[Cite as *State v. Littlejohn*, 2015-Ohio-875.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101549

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ROBERT LITTLEJOHN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART; REVERSED IN PART;
SENTENCES VACATED; REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-580807

BEFORE: E.A. Gallagher, P.J., E.T. Gallagher, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: March 12, 2015

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EILEEN A. GALLAGHER, P.J.:

{¶1} Defendant-appellant Robert Littlejohn appeals his convictions for breaking and entering in violation of R.C. 2911.13(A), theft in violation of R.C. 2913.02(A)(1) and vandalism in violation of R.C. 2909.05(B)(1)(b). Littlejohn contends that his convictions were against the manifest weight of the evidence. He also contends that the trial court erred in imposing consecutive sentences without making the factual findings required under R.C. 2929.14(C)(4). The state concedes that the trial court did not make the factual findings required under R.C. 2929.14(C)(4). For the reasons that follow, we affirm Littlejohn's convictions but vacate Littlejohn's consecutive sentences and remand the matter for resentencing consistent with this opinion.

Factual and Procedural Background

{¶2} Littlejohn's convictions arose out of an early morning theft of a Speedy gas station located at 4025 East 131st Street in Cleveland on September 13, 2013. Littlejohn was indicted by the Cuyahoga County Grand Jury on one count of breaking and entering in violation of R.C. 2911.13(A), one count of theft in violation of R.C. 2913.02(A)(1) and vandalism in violation of R.C. 2909.05(B)(1)(b). All of the charges were fifth-degree felonies. Littlejohn pled not guilty and, on April 15, 2014, a jury trial commenced.

{¶3} The state's witnesses provided the following account of the incident and subsequent investigation that led to Littlejohn's convictions.

{¶4} At approximately 4:25 a.m. on September 13, 2013, Patrol Officers Ronald Clayton and Kenneth Allen with the Cleveland Police Department were traveling in their patrol car northbound on East 131st Street, responding to a "low priority call." While stopped at a traffic light at the corner of East 131st Street and Harvard Avenue, Officer Clayton observed a male "sprinting" across the parking lot of the Speedy gas station dragging a garbage can. He pointed

the man out to Allen. The officers then noticed that the front door to the store area of the gas station (the "store") had been "ripped open." Officer Clayton drove the patrol vehicle toward the gas station to investigate what was occurring.

{¶5} Officer Allen testified that, at first, the suspect did not see them because he was dragging the garbage can with his back towards the patrol vehicle. However, when the suspect reached the corner of the gas station near the street, he saw the officers and began running northbound on East 131st Street through the yard of a house directly north of the gas station, leaving the garbage can behind. The gas station was closed at the time but the area was fairly well lit. Officer Clayton testified that he "couldn't really see" the suspect's face because he had a hooded sweatshirt or "hoodie" pulled over his head but described him as a black male no taller than 5'7" wearing a black hoodie and black or dark blue pants and gloves. Officer Allen described the man as a black male wearing black jogging pants, a black hoodie, tennis shoes and brown or black gloves. With respect to the height of the suspect, Officer Allen testified that the suspect was considerably shorter than his own height of 5'9," i.e., "up to my chin." The officers testified that they only saw one man in the area of the Speedy gas station that morning.

{¶6} Officer Allen testified that he jumped out of the vehicle and began pursuing the suspect on foot while Officer Clayton called for back up and drove around the corner, eastbound on Crennell Avenue. Officer Allen pursued the man eastbound through backyards and over fences behind Harvard Avenue and Crennell Avenue while Officer Clayton drove down the next street in an attempt to cut off the suspect. Officer Allen testified that, as he was pursuing the suspect, the suspect began pulling money out of his pockets and throwing it onto the ground. He testified that as the suspect crossed a fence, he took off his gloves and threw them onto the ground as well. Officer Allen testified that he then got "caught up in the fence" and that by the

time he freed himself, the suspect was running down a driveway. He testified that Officer Clayton nearly caught up with the suspect but that the suspect then turned around, came back and "hopped a few more fences" before they lost the suspect in a backyard. Other units arrived to cordon off the area in attempt to locate and capture the suspect but the officers were unable to find him.

{¶7} Officer Allen testified that when the officers first saw the suspect, he was forty or fifty feet away from them but that during his pursuit, he "almost grabbed" the suspect and "was within hands-grasp." Because he was chasing the suspect from behind, however, Officer Allen never saw the suspect's face.

{¶8} After searching for the suspect without success for ten to fifteen minutes, the officers' supervisor, Sergeant Jason Steckle, instructed Officers Clayton and Allen to return to the store to "lock the scene down." Officers Clayton and Allen then returned to the Speedy gas station.

{¶9} When Officers Clayton and Allen returned to the scene, they discovered that the trash can that the suspect had been dragging contained a white bucket filled with loose change. Although he did not know how much change was inside the bucket, Officer Allen testified that the bucket was "extremely heavy."

{¶10} The officers testified that they would usually wait for the crime scene unit to arrive before collecting any evidence but it began to rain and Sergeant Steckle directed the officers to go back and recover the gloves and money that the suspect had dropped as well as a cardboard box containing several cartons of Newport cigarettes and an iPad that Officer Clayton had discovered on the corner of East 131st Street and Crennell Avenue, one block north of the gas station, when he was returning to the gas station. Sergeant Steckle testified that he directed the

officers to collect the evidence because he wanted to avoid losing any evidence in the rain and wanted to free up the officers, whom he had previously told to stay and guard the evidence, to answer other calls.

{¶11} Officer Allen recovered the gloves and the money ($351) as requested and brought them back to the gas station. Officer Clayton testified that he was "in the area" of the backyard with Officer Allen when he recovered the gloves but that he "wasn't standing right next to him." Officer Clayton described the gloves his partner recovered as "rubber" or "latex" gloves but testified that he was not "a hundred percent sure" of the material out of which the gloves were made. Officer Clayton testified that he or another officer recovered the cardboard box and brought it back to the gas station. After the crime scene unit arrived, the evidence was photographed and tagged on the property of the gas station then brought to the evidence storage room of the Cleveland Police Department.

{¶12} Detective Todd Clemens with the Cleveland police crime scene unit testified that he was called to the scene to photograph and collect the evidence that had been recovered. He testified that when he arrived at the scene at approximately 5:40 a.m., he first spoke with the officers present and then began photographing the scene and the evidence. He testified that Officer Allen handed him a pair of gloves in an envelope and informed him that he had observed the suspect throw the gloves to the ground as he was chasing him. Detective Clemens testified that he sealed the envelope he had received from Officer Allen and brought the envelope with the gloves to the evidence storage room. He testified that the gloves he received from Officer Allen were made out of a dark cloth material. He testified that he did not find, and was not given, any "rubber" gloves.

{¶13} Mahmoud Zayed, the owner of the Speedy gas station, testified that he received a call from the alarm company on the morning of September 13, 2013 advising him that someone had broken into the store. He testified that when he arrived at the store, two police officers were out front and that the store's glass door and shutters, its cash registers and the system used to control the gas pumps were damaged during the break-in. He testified that the cost to repair the damage caused by the break-in was approximately $6,100 and that $2,100 in cash, his son's iPad and cartons of cigarettes valued at $1,650 were stolen. He testified that the gas station had several surveillance cameras in operation at the time of the incident and that he gave the videos recorded by those surveillance cameras (the "surveillance videos") to the police, at their request.

{¶14} Detective John Hudelson was the detective assigned to perform the follow-up investigation regarding the break-in at the Speedy gas station. He testified that after reviewing the report of the incident, he contacted Zayed, discussed the value of the property that had been stolen and possible suspects with him and obtained copies of the surveillance videos from the time of the incident. Zayed testified that when he first saw the surveillance videos, he thought one of the perpetrators was "[t]his guy named David" because "we know David" and he came into the store frequently. Detective Hudelson testified, however, that Zayed did not give him any "concrete information" he could use to verify whether "David" existed or had been in the store. Zayed testified that he believed Littlejohn resembled one of the men seen on the surveillance videos and that Littlejohn "look[ed] like David too." He testified that Littlejohn was the same height as David and that "David could be brothers with him. * * * He could be twin brothers with this guy."

{¶15} The several surveillance videos that recorded the break-in were also introduced into evidence.[1] As Detective Hudelson testified, the surveillance videos show the outer shutter being pulled away from the door of the store area of the gas station and glass on the door being broken. The door then opens and two men in hoodies and pants are seen entering the store. The videos show one of the men behind the counter opening the drawers of two cash registers, pulling out cash and stuffing it into the pockets of his hoodie. The men then run back towards the door through which they entered the store. Approximately seventy seconds later, both men return to the area behind the counter. The first man pulls cash out of a third cash register drawer while the second man checks one of the cash registers that the first man had previously searched then collects a tablet and a box with cartons of cigarettes and carries them out of the store. The first man follows the second man out of the store, carrying a large bucket of change. Officer Allen testified that the box of cigarettes, iPad and bucket of change seen in the surveillance videos matched the evidence the officers recovered after pursuing the suspect.

{¶16} Because the surveillance videos were recorded in "night vision," Officers Clayton and Allen testified that they were unable to tell if the color of the hoodies or pants the men were wearing in the videos matched the clothing of the suspect they saw running from the gas station but that the two men otherwise appeared to be dressed similarly to the suspect. Officer Clayton testified that although one of the men in the videos had a beard like Littlejohn, he could not "definitively say" that the man in the video was the same man he saw running from the gas station. Officer Allen similarly testified that he could not determine from the surveillance

[1]The date and time depicted on the surveillance videos were determined to be twelve hours off from when the incident actually occurred, e.g., one of the videos showed a time of 16:27 or 4:27 p.m. on September 12, 2013, when, in fact, the incident occurred at 4:27 a.m. on September 13, 2013.

videos alone whether the man he had been chasing was one of the men in the videos. Officers Clayton and Allen acknowledged that they could not determine the height of either of the perpetrators from the videos.

{¶17} Detective Hudelson testified that as part of his investigation, he obtained a photograph of Littlejohn and compared it to a still image he obtained from the surveillance videos showing the man carrying the bucket of change out of the store. Based on similarities in their complexions, full eyebrows, facial hair, height and weight, Detective Hudelson testified that he identified Littlejohn as the man who is seen in the surveillance videos carrying the bucket of change.

{¶18} The gloves recovered by Officer Allen were submitted to the Bureau of Criminal Investigation ("BCI") for DNA testing in October 2013. Stacy Violi, a forensic scientist in BCI's DNA section, testified regarding the DNA testing performed in the case. Violi testified that DNA was extracted from swabs taken from the inside of the gloves and used to develop a DNA profile. She testified that the DNA profile showed that the DNA on the gloves was a mixture of at least two individuals — a major contributor, contributing the majority of the DNA, and at least one other minor contributor, contributing a smaller percentage of the DNA found on the gloves. The precise amounts of DNA contributed by the major and minor contributors were not calculated.

{¶19} The DNA testing of the gloves matched a sample that was on file for Littlejohn and another DNA sample was, therefore, requested from Littlejohn to confirm the match. Detective Hudelson testified that Littlejohn agreed to provide a buccal swab sample and that he obtained the DNA sample from Littlejohn.

{¶20} Detective Hudelson testified that when he went to collect the DNA sample from Littlejohn, he spoke with him briefly. Detective Hudelson testified that Littlejohn denied having been inside the gas station. He testified that he then showed Littlejohn the still image from the surveillance videos in which the suspect was holding a bucket full of change and questioned Littlejohn about the image and why, based on the image, Littlejohn appeared to have been inside the store at the time of the incident. Littlejohn responded that he had nothing to say. Detective Hudelson testified that he also asked Littlejohn why his DNA would be inside a pair of gloves recovered near the scene and that once again Littlejohn responded that he had nothing to say.

{¶21} After BCI received the DNA standard provided by Littlejohn, Violi compared the DNA profile from the gloves to the DNA standard obtained from Littlejohn. Violi testified that she concluded that Robert Littlejohn's DNA matched the major DNA contributor from the gloves and that the expected frequency of such a match was one in 212 quintillion unrelated individuals. She testified that she was unable to identity the minor contributor(s) to the DNA found on the gloves.

{¶22} Violi testified that the most common way for a person's DNA to get on the inside of gloves would be by wearing them, i.e., from skin cells. She testified, however, that it was possible that if a person had DNA on his or her hands from another person and then wore the gloves that the other person's DNA could get transferred to the inside of the gloves. She further testified that factors such as the frequency with which the gloves were worn by a particular person, whether bodily fluid was present on the gloves that had not been detected and who last handled the gloves could affect who was the majority contributor to the DNA on the inside of the gloves. She testified that she could not state within a reasonable degree of probability whether

the majority contributor to the DNA found on the gloves, i.e., Littlejohn, was, in fact, the last person to wear the gloves.

{¶23} After the conclusion of the state's case, Littlejohn moved for acquittal pursuant to Crim.R. 29. The court denied the motion. Littlejohn rested without presenting any witnesses and then renewed his motion for acquittal. Once again, the trial court denied the motion and the case went to the jury.

{¶24} The jury found Littlejohn guilty on all counts. At his sentencing hearing on May 15, 2014, the trial court sentenced Littlejohn to one year in prison on each count to run concurrently to each other but to run consecutively to sentences imposed in three other cases, a one-year sentence in CR-10-545629, a sentence of six months in CR-13-578942 and a sentence of nine months in CR-14-581460, for a total aggregate prison sentence of three years and three months. The trial court also sentenced Littlejohn to three years of postrelease control and ordered him to pay $702 in restitution to the owner of the Speedy gas station.

{¶25} With regard to its imposition of consecutive sentences, the trial court stated as follows:

> The reason why I'm running these consecutive, obviously, you have a history of criminal behavior. You committed these offenses while you were on a community control sanctions [sic] for the same type of behavior. You're just a classic thief.

No findings were included in the trial court's May 20, 2014 sentencing entry with respect to the imposition of consecutive sentences.

{¶26} This appeal followed. Littlejohn raises the following two assignments of error for review:

Assignment of Error I:

The appellant's convictions for breaking and entering, theft and vandalism were against the manifest weight of the evidence.

Assignment of Error II:

The trial court failed to make all the factual findings necessary to sentence appellant to consecutive sentences under R.C. 2929.14.

Law and Analysis

Manifest Weight of the Evidence

{¶27} In his first assignment of error, Littlejohn argues that his convictions for breaking and entering, theft and vandalism were against the manifest weight of the evidence and should be overturned because the identification evidence in the case was "lacking in reliability and credibility." We disagree.

{¶28} A manifest weight challenge attacks the credibility of the evidence presented and questions whether the state met its burden of persuasion at trial. *State v. Whitsett*, 8th Dist. Cuyahoga No. 101182, 2014-Ohio-4933, ¶ 26, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 13. When considering an appellant's claim that a conviction is against the manifest weight of the evidence, the court of appeals sits as a "'thirteenth juror'" and may disagree "with the factfinder's resolution of conflicting testimony." *Thompkins* at 387, quoting *Tibbs v. Florida*, 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982). Weight of the evidence "addresses the evidence's effect of inducing belief." *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, citing *Thompkins* at 386-387, 678 N.E.2d 541.

{¶29} The reviewing court must examine the entire record, weigh the evidence and all reasonable inferences, consider the witnesses' credibility and determine whether, in resolving 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. *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). In conducting such a review, this court remains mindful that the credibility of the witnesses and the weight to be given the evidence are primarily for the trier of fact to assess. *State v. Bradley*, 8th Dist. Cuyahoga No. 97333, 2012-Ohio-2765, ¶ 14, citing *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner, demeanor, gestures and voice inflections, in determining whether the proffered testimony is credible. *State v. Kurtz*, 8th Dist. Cuyahoga No. 99103, 2013-Ohio-2999, ¶ 26, quoting *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 24. A manifest weight challenge to a conviction resulting from a jury verdict requires a unanimous concurrence of all three appellate judges to reverse. *Thompkins* at 389. Reversal on manifest weight grounds is reserved for the "'exceptional case in which the evidence weighs heavily against the conviction.'" *Thompkins* at 387, quoting *Martin, supra*.

{¶30} Littlejohn's challenge to his convictions is limited to the element of identity. He does not dispute that the state presented substantial competent, credible evidence to prove the other elements of the offenses of which he was convicted beyond a reasonable doubt. We, therefore, limit our analysis to whether the evidence weighed heavily against the jury's determination that Littlejohn was one of the participants in the September 13, 2013 theft of the Speedy gas station.

{¶31} In support of his manifest weight challenge, Littlejohn argues that the evidence identifying him as a participant in the gas station theft lacked credibility and reliability because: (1) the police report generated after Littlejohn's arrest indicates that he was 5'3" and weighed

130 pounds at the time of his arrest, but none of the witnesses testified that the suspect they saw running from the gas station matched this description; (2) the surveillance videos were "too unclear" to serve as a basis for a reliable identification of Littlejohn given that the males in the videos were wearing hoodies and the height and weight of the males could not be determined from the videos; (3) the results of the DNA testing performed on the gloves "reveal that more than one individual wore the gloves dropped at the scene" and it could not be determined from the DNA testing who last wore the gloves and (4) there was no evidence identifying Littlejohn as the person who dropped the gloves during the police pursuit. These arguments do not persuade us that Littlejohn's convictions were against the manifest weight of the evidence.

{¶32} First, with respect to the evidence of the height and weight of the suspect the officers saw running from the gas station, although Officers Clayton and Allen could not precisely identify the height of the suspect, their descriptions of the height of the suspect were consistent with each other and consistent with Littlejohn's height of 5'3". Officer Clayton described the suspect as a black male no taller than 5'7". Officer Allen testified that he was 5'9" and that the suspect was considerably shorter than he was, i.e., "up to my chin." The officers did not testify regarding the weight of the suspect.

{¶33} Likewise, although the height and weight of the perpetrators could not be determined from the surveillance videos, the state presented other evidence that supported the identification of Littlejohn as one of the men seen in the videos. Detective Hudelson testified that by comparing a still image from the surveillance videos to a picture of Littlejohn, he was able to determine that the features of one of the men seen in the videos resembled those of Littlejohn. Although the gas station's owner, Zayed, testified that he originally thought after viewing the surveillance videos that someone named "David" may have been involved in the

theft, he further testified that Littlejohn so strongly resembled "David" that the two "could be twin brothers." More importantly, however, the jury was able to view the surveillance videos, look at Littlejohn and determine for itself whether Littlejohn was one of the men shown in the surveillance videos stealing from the gas station.

{¶34} With respect to the DNA evidence, the fact that the DNA profile on the gloves was a mixture of major and minor contributors — including in addition to Littlejohn's DNA as the major contributor, the DNA of at least one other, unidentified individual as a minor contributor — does not warrant overturning Littlejohn's convictions. The state's forensic scientist testified that the most common way for a person's DNA to get on the inside of gloves is by wearing them. She further testified that it was possible that if a person had DNA on his or her hands from another person and then wore the gloves that the other person's DNA could get transferred to the inside of the gloves. Accordingly, it would not be unusual for DNA from more than one person to be found on the inside of a pair of gloves. Although Violi could not state, based on the results of the DNA testing whether Littlejohn, as the majority contributor, was the last person to wear the gloves, it does not negate the significance of the DNA evidence.

{¶35} This court and others have upheld convictions where similar DNA evidence linked the defendant to the crimes at issue. *See, e.g., State v. Brown*, 8th Dist. Cuyahoga No. 98881, 2013-Ohio-2690 (where defendant was shown to be major contributor to DNA profile on ripped T-shirt similar to masks used by intruders recovered at the scene of home invasion, fact that at least two other, unidentified individuals were minor contributors did not warrant overturning defendant's convictions); *State v. Crabtree*, 9th Dist. Summit No. 24946, 2010-Ohio-2073 (even though victim could not identify defendant, evidence was sufficient to establish defendant was perpetrator in home invasion and was not against the manifest weight of the evidence where the

major DNA profile found on gun used at the crime scene was consistent with defendant and victim testified regarding contact with intruder); *State v. Johnson*, 5th Dist. Stark No. 2012 CA 00054, 2012-Ohio-5621, ¶ 25 (although victim was unable to identify defendant as one of the men who robbed him, evidence of defendant's DNA on ball cap, which was identified by victim as the one the robber wore, and in spit found in area where the robbers retreated was sufficient to withstand sufficiency and manifest weight challenges to defendant's convictions); *State v. Bridgeman*, 2d Dist. Champaign No. 2010 CA 16, 2011-Ohio-2680, ¶ 35-42 (convictions arising out of bank robbery were not against manifest weight of the evidence where defendant was the major contributor to DNA found on clothing that appeared from surveillance video to have been worn by the robber, notwithstanding that clothing also contained DNA from another individual and eyewitnesses gave differing descriptions of robber).

{¶36} Furthermore, the DNA evidence was not presented to the jury in isolation. As detailed above, the state's witnesses presented credible, consistent testimony establishing that the gloves found to contain Littlejohn's DNA were worn by the suspect Officers Clayton and Allen observed sprinting through the gas station parking lot and were discarded, along with handfuls of cash, as the officers pursued the suspect. The state also presented evidence that gloves were worn by one of the men seen in the surveillance video — the man that Detective Hudelson and Zayed testified resembled Littlejohn.

{¶37} The fact that Officers Clayton and Allen were unable to specifically identify Littlejohn as the person who dropped the gloves during the police pursuit likewise does not support the conclusion that the jury lost its way in convicting Littlejohn of the crimes at issue. Officer Clayton testified that because the suspect had his hoodie pulled over his head, he "couldn't really see" the suspect. Officer Allen testified that although at one point during the

pursuit he was "within hands-grasp" of the suspect, he never saw the suspect's face; he was always chasing the suspect from behind. There is no requirement that a defendant be specifically identified as the perpetrator of a crime by a witness testifying in court to uphold his conviction for that crime. *Brown* at ¶ 30; *State v. Collins,* 8th Dist. Cuyahoga No. 98350, 2013-Ohio-488, ¶ 19. Direct or circumstantial evidence can establish the identity of a defendant as the person who committed a crime. *See, e.g., Collins, supra*; *State v. Lawwill,* 12th Dist. Butler No. 2007-01-014, 2008-Ohio-3592, ¶11; *State v. Williams*, 10th Dist. Franklin No. 10AP-779, 2011-Ohio-4760, ¶ 22-25. Circumstantial evidence, "'the proof of facts by direct evidence from which the trier of fact may infer or derive by reasoning other facts,'" *Brown* at ¶ 20, quoting *Lawwill* at ¶ 12, has no less probative value than direct or testimonial evidence. *State v. Primeau*, 8th Dist. Cuyahoga No. 97901, 2012-Ohio-5172, ¶ 30, citing *Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492, at paragraph one of the syllabus; *see also State v. Cassano*, 8th Dist. Cuyahoga No. 97228, 2012-Ohio-4047, ¶ 13-15 (observing that the Ohio Supreme Court "has 'long held that circumstantial evidence is sufficient to sustain a conviction if that evidence would convince the average mind of the defendant's guilt beyond a reasonable doubt'"), quoting *State v. Heinish*, 50 Ohio St.3d 231, 238, 553 N.E.2d 1026 (1990). Accordingly, the fact that Officers Clayton and Allen could not identify Littlejohn as the man they were chasing does not warrant a conclusion that the jury's verdict was against the manifest weight of the evidence.

{¶38} The record reveals that the state presented substantial consistent, competent, credible evidence upon which the jury could have reasonably found, beyond a reasonable doubt, that Littlejohn was one of the perpetrators of the theft at the Speedy gas station. The surveillance videos show two men wearing hoodies and pants breaking into the store area of the gas station, stealing cash, a box with cartons of cigarettes, an iPad and a large bucket of change.

The surveillance video further shows one of the men — the man whom Detective Hudelson and Zayed testified looked like Littlejohn — in a hoodie, pants, tennis shoes and gloves taking cash from the cash resisters, shoving it into the pockets of his hoodie and carrying a large bucket of change out of the store. Officers Allen and Clayton testified that they saw a man matching this description (i.e., a black male wearing a hoodie, pants, tennis shoes and a pair of gloves), dragging a garbage can containing a large bucket of change across the parking lot of the gas station. The officers testified that they immediately began pursuing the suspect and that, as they did so, the suspect took off his gloves and threw them, along with handfuls of cash from his pockets, onto the ground.

{¶39} The jury could reasonably conclude based on the surveillance videos, the witness testimony and the scientific evidence establishing that Littlejohn was the major contributor to the DNA found on the gloves that (1) Littlejohn had worn the gloves, (2) was the suspect the officers had seen dragging the garbage can through the parking lot of the gas station and (3) was one of the men seen in the surveillance video who participated in the theft of the gas station. Even if, as Littlejohn contends, the jury found the surveillance videos to be "too unclear" to identify Littlejohn, the state's evidence could well have convinced the jury that "the application of various facts formed a larger picture that, when viewed as [a] whole, made a compelling case for [Littlejohn's] guilt." *Cassano*, 2012-Ohio-4047 at ¶ 19.

{¶40} Based on our review of the entire record in this case, weighing the strength and credibility of the evidence presented and the inferences to be reasonably drawn therefrom, we cannot say that the jury clearly lost its way and created such a manifest miscarriage of justice that Littlejohn's convictions are against the manifest weight of the evidence. Accordingly, we overrule Littlejohn's first assignment of error.

Consecutive Sentences

{¶41} In his second assignment of error, Littlejohn argues that his sentences should be vacated because the trial court ordered that the sentences imposed in this case be served consecutively to the sentences imposed in Case Nos. CR-10-545629, CR-13-578942 and CR-14-581460 without making all of the factual findings required by R.C. 2929.14(C)(4). R.C. 2929.14(C)(4) requires that a trial court engage in a three-step analysis prior to imposing consecutive sentences. First, the trial court must find that "consecutive service is necessary to protect the public from future crime or to punish the offender." *Id.* Next, 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." *Id.* Finally, the trial court must find that at least one of the following applies: (1) the offender committed one or more of the multiple offenses while awaiting trial or sentencing, while under a sanction, or while under postrelease control for a prior offense; (2) 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 offenses 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; or (3) the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. *Id.*

{¶42} In order to impose consecutive terms of imprisonment, a trial court must both (1) make the statutory findings mandated for consecutive sentences under R.C. 2929.14(C)(4) at the sentencing hearing and (2) incorporate those findings into its sentencing entry. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus.

{¶43} In this case, the trial court stated during the sentencing hearing that consecutive sentences were being imposed because Littlejohn had a "history of criminal behavior" and committed these offenses while on community control sanctions "for the same type of behavior." The trial court made no findings at the sentencing hearing that consecutive sentences were necessary to protect the public from future crime or to punish the offender or that consecutive sentences were not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. Likewise, no findings with respect to the imposition of consecutive sentences were included in the May 20, 2014 sentencing entry. As such, the trial court's findings were insufficient to support the imposition of consecutive sentences under R.C. 2929.14(C)(4) and *Bonnell*, and Littlejohn's consecutive sentences are contrary to law. *See State v. Littlejohn*, 8th Dist. Cuyahoga No. 101491, 2014-Ohio-5343 (concluding in Littlejohn's appeal of the imposition of consecutive sentences in Case No. 13-CR-578942, involving the findings made at the May 15, 2014 sentencing hearing and a similar sentencing entry, that the trial court's findings were insufficient to support the imposition of consecutive sentences under R.C. 2929.14(C)(4)). The state concedes this error.

{¶44} Accordingly, we vacate Littlejohn's sentences and remand the case for resentencing so that the trial court may consider whether consecutive sentences are appropriate under R.C. 2929.14(C)(4), and, if so, to make the required findings on the record.[2] *See State v. Fowler*, 8th

[2]We are aware that on February 12, 2015, while this appeal was pending, the trial court entered a judgment entry (in both this case and Case No. CR-13-578942), purporting to resentence Littlejohn as follows:

> Pursuant to remand by the court of appeals in case number CA 101491, defendant is returned for resentencing for the purpose of the findings for consecutive sentences. The court finds that consecutive sentences is [sic] necessary to protect the public from future crimes and to punish the offender. Consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public. Defendant committed offenses in 578942, 581460 and 582807 while under community control sanctions in case number 545629. Two of the cases involved breaking and entering consisting of a course of conduct. * * *

Dist. Cuyahoga No. 101101, 2014-Ohio-5687, ¶ 20-21; *State v. Fulford*, 8th Dist. Cuyahoga Nos. 101505, 101511, and 101512, 2014-Ohio-5436, ¶ 11. In accordance with *Bonnell*, the required statutory findings, if any, must be both pronounced in open court and placed in the sentencing journal entry. *Bonnell* at syllabus. Littlejohn's second assignment of error is sustained.

{¶45} Judgment affirmed in part and reversed in part; sentences vacated; matter remanded for resentencing consistent with this opinion.

It is ordered that appellant recover costs from appellee.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's convictions having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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EILEEN A. GALLAGHER, PRESIDING JUDGE

The trial court, however, lacked jurisdiction to resentence Littlejohn in this case while this appeal was pending. *See, e.g., State v. Dunning*, 12th Dist. Warren Nos. CA2013-05-048, CA2013-06-058, 2014-Ohio-253, ¶ 8-10 (Once an appellant perfects his appeal by filing a notice of appeal, "the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court's jurisdiction to reverse, modify, or affirm the judgment." * * * This includes the trial court's ability to resentence a defendant to correct a sentencing error while his appeal is still pending.") (Citations and internal quotation marks omitted.); *State v. Williamson*, 8th Dist. Cuyahoga Nos. Nos. 100563 and 101115, 2014-Ohio-3909, ¶ 18 ("[O]nce an appeal is taken, the trial court is divested of jurisdiction until the case is remanded to it by the appellate court, except where the retention of jurisdiction is not inconsistent with that of the appellate court to review, affirm, modify, or reverse the order from which the appeal is perfected."); *see also State v. Liso*, 12th Dist. Brown No. CA2012-08-017, 2013-Ohio-4759, ¶ 38; *State v. Hopkins*, 6th Dist. Lucas No. L-10-1127, 2011-Ohio-4144, ¶ 10. As such, the trial court's resentencing hearing was a nullity and the new entry resentencing Littlejohn was void. *See Dunning* at ¶ 10, citing *Liso* at ¶ 38, and *Hopkins* at ¶ 10; *Williamson* at ¶ 18; *see also State v. Triplett*, 4th Dist. Lawrence No. 11CA3, 2011-Ohio-5431, ¶ 1, 9. This result could have been avoided had the parties moved to consolidate the appeals in this case and Case No. CR-13-578942.

EILEEN T. GALLAGHER, J., and
ANITA LASTER MAYS, J., CONCUR