. The finder of fact, as the sole judge of the weight of the evidence and the credibility of the witnesses, may believe or disbelieve all, part, or none of a witness's testimony. *State v. Antill*, 176 Ohio St. 61, 67 (1964); *State v. Jackson*, 10th Dist. No. 01AP-973 (Mar. 19, 2002); *Chandler* at ¶ 13; *Raver* at ¶ 21.

{¶ 38} A conviction is not against the manifest weight of the evidence merely because the trier of fact believed the prosecution testimony. *State v. Houston*, 10th Dist. No. 04AP-875, 2005-Ohio-4249, ¶ 38 (reversed and remanded in part on other grounds); *Stewart* at ¶ 22. An appellate court must give great deference to the fact finder's determination of the witness credibility. *Chandler* at ¶ 19; *State v. Webb*, 10th Dist. No. 10AP-189, 2010-Ohio-5208, ¶ 16.

{¶ 39} In the instant case, the trial judge had the opportunity to hear the testimony of McKnight and Sutton. The trial judge was made aware of the witnesses' criminal past and any bias, and the witnesses were subject to extensive cross-examination. Nevertheless, the trial judge found them to be credible, at least with respect to their assertion that appellant possessed a firearm. That assertion was supported by the fact that two firearms matching the general description of the firearms described by the

witnesses were recovered in the toilet tank of the apartment where appellant was living. Given the foregoing, a reasonable fact finder could certainly find the testimony of McKnight and Sutton regarding appellant's possession or use of a firearm to be credible.

{¶ 40} Because great deference must be given to the trial court's determination of credibility, and because the firearms were recovered in the apartment where appellant was residing, we find appellant's conviction for having a weapon under disability is not against the manifest weight of the evidence. Accordingly, we overrule appellant's fourth assignment of error.

D. Fifth Assignment of Error—Validity of Jury Trial Waiver

{¶ 41} In his fifth assignment of error, appellant contends his jury trial waiver as to the weapon under disability charge was not knowingly and intelligently made because he lacked information as to whether or not the trial judge would consider evidence from his prior bank robbery case in reaching a decision in the case subjudice. Because the trial judge referenced appellant's prior bank robbery case (which had been tried before the same judge) at the sentencing hearing, appellant submits his jury waiver was not valid.

{¶ 42} We fail to find any merit in this argument. We further note that appellant has failed to support this argument with any authority or even any further explanation.

{¶ 43} The offense at issue required the State to prove that appellant was under a disability at the time of the offense. Appellant's disability, as alleged in the indictment, included a pending indictment for the felony offense of robbery, which arose from the aforementioned bank robbery case. We cannot see how reference to said case at the sentencing hearing had any effect whatsoever on the validity of appellant's jury waiver, which was executed prior to the commencement of trial and thus prior to sentencing. Additionally, appellant stipulated to his disability and, at the same time, acknowledged that the trial court was aware of his prior criminal record.

{¶ 44} Therefore, we overrule appellant's fifth assignment of error.

E. Sixth Assignment of Error—Sufficiency of the Indictment

{¶ 45} Finally, in his sixth assignment of error, appellant submits his conviction must be overturned because he was convicted on a count in the indictment which does not exist. In essence, appellant argues that because the indictment charged him with two counts of having a weapon under disability, but it failed to specify which count applied to

the black gun and which count applied to the white-tipped gun, the conviction must be overturned and he cannot be convicted for possessing either firearm. We disagree.

{¶ 46} Appellant did not raise this issue at the time of the trial. When a defendant fails to preserve objections to a defective indictment during trial, generally the issues are forfeited and a plain error analysis pursuant to Crim.R. 52(B) must be applied. *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749, ¶ 7. In rare cases, such as where multiple errors at the trial follow the defective indictment, a structural error analysis is appropriate. *Id.* at ¶ 8. This is not such a case.

{¶ 47} The purpose of an indictment is to provide the accused with adequate notice of the charge and to enable the accused to protect himself from future prosecution for the same event. *State v. Buehner*, 110 Ohio St.3d 403, 2006-Ohio-4707, ¶ 7; *Weaver v. Sacks*, 173 Ohio St. 415, 417 (1962); *State v. Sellards*, 17 Ohio St.3d 169, 170 (1985).

{¶ 48} "The sufficiency of an indictment is subject to the requirements of Crim.R. 7 and the constitutional protections of the Ohio and federal Constitutions. Under Crim.R. 7(B), an indictment 'may be made in ordinary and concise language without technical averments or allegations not essential to be proved. The statement may be in the words of the applicable section of the statute, provided the words of that statute charge an offense, or in words sufficient to give the defendant notice of all the elements of the offense with which the defendant is charged.'" *State v. Childs*, 88 Ohio St.3d 558, 564-65 (2000).

{¶ 49} Here, the indictment was sufficient. The weapon under disability charge does not require that the firearm be specifically identified. In addition, appellant was placed on notice of the fact that he was accused of two offenses involving two separate firearms. Contrary to appellant's assertion, the language in the two counts is identical, except for the last two lines of the sixth count. That count contains conclusory language placed at the end of the final count of every indictment and it has no impact here. Had appellant raised this issue in the trial court, there is no reason to believe that the trial court would have handled the issue any differently than the way it did—by simply assigning a firearm to each count. Finding no plain error, we overrule appellant's sixth assignment of error.

III. Conclusion

{¶ 50} In conclusion, we overrule appellant's first, second, third, fourth, fifth, and sixth assignments of error. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT and SADLER, JJ., concur.
