[Cite as *State v. Taylor*, 2016-Ohio-1231.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 13CA3419
vs.	:	
WILLIE D. TAYLOR,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Aaron M. McHenry, Chillicothe, Ohio, for Appellant.

Matthew S. Schmidt, Ross County Prosecuting Attorney, Chillicothe, Ohio, for Appellee.

CRIMINAL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED:3-11-16
ABELE, J.

{¶ 1} This is an appeal from a Ross County Common Pleas Court judgment of conviction and sentence. A jury found Willie D. Taylor, defendant below and appellant herein, guilty of two counts of aggravated possession of drugs in violation of R.C. 2925.11.

{¶ 2} Appellant assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED WHEN IT DENIED MR. TAYLOR'S MOTION TO SUPPRESS."

SECOND ASSIGNMENT OF ERROR:

"THE JURY'S VERDICT IS NOT SUPPORTED BY SUFFICIENT EVIDENCE."

THIRD ASSIGNMENT OF ERROR:

"THE JURY'S VERDICT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 3} On September 27, 2012, Ohio State Highway Patrol Trooper Michael Wilson observed what he described as "a driverless vehicle," meaning that the vehicle's occupants were positioned "very low in the seat." Because Trooper Wilson believed that the occupants were "hiding" from him, he decided to follow the vehicle. Shortly thereafter, the vehicle quickly maneuvered from the right lane of the highway, through the "gore,"[1] and onto an exit ramp. The trooper thought that the abrupt maneuver was dangerous and that driving through the gore constituted a traffic violation (a marked lanes violation), so he initiated a traffic stop.

{¶ 4} When Trooper Wilson approached the vehicle, he found appellant "jittery" and "jumpy" in the driver's seat, with a passenger seated next to him. After the trooper asked appellant to exit the vehicle, Trooper Wilson noticed a 13- to 15-inch piece of black electrical tape stuck to appellant's right thigh area.

{¶ 5} During the traffic stop, Ohio State Highway Patrol Trooper Nicholas Johnson arrived with his canine and walked around the vehicle. After the canine alerted to the presence of drugs inside the vehicle, the troopers searched the vehicle and discovered a package affixed

[1] Trooper Wilson explained that the "gore" is the "no access," triangle-shaped area between the exit ramp and the highway. He stated that "it is marked with paint, with the cross ways painted stripes through the gore area."

with black electrical tape beneath the driver's side dashboard area. The package contained multiple bags of pills. Inside the trunk, Trooper Wilson found a partially used roll of black electrical tape in a blue duffle bag. A subsequent analysis of the package recovered from the vehicle showed that it contained multiple bags of pills that contained oxycodone.

{¶ 6} A Ross County grand jury returned an indictment that charged appellant with two counts of aggravated possession of drugs, in violation of R.C. 2925.11. Appellant entered a not guilty plea and filed a motion to suppress the evidence uncovered as a result of the traffic stop. Appellant asserted that the traffic stop violated his Fourth Amendment right to be free from unreasonable searches and seizures. Specifically, appellant argued that Trooper Wilson lacked probable cause or reasonable suspicion to stop his vehicle.

{¶ 7} At the hearing to consider appellant's motion to suppress evidence, Trooper Wilson explained that he believed that appellant committed a marked lanes violation by driving through the gore to exit the highway. The trooper stated that exiting a highway through the gore is "an extremely dangerous way to take the off ramp." Trooper Wilson admitted that the paint marking the gore was "half ground off" due to construction, but further stated that the paint is still visible. The trooper additionally stated that appellant did not activate his turn signal until he was within approximately fifty feet of the exit ramp.

{¶ 8} At the conclusion of the hearing, the trial court overruled appellant's motion to suppress evidence. The court determined that the trooper possessed probable cause, or a reasonable suspicion, to believe that appellant violated the marked lanes statute (R.C. 4511.33) and the failure to activate turn signal statute (R.C. 4511.39). With respect to the marked lanes violation, the court specifically found that appellant "drove over the area of the roadway known

as the gore, and that area was marked by horizontal lines." The court observed that the videotaped recording of the traffic stop did not clearly indicate "whether those lines had been partially ground off," but the court "believe[d] the trooper's testimony that the lines had been partially ground off."

{¶ 9} At the jury trial, appellant's primary defense was that he did not possess the drugs. Trooper Wilson testified that the drugs were located beneath the driver's side dashboard area of the vehicle, an area that appellant, the driver, could access. Trooper Wilson further stated that the drugs were affixed with the same type of black electrical tape that he observed on appellant's right thigh, and that he discovered in the vehicle's trunk. The trooper explained that when he asked appellant about the black tape, appellant indicated that he used it to try to affix a GPS device to the windshield. The trooper stated, however, that he did not notice any tape residue on either the GPS device or the windshield. Trooper Wilson explained that appellant denied knowing that drugs were in the vehicle and denied that he owned the blue duffle bag that contained the electrical tape.

{¶ 10} Trooper Wilson testified that when he sent the evidence to the crime lab, he did not request DNA or fingerprint analysis due to "the mountain of evidence against [appellant]." The trooper explained this "mountain of evidence" as follows:

> "The totality that the electrical tape as on his pants [sic], the electrical tape that secured the packages together underneath the driver's seat, not the passenger seat, the driver's seat, the electrical tape and the bag of clothes in the trunk, the fact that [appellant] knew about the tape, said that he was using it to affix his GPS, and the vehicle that had no electrical tape on it whatsoever, nor did it show any resin or any glue or pollen or anything like that, like tape had been removed. There was no blob on the windshield that would show anything had been affixed there whatsoever, it was very clean, it was a rental car. Just his story did not add up whatsoever."

{¶ 11} After Trooper Wilson's testimony, the state rested. Appellant moved for a judgment of acquittal and asserted that the state failed to present sufficient evidence that he possessed the drugs. The court overruled the motion.

{¶ 12} On October 24, 2013, the jury found appellant guilty of both counts of aggravated possession of drugs. On December 17, 2013, the trial court sentenced appellant to serve four years in prison for each offense and further ordered to serve the terms concurrently. This appeal followed.

I

{¶ 13} In his first assignment of error, appellant asserts that the trial court erred by overruling his motion to suppress evidence. Appellant argues that the trooper lacked probable cause, or reasonable suspicion, to believe that appellant committed a traffic violation so as to justify the stop.

{¶ 14} Appellate review of a trial court's ruling on a motion to suppress generally presents a mixed question of law and fact. State v. Castagnola, 2015-Ohio-1565, ¶32, citing State v. Burnside, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71; State v. Moore, 2013–Ohio–5506, 5 N.E.3d 41 (4th Dist.), ¶7. The Burnside court explained this standard as follows:

> "When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard."

Id. (citations omitted); accord State v. Leak, Slip Op. No. 2016-Ohio-154, ¶12.

{¶ 15} In the case sub judice, we must defer to the trial court's factual findings as long as competent, credible evidence supports them. However, we will independently determine whether the trial court properly determined that the facts demonstrate that the trooper lawfully stopped appellant's vehicle, a matter of law.

{¶ 16} The Fourth and Fourteenth Amendments to the United States Constitution, as well as Section 14, Article I of the Ohio Constitution, protect individuals against unreasonable governmental searches and seizures. Delaware v. Prouse, 440 U.S. 648, 662, 99 S.Ct. 1391, 1400, 59 L.Ed.2d 660 (1979); State v. Gullett, 78 Ohio App.3d 138, 143, 604 N.E.2d 176 (1992). "[S]searches [and seizures] conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967); Leak at ¶15; State v. Roberts, 110 Ohio St.3d 71, 2006-Ohio-3665, 850 N.E.2d 1168, ¶98. Once the defendant demonstrates that he was subjected to a warrantless search or seizure, the burden shifts to the state to establish that the warrantless search or seizure was constitutionally permissible. Roberts at ¶98; Maumee v. Weisner, 87 Ohio St.3d 295, 297, 720 N.E.2d 507 (1999); Xenia v. Wallace, 37 Ohio St.3d 216, 524 N.E.2d 889 (1988), paragraph two of the syllabus.

{¶ 17} A traffic stop initiated by a law enforcement officer constitutes a seizure within the meaning of the Fourth Amendment. Whren v. United States, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996); Delaware v. Prouse, 440 U.S. at 653. Thus, a traffic stop must comply with the Fourth Amendment's general reasonableness requirement. Whren, 517

U.S. at 810. "[T]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." Id. (citations omitted); accord Dayton v. Erickson, 76 Ohio St.3d 3, 11–12, 665 N.E.2d 1091 (1996). Consequently, "[p]robable cause is * * * a complete justification for a traffic stop * * *." State v. Mays, 119 Ohio St.3d 406, 2008–Ohio–4539, 894 N.E.2d 1204, ¶23; accord Bowling Green v. Godwin, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698, ¶11.

{¶ 18} We note, however, that probable cause is not required to justify a traffic stop. Mays at ¶23. Instead, a traffic stop may be based upon less than probable cause when an officer possesses reasonable suspicion that the driver has committed, or is committing, a crime, including a minor traffic violation. Id. at ¶¶7-8; State v. Williams, 4th Dist. Ross No. 14CA3436, 2014-Ohio-4897, ¶8; State v. Ward, 4th Dist. Washington No. 10CA30, 2011-Ohio-1261, ¶13. To justify a traffic stop based upon reasonable suspicion, the officer must be able to articulate specific facts that would warrant a person of reasonable caution to believe that the driver has committed, or is committing, a crime, including a minor traffic violation. E.g., Williams at ¶8.

{¶ 19} When a court determines whether an officer possessed probable cause or a reasonable suspicion to stop a vehicle, the court must examine the totality of the circumstances. Mays at ¶7. "[T]he question whether a traffic stop violates the Fourth Amendment * * * requires an objective assessment of a police officer's actions in light of the facts and circumstances." Bowling Green at ¶14. "[T]he existence of probable cause [or reasonable suspicion] depends on whether an objectively reasonable police officer would believe that [the

driver]'s conduct * * * constituted a traffic violation, based on the totality of the circumstances known to the officer at the time of the stop." Id. at ¶16.

{¶ 20} Moreover, simply because a driver cannot ultimately be convicted of a traffic offense "is not determinative of whether the officer acted reasonably in stopping and citing [the driver] for that offense. Probable cause does not require the officer to correctly predict that a conviction will result." Id. at ¶15.

As we explained in State v. Emerick, 4th Dist. Washington No. 06CA45, 2007-Ohio-4398, ¶15:

> "A traffic stop may pass constitutional muster even where the state cannot convict the driver due to a failure in meeting the burden of proof or a technical difficulty in enforcing the underlying statute or ordinance. * * * The very purpose of an investigative stop is to determine whether criminal activity is afoot. This does not require scientific certainty of a violation nor does it invalidate a stop on the basis that the subsequent investigation reveals no illegal activity is present."

(citations omitted); accord Mays at ¶17 (explaining that whether a driver has a possible defense to traffic violation "is irrelevant in our analysis of whether an officer has a reasonable and articulable suspicion to initiate a traffic stop").

{¶ 21} This court has previously determined that a traffic stop complies with the Fourth Amendment's reasonableness requirement if an officer possesses probable cause or a reasonable suspicion to believe that a driver committed a marked lanes violation,[2] State v. Crocker, 4th Dist. No. 14CA3640, 2015-Ohio-2528, 38 N.E.3d 369, ¶62; State v. Littlefield, 4th Dist. Ross No.

[2] The marked lanes statute, R.C. 4511.33(A)(1), states that upon "any roadway * * * divided into two or more clearly marked lanes for traffic," a vehicle to "shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from such lane or line until the driver has first ascertained that such movement can be made with safety."

11CA3247, 2013-Ohio-481, ¶15, or fails to activate a turn signal.[3] Williams at ¶9; State v. Eatmon, 4th Dist. Scioto No. 12CA3498, 2013-Ohio-4812, ¶16.

{¶ 22} In the case sub judice, we agree with the trial court's conclusion that Trooper Wilson possessed sufficient information to believe that appellant violated R.C. 4511.33(A)(1) or 4511.39. The trooper testified that (1) appellant drove through the roadway markings that separated the highway and the exit ramp; and (2) this triangle-shaped area, known as the "gore," was marked with paint to indicate that it was a "no access" zone. We recognize appellant's complaint that the gore area was not clearly marked and, thus, that he could not have violated the marked lanes statute. The trial court, however, specifically credited the trooper's testimony and found that the gore was marked with horizontal lines, even if they were "partially ground off." Thus, the trooper's testimony shows the trooper possessed at least a reasonable suspicion to believe that appellant did not drive his vehicle within a single lane of traffic upon a roadway divided into two or more lanes, but instead, crossed from a marked lane of traffic into the gore and onto an exit ramp. We again note that even if the evidence fails to show that appellant could be found guilty of violating R.C. 4511.33(A)(1), this does not mean that the trooper lacked either probable cause or a reasonable suspicion to believe that appellant violated the statute. See Bowling Green, supra; Emerick, supra.

{¶ 23} Furthermore, assuming, arguendo, that the trooper lacked probable cause or a reasonable suspicion to believe that appellant violated R.C. 4511.33(A)(1), the trooper nonetheless possessed probable cause or (at the least a reasonable suspicion) to believe that

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[3] The failure to activate a turn signal statute, R.C. 4511.39, states: "When required, a signal of intention to turn or move right or left shall be given continuously during not less than the last one hundred feet traveled by the vehicle or trackless trolley before turning * * *."

appellant violated R.C. 4511.39 by failing to activate his turn signal within one hundred feet before moving his vehicle from the roadway to the exit ramp. The trooper testified that appellant abruptly moved his vehicle from the lane of travel to the exit ramp and did not activate his turn signal within one hundred feet of moving his vehicle from his lane of travel. Once again, even if the facts are insufficient to establish appellant's guilt, the facts are not insufficient to show that the officer had an objectively reasonable basis to believe that appellant violated R.C. 4511.39. The trooper thus had at least reasonable suspicion to stop appellant.

{¶ 24} Therefore, we disagree with appellant's argument that the trial court erred by overruling his motion to suppress evidence and, based upon the foregoing reasons, we hereby overrule appellant's first assignment of error.

II

{¶ 25} Appellant's second and third assignments of error raise the related, but legally distinct, arguments that sufficient evidence does not support his conviction and that his conviction is against the manifest weight of the evidence. For ease of analysis, we have combined our review of the assignments of error.

{¶ 26} In his second assignment of error, appellant contends that the state failed to present sufficient evidence to support his aggravated possession convictions. In particular, he argues that the state did not present sufficient evidence to prove that he knowingly possessed the drugs discovered in the vehicle. In his third assignment of error, appellant argues that his convictions are against the manifest weight of the evidence. Specifically, he asserts that the weight of the evidence failed to demonstrate that he knowingly possessed the drugs.

{¶ 27} A claim of insufficient evidence invokes a due process concern and raises the question whether the evidence is legally sufficient to support the verdict as a matter of law. State v. Thompkins, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). When reviewing the sufficiency of the evidence, our inquiry focuses primarily upon the adequacy of the evidence; that is, whether the evidence, if believed, reasonably could support a finding of guilt beyond a reasonable doubt. Thompkins, syllabus. The standard of review is whether, after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt. E.g., Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Jenks, 61 Ohio St.3d 259, 273, 574 N.E.2d 492 (1991). Furthermore, a reviewing court is not to assess "whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction." Thompkins, 78 Ohio St.3d at 390 (Cook, J., concurring).

{¶ 28} Thus, when reviewing a sufficiency-of-the-evidence claim, an appellate court must construe the evidence in a light most favorable to the prosecution. E.g., State v. Hill, 75 Ohio St.3d 195, 205, 661 N.E.2d 1068 (1996); State v. Grant, 67 Ohio St.3d 465, 477, 620 N.E.2d 50 (1993). A reviewing court will not overturn a conviction on a sufficiency-of-the-evidence claim unless reasonable minds could not reach the conclusion that the trier of fact did. State v. Tibbetts, 92 Ohio St.3d 146, 162, 749 N.E.2d 226 (2001); State v. Treesh, 90 Ohio St.3d 460, 484, 739 N.E.2d 749 (2001).

{¶ 29} "Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may nevertheless conclude that the judgment is against the weight of the evidence." Thompkins, 78 Ohio St.3d at 387.

> "'Weight of the evidence concerns "the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief."'"

Eastley v. Volkman, 132 Ohio St.3d 328, 2012–Ohio–2179, 972 N.E.2d 517, ¶12, quoting Thompkins, 78 Ohio St.3d at 387, quoting Black's Law Dictionary 1594 (6th ed.1990).

{¶ 30} When an appellate court considers a claim that a conviction is against the manifest weight of the evidence, the court must dutifully examine the entire record, weigh the evidence, and consider the witness credibility. A reviewing court must bear in mind, however, that credibility generally is an issue for the trier of fact to resolve. State v. Issa, 93 Ohio St.3d 49, 67, 752 N.E.2d 904 (2001); State v. Murphy, 4th Dist. Ross No. 07CA2953, 2008–Ohio–1744, ¶31. "'Because the trier of fact sees and hears the witnesses and is particularly competent to decide "whether, and to what extent, to credit the testimony of particular witnesses," we must afford substantial deference to its determinations of credibility.'" Barberton v. Jenney, 126 Ohio St.3d 5, 2010–Ohio–2420, 929 N.E.2d 1047, ¶20, quoting State v. Konya, 2nd Dist. Montgomery No. 21434, 2006–Ohio–6312, ¶ 6, quoting State v. Lawson, 2nd Dist. Montgomery No. 16288 (Aug. 22, 1997). As the Eastley court explained:

> "'[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment must be made in favor of the judgment and the finding of facts. * * *

> If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.'"

Id. at ¶21, quoting Seasons Coal Co., Inc. v. Cleveland, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn.3, quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, at 191–192 (1978). Thus, an appellate court will leave the issues of weight and credibility of the evidence to the fact finder, as long as a rational basis exists in the record for its decision. State v. Picklesimer, 4th Dist. Pickaway No. 11CA9, 2012–Ohio–1282, ¶24; accord State v. Howard, 4th Dist. Ross No. 07CA2948, 2007–Ohio–6331, ¶6 ("We will not intercede as long as the trier of fact has some factual and rational basis for its determination of credibility and weight.").

{¶ 31} Once the reviewing court finishes its examination, the court may reverse the judgment of conviction only if it appears that the fact-finder, when resolving the conflicts in evidence, "'clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.'" Thompkins, 78 Ohio St.3d at 387, quoting State v. Martin, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). A reviewing court should find a conviction against the manifest weight of the evidence only in the "'exceptional case in which the evidence weighs heavily against the conviction.'" Id., quoting Martin, 20 Ohio App.3d at 175; State v. Lindsey, 87 Ohio St.3d 479, 483, 721 N.E.2d 995 (2000).

{¶ 32} It is important to recognize that when an appellate court concludes that the weight of the evidence supports a defendant's conviction, this conclusion necessarily includes a finding that sufficient evidence supports the conviction. State v. Pollitt, 4th Dist. Scioto No. 08CA3263, 2010–Ohio–2556, ¶15. "'Thus, a determination that [a] conviction is supported by

the weight of the evidence will also be dispositive of the issue of sufficiency.'" State v. Lombardi, 9th Dist. Summit No. 22435, 2005–Ohio–4942, ¶9, quoting State v. Roberts, 9th Dist. Lorain No. 96CA006462 (Sept. 17, 1997). In the case sub judice, therefore, we first consider appellant's argument that his aggravated possession of drug convictions are against the manifest weight of the evidence.

{¶ 33} R.C. 2925.11(A) states: "No person shall knowingly obtain, possess, or use a controlled substance * * *." In the case at bar, appellant disputes whether the evidence shows that he knowingly possessed the drugs discovered in the vehicle he was driving. "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. A person has knowledge of circumstances when he is aware that such circumstances probably exist." R.C. 2901.22(B). "With regard to the ability to prove an offender's intentions, the Ohio Supreme Court has recognized that 'intent, lying as it does within the privacy of a person's own thoughts, is not susceptible [to] objective proof.'" State v. Wilson, 12th Dist. Warren No. CA2006–01–007, 2007–Ohio–2298, ¶41, quoting State v. Garner, 74 Ohio St.3d 49, 60, 656 N.E.2d 623 (1995). Thus, "whether a person acts knowingly can only be determined, absent a defendant's admission, from all the surrounding facts and circumstances * * *." State v. Huff, 145 Ohio App.3d 555, 563, 763 N.E.2d 695 (1st Dist.2001).

{¶ 34} R.C. 2925.01(K) defines "possession" as "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." Whether a defendant knowingly possessed a controlled substance "is to be determined from all

the attendant facts and circumstances available." State v. Teamer, 82 Ohio St.3d 490, 492, 696 N.E.2d 1049 (1998); accord State v. Corson, 4th Dist. Pickaway No. 15CA4, 2015-Ohio-5332, ¶13.

{¶ 35} Possession may be actual or constructive. State v. Butler, 42 Ohio St.3d 174, 175, 538 N.E.2d 98 (1989) ("To constitute possession, it is sufficient that the defendant has constructive possession * * *."); State v. Hankerson, 70 Ohio St.2d 87, 434 N.E.2d 1362 (1982), syllabus. "'Actual possession exists when the circumstances indicate that an individual has or had an item within his immediate physical possession.'" State v. Kingsland, 177 Ohio App.3d 655, 2008-Ohio-4148, 895 N.E.2d 633, ¶13 (4th Dist.), quoting State v. Fry, 4th Dist. Jackson No. 03CA26, 2004-Ohio-5747, 2004 WL 2428439, ¶39. "Constructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within his immediate physical possession." Hankerson, syllabus; State v. Brown, 4th Dist. Athens No. 09CA3, 2009-Ohio-5390, 2009 WL 3236206, ¶19. For constructive possession to exist, the state must show that the defendant was conscious of the object's presence. Hankerson, 70 Ohio St.2d at 91, 434 N.E.2d 1362; Kingsland at ¶13; accord State v. Huckleberry, Scioto App. No. 07CA3142, 2008-Ohio-1007, 2008 WL 623342, ¶34; State v. Harrington, Scioto App. No. 05CA3038, 2006-Ohio-4388, 2006 WL 2457218, ¶15. Both dominion and control, and whether a person was conscious of the object's presence, may be established through circumstantial evidence. E.g., Brown at ¶19.

> "Although a defendant's mere proximity is in itself insufficient to establish constructive possession, proximity to the object may constitute some evidence of constructive possession. Fry at ¶40. Thus, presence in the vicinity of contraband, coupled with another factor or factors probative of dominion or control over the contraband, may establish constructive possession."

State v. Kingsland, 177 Ohio App.3d 655, 2008-Ohio-4148, 895 N.E.2d 633, ¶ 13.

{¶ 36} In the case at bar, we believe that the state presented ample competent, credible evidence from which a jury could conclude, beyond a reasonable doubt, that appellant knowingly possessed the drugs discovered in the vehicle. Although the evidence may not show that appellant actually possessed the drugs at that particular time, the evidence does show that appellant constructively possessed the drugs. Appellant was the driver of the rental vehicle in which the drugs were found. We have previously determined that an individual's status as the driver of a vehicle suggests the ability to exercise dominion and control over the vehicle and its contents. Corson at ¶27 (stating that "it can be inferred that Appellant's driving the vehicle provides some indication of dominion and control over any occupants or contents brought into the vehicle"); Brown at ¶21 (explaining that the defendant's "possession of the keys provided a strong indication of control over the drugs found in the automobile"); State v. Chaffins, 4th Dist. Scioto No. 13CA3559, 2014–Ohio–1969, ¶33 (determining that a fact finder may conclude that a defendant who exercises dominion and control over an automobile also exercises dominion and control over illegal drugs found in it). Additionally, the drugs were located on appellant's side of the vehicle, underneath the dashboard area. Thus, the drugs were in proximity to appellant. Furthermore, the evidence indicates that appellant was conscious of the presence of the drugs. Appellant sat low in the vehicle, as if hiding from the trooper, as he drove past the trooper on the highway. Appellant acted nervously once the trooper made contact. The trooper also found a 13- to 15-inch piece of black electrical tape on appellant's thigh, and this was the same type of tape used to secure the drugs to the vehicle. Appellant, however, explained that he used the tape

to secure a GPS device to the windshield, but the trooper did not notice any tape residue on the windshield or a GPS device. We believe that the combination of these factors allow a reasonable inference that appellant was conscious of the presence of the drugs.

{¶ 37} Consequently, based upon the totality of the evidence, we do not believe that the jury clearly lost its way and created such a manifest miscarriage of justice that we must reverse its judgment. This is not an exceptional case in which the evidence weighs heavily against the conviction.

{¶ 38} Moreover, our determination that appellant's conviction is not against the manifest weight of the evidence also means that sufficient evidence supports his conviction. We therefore disagree with appellant that the state failed to present sufficient evidence to support his convictions.

{¶ 39} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's first and second assignments of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

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

Harsha, J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.