

IN THE COURT OF APPEALS OF OHIO  
THIRD APPELLATE DISTRICT  
HANCOCK COUNTY

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STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 5-12-34

v.

DESHAWN L. WATTS,

OPINION

DEFENDANT-APPELLANT.

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Appeal from Hancock County Common Pleas Court  
Trial Court No. 2011 CR 147

Judgment Affirmed

Date of Decision: January 25, 2016

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APPEARANCES:

*Gabriel W. Poland* for Appellant

*Alex K. Treece* for Appellee

**PRESTON, J.**

{¶1} Defendant-appellant, Deshawn L. Watts (“Watts”), appeals the October 18, 2012 judgment entry of the Hancock County Court of Common Pleas. For the reasons that follow, we affirm.

{¶2} On June 17, 2011, the Hancock County Grand Jury indicted Watts on Count One of aggravated possession of drugs in violation of R.C. 2925.11(A), a second-degree felony, and Count Two of possession of drugs in violation of R.C. 2925.11(A), a fourth-degree felony. (Doc. No. 1).

{¶3} On July 13, 2011, Watts entered pleas of not guilty at arraignment. (Doc. No. 8). On August 31, 2011, Watts filed a motion to suppress evidence, which the trial court denied on December 13, 2011. (Doc. Nos. 15, 23).

{¶4} On September 17-19, 2012, a jury trial was held. The jury found Watts guilty of both counts of the indictment on September 19, 2012. (Doc. Nos. 81, 82). The trial court filed its judgment entry of conviction on October 12, 2012. (Doc. No. 94). On October 10, 2012, a sentencing hearing was held, and the trial court sentenced Watts to 4 years in prison as to Count One and 12 months in prison as to Count Two to be served concurrently. (Doc. No. 96).

{¶5} The trial court filed its judgment entry of sentence on October 18, 2012, and Watts filed his notice of appeal on November 19, 2012. (Doc. Nos. 96, 117). On June 26, 2013, this court sua sponte dismissed Watts’ appeal for want of

prosecution. On June 14, 2015, Watts filed with this court a motion for leave “to Reopen Appeal Pursuant to Appellate Rule 26(B).” On July 27, 2015, the State filed a response to Watts’ motion for leave to reopen his appeal. On August 26, 2015, this court granted Watts’ “application for reopening” after concluding that Watts’ prior appellate counsel was per se ineffective for failing to timely file a merit brief or respond to this court’s show-cause order. Watts raises two assignments of error for our review, which we will address together.

**Assignment of Error No. I**

**The Verdict of Guilty as to the Charge of Aggravated Possession and the Charge of Possession of Controlled Substances was Reached Against the Manifest Weight of the Evidence.**

**Assignment of Error No. II**

**The Trial Court Erred in Overruling the Defendant’s Criminal Rule 29 Motion to Dismiss for Lack of Any Testimony Which Could Lead Reasonable Minds to a Finding of Guilty.**

{¶6} In his first and second assignments of error, Watts argues that his convictions are against the manifest weight of the evidence and based on insufficient evidence. Although Watts’ arguments under his assignments of error are unclear, it appears that Watts is arguing that the jury’s conclusion that he had constructive possession of the drugs is against the manifest weight of the evidence and that there is insufficient evidence that he had constructive possession of the drugs.

{¶7} Manifest “weight of the evidence and sufficiency of the evidence are clearly different legal concepts.” *State v. Thompkins*, 78 Ohio St.3d 380, 389 (1997). As such, we address each legal concept individually.

{¶8} “An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259 (1981), paragraph two of the syllabus, superseded by state constitutional amendment on other grounds as stated in *State v. Smith*, 80 Ohio St.3d 89 (1997). Accordingly, “[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *Id.* “In deciding if the evidence was sufficient, we neither resolve evidentiary conflicts nor assess the credibility of witnesses, as both are functions reserved for the trier of fact.” *State v. Jones*, 1st Dist. Hamilton Nos. C-120570 and C-120571, 2013-Ohio-4775, ¶ 33, citing *State v. Williams*, 197 Ohio App.3d 505, 2011-Ohio-6267, ¶ 25 (1st Dist.). *See also State v. Berry*, 3d Dist. Defiance No. 4-12-03, 2013-Ohio-2380, ¶ 19 (“Sufficiency of the evidence is a test of adequacy rather than credibility or weight of the evidence.”), citing *Thompkins* at 386.

{¶9} On the other hand, in determining whether a conviction is against the manifest weight of the evidence, a reviewing court must examine the entire record, “weigh[ ] the evidence and all reasonable inferences, consider[ ] the credibility of witnesses 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 (1st Dist.1983). A reviewing court must, however, allow the trier of fact appropriate discretion on matters relating to the weight of the evidence and the credibility of the witnesses. *State v. DeHass*, 10 Ohio St.2d 230, 231 (1967). When applying the manifest-weight standard, “[o]nly in exceptional cases, where the evidence ‘weighs heavily against the conviction,’ should an appellate court overturn the trial court’s judgment.” *State v. Haller*, 3d Dist. Allen No. 1-11-34, 2012-Ohio-5233, ¶ 9, quoting *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, ¶ 119.

{¶10} The criminal offense of possession of drugs is codified in R.C. 2925.11, which provides, “No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog.” R.C. 2925.11(A). “‘Possess’ or ‘possession’ means having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is

found.” R.C. 2925.01(K). “The issue of whether a person charged with drug possession knowingly possessed a controlled substance ‘is to be determined from all the attendant facts and circumstances available.’” *State v. Brooks*, 3d Dist. Hancock No. 5-11-11, 2012-Ohio-5235, ¶ 45, quoting *State v. Teamer*, 82 Ohio St.3d 490, 492 (1998).

{¶11} “Possession of drugs can be either actual or constructive.” *State v. Bustamante*, 3d Dist. Seneca Nos. 13-12-26 and 13-13-04, 2013-Ohio-4975, ¶ 25, citing *State v. Cooper*, 3d Dist. Marion No. 9-06-49, 2007-Ohio-4973, ¶ 2, citing *State v. Wolery*, 46 Ohio St.2d 316, 329 (1976) and *State v. Haynes*, 25 Ohio St.2d 264 (1971). “A person has ‘actual possession’ of an item if the item is within his immediate physical possession.” *Id.*, quoting *State v. Williams*, 4th Dist. Ross No. 03CA2736, 2004-Ohio-1130, ¶ 23. “A person has ‘constructive possession’ if he is able to exercise dominion and control over an item, even if the individual does not have immediate physical possession of it.” *Id.*, citing *State v. Hankerson*, 70 Ohio St.2d 87 (1982), syllabus and *Wolery* at 329. “For constructive possession to exist, ‘[i]t must also be shown that the person was conscious of the presence of the object.’” *Id.*, quoting *Hankerson* at 91. “Finally, the State may prove the existence of the various elements of constructive possession of contraband by circumstantial evidence alone.” *Id.*, citing *State v. Stewart*, 3d Dist. Seneca No. 13-08-18, 2009-Ohio-3411, ¶ 51. *See also Jenks*, 61 Ohio St.3d at

272-73. “Absent a defendant’s admission, the surrounding facts and circumstances, including the defendant’s actions, are evidence that the trier of fact can consider in determining whether the defendant had constructive possession.” *State v. Voll*, 3d Dist. Union No. 14-12-04, 2012-Ohio-3900, ¶ 19, citing *State v. Norman*, 10th Dist. Franklin No. 03AP-298, 2003-Ohio-7038, ¶ 31 and *State v. Baker*, 10th Dist. Franklin No. 02AP-627, 2003-Ohio-633, ¶ 23.

{¶12} Trooper Zachary Yoder (“Trooper Yoder”) of the Ohio State Highway Patrol was called as the State’s first witness at trial. (Sept. 17, 2012 Tr., Vol. I, at 209). Trooper Yoder testified that he initiated a traffic stop of a vehicle of which Watts was a passenger on June 17, 2011 in Findlay, Ohio. (*Id.* at 211, 216). As part of his traffic stop of the vehicle, Trooper Yoder testified that he learned that the vehicle was rented in Watts’ name and that Watts was a passenger in the rear of the vehicle. (*Id.* at 217, 222). There were two other passengers in the vehicle—Toree Foree (“Foree”), the driver, and Victoria Gomez (“Gomez”), who was riding in the front passenger seat. (*Id.* at 217, 221). Also as part of the traffic stop, Trooper Yoder testified that he called for the K-9 unit of the Hancock County Sheriff’s Department to assist in the stop and that Deputy Fred Smith (“Deputy Smith”) arrived at the scene shortly thereafter with his K-9. (*Id.* at 221). According to Trooper Yoder, the K-9 alerted to the presence of narcotics in the vehicle. (*Id.* at 225). As a result, Trooper Yoder testified that he first had Gomez

exit the vehicle and that he conducted a pat-down search of Gomez for weapons, to which she consented. (*Id.* at 225-226). From his pat-down search of Gomez, Trooper Yoder testified that he “felt a firm bulge that seemed very unnatural” “in her groin area,” but that he “didn’t ask her about it at the time.” (*Id.* at 226). After Gomez was secured in Trooper Yoder’s patrol car, Trooper Yoder testified that he had Watts exit the vehicle and that he conducted a pat-down search of Watts for weapons, to which he consented. (*Id.* at 227). According to Trooper Yoder, he then secured Watts in his patrol car “so that we could perform the probable cause search.” (*Id.*).

{¶13} Trooper Yoder testified that he and Deputy Smith searched the vehicle. (*Id.* at 227-228). According to Trooper Yoder, Deputy Smith “noticed there were some Minute Maid juice bottles \* \* \* in a Styrofoam cooler in the trunk of the vehicle[, which] seemed unusually heavy” when Deputy Smith “picked them up.” (*Id.* at 228-229). Trooper Yoder testified that he inspected the bottles, and they felt unusually heavy to him, and testified that “when you tilted them, the liquid wasn’t similar to juice, which has the consistency of water. It had more like a syrupy, kind of a heavy goo to it.” (*Id.* at 229). Trooper Yoder testified that he also noticed that the security seal was broken on one bottle and was missing on the other bottle. (*Id.*). According to Trooper Yoder, he and Deputy Smith opened the bottles and noticed that the liquid inside the bottles “had a syrupy, or a cough

syrup odor to them, which is consistent with \* \* \* a Schedule V controlled substance.” (*Id.*).

{¶14} At that point, Trooper Yoder testified that he arrested Watts, Foree, and Gomez. (*Id.* at 232). According to Trooper Yoder, he inquired about the bottles: “When I asked them that, Ms. Gomez had looked at Mr. Watts. She didn’t say anything. She just kind of gave a quick glance at him. So I asked him about it, if the cooler was his, and if the bottles were his. He stated that they were.” (*Id.* at 232). Further, regarding the bottles, the following exchange took place:

[The State]: Did he say the cooler was his?

[Trooper Yoder]: Yes.

[The State]: Did he say the bottles were his?

[Trooper Yoder]: Correct.

[The State]: Did you ask him what was inside the bottles?

[Trooper Yoder]: I did.

[The State]: What did he say?

[Trooper Yoder]: He said juice.

[The State]: And then what was your response to that?

[Trooper Yoder]: I told him I knew that it was not juice and appeared to be Tylenol with codeine. He simply stated, oh.

*(Id.)*. (*See also id.* at 236).

{¶15} At that time, Trooper Yoder testified that he wanted to keep Gomez separate from Watts and Foree because of the bulge that Trooper Yoder felt in her pants, and he wanted to question her about that bulge without Watts and Foree present, so he had Gomez sit in the front of his patrol car and placed Watts and Foree in a deputy's vehicle. (*Id.* at 237). He testified that Gomez told him "that they had made a stop in Toledo area [sic] at a gas station, where Mr. Watts had purchased the coolers, some ice, couple sodas, and the Minute Maid bottles." (*Id.* at 238). He testified that Gomez told him that she did not see Watts put anything in the Minute Maid bottles. (*Id.*). He further testified that he questioned Gomez if she had any pills on her person, and that she eventually said that she did and that she would voluntarily remove them, which she did. (*Id.* at 238-239). Gomez removed two condoms from her person, each one containing a plastic baggie with oxymorphone and hydrocodone pills inside. (*Id.* at 188, 198, 240, 243-244).

{¶16} According to Trooper Yoder, at that time, he retrieved Foree and Watts from the back of the deputy's patrol car and "informed them that [law enforcement] suspect Ms. Gomez has narcotics in her genital area. And if they know anything about it, have her give them to us, or we're going to go for a warrant." (*Id.* at 260). According to Trooper Yoder, the law enforcement officers "wanted to see basically what their response was, if they were going to admit that

[the drugs were in Gomez's genital area], or to see what their involvement to the extent was." (*Id.*). Trooper Yoder testified that Watts "stated that there is nothing in [Gomez's genital area], knew nothing of it." (*Id.*).

{¶17} As part of a ruse in which Gomez was to pretend that she had not yet provided law enforcement the pills, Trooper Yoder secured all three inside the same room at the highway-patrol post for approximately five minutes. (*Id.* at 260-261). After the five minutes, Trooper Yoder testified that Gomez, while still pretending to have the pills, requested a law enforcement officer to come to the room and told that law enforcement officer that she would hand over the pills. (*Id.* at 261). According to Trooper Yoder, Gomez informed him that Watts told Gomez to provide law enforcement officers with one bag of pills. (*Id.*). At that point, Trooper Yoder testified that Watts was told that law enforcement suspected that there were additional pills and that they were going to proceed to obtain a search warrant. (*Id.* at 262). Trooper Yoder testified that Watts was adamant that there were no additional pills. (*Id.*).

{¶18} On cross-examination, Trooper Yoder admitted that his written report depicting the traffic stop does not reflect that Watts admitted that the Minute Maid bottles were his. (Sept. 18-19, 2012 Tr., Vol. II, at 17); (Defendant's Ex. A). He also admitted that the plastic bag and the condoms that the pills were wrapped in were disposed of on the day of the traffic stop, and that law

enforcement did not search the plastic bag or the condoms for fingerprints. (Sept. 18-19, 2012 Tr., Vol. II, at 19). According to Trooper Yoder, Gomez told him that she was afraid of Watts and was afraid that law enforcement officers would tell him that she voluntarily provided them the pills. (*Id.*). However, Trooper Yoder testified that Gomez “made no indication of being afraid of Mr. Foree.” (*Id.* at 23).

{¶19} On re-direct examination, Trooper Yoder testified that he did not recall if he asked Watts if the Minute Maid bottles belonged to him. (*Id.* at 27). However, Trooper Yoder testified that, after he told Watts that he believed that the liquid in the Minute Maid bottles was Tylenol with codeine, Watts did not indicate that the bottles were not his or indicate that he did not know what was in the bottles. (*Id.*). Trooper Yoder testified that the condoms that contained the pills were not tested for fingerprints because “[f]ingerprinting isn’t something that our crime lab does. It’s not a general practice for us to keep the condoms for fingerprinting purpose.” (*Id.*). Indeed, Trooper Yoder testified that there would not be any useful fingerprints on the condoms because they were either inside Gomez or in her underwear. (*Id.* at 27-28).

{¶20} Gomez testified on behalf of the State. (*Id.* at 96). She testified that she was in a relationship with Watts during the summer of 2011 and that during that time “[h]e called [her] and asked [her] if [she] wanted to go out of town with

him.” (*Id.* at 100). When Watts picked Gomez up for the trip—she testified that they were supposed to go to the Greektown Casino in Detroit, Michigan from Louisville, Kentucky—Foree was already in the vehicle with Watts. (*Id.* at 101). However, Gomez testified that the group stopped at Denny’s on the way to the casino and then began to return to Louisville. (*Id.* at 101-102). According to Gomez, she did not order any food at Denny’s because she was not hungry. (*Id.* at 102). She did not ask Watts why they did not go to the casino. (*Id.*). During their return trip, Gomez testified that they stopped at a gas station and purchased “a little foam cooler and whole [sic] bunch of different drinks”—“Minute Maid, sodas, waters.” (*Id.* at 103). She testified that Watts paid for the cooler and drinks. (*Id.*). According to Gomez, Watts “picked out” the Minute Maid, and Watts put the “stuff” in the cooler. (*Id.* at 103-104, 111).

{¶21} Gomez further testified that, before they left the gas station, Watts instructed her to hold the pills by “[p]ut[ting] them in [her] vaginal area.” (*Id.* at 105). According to Gomez, she “was scared” when he told her to hold the pills, “but then [she] was reassured he [sic] told [her] a number of things like her room would be paid.” (*Id.*). Gomez testified that she acquiesced to Watts’ request because (1) Watts offered to pay her rent in exchange for her holding the pills; (2) Watts was her boyfriend; and (3) she was too nervous to decline. (*Id.* at 105-106). At that point, she testified that she went into the gas-station bathroom and put one

bundle of pills inside her vagina and one bundle of pills in the lining of her underwear. (*Id.* at 106). She testified that the pills “were double bagged and then put into condoms.” (*Id.* at 107).

{¶22} According to Gomez, when the vehicle was pulled over by Trooper Yoder, Watts told her not to say anything about the pills. (*Id.* at 108-109). She testified that she was scared when Trooper Yoder asked her to exit the vehicle and asked her to consent to a pat-down search “[b]ecause [she had] these pills on [her] that don’t belong to [her].” (*Id.* at 109). Gomez testified that she eventually admitted to Trooper Yoder that she had the pills and that she would voluntarily remove them. (*Id.* at 110). When law enforcement officers asked Gomez who the pills belonged to, she testified that she told them that the pills belonged to Watts. (*Id.* at 112).

{¶23} Gomez testified that she was scared of Watts, so she asked the law enforcement officers not to tell Watts that she voluntarily gave them the pills. (*Id.* at 113). According to Gomez, law enforcement officers placed her in a room in the patrol post with Watts and Foree and, at that time, she asked Watts what to do about the pills, while pretending that she still had them, and Watts told her to make the law enforcement officers obtain a search warrant. (*Id.* at 113-114). Eventually, Gomez testified, Watts instructed her to “give them one bag.” (*Id.* at 114). According to Gomez, Watts exercised dominion over the pills—directing

whether the pills should be handed over to law enforcement—and that he was in control over the pills. (*Id.* at 114-115). Gomez testified that neither the pills nor the codeine were hers—that she did not buy either or make a deal to buy either. (*Id.* at 118-119).

{¶24} On cross-examination, Gomez testified that she was instructed to say that there was a fourth individual in the vehicle that was dropped off before the group returned to Louisville, but confessed that there was never a fourth person in the vehicle. (*Id.* at 125-126). She testified that, when the group arrived at Denny’s, she and Foree “went in together and [they] came back out together” after waiting “for awhile” [sic]. (*Id.* at 127). She testified that she ordered “a cup of water.” (*Id.*). According to Gomez, she did not know where Watts was while she and Foree were in the restaurant. (*Id.*). She reiterated that Watts purchased the cooler and the drinks from the gas station after they left Denny’s and that Watts picked out the Minute Maid. (*Id.* at 128-129). She testified that she did not see the cooler being loaded in the trunk of the vehicle because she was in the bathroom. (*Id.* at 130-131).

{¶25} On re-direct examination, Gomez testified that Watts instructed her to tell Trooper Yoder at the time of the traffic stop about the fourth person in the vehicle. (*Id.* at 140). According to Gomez, she never discussed the pills with Foree and was never provided any instruction regarding the pills from Foree. (*Id.*

at 141). Gomez testified that Watts gave her money—\$2,000—when Trooper Yoder stopped the vehicle, which she put in her purse, and that Watts asked her to return that money while they were in the room at the patrol post, which she did. (*Id.* at 141-142).

{¶26} On re-cross examination, Gomez testified that even though she testified that Watts asked her to hold the money, she admitted that she previously testified that there was no further discussion in the car between her and Watts at the time of the traffic stop. (*Id.* at 143-144). She also testified that she did not have her purse with her in the room at the patrol post and that she may have put the money on her person, but that Trooper Yoder did not locate the money during his pat-down search of her. (*Id.* at 144).

{¶27} Thereafter, the State moved to admit its exhibits and rested. (*Id.* at 147-148). The State's Exhibits were admitted without objection. (*Id.* at 148). Next, Watts made a Crim.R. 29(A) motion, which the trial court denied. (*Id.* at 149, 153).

{¶28} Watts presented the testimony of Foree who testified that he had been friends with Watts for eight or nine years. (*Id.* at 157-158). Foree testified that he was in a relationship with a woman, "LaShawwna"—Foree could not recall her last name or the actual spelling of her first name—who he allowed to stay with him for a few weeks until she could move in with her grandmother in Toledo,

Ohio. (*Id.* at 159-161). According to Foree, LaShawwna asked him to drive her to Toledo, but his vehicle “wasn’t in the shape to make it,” so he said that he would try to find her a ride. (*Id.* at 161-162). He testified that when he asked Watts if he could give the couple a ride to Toledo, Watts did not initially agree; rather, Watts called him back after about 20 minutes to tell Foree that he could take them. (*Id.* at 162-163). Foree testified that only Watts was in the vehicle when he arrived at Foree’s residence. (*Id.* at 163). Although LaShawwna was moving to Toledo to live with her grandmother, Foree testified that “[s]he just had a small bag”— “[l]ike a duffel bag.” (*Id.* at 164). Foree testified that, at that point, they went to pick up Gomez. (*Id.*).

{¶29} From there, Foree testified that they drove to Toledo and left LaShawwna at her grandmother’s house. (*Id.* at 167). After they left LaShawwna, Foree testified that Gomez was hungry and asked to go to Denny’s and provided directions to Denny’s. (*Id.* at 168). According to Foree, when they arrived at Denny’s, he and Watts went into the men’s restroom and Gomez went into the women’s restroom; however, after they exited the restrooms, the group returned to the vehicle and left without ordering any food because no one was hungry. (*Id.* at 169-171). Foree testified that they stopped at a gas station after they left Denny’s, and Watts and Gomez went inside the gas station and Foree saw Watts return with a bag of ice. (*Id.* at 171-172). He testified that Watts put the ice in a cooler that

was in the trunk. (*Id.* at 172). According to Foree, Gomez came out of the store “like a minute after that” and then the group departed. (*Id.* at 173).

{¶30} Foree assumed the cooler was in the car prior to the time they stopped at the gas station, and Foree testified that he did not know how the cooler got into the car—he only saw Watts put ice in the cooler. (*Id.* at 179). Foree further testified that he did not see the Minute Maid bottles prior to the time Deputy Smith found the bottles. (*Id.* at 180). According to Foree, a law enforcement officer asked all three at the same time what was in the bottles, and none of them responded. (*Id.*).

{¶31} When the law enforcement officers were transporting the group to the patrol post, Foree testified that he and Watts were handcuffed in the back of the same patrol car. (*Id.* at 182-183). Foree testified that he asked Watts what was happening and, according to Foree, Watts responded that he did not know. (*Id.* at 182). Foree testified that, after that, he and Watts were put into the same interview room with Gomez, and “officers proceeded to insist that [Gomez] had some type of drugs on her.” (*Id.* at 183). According to Foree, there was no conversation amongst the group after the law enforcement officers left the interview room regarding whether Gomez should hand over the pills. (*Id.* at 183-185). Foree testified that a law enforcement officer eventually returned to the room “with a paper saying that [law enforcement] got the order from the Judge, and then they

took Ms. Gomez away.” (*Id.* at 185). After Gomez was removed from the room, Foree testified that he again asked Watts what was happening and, according to Foree, Watts again responded that he did not know. (*Id.*)

{¶32} Eventually, Gomez was brought back to the room, and law enforcement informed Foree and Watts that they found the pills. (*Id.* at 186). According to Foree, that was the first time he knew about the pills. (*Id.*) Foree testified that law enforcement informed them that they were all being charged with possession the pills and wanted them “to admit that they was [sic] our pills.” (*Id.*) However, Foree testified that he did not admit the pills were his “[b]ecause they wasn’t [sic] [his] pills.” (*Id.*) In determining who the pills belonged to, Foree testified that law enforcement officers told him that “we know they’re not your pills because this is his \* \* \* girlfriend. So we know that she wouldn’t have drugs in her for you.” (*Id.* at 187). According to Foree, he was not separated long enough from Watts during their trip that Watts could have given the pills to Gomez to hide. (*Id.* at 191).

{¶33} Foree testified that he saw Gomez reach in her pocket and give Watts money while they were in the interview room at the patrol post. (*Id.* at 186-187). Eventually, Watts was arrested, and Foree and Gomez were released. (*Id.* at 188). Foree testified that he and Gomez did not discuss anything on their return trip to Louisville. (*Id.* at 190).

{¶34} On cross-examination, Foree testified that Watts and Gomez went into the gas station together, which was a long enough period of time for Watts and Gomez to have a private conversation. (*Id.* at 200). According to Foree, Gomez did not put anything in the trunk when she and Watts returned from the gas-station store. (*Id.* at 201). Foree saw Watts carrying only ice out of the gas-station store and nothing else. (*Id.*). Although Foree testified that while he did not talk to Gomez since the incident, he spoke with Watts “[a] lot” since the incident. (*Id.* at 202). Indeed, Foree testified that he discussed the incident with Watts—that he did not discuss Foree’s testimony, but that he “talked about the court case” with Watts. (*Id.* at 203-204).

{¶35} Watts testified in his defense. (*Id.* at 213). He testified that he picked up the rental car on June 17, 2011 because his car was in the shop. (*Id.* at 217-218). He testified that Foree called him after he had the rental car and asked him to take him and LaShawanna to Toledo. (*Id.*). He testified that he did not rent the vehicle to go to Toledo. (*Id.* at 221). Watts identified Defendant’s Exhibit D as the invoice for his vehicle that was in the shop. (*Id.* at 219). The invoice reflects service dates from June 6-10, 2011; however, Watts testified that his vehicle was not returned to him on June 10, 2011, and he did not know why the invoice reflects those dates. (*Id.*).

{¶36} According to Watts he did not tell Gomez that they were going to the Greektown Casino; rather, he told her that they were going to Toledo. (*Id.* at 225). Watts testified that, after they dropped off LaShawna, Gomez was hungry and wanted to go to Denny's. (*Id.* at 226). When they arrived at Denny's, Watts testified that he and Foree went to the men's restroom and Gomez went to the women's restroom. (*Id.* at 226-227). Watts testified that, after he and Foree finished in the men's restroom, they waited for Gomez outside the restrooms. (*Id.* at 227). After waiting for approximately five minutes, Watts testified that he and Foree went to the vehicle and found Gomez already in the vehicle and, according to Watts, Gomez told them that she was not hungry and ready to leave. (*Id.* at 228).

{¶37} From there, Watts testified that they went to the gas station where he and Gomez went in the gas-station store while Foree dispensed gas into the vehicle. (*Id.* at 229). Watts testified that he purchased only a bag of ice and paid for the gas. (*Id.*). He testified that Gomez was still in the store when he left. (*Id.*). Watts put the ice in the cooler that was in the trunk of the vehicle and he testified that he "added a couple more pops," which were already in the trunk to the cooler. (*Id.* at 230). Watts testified, "I drink pop real bad," so he had the pop and the cooler in the trunk before he picked up Foree and Gomez. (*Id.*). According to Watts, he noticed that water and "juice jugs" were in the trunk while he was filling

the cooler with ice, but that he did not know where the juice jugs came from. (*Id.* at 230-231, 232).

{¶38} Watts testified that he did not give Gomez the pills or ask her to hide them inside of her. (*Id.* at 234). Watts testified that he admitted the cooler belonged to him when Trooper Yoder asked the group who it belonged to. (*Id.* at 236). However, according to Watts, he did not admit that the Minute Maid bottles were his. (*Id.*). Watts testified that he did not know that Gomez was hiding the pills and that he did not tell Gomez to provide law enforcement one of the bags of pills. (*Id.* at 238). Watts further testified that he did not ask Gomez to hide the drugs for him or offer to pay her rent for hiding the drugs. (*Id.* at 242). Indeed, Watts testified that he never had control of the pills and did not know where the substance in the Minute Maid bottles came from. (*Id.* at 243).

{¶39} Watts testified that the law enforcement officers told them that they would seek a search warrant to search Gomez for the pills and that “they came back with a paper” and removed Gomez from the room. (*Id.* at 240). After the law enforcement officers informed them that they found the pills, Watts testified that they were left alone in the interview room and “[t]hat’s when she gave [Watts] some money and told me to hold it. So [he] guess[ed] she felt like she was going to jail.” (*Id.*). According to Watts, he did not give Gomez any money prior to that time and he did not know from where the money came. (*Id.* at 241). However,

Watts testified that he did not deny to law enforcement that the money was his. (*Id.* at 242).

{¶40} On cross-examination, Watts testified that he rented the vehicle a couple of days before the Toledo trip. (*Id.* at 249). Watts testified that he asked Gomez if she wanted to go to Toledo because Watts wanted her company. (*Id.* at 250). He testified that the “cooler been [sic] there probably for about a day or so” and it was in the trunk of his car “[b]ecause [he] drink[s] pop a lot.” (*Id.* at 251). Indeed, Watts testified that he normally keeps a refillable Styrofoam cooler in the trunk of his car so he can drink pop. (*Id.*). Watts testified that when he purchased the ice at the gas station and put it in the cooler, he did not dump out any water because “it wasn’t full or none of that.” (*Id.* at 253). Watts testified that he put the money that Gomez gave him in his underwear instead of his pocket even though he thought Gomez was going to jail because “that’s what [he] did” with the money. (*Id.* at 255).

{¶41} On re-cross examination, Watts testified that he did not see anyone put the Minute Maid bottles in the cooler. (*Id.* at 262). Yet, Watts responded to a question from the jury by testifying that the trunk of the vehicle was not opened after Gomez, Foree, and LaShawwna got into the vehicle until they stopped at the gas station and he opened the trunk to put the ice in the cooler. (*Id.* at 263).

{¶42} Thereafter, the defense moved to admit its exhibits, which were admitted without objection, and rested. (*Id.* at 269-270). The State did not present any witnesses on rebuttal, and the matter was submitted to the jury, which found Watts guilty as to both counts of the indictment. (*Id.* at 270); (Sept. 18-19, 2012 Tr., Vol. III, at 336-337).

{¶43} We first review the sufficiency of the evidence supporting Watts' possession-of-drugs convictions. *State v. Velez*, 3d Dist. Putnam No. 12-13-10, 2014-Ohio-1788, ¶ 68, citing *State v. Wimmer*, 3d Dist. Marion No. 9-98-46, 1999 WL 355190, \*1 (Mar. 26, 1999). Because it is the only element Watts challenges on appeal, we review the sufficiency of the evidence supporting only whether he had constructive possession of the drugs.

{¶44} Viewing this evidence in a light most favorable to the prosecution, we conclude that Watts' possession-of-drugs convictions are supported by sufficient evidence. A rational trier of fact could have found that Watts had constructive possession of the drugs—that is, that he exercised dominion and control over the codeine and the pills.

{¶45} First, there is sufficient evidence that Watts had constructive possession—that he exercised dominion and control—of the codeine. It is undisputed that Watts rented the vehicle. *See State v. Brooks*, 3d Dist. Hancock No. 5-11-11, 2012-Ohio-5235, ¶ 47 (concluding that Brooks had constructive

possession of the drugs, in part, because Brooks rented the vehicle), citing *State v. Ray*, 9th Dist. Medina No. 03CA0062-M, 2004-Ohio-3412, ¶ 23 (““possession of the keys to the automobile is a strong indication of control over the automobile and all things found in or upon the automobile””), quoting *State v. Miller*, 4th Dist. Ross No. 98CA2467, 1999 WL 595361, \*8 (July 27, 1999), quoting *State v. Kurtz*, 10th Dist. Franklin No. 98AP-210, 1998 WL 767430, \*5 (Oct. 27, 1998); *State v. Rodgers*, 3d Dist. Hancock No. 5-10-35, 2011-Ohio-3003, ¶ 30 (concluding that there was sufficient evidence that Rodgers constructively possessed drugs found in a rental vehicle in part because Rodgers was responsible for the rental vehicle). Watts not only controlled the vehicle, but also had sole control over, and access to, the rental vehicle at least a day before the trip. It is also undisputed that the cooler belonged to Watts. The record reflects that only Watts accessed the trunk and the cooler—namely, the record reflects that no one other than Watts accessed the trunk and the cooler prior to the trip or prior to, or after, the point when the group stopped at the gas station, until they were stopped by Trooper Yoder.

{¶46} While Watts testified that the cooler was already in the vehicle, Gomez testified that Watts purchased the cooler along with the ice and the juice bottles at the gas station near Toledo. She specifically testified that Watts picked out the Minute Maid bottles even though Watts testified that he did not purchase

any beverages at the gas station. The credibility and weight of the evidence is primarily the role of the trier-of-fact—in this case, the jury. *State v. Frazier*, 115 Ohio St.3d 139, 2007-Ohio-5048, ¶ 106, citing *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. In assessing the sufficiency of the evidence, we do not resolve evidentiary conflicts or assess the credibility of witnesses; rather, we determine if any rational trier of fact could have found the essential elements of possession of drugs beyond a reasonable doubt when viewing the evidence in a light most favorable to the prosecution. *Jenks*, 61 Ohio St.3d 259, at paragraph two of the syllabus; *Jones*, 2013-Ohio-4775, at ¶ 33.

{¶47} Trooper Yoder initially testified that Watts admitted that the Minute Maid bottles were his, and testified that Watts did not deny that the bottles were his, or indicate that he did not know what was in them. *See State v. Jamison*, 2d Dist. Montgomery No. 22177, 2008-Ohio-2065, ¶ 29 (concluding that there was sufficient evidence that Jamison constructively possessed contraband found in a bag in the trunk of a vehicle in part because Jamison did not deny “knowledge that the drugs were in the trunk”).

{¶48} Additional circumstantial evidence that Watts was in control of the drugs is (1) his instruction to Gomez to tell law enforcement officers the story about LaShawanna; (2) that Gomez thought that they were travelling to the Greektown casino, but that they never made it there because they began their

return trip after stopping at Denny's without ordering any food; (3) Gomez indicating that Watts disappeared for "a while" while she and Foree went into the restaurant, and (4) Trooper Yoder's testimony that Gomez looked to Watts when Trooper Yoder asked them about the Minute Maid bottles.

{¶49} Another factor indicating constructive possession of drugs includes large amounts of cash found on a person. *Brooks*, 2012-Ohio- 5235, at ¶ 50, citing *Westlake v. Wilson*, 8th Dist. Cuyahoga No. 96948, 2012-Ohio-2192, ¶ 38. Indeed, \$2,000 was discovered in Watts' underwear at the time of his arrest. Gomez testified that Watts initially gave her the money when they were pulled over by Trooper Yoder and asked her to return the money when they were in the interview room at the patrol post. Although Watts testified that Gomez was the one to give him the money and that he did not know where it came from, he did not deny to law enforcement that the money was his when it was discovered in his underwear.

{¶50} Accordingly, while the mere proximity to the codeine found in the rental vehicle alone is insufficient to establish constructive possession, proximity to the contraband constitutes some evidence of constructive possession, and proximity may, coupled with other factors, establish constructive possession. *Rodgers*, 2011-Ohio-3003, at ¶ 30, citing *State v. Kingsland*, 177 Ohio App.3d 655, 2008-Ohio-4148, ¶ 13 (4th Dist.), citing *State v. Fry*, 4th Dist. Jackson No.

03CA26, 2004-Ohio-5747, ¶ 39. Therefore, that the codeine was found in the trunk of the vehicle of which Watts was a passenger coupled with the facts we addressed above is sufficient evidence that Watts constructively possessed—that he exercised dominion and control over—the codeine.

{¶51} Second, there is sufficient evidence that Watts had constructive possession of—that he exercised dominion and control over—the pills. Even though Watts testified to the contrary, Gomez testified that Watts asked her to hide the pills in her vagina and that she assented to Watts' request because Watts was her boyfriend, because she was scared of him, and because he offered to pay her rent in exchange for hiding the pills. Gomez testified that Watts gave her the pills and she hid one bag in her vagina and one bag in the lining of her underwear. Gomez further testified that Watts instructed her not to say anything about the pills when they were initially stopped by Trooper Yoder, but that he eventually instructed her to hand over one bag of pills to law enforcement. Trooper Yoder also testified that Gomez told him that (1) Watts instructed her to give him one of the bags of pills; (2) she was afraid of Watts; and (3) she was afraid that law enforcement would tell Watts that she voluntarily provided law enforcement the pills. Foree testified that the pills were not his, and testified that, at the time the pills were discovered, law enforcement told him that they knew the pills were not his because Gomez would not hide them for him since she was not his girlfriend.

{¶52} Again, the credibility of the witnesses is a determination for the jury, and we need only determine whether a rational trier of fact could have concluded that Watts constructively possessed the pills in assessing the sufficiency of the evidence of that element. The evidence demonstrates that Gomez was Watts' agent with respect to the pills. That is, the record provides sufficient evidence that Watts exercised dominion and control over the pills by directing Gomez, his agent, to hide the pills in her vagina and whether to provide the pills to law enforcement. *See State v. Williams*, 117 Ohio App.3d 488, 493 (1st Dist.1996) (concluding that there was sufficient evidence that Williams constructively possessed contraband because he "directed her to get the package, and then told her what to do with it after she asked for instructions"). Moreover, the discovery of the \$2,000 in Watts' underwear is also circumstantial evidence related to his constructive possession of the pills. Also circumstantial evidence that Watts exercised dominion and control over the pills is the evidence that: (1) Watts instructed Gomez to tell the story about LaShawwna, (2) the group began their return trip to Louisville after stopping at Denny's without ordering any food, and not reaching the Greektown casino, which Gomez thought was the purpose of the trip, and (3) Watts disappearing for a period of time while Gomez and Foree were in the restaurant.

{¶53} Viewing this evidence in a light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that Watts

exercised dominion and control over the drugs, and therefore, constructively possessed the drugs. Accordingly, Watts' possession-of-drugs convictions are based on sufficient evidence.

{¶54} Having concluded that Watts' convictions are based on sufficient evidence, we next address Watts' argument that his convictions are against the manifest weight of the evidence. *Velez*, 2014-Ohio-1788, at ¶ 76. Watts makes many of the same arguments that he makes in support of his sufficiency-of-the-evidence assignment of error.

{¶55} “Even removing the lens of favorability in favor of the prosecution, through which we examine the sufficiency of the evidence, this is not an exceptional case where the evidence weighs heavily against the convictions.” *State v. Suffel*, 3d Dist. Paulding No. 11-14-05, 2015-Ohio-222, ¶ 33. Although Trooper Yoder was inconsistent in his testimony regarding whether Watts admitted that the Minute Maid bottles belonged to him and Gomez provided inconsistent testimony regarding the \$2,000 that Watts asked her to hold, the jury also observed Watts' and Foree's testimony, “and we are mindful of the jury's ‘superior first-hand perspective in judging the demeanor and credibility of witnesses.’” *Id.*, quoting *State v. Phillips*, 10th Dist. Franklin No. 14AP-79, 2014-Ohio-5162, ¶ 125, citing *DeHass*, 10 Ohio St.2d 230, at paragraph one of the syllabus.

{¶56} With regard to the codeine, Watts maintains that he does not know how the Minute Maid bottles got into the cooler in the trunk of his rental vehicle. Yet, the evidence that we summarized in our sufficiency-of-the-evidence analysis supporting Watts' conviction is much weightier than the evidence against it. Most significant is that there is *no* evidence in the record that anyone other than Watts accessed the trunk or the cooler. Despite Gomez's testimony that she saw Watts pick out and purchase the Minute Maid bottles and the cooler at the gas station, Watts testified that the cooler was in the vehicle prior to the trip and contained only his pop. He testified that he first noticed the Minute Maid bottles when he was refilling the cooler with the ice he purchased at the gas station, but did not know how they got into the cooler, and he did not ask Foree or Gomez where they came from. Moreover, Foree testified that he did not know the Minute Maid bottles were in the trunk until Deputy Smith discovered them, and that he saw Watts purchase only a bag of ice at the gas station. "[I]t is well within the province of the trier-of-fact to determine [Watts' and Foree's] credibility in making those statements including the prerogative to find [Watts' and Foree's] denials not to be truthful." *Voll*, 2012-Ohio-3900, at ¶ 27. Indeed, even though Foree testified that he saw Watts purchase only a bag of ice at the gas station, Foree testified that he saw Watts open the trunk and the cooler to put the ice in the cooler. And, Watts testified that, although the cooler was in the trunk of the rental

vehicle for at least a day before the trip, presumably chilling his pop, he did not need to drain any water from melted ice when he refilled the cooler with ice at the gas station. Furthermore, while Trooper Yoder was inconsistent with his testimony regarding whether Watts admitted that the Minute Maid bottles were his, Trooper Yoder testified that Watts did not deny that the Minute Maid bottles were his, and did not indicate that he did not know what was in them. Trooper Yoder also told the jury that Gomez looked to Watts when Trooper Yoder questioned the group about the Minute Maid bottles.

{¶57} With regard to the pills, Watts claims that the evidence shows that Gomez, not Watts, was the person most likely responsible for the pills since the pills were found on Gomez. Watts' and Foree's testimony that they did not know anything about the pills is underwhelming compared to Gomez's testimony that Watts was responsible for the pills. Watts testified that he did not (1) give any pills to Gomez; (2) ask her to hide any pills; or (3) instruct Gomez to hand over any pills to law enforcement. Watts testified that law enforcement came with "a paper" before removing Gomez from the interview room to search for the pills. Yet, there is no evidence in the record that law enforcement obtained any search warrant in this case. However, Watts admitted that he was present for all of the testimony in the case, including Foree's testimony. Indeed, Foree testified that he did not see Watts give Gomez any pills to hide. Similar to Watts' testimony,

Foree testified that law enforcement returned to the interview room “with a paper saying that [law enforcement] got the order from the Judge” to be able to search Gomez for the pills instead of Watts instructing Gomez to hand over one of the bags of the pills. Moreover, Foree testified that he has been friends with Watts for several years and, although, according to Foree, they did not discuss their testimony in this case, he and Watts discussed the case itself.

{¶58} Nevertheless, Watts appears to imply that Gomez was the one responsible for, at least, the pills because she was the one that said that she was hungry after the group supposedly dropped LaShawonna at her grandmother’s house and directed the group to Denny’s. Also damning, according to Watts, is that Gomez returned to the vehicle before Watts and Foree exited the men’s restroom and declared that she was no longer hungry and was ready to return to Louisville. However, contrary to Watts’ argument, the record reflects that Gomez was merely a passenger during the trip. While there is conflicting evidence regarding the purpose of the trip, the record clearly reflects that Watts invited Gomez to accompany him on the trip—that is, there is no evidence in the record that Gomez had any purpose to go to Toledo or Detroit; rather, it was Watts that invited her to ride along. In addition, although Watts and Foree provided testimony that they were going to Toledo to drop off LaShawonna, Gomez testified that Watts instructed her to tell that story, but testified that LaShawonna was never

in the vehicle during the trip. Indeed, Lashawanna did not testify at trial, and Foree, who was supposedly in a romantic relationship with LaShawanna, did not know her last name or how to spell her first name. Also, Watts could not explain why the invoice for his car, which he claimed to be in the shop at the time of the trip—June 17, 2011—and the reason he needed the rental vehicle, reflected service dates from June 6-10, 2011.

{¶59} Moreover, as we stated above, that \$2,000 was found in Watts' underwear supports Watts' convictions. Gomez testified that Watts asked her to hold the money at the time of the traffic stop, and that she returned it to him in the interview room at the patrol post. However, to support his testimony that he was not responsible for the drugs, Watts testified that Gomez gave him the money to hold. Yet, Watts could not explain why he put it in his underwear as opposed to his pocket, and did not deny to law enforcement officers, when it was discovered in his underwear, that it was his.

{¶60} For these reasons, we cannot conclude that the jury clearly lost its way and created such a manifest miscarriage of justice that Watts' convictions must be reversed and a new trial ordered.

{¶61} Watts' assignments of error are overruled.

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{¶62} Having found no error prejudicial to the appellant herein in the particulars assigned and argued, we affirm the judgment of the trial court.

*Judgment Affirmed*

**SHAW, P.J. and ROGERS, J., concur.**

/jlr