

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,	:	
	:	CASE NO. CA2014-01-023
Plaintiff-Appellee,	:	
	:	<u>OPINION</u>
	:	3/9/2015
- vs -	:	
	:	
WILLIAM BLAIR,	:	
	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR13-07-1085

Michael T. Gmoser, Butler County Prosecuting Attorney, Lina N. Alkamdawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

The Kollin Firm, LLC, Thomas M. Kollin, 2372 Lakeview Drive, Suite H, Beavercreek, Ohio 45431, for defendant-appellant

S. POWELL, P.J.

{¶ 1} Defendant-appellant, William Blair, appeals from the conviction and sentence he received in the Butler County Court of Common Pleas after he was found guilty of multiple criminal offenses following a bench trial. For the reasons outlined below, we affirm.

{¶ 2} On July 24, 2013, the Butler County grand jury returned an indictment against Blair charging him with one count of having weapons while under disability in violation of R.C.

2923.13(A)(2), a third-degree felony; two counts of assault in violation of R.C. 2903.13(A), one a fourth-degree felony pursuant to R.C. 2903.13(C)(5), the other a fifth-degree felony pursuant to R.C. 2903.13(C)(4)(a); one count of obstructing official business in violation of R.C. 2921.31(A), a fifth-degree felony; one count of aggravated menacing in violation of 2903.21(A), a first-degree misdemeanor; and one count of resisting arrest in violation of R.C. 2921.33(A), a second-degree misdemeanor. The charges stemmed from Blair's actions on the morning of January 29, 2013 at an apartment leased by Sara Rossi, his girlfriend and mother of his infant son, located at 316 Clark Street, Middletown, Butler County, Ohio, as well as at the Middletown jail. The matter proceeded to a two-day bench trial that concluded on December 3, 2013.

{¶ 3} At trial, Clark McIntosh, a service manager at the apartment complex, testified that on the morning in question, he and David Shields, a service technician, as well as Melissa Riblet, the apartment's property manager, were conducting routine scheduled maintenance on approximately 66 of the complex's 200 apartment units. This routine maintenance included checking the condition of the apartment, changing furnace filters and testing smoke detectors for proper operation. It is undisputed that all tenants subject to this routine maintenance received a five-day notice that informed each tenant they would be assessed a \$50 inconvenience fee if they did not allow the maintenance workers to enter their respective apartments.

{¶ 4} After checking several other apartment units, McIntosh testified he approached the apartment located at 316 Clark Street and knocked on the door. After waiting sometime without any response, McIntosh testified he inserted his key and began to unlock the door when he heard someone inside. A male, later identified as Blair, then opened the door and asked who was there. In response, McIntosh testified he informed Blair that they were apartment maintenance there to change the furnace filter and check the smoke detector.

According to McIntosh, Blair refused them entry into the apartment and said they would have to come back later.

{¶ 5} McIntosh then testified he told Blair that a \$50 inconvenience fee would be assessed to the unit if he did not let them enter the apartment. To this, McIntosh testified Blair "started yelling expletives." Specifically, McIntosh testified Blair told him to "get the f**k out of my doorway. You need to f**king leave." McIntosh also testified Blair threatened him by saying "I'll get my f**king gun and shoot you or anybody that come – tries to come into my apartment." Scared that he may be shot, McIntosh testified he backed away from the door and instructed Riblet to call police.

{¶ 6} Riblet also testified at trial. Riblet testified McIntosh knocked on the apartment door three times before Blair answered. Riblet then testified McIntosh asked Blair if he could enter the apartment to complete the routine maintenance. According to Riblet, Blair "got very angry, at that point, and said that we were not going to come into his apartment." Riblet testified she then informed Blair that a \$50 inconvenience fee would be assessed to the unit if they were not allowed to enter the apartment and complete the routine maintenance.

{¶ 7} In response, Riblet testified Blair "started cursing at me saying, we pay our damn rent. You can't f**king come in, in my apartment, you – you know, there's no reason and if you try to come back into my f**king apartment, I'm going to get my gun." Riblet also testified Blair called her everything "from a cunt to a bitch, a f**king bitch," as well as a "honkey" and a whore. Taking Blair's threat seriously, Riblet testified she backed away from the door and called Detective Jon Hoover, the apartment complex's courtesy officer with the Middletown Police Department. Police were then dispatched to the scene, with Detective Hoover arriving shortly thereafter.

{¶ 8} Officer Riggs was the first officer to arrive at the scene. Upon his arrival, Officer Riggs testified he spoke with Riblet, who appeared upset and nervous. After speaking with

Riblet, Officer Riggs testified he knocked on the apartment door and spoke with Blair. During this time, Officer Riggs testified Blair became argumentative and said he was not going to let anybody enter the apartment. Officer Riggs then testified he informed Blair that "we may have to seek a search warrant to gain entry," to which Blair stated "get your f**king search warrant" and slammed the door. Officer Riggs then testified he called his supervisor, Sergeant Steve Ream, and asked him to come to the apartment.

{¶ 9} Upon arriving at the scene, Sergeant Ream testified he was advised "they had a subject that was refusing to come out of the house." Sergeant Ream then testified he knocked on the apartment door. Once the door opened, Sergeant Ream testified he saw Blair holding a small child, as well as a woman, later identified as Rossi, inside the apartment. Despite his numerous requests, Sergeant Ream testified Blair repeatedly refused to exit the apartment. However, Blair did provide officers with his name and social security number, which revealed Blair had an outstanding warrant for his arrest. After discovering Blair had an outstanding warrant, and because Blair had made threats regarding a gun with a small child present, Sergeant Ream testified he made the decision to call in the Special Response Team, more commonly referred to as the SWAT Team.

{¶ 10} Once the Special Response Team arrived, Officer Riggs testified Blair came out of the apartment. As Officer Riggs testified, "[Blair] was ordered to the ground; he refused to do so. There were officers near Mr. Blair, not myself, who took him to the ground." Officer Riggs also testified Blair resisted when being told to go to the ground, and "did not go to the ground willingly." In addition, Detective Hoover testified "[Blair] refused to go down on the ground, telling me f**k that. I'm not going to the ground. F**k you." According to Detective Hoover, Blair was acting belligerent saying "f**k that; f**k you; not going to the ground. I'm not getting on the ground." After being taken to the ground, Blair was handcuffed and transported to the Middletown jail by Officer Riggs.

{¶ 11} Once Blair was removed from the scene, Detective Hoover testified he entered the apartment and spoke with Rossi. During this conversation, Detective Hoover testified he asked Rossi if there were any guns in the apartment, to which Rossi "stated that she owns a gun and that she has a CCW permit." Rossi then provided Detective Hoover with written consent to search the apartment. A gun was subsequently found in an upstairs bedroom closet stuck between a pile of blue jeans. The gun was tested and found to be operational. Once the gun was located, Detective Hoover testified he left the scene and went to the jail to complete an incident report and booking process.

{¶ 12} Upon Blair's arrival at the jail, Corrections Officer Danny Gibson testified he attempted to conduct a search of Blair's person. According to Officer Gibson, Blair was initially "very calm," thus allowing Officer Gibson to remove Blair's handcuffs. Officer Gibson then testified he noticed Blair had "a pair of shorts underneath his pants because his pants was down lower than I wear mine." As a result, Officer Gibson testified he asked Blair to "remove his blue jeans so I can search the clothing underneath." To this, Officer Gibson testified Blair "gets a little irate with me." Repeating his request for Blair to remove his blue jeans, Officer Gibson testified Blair "starts cussing and ranting and raving with me." Specifically, Officer Gibson testified Blair stated "[t]here was no f**king way you were going to take his pants off. This was bulls**t."

{¶ 13} Continuing, Officer Gibson testified Blair then took a defensive stance against him, "squared up" and moved towards him. Based on a totality of the circumstances, including Blair's aggressive and boisterous behavior, Officer Gibson testified he made the split-second decision to place Blair into an "escort position" and move him to a nearby holding cell. However, once he grabbed onto Blair's arm, Officer Gibson testified Blair "began jerking immediately trying to get free of that hold." Seeing Blair try to break free, both Officer Riggs and Detective Hoover came to Officer Gibson's aid. During the ensuing

struggle, Blair elbowed Officer Gibson in the eye and took several swings at Detective Hoover. Blair was eventually subdued after being tased by Officer Gibson. Video depicting a portion of the altercation was submitted to the trial court for review.

{¶ 14} In addition to the above testimony, Detective Hoover testified he overheard Blair ask if he could "get that gun back" when the weapon was shown to defense counsel during trial. The state also introduced a certified copy of a decision issued by the Montgomery County Court of Common Pleas, Juvenile Division, adjudicating Blair a delinquent child as a result of his no contest plea to assault in violation of R.C. 2903.13, a fourth-degree felony. Blair's juvenile probation officer, Erika McWhorter, also testified to the documents' authenticity and to Blair's subsequent adjudication. The state then rested.

{¶ 15} As part of Blair's defense, Rossi testified Blair was her boyfriend and father of her youngest child. When asked to describe the events on the morning in question, Rossi testified she and Blair were in her apartment's living room sitting on the couch when they heard a knock on the door. Rossi then testified that "[b]efore we even had a chance to get up, open the door, [the maintenance workers] had put the key in and tried to open the door." Rossi then testified that Blair asked the maintenance workers to come back later only to have the police arrive. Rossi then testified, in pertinent part, as follows:

The – we – he had asked why the police officer was there and, I guess, officer said that he had said the maintenance people said [Blair] had threatened them and then he asked if he could come in and I said, there is no reason for them to come in. There was no reason for the police to be called in the first place.

{¶ 16} According to Rossi, Blair was cooperative with the maintenance workers, did not use any cuss words, and did not make any threats. Rossi claimed any accusation that Blair used cuss words or threats against the maintenance workers was a lie. Rossi then testified the gun located in the apartment was hers. When questioned further about the gun, Rossi testified she purchased the gun outside a local McDonald's for \$250 from a private

seller she found on the Internet. Rossi, however, could not remember the seller's name, nor could she name the manufacturer of the gun or how many bullets it could hold. Rossi also testified that although she had obtained her concealed carry permit, she had never fired the gun found in her apartment and did not have a receipt for the gun. Rossi further testified that Blair, at some point during his many visits to the apartment, had been in and had access to the bedroom closet where the gun was located.

{¶ 17} Blair, a self-proclaimed full-time father, also testified at trial. According to Blair, he was sitting on the couch "butt naked" with Rossi when he heard a knock on the door. However, before he could get up to answer the door, Blair testified "the maintenance people just walked in and – and the maintenance people walked into my child's home." Blair then testified he "never threaten no people," but merely said "don't just walk in people's house like that." Blair testified he then told the maintenance workers to come back later, but they "blew the situation way out of proportion. All I asked them was to come back." Blair also testified he had no reason to threaten the maintenance workers, and that "if they took it as a threat, I mean, that's how they perceived it. I – I looked at it as – as advice." Blair then testified he "never cussed at them people" and that the allegations against him were all part of a "conspiracy going on and you all conspiring with Montgomery County."

{¶ 18} Continuing, Blair testified shortly after the maintenance workers left, the police knocked on the apartment door and informed him that "the maintenance people said that I threaten them with a gun, which was a lie." Blair then testified police told him if he did not let them enter the apartment that they would get a search warrant. In response, Blair testified he told the officer to "go get a search warrant." Blair testified he then called his attorney and decided that, because he had "already [been] threatened by government that they were going to kill [him]," he would surrender to police waiting outside.

{¶ 19} After speaking with his attorney, Blair testified he then walked outside with his

hands in the air and got on the ground as instructed. When asked if any of the responding officers had to take him to the ground, Blair testified that he was "already on the ground when Detective Hoover jumped on [his] back and hit [him] in the head with his – with his gun." Blair also testified that Detective Hoover "was on my back hitting me; kept calling me stupid mother f**kers and I'm dumbest f**k. I should have just let them in and * * * basically trying to say it was my fault. That the situation was going on."

{¶ 20} Upon being transported to jail, Blair testified that as he was being searched, Officer Gibson asked him if he was going to be able to post bond. In response, Blair testified, "I asked him, what's my bond? Next thing I know, he went mayhem like. * * * I don't understand how he just snapped so fast. So fast. I didn't even say nothing or do nothing for him to even snap." Blair also testified he complied with Officer Gibson's instructions to take off his blue jeans, that he never took a defensive stance against Officer Gibson, never attacked Officer Gibson, never assaulted Officer Gibson, and "for him to even say I assault him, it – it really, you know – I feel some type of weight on the – how you just don't lie? You just lied. It – it – he just lied on me." Blair then testified he was cooperative with police at all times and that "there was never no aggression with the police whatsoever."

{¶ 21} Rather, Blair testified he was being "swang [sic] like a rag doll" as Officer Gibson tried to "run [him] head first into everything he can." Blair then testified he never intended to elbow Officer Gibson in the eye, nor did he ever attempt to strike Detective Hoover. As Blair testified, "I'm not stupid to assault a police officer, knowing that they would have killed me in there." Blair also testified if he "assaulted any officer, I'd be dead right now. Me and you both know the truth." Blair then testified as soon as he was placed into the holding cell, "all I remember is being cold-cocked and waking up and they pulling tasers out of me."

{¶ 22} Blair further testified he did not live with Rossi, but that he lived with his mother

in Dayton. In addition, when asked if he had ever held the gun located in the apartment, Blair testified he had never held the gun and "[a]t the time, I didn't even know where [the gun] was." Blair did testify, however, that he knew Rossi had a gun and "was around when it was purchased." Blair also testified he never asked if he could "get that gun back" as Detective Hoover claimed, but merely asked "are you guys going to get the gun back?" Concluding, Blair testified all of the state's witnesses were lying and that "I know it's corrupt activity going on. I know some malicious prosecution going on." After making further accusations against the state alleging a grand ongoing conspiracy against him, Blair then rested.

{¶ 23} After defense rested, the trial court issued its decision finding Blair guilty on all charges. In so holding, the trial court found the testimony of the state's witnesses to be "very credible," whereas the testimony from Rossi and Blair "lack credibility; serious deficits in terms of credibility." In addition, as it relates to Blair's conviction for having weapons while under disability, the trial court stated, in pertinent part:

Now, the question of who had the firearm, who possessed the firearm. I find it, again, I find Ms. Rossi's testimony hard to believe that as a new CCW holder, that she would purchase a firearm and not even know the name of the manufacturer of the firearm; how many shells or bullets this firearm could accommodate; that she possessed the firearm, stuck between clothing in a rather accessible area of the house with children in the house, yet she had not purchased any ammunition for the firearm. And – and purchased it with the intent, as indicated by [the state], with the intent of protecting herself and her family. That just doesn't make a lot of sense.

The trial court then concluded, based on the totality of the circumstances and circumstantial evidence presented, that Blair had "at the very least" joint possession of the gun.

{¶ 24} On January 16, 2014, the parties reconvened for the purposes of Blair's sentencing hearing. At the sentencing hearing, the trial court merged Blair's fifth-degree felony obstructing official business conviction with his fourth-degree felony assault conviction. After the state elected to proceed with sentencing on the fourth-degree felony assault, the

trial court sentenced Blair to a total aggregate term of 66 months in prison. In reaching its sentencing decision, the trial court imposed sentences of 36 months in prison for having weapons while under disability, 18 months in prison for assaulting Detective Hoover and 12 months in prison for assaulting Officer Gibson, all to be served consecutively.

{¶ 25} Blair now appeals from his conviction and sentence, raising four assignments of error for review. For ease of discussion, Blair's second and third assignments of error will be addressed together.

{¶ 26} Assignment of Error No. 1:

{¶ 27} THE COURT COMMITTED ERROR IN SEPARATELY SENTENCING ALLIED OFFENSES OF SIMILAR IMPORT INSTEAD OF MERGING THEM.

{¶ 28} In his first assignment of error, Blair argues the trial court erred by failing to merge his convictions for assaulting Detective Hoover and Officer Gibson for purposes of sentencing as they were allied offenses of similar import. We disagree.

{¶ 29} Pursuant to R.C. 2941.25, Ohio's multiple-count statute, the imposition of multiple punishments for the same criminal conduct is prohibited. *State v. Brown*, 186 Ohio App.3d 437, 2010-Ohio-324, ¶ 7 (12th Dist.). Specifically, R.C. 2941.25 states:

(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

{¶ 30} The Ohio Supreme Court established a two-part test for determining whether offenses are allied offenses of similar import under R.C. 2941.25 in *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314. Under the *Johnson* test, the first inquiry focuses on

whether it is possible to commit the offenses with the same conduct. *State v. Richardson*, 12th Dist. Clermont No. CA2012-06-043, 2013-Ohio-1953, ¶ 21, citing *Johnson* at ¶ 48. In making this determination, it is not necessary that the commission of one offense would always result in the commission of the other. *State v. Jackson*, 12th Dist. Clermont No. CA2013-04-037, 2013-Ohio-5371, ¶ 10. Rather, the question is merely whether it is possible for the offenses to be committed with the same conduct. *State v. Craycraft*, 193 Ohio App.3d 594, 2011-Ohio-413, ¶ 11 (12th Dist.); *State v. Marlow*, 12th Dist. Clermont No. CA2012-07-051, 2013-Ohio-778, ¶ 10.

{¶ 31} If it is possible to commit the offenses with the same conduct, the second inquiry under the *Johnson* test focuses on whether the offenses were in fact committed by the same conduct; that is, by a single act, performed with a single state of mind. *State v. Estes*, 12th Dist. Preble No. CA2013-04-001, 2014-Ohio-767, ¶ 10. If so, the offenses are allied offenses of similar import and must be merged. *State v. Luong*, 12th Dist. Brown No. CA2011-06-110, 2012-Ohio-4520, ¶ 39. However, if the commission of one offense will never result in the commission of the other, "or if the offenses are committed separately, or if the defendant has separate animus for each offense, then, according to R.C. 2941.25(B), the offenses will not merge." *State v. Standifer*, 12th Dist. Warren No. CA2011-07-071, 2012-Ohio-3132, ¶ 66, quoting *Johnson* at ¶ 51. The term "animus" is defined as "purpose' or 'more properly, immediate motive." *State v. Lewis*, 12th Dist. Clinton No. CA2008-10-045, 2012-Ohio-885, ¶ 13, quoting *State v. Logan*, 60 Ohio St.2d 126, 131 (1979).

{¶ 32} An appellate court applies a de novo standard of review in reviewing a trial court's R.C. 2941.25 merger determination. *State v. Whitaker*, 12th Dist. Preble No. CA2012-10-013, 2013-Ohio-4434, ¶ 36, citing *State v. Williams*, 134 Ohio St.3d 482, 2012-Ohio-5699, ¶ 28. De novo review means "that we apply the same standards as the trial court." *State v. Chavez-Juarez*, 185 Ohio App.3d 189, 2009-Ohio-6130, ¶ 44 (2d Dist.),

quoting *GNFH, Inc. v. W. Am. Ins. Co.*, 172 Ohio App.3d 127, 2007-Ohio-2722, ¶ 16 (2d Dist.). "The defendant bears the burden of establishing his entitlement to the protection provided by R.C. 2941.25 against multiple punishments for a single criminal act." *State v. Tannreuther*, 12th Dist. Butler No. CA2013-04-062, 2014-Ohio-74, ¶ 12.

{¶ 33} Blair argues the trial court erred by failing to merge his two assault convictions against Detective Hoover and Officer Gibson because the charges constituted a "single transaction, objective and conduct, interfering with his booking at jail, and under *Johnson*, the two aforementioned counts must merge." Ohio courts, however, "have routinely recognized that separate convictions and sentences are permitted when the same course of conduct affects multiple victims." *State v. Clay*, 4th Dist. Lawrence No. 11 CA23, 2013-Ohio-4649, ¶ 84; see also *State v. Young*, 8th Dist. Cuyahoga No. 99752, 2014-Ohio-1055, ¶ 27; *State v. Wills*, 2d Dist. Montgomery No. 25357, 2013-Ohio-4507, ¶ 37; *State v. Jackson*, 9th Dist. Summit No. 26757, 2013-Ohio-5557, ¶ 29; *State v. Lewis*, 11th Dist. Lake No. 2012-L-074, 2013-Ohio-3974, ¶ 136; *State v. Ruby*, 6th Dist. Sandusky No. S-10-028, 2011-Ohio-4864, ¶ 60.

{¶ 34} In fact, as this court stated previously, "where a defendant commits the same offense against different victims during the same course of conduct, a separate animus exists for each offense." *State v. Kwambana*, 12th Dist. Clermont No. CA2013-12-092, 2014-Ohio-2582, ¶11, quoting *State v. Lung*, 12th Dist. Brown No. CA2012-03-004, 2012-Ohio-5352, ¶ 16; *State v. Phelps*, 12th Dist. Butler No. CA2009-09-243, 2010-Ohio-3257, ¶ 16 ("Where a defendant's conduct injures multiple victims, the defendant may be convicted and sentenced for each offense involving a separate victim"). In other words, "[c]ommitting the same crime, even simultaneously, with regard to different victims does not result in merger pursuant to R.C. 2941.25." *Lung* at ¶ 18, quoting *State v. Petefish*, 7th Dist. Mahoning No. 10 MA 78, 2012-Ohio-2723, ¶ 10. "Nothing in *Johnson* alters that conclusion." *Id.* at ¶ 16, quoting

State v. Young, 2d Dist. Montgomery No. 23642, 2011-Ohio-747, ¶ 39.

{¶ 35} Therefore, as each of the two assault offenses committed by Blair were perpetrated against two different victims; namely, Detective Hoover and Officer Gibson, the trial court did not err by failing to merge Blair's two assault convictions for purposes of sentencing. Accordingly, Blair's first assignment of error is without merit and overruled.

{¶ 36} Assignment of Error No. 2:

{¶ 37} APPELLANT'S CONVICTION FOR HAVING WEAPON UNDER DISABILITY WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE AS REQUIRED BY DUE PROCESS IN VIOLATION OF U.S. CONSTITUTION AMENDMENT XIV AND CRIM.R. 29.

{¶ 38} Assignment of Error No. 3:

{¶ 39} APPELLANT'S CONVICTION FOR HAVING WEAPON UNDER DISABILITY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 40} In his second and third assignments of error, Blair argues his having weapons while under disability conviction must be reversed because the conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. We disagree.

{¶ 41} At the outset, we note that "[t]he legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different." *State v. Wright*, 12th Dist. Butler No. CA2012-08-152, 2014-Ohio-985, ¶ 10, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1987). Nevertheless, although the two concepts are different, it is now well-established that finding a conviction is supported by the manifest weight of the evidence is also dispositive of the issue of sufficiency. *State v. Jones*, 12th Dist. Butler No. CA2012-03-049, 2013-Ohio-150, ¶ 19, citing *State v. Church*, 12th Dist. Butler No. CA2011-04-070, 2012-Ohio-3877, ¶ 10. Therefore, "[b]ecause sufficiency is required to take a case to the jury, a finding that a conviction is supported by the weight of the evidence must necessarily include a finding of sufficiency." *State v. Hart*, 12th Dist.

Brown No. CA2011-03-008, 2012-Ohio-1896, ¶ 43; *State v. Kinsworthy*, 12th Dist. Warren No. CA2013-06-053, 2014-Ohio-1584, ¶ 54.

{¶ 42} A manifest weight of the evidence challenge examines the "inclination of the greater amount of credible evidence, offered at a trial, to support one side of the issue rather than the other." *State v. Barnett*, 12th Dist. Butler No. CA2011-09-177, 2012-Ohio-2372, ¶ 14. To determine whether a conviction is against the manifest weight of the evidence, the reviewing court must look at the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving the 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. Morgan*, 12th Dist. Butler Nos. CA2013-08-146 and CA2013-08-147, 2014-Ohio-2472, ¶ 34.

{¶ 43} However, while appellate review includes the responsibility to consider the credibility of witnesses and weight given to the evidence, "these issues are primarily matters for the trier of fact to decide." *State v. Barnes*, 12th Dist. Brown No. CA2010-06-009, 2011-Ohio-5226, ¶ 81, quoting *State v. Walker*, 12th Dist. Butler No. CA2006-04-085, 2007-Ohio-911, ¶ 26. An appellate court, therefore, will overturn a conviction due to the manifest weight of the evidence only in extraordinary circumstances when the evidence presented at trial weighs heavily in favor of acquittal. *Id.*, citing *Thompkins*, 78 Ohio St.3d at 387.

{¶ 44} As noted above, Blair was convicted of having weapons while under disability in violation of R.C. 2923.13(A)(2), which, as relevant here, provides "no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if * * * [t]he person * * * has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence." Blair does not challenge the trial court's decision finding he had been adjudicated a delinquent child after pleading no contest to assault, a felony offense of violence. Rather, Blair merely challenges the trial court's

decision finding he knowingly had possession of the gun located in the apartment.

{¶ 45} Pursuant to R.C. 2901.22(B), "[a] person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature." In addition, to "have" a firearm within the meaning of R.C. 2923.13(A), "a person must have actual or constructive possession of the firearm." *State v. Brown*, 12th Dist. Butler No. CA2013-03-043, 2014-Ohio-1317, ¶ 16, citing *State v. Leide*, 12th Dist. Butler No. CA2005-08-363, 2006-Ohio-2716, ¶ 29. Ownership of the weapon, however, "need not be proven to establish constructive possession." *State v. Brooks*, 9th Dist. Summit No. 23236, 2007-Ohio-506, ¶ 23. Rather, "[a]n accused has 'constructive possession' of an item when the accused is conscious of the item's presence and is able to exercise dominion and control over it, even if the item is not within the accused's immediate physical possession." *State v. Jester*, 12th Dist. Butler No. CA2010-10-264, 2012-Ohio-544, ¶ 25. "Dominion and control can be proven by circumstantial evidence alone." *State v. Brown*, 12th Dist. Butler No. CA2006-10-247, 2007-Ohio-7070, ¶ 43.

{¶ 46} After a thorough review of the record, we find Blair's conviction for having weapons while under disability was not against the manifest weight of the evidence. Just as the trial court found, given the fact Blair knew Rossi had purchased a gun and had access to the bedroom closet where the gun was located, circumstantial evidence exists to prove Blair, "at the very least," jointly possessed the gun located in the apartment. This is further supported by the fact that testimony was presented indicating Blair referred to the gun as "my gun," as well as testimony Blair asked if he could "get that gun back" when the weapon was shown to defense counsel during trial.

{¶ 47} Moreover, although Blair claimed "[a]t the time, I didn't even know where [the gun] was," as the trier of fact, the trial court was in the best position to resolve factual questions and evaluate witness credibility. As noted above, the trial court found Blair and

Rossi lacked credibility and exhibited "serious deficits in terms of credibility." The trial court also found Rossi's testimony regarding the gun was "hard to believe" and "doesn't make a lot of sense." Again, these were issues for the trial court to decide. As this court has consistently stated, "a conviction is not against the manifest weight of the evidence simply because the trier of fact believed the prosecution testimony." *Brown*, 2014-Ohio-1317 at ¶ 20; *State v. Lunsford*, 12th Dist. Brown No. CA2010-10-021, 2011-Ohio-6529, ¶ 17; *State v. Guzzo*, 12th Dist. Butler No. CA2003-09-232, 2004-Ohio-4979, ¶ 13.

{¶ 48} In light of the foregoing, having found Blair's conviction for having weapons under disability was not against the manifest weight of the evidence, we necessarily conclude the state presented sufficient evidence to support the trial court's guilt finding. Accordingly, Blair's second and third assignments of error also lack merit and are overruled.

{¶ 49} Assignment of Error No. 4:

{¶ 50} THE TRIAL COURT IMPOSED CONSECUTIVE SENTENCES WITHOUT MAKING THE REQUIRED FINDINGS UNDER R.C. 2929.14(C)(4) AND THUS VIOLATED MR. BLAIR'S STATUTORY AND CONSTITUTIONAL RIGHTS TO A SENTENCE CONSISTENT WITH APPLICABLE LAW.

{¶ 51} In his fourth assignment of error, Blair argues the trial court erred by imposing consecutive sentences for the felony offenses of having weapons while under disability and two counts of assault without first making the necessary findings as required by R.C. 2929.14(C)(4). We again disagree.

{¶ 52} Pursuant to R.C. 2929.14(C)(4), a trial court must engage in a three-step analysis and make certain findings before imposing consecutive sentences. *State v. Setty*, 12th Dist. Clermont Nos. CA2013-06-049 and CA2013-06-050, 2014-Ohio-2340, ¶ 112. First, the trial court must find the consecutive sentence is necessary to protect the public from future crime or to punish the offender. *State v. Dillon*, 12th Dist. Madison No. CA2012-

06-012, 2013-Ohio-335, ¶ 9. Second, the trial court must find that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. *State v. Heard*, 12th Dist. Butler Nos. CA2014-02-024, CA2014-02-025, and CA2014-05-118, 2014-Ohio-5394, ¶ 10. Third, the trial court must find that at least one of the three circumstances listed in R.C. 2929.14(C)(4)(a)-(c) applies; namely:

(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 post-release 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.

R.C. 2929.14(C)(4)(a)-(c).

{¶ 53} "A trial court satisfies the statutory requirement of making the required findings when the record reflects that the court engaged in the required analysis and selected the appropriate statutory criteria." *State v. Childers*, 12th Dist. Warren No. CA2014-02-034, 2014-Ohio-4895, ¶ 31, quoting *Setty* at ¶ 113. When imposing consecutive sentences, a trial court is not required to provide a word-for-word recitation of the language of the statute or articulate reasons supporting its findings. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, ¶ 27, 29. "Nevertheless, the record must reflect that the trial court engaged in the required sentencing analysis and made the requisite findings." *State v. Moore*, 12th Dist. Clermont No. CA2014-02-016, 2014-Ohio-5191, ¶ 12. The court's findings must then be

incorporated into its sentencing entry. *Id.*, citing *Bonnell* at ¶ 37.

{¶ 54} In this case, the record firmly establishes the trial court made all the necessary findings required by R.C. 2929.14(C)(4) before imposing consecutive sentences. Specifically, in ordering Blair to serve consecutive sentences for the felony offenses of having weapons while under disability and two counts of assault, the trial court stated:

Now, Counts I, II and III, will run consecutive to one another. Court will impose consecutive sentences and will find that the presumption of concurrent sentences, as referenced in Revised Code Section 2929.41(A), has been rebutted in this case and that consecutive sentences are necessary to adequately protect the public and to punish the Defendant and are not disproportionate. And will find that the harm was so great or unusual that a single term does not adequately reflect the seriousness of the Defendant's conduct. Furthermore, this Court will find that Defendant's criminal history shows that consecutive terms are needed to protect the public.

The trial court also noted its "serious public safety concerns" regarding Blair's "conduct and [his] complete lack of boundaries, complete lack of respect for law enforcement." The trial court later memorialized these findings within its sentencing entry.

{¶ 55} After a thorough review of the record, and based on the trial court's statements at the sentencing hearing, as well as the language utilized by the trial court in its sentencing entry, it is clear the trial court complied with the dictates of R.C. 2929.14(C)(4). The trial court, therefore, did not err by imposing consecutive sentences in this matter. *See, e.g., State v. Haley*, 12th Dist. Butler No. CA2012-10-212, 2013-Ohio-4531, ¶ 15-18; *State v. Crawford*, 12th Dist. Clermont No. CA2012-12-088, 2013-Ohio-3315, ¶ 13-16. Accordingly, finding no error in the trial court's sentencing decision, Blair's fourth assignment of error is overruled.

{¶ 56} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.