[Cite as *State v. Williams*, 2010-Ohio-3667.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

STATE OF OHIO Appellee v. JAMES WILLIAMS Appellant	C.A. No. 09CA009679 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE No. 04CR065188

DECISION AND JOURNAL ENTRY

Dated: August 9, 2010

BELFANCE, Judge.

{¶1} Defendant-Appellant, James D. Williams, appeals his convictions from the Lorain County Court of Common Pleas. For the reasons that follow, we affirm the convictions.

BACKGROUND

{¶2} In 2004, Williams was residing in Detroit, Michigan, but travelled to Erie, Pennsylvania to have visitation with his infant daughter each Friday in Erie. During one of these visits, Williams lost his wallet and bus ticket for the trip back to Detroit. A friend of Williams', Moriba Ramsey, was in Erie at the time and planned to drive to Detroit for a few days then, back to Erie. Ramsey agreed to give Williams a ride from Erie home to Detroit, then, from Detroit to Erie for his next Friday visitation with his daughter.

{¶3} On April 1, 2004, Williams and Ramsey made the drive from Detroit to Erie in a car belonging to Ramsey's aunt. They were accompanied by Albert Graves. Williams was driving the car through Lorain County at approximately eleven o' clock in the morning when he

was stopped by Sgt. Mark Neff of the Ohio State Highway Patrol. As the stop progressed, Sgt. Neff became suspicious of criminal activity and requested a K-9 sniff of the vehicle. A large quantity of drugs was found in the trunk as well as a small amount of marijuana under the passenger seat. All three men in car were arrested.

{¶4} Williams was charged with possession of marijuana, possession of cocaine, trafficking in marijuana, and trafficking in cocaine. Williams filed a motion to suppress and a motion in limine to exclude certain evidence. The trial court denied both. After a trial to the bench, Williams was found guilty of all charges and sentenced to an aggregate term of incarceration of twelve years. Williams twice appealed his conviction to this Court; each was dismissed due to deficiencies in the sentencing entry.

{¶5} In his instant appeal, Williams assigns five errors for our review. He asserts that the trial court erred in denying his motion to suppress, admitting evidence obtained as a result of the K-9 sniff, and allowing the State to present hearsay. Finally, he contends that his convictions are based on insufficient evidence and against the manifest weight of the evidence.

INITIAL STOP

{¶6} In his first assignment of error, Williams argues that Sgt. Neff lacked the reasonable suspicion of criminal activity necessary to initiate a traffic stop of the car and that there was no justification to detain Williams and his passengers. Thus, according to Williams the trial court should have granted Williams' motion to suppress all evidence gathered during the stop.

{¶7} An appeal from a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, at ¶8. This Court must defer to the trial court's findings of fact as the trial court is in the best position to evaluate the evidence

and determine the credibility of the witnesses. *State v. Kurjian*, 9th Dist. No. 06CA0010-M, 2006-Ohio-6669, at ¶10. A reviewing court accepts the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Metcalf*, 9th Dist. No. 23600, 2007-Ohio-4001, at ¶6. However, this Court will review the trial court's application of the law to the facts de novo. Id.

{¶8} A traffic stop constitutes a seizure for purposes of the Fourth Amendment to the United States Constitution. *State v. Swann*, 9th Dist. No. 23529, 2007-Ohio-3235, at ¶6. Thus, an officer must demonstrate "specific and articulable facts which, taken together with rational inferences from those facts" lead to a reasonable suspicion of criminal activity to justify the intrusion. *Terry v. Ohio* (1968), 392 U.S. 1, 21-22.

{¶9} Sgt. Neff testified that his attention was drawn to the car Williams was driving because it had two forms of registration, a temporary tag in the rear window and a license plate on the rear bumper, but neither was clearly visible. Sgt. Neff could not read the temporary tag through the tinted rear window and was not able to determine the name of the issuing state on the license plate because it was blocked by the license plate holder. Additionally, due to the mixture of snow and rain, the car's windshield wipers were on, but Williams did not have his headlights on. Williams did not dispute Sgt. Neff's statements.

{¶10} State law requires all vehicles on the roadway to have license plates or temporary tags displayed. R.C. 4503.21(A). In addition, the license or temporary tag shall be displayed in "plain view" in a manner that does not obstruct visibility of the license or tag. Id. The purpose of the law is to allow these identifying marks to be visible to law enforcement and other members of the public. *State v. Molek*, 11th Dist. No. 2001-P-0147, 2002-Ohio-7159, at ¶26. Also, pursuant to the version of R.C. 4513.03 in effect on the date Williams was stopped, a

driver was required to have his vehicle's lights turned on if, due to time of day or atmospheric conditions, there was insufficient natural light to see objects at a distance of 1000 feet. R.C. 4513.03(A).

{¶11} This Court has held that a law enforcement officer may make an investigatory stop of vehicle based upon a reasonable suspicion that the driver has committed a traffic violation. *Swann* at ¶6. Williams argues that the license plate was not obstructed because only the name of the state was not visible and Sgt. Neff testified that once he walked up to the vehicle, he could read both the temporary tag and the license plate and recognized them as Pennsylvania registration marks. He further argues that conditions at the time of the stop did not require the car's lights to be illuminated. We do not agree with either argument.

{¶12} With respect to the obstructed license and temporary tag, Sgt. Neff stated that while following the vehicle, he was unable to clearly see either registration tag and that the portion of the license plate identifying the state was not visible. The name of the issuing state is an integral identifying mark for vehicle registration. Although by virtue of his training and experience, Sgt. Neff was able to deduce that the issuing state for the tags was Pennsylvania; this fact does not negate the existence of a traffic violation.

{¶13} Sgt. Neff's testimony also established that it was raining and snowing at the time of the stop. A video captured by a dashboard camera in the patrol cruiser and played during the suppression hearing also showed that conditions were quite overcast, that precipitation was falling, and both Williams and Sgt. Neff were operating their vehicles' windshield wipers at a constant setting. It is undisputed that while driving under these conditions, Williams was operating the vehicle without illuminated headlights. Although the stop occurred during the day, the clouds and heavy precipitation limited the amount of natural light. See R.C. 4513.03(A).

Sgt. Neff testified that in light of his observations, citations could have been issued for either offense. Based on the record before us, Sgt. Neff was justified in initiating the initial traffic stop based on his observation of several traffic violations. Accordingly, we do not agree with Williams' contention that Sgt. Neff lacked a reasonable suspicion of criminal activity to justify the traffic stop. See *Terry*, 392 U.S. at 21-22.

{¶14} Williams also argues that Sgt. Neff did not have a legitimate reason to further detain him beyond the time it took to resolve the license plate issue. Again, we do not agree.

{¶15} Not only must the State present facts to justify the initial stop, the State must also present facts that justify the duration of the seizure. *Florida v. Royer* (1983), 460 U.S. 491, 500. When one has been detained so that the police may investigate a traffic violation, the police may detain the individual for the length of time necessary to check the driver's license and registration, and the vehicle's license plates. *State v. Batchili*, 113 Ohio St.3d 403, 2007-Ohio-2204, at ¶12. If, during the investigation of the events that gave rise to the initial stop, the officer discovers additional facts from which it is reasonable to infer additional criminal activity; the officer is permitted to lengthen the duration of the stop to investigate such suspicions. Id. at ¶15; *State v. Robinette* (1997), 80 Ohio St.3d 234, 241. We consider the totality of the circumstances to determine whether the length of the seizure is justified. *Batchili* at ¶12.

{¶16} In the instant matter, Sgt. Neff called dispatch with the license plate and temporary tag numbers to ascertain the owner of the vehicle. Dispatch replied that the plate and the tag were registered to different individuals. Additionally, the license plate was not registered to the car Williams was driving. Sgt. Neff asked Williams who owned the car and he replied that it belonged to the girlfriend of the front-seat passenger, Ramsey. Williams was unable to produce the registration paperwork for the car, but instead gave Sgt. Neff a bill of sale for the

car. Sgt. Neff asked Williams for his driver's license. Williams responded that he did not have it with him and was unsure if he had a valid license or driving privileges. Sgt. Neff placed Williams in the front-seat of his patrol car while he attempted to determine if he was a valid driver and for safety reasons, asked one of the other men in Williams' vehicle to move the car to the parking lot of the nearby highway maintenance facility. He also asked Ramsey who owned the car. Ramsey replied that it belonged to his aunt. This inconsistency regarding ownership led Sgt. Neff to suspect that the men did not have permission to have the car and that other criminal activity was afoot. Sgt. Neff decided to call Trooper Robert Farabaugh who was working in the area with Sgt. Neff that day. Sgt. Neff requested that Trooper Farabaugh investigate Williams' vehicle with his drug dog, Caesar.

{¶17} While Sgt. Neff continued to investigate the issue of the ownership of the vehicle and whether Williams was a properly licensed driver, Trooper Farabaugh arrived at the scene. Approximately ten to fifteen minutes had elapsed. Meanwhile, Sgt. Neff was able to verify that the car was owned by Ramsey's aunt; however, he continued to have dispatch search the databases in surrounding states to determine if Williams was a valid driver. At the time that Caesar alerted on the vehicle, Sgt. Neff still did not have any confirmation that Williams had a valid license or privileges.

{¶18} The evidence established that after Sgt. Neff initiated the stop, he encountered additional concerns that warranted further investigation. Williams told Sgt. Neff that he did not have a license and he was unsure whether he had a valid license or driving privileges. In addition, Sgt. Neff was unable to determine the ownership of the vehicle. Given the totality of the circumstances described above, Sgt. Neff was justified in continuing the detention in order to investigate these concerns. There is no indication that Williams was detained any longer than

was necessary to investigate these issues. Sgt. Neff diligently investigated whether Williams was a valid driver, never arriving at a conclusion. In light of incompatible information with respect to the license plate and temporary tag, as well as who actually owned the vehicle, Sgt. Neff became concerned that other crimes had been committed, for example, that the car was possibly stolen. This suspicion of additional criminal activity in particular justified the continued detention of Williams to allow Sgt. Neff to fully investigate the situation. The trial court properly denied Williams' motion to suppress. Williams' first assignment of error is overruled.

CAESAR

{¶19} In his second assignment of error Williams argues that the trial court erred in allowing evidence obtained from Caesar, the drug dog who alerted on the vehicle. Williams first argues that the search of the vehicle was "illegal" because Sgt. Neff detained Williams by calling a K-9 to the scene without having any reason to believe a crime was afoot and without Williams' consent. Williams also argues that Caesar's alert was not sufficiently reliable to justify the search of the vehicle because Caesar's training and reliability in "real world situations" was not established. Williams offers no legal authority to support the proposition that the State was required to present records as to Caesar's performance in real life situations as a prerequisite to a finding of reliability.

{¶20} Initially, "[w]e note that a drug dog sniff of a vehicle is not a search within the meaning of the Fourth Amendment." *State v. Kay*, 9th Dist. No. 09CA0018, 2009-Ohio-4801, at ¶10, citing *Illinois v. Caballes* (2005), 543 U.S. 405, 408-409. "[I]f a vehicle is lawfully detained, an officer does not need a reasonable suspicion of drug-related activity in order to request that a drug dog be brought to the scene or to conduct a dog sniff of the vehicle." *State v. Carlson* (1995), 102 Ohio App.3d 585, 594. Finally, "once a trained drug dog alerts to the odor

of drugs from a lawfully detained vehicle, an officer has probable cause to search the vehicle for contraband." Id. at 600. Williams does not dispute this proposition. Williams has also failed to provide any authority that his prior consent was needed in order for Caesar to be allowed to sniff the vehicle. Having already determined that the continued detention and investigation was justified, we will focus our attention on Williams' claim that the trial court erred in admitting evidence concerning Caesar because his reliability was not established.

{¶21} After Trooper Farabaugh arrived with Caesar, the troopers had Williams' passengers exit the vehicle so they could be placed in Sgt. Neff's patrol car during Caesar's assessment of the vehicle. Caesar alerted on the vehicle, thus, the troopers began to execute their search. A small amount of marijuana was found under the passenger's seat. Eventually, they discovered a package hidden under the trunk mat in the well for the spare tire. The package contained one-half pound of marijuana, 1100 grams of crack cocaine and some powder cocaine. The troopers read Williams and the other men their rights and placed them under arrest.

{¶22} At the suppression hearing, Trooper Farabaugh testified as to Caesar's training with various police dog training facilities. He stated that Caesar has completed 210 hours of training and has obtained certifications from the North American Police Work Dog Association and Ohio Peace Officer Training Academy. Trooper Farabaugh also stated that Caesar must be tested and certified every two years, and that his certification is current. Caesar's certificates were presented in court during the hearing. Trooper Farabaugh went on to discuss Caesar's performance during training, however, he stated that statistics are not kept with respect to the drug dogs' performance in the field. Williams did not attempt to contradict this evidence.

{¶23} Pursuant to prior holdings of this Court, "a trial court may properly find 'from the uncontested training and certification evidence that [the dog] was [] sufficiently trained and

reliable.'" *State v. Barbee*, 9th Dist. No. 07CA009183, 2008-Ohio-3587, at ¶20, quoting *State v. Calhoun* (May 3, 1995), 9th Dist. No. 94CA005824, at *4. The uncontroverted evidence presented at the hearing was sufficient to demonstrate Caesar's reliability. We overrule Williams' second assignment of error.

TAPE

{¶24} Williams next contends that the trial court erred in admitting at trial a tape recording of statements Williams made while in Sgt. Neff's patrol car. Specifically, he alleges that the statements in the tape were prejudicial, inadmissible hearsay, and that their admission violated his Sixth Amendment right to confrontation.

{¶25} Sgt. Neff's patrol car is equipped with a camera and a sound recording device. Sgt. Neff wears one microphone, and another is located inside the patrol car. Both microphones can be on at the same time, or either one can be turned on while the other is off. The camera faces the front of the patrol car and captures images outside of the vehicle. A sign posted within the car notifies occupants that they are being recorded. Sgt. Neff's camera was on from the moment he stopped Williams and throughout the entire stop and search. When the men were placed in the backseat of the patrol car so that Caesar could complete the drug sniff, Sgt. Neff turned on the in-car microphone and turned off his body microphone. The camera did not record visual images of the men while they were in the back of the patrol car, but it did record the conversation they had in the patrol car while Caesar sniffed the car and the troopers searched it.

{¶26} Williams first argues that the probative value of the tape is outweighed by the danger of unfair prejudice it creates, see Evid.R. 403(A), because, he asserts, it is difficult to determine which man made which statements. During the conversation, Williams' statements with regard to driving with the cruise control on, that he was not speeding, and the reasons Sgt.

Neff stated for pulling him over serve to identify his voice on the tape as he was the driver. One of the other men speaks only a couple of times and has a distinctive, deeper voice. At trial, Williams identified that man as Albert Graves, a passenger in the vehicle. The bulk of the recording is conversation between Williams and Ramsey, including the reactions of each as the sniff and search take place.

{¶27} The quality of the audio recording is clear enough to have allowed the trial court to sufficiently hear the events as they unfolded. When the tape was played at the suppression hearing, Sgt. Neff was able to describe what was happening and identify each speaker. At trial, Williams was also able to identify himself and the other speakers. Additionally, the substance of the statements made during the conversation serve to identify each speaker. Based on this Court's review of the tape, it is not difficult to determine who makes which statements and it is not otherwise confusing. Admission of the tape did not create the danger of unfair prejudice.

{¶28} Williams also asks this Court to conclude that the tape was inadmissible because it contained hearsay statements. Pursuant to Ohio Rule of Evidence 801, "'[h]earsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." "Hearsay is not admissible except as otherwise provided * * * by [the Ohio Rules of Evidence]." Evid.R. 802. The Rules of Evidence enumerate multiple exceptions to the rule that hearsay is inadmissible. One such exception provides that "[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or condition[]" is admissible as a present sense impression. Evid.R. 803(1). Such statements are generally held to be trustworthy because they are made at the time of, or immediately following an event without sufficient time to reflect upon the event. *State v. Simmons*, 9th Dist. No. 21150, 2003-Ohio-721, at ¶¶35-36.

{¶29} As previously mentioned, the tape contains spontaneous statements made by Williams and the other men while they watched Caesar examine the vehicle and watched the troopers search the vehicle, ultimately finding the drugs. The men react as the search progresses and become increasingly anxious as the troopers move through the car and towards the trunk. At one point, Ramsey asks Williams to join him in a prayer that the troopers will not discover the drugs. In *State v. Graves*, a case involving Williams' co-defendant, we concluded that even assuming the videotape constituted hearsay; the tape was properly admitted pursuant to the present sense impression exception to the hearsay rule. *State v. Graves*, 9th Dist. No. 08CA009397, 2009-Ohio-1133, at ¶4. In light of our established precedent, we do not find Williams' argument to be well taken.

{¶30} Finally, Williams argues that admission of the tape violated his right to confront witnesses against him. "The Sixth Amendment to the United States Constitution guarantees an accused the right to confront witnesses against him." *State v. Swaby*, 9th Dist. No. 24528, 2009-Ohio-3690, at ¶6, citing *Crawford v. Washington* (2004), 541 U.S. 36, 54. This right applies to statements that are testimonial in nature. Id. "Statements are testimonial when the circumstances objectively indicate that the primary purpose in obtaining them was to 'establish or prove past events potentially relevant to later criminal prosecution.'" Id., quoting *State v. Siler*, 116 Ohio St.3d 39, 2007-Ohio-5637, paragraph one of the syllabus, quoting *Davis v. Washington* (2006), 547 U.S. 813, 822. There is no clear definition of "testimonial statements," but they "includ[e] prior testimony at a preliminary hearing or other court proceeding, as well as confessions and responses made during police interrogations." *State v. Ha*, 9th Dist. No. 07CA0089-M, 2009-Ohio-1134, at ¶55, citing *Crawford*, 541 U.S. at 51-52, 68.

{¶31} As we held in *Graves*, the statements at issue here are not the type contemplated by the confrontation clause because the statements on the tape are not testimonial. *Graves* at ¶8. They are statements made spontaneously by Williams and the other men in the patrol cruiser and were not produced through any type of questioning or interrogation. See *Ha* at ¶55, citing *Crawford*, 541 U.S. at 51-52, 68. The statements also do not relate to a past event, they are contemporaneous to an on-going event.

{¶32} Williams also relies on *Bruton v. United States* (1968), 391 U.S. 123, to support his argument. *Bruton* discussed the propriety of admitting a co-defendant's confession that implicated another defendant during their joint trial. Id. at 124-126. *Bruton* is inapplicable to the case at bar because the statements contained in the tape are not a confession of one of Williams' co-defendants that implicate Williams in any way.

{¶33} Williams' arguments with respect to the tape are not well taken. The trial court properly admitted the tape at trial; therefore, Williams' third assignment of error is overruled.

SUFFICIENCY

{¶34} In his fourth assignment of error, Williams complains that his convictions are based on insufficient evidence. Williams alleges that there was no evidence that showed that he was aware of the drugs in the car. "Whether a conviction is supported by sufficient evidence is a question of law that [we] review [] de novo." *State v. Williams*, 9th Dist. No. 24731, 2009-Ohio-6955, at ¶18, citing *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. The relevant inquiry is whether the prosecution has met its burden of production by presenting sufficient evidence to sustain a conviction. *Thompkins*, 78 Ohio St.3d at 390 (Cook, J., concurring). In reviewing the evidence, we do not evaluate credibility and make all reasonable inferences in favor of the State. *State v. Jenks* (1991), 61 Ohio St.3d 259, 273. The evidence is sufficient if, when viewing the

evidence in a light most favorable to the prosecution, it allows the factfinder to reasonably conclude that the essential elements of the charged crime were proven beyond a reasonable doubt. Id.

{¶35} Williams was convicted of two counts of possession of marijuana, two counts of possession of cocaine, one count of trafficking in marijuana, and one count of trafficking in cocaine. Pursuant to the possession statute, "[n]o person shall knowingly obtain, possess, or use a controlled substance." R.C. 2925.11(A). Pursuant to the trafficking statute, "[n]o person shall knowingly * * * ship, transport, [or] deliver[] * * * a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person." R.C. 2925.03(A)(2). Marijuana, crack cocaine, and cocaine are controlled substances. See R.C. 3719.01(C), 3719.41. A person acts knowingly when, regardless of his purpose, he is aware of the existence of the facts and that his conduct will probably cause a certain result or be of a certain nature. R.C. 2901.22(B).

{¶36} The term possession, under the Ohio Revised Code, "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). Possession can be actual or constructive. See *State v. Mack*, 9th Dist. No. 22580, 2005-Ohio-5808, at ¶13. Actual possession requires ownership or physical control. Id. However, constructive possession exists "when a person knowingly exercises dominion or control over an item, even without physically possessing it. While mere presence in the vicinity of the item is insufficient to justify possession, ready availability of the item and close proximity to it support a finding of constructive possession." *Graves*, at ¶18, quoting *State v. Lamb*, 9th Dist. No. 23418, 2007-Ohio-5107, at ¶12. A person's dominion and control over an item may be

proven through circumstantial evidence. See *Jenks*, 61 Ohio St.3d at 272-273. Circumstantial evidence has the same probative value as direct evidence. Id. at 272. "[C]onstructive possession may be inferred from the drugs' presence in a usable form and in close proximity to the defendant." *State v. Fletcher*, 9th Dist. No. 23171, 2007-Ohio-146, at ¶20, quoting *State v. Figueroa*, 9th Dist. No. 22208, 2005-Ohio-1132, at ¶8. Additionally, "[p]ossession of a drug includes possessing individually, or jointly with another person. Joint possession exists when two or more persons together have the ability to control an object, exclusive of others." (Citations and internal quotations omitted.) *Fletcher* at ¶20.

{¶37} It is undisputed that Williams was the driver of the vehicle on April 1, 2004, and possessed the keys to the car. "[P]ossession of the keys to the automobile is a strong indication of control over the automobile and all things found in or upon the automobile." (Internal quotation and citations omitted.) *State v. Ray*, 9th Dist. No. 03CA0062-M, 2004-Ohio-3412, at ¶23. It is also undisputed that there was a substantial quantity of drugs in the vehicle. At trial, the State played the video from Sgt. Neff's patrol car that recorded the traffic stop and subsequent related events involving Williams. As the stop progressed, Williams and his passengers were placed in Sgt. Neff's car as he and another trooper searched the vehicle. On the tape, before the drugs were discovered, Williams can be heard to ask Ramsey if "it" is still in the bag in the trunk. Ramsey replies in the affirmative and continues on to describe the exact location where the troopers eventually find a large quantity of drugs in a plastic bag in the trunk. The tape was admitted into evidence, thereby allowing the trial court to view it after the trial as necessary. Viewing the evidence in the light most favorable to the prosecution, we conclude that there was sufficient evidence presented from which the trier of fact could reasonably conclude

that Williams had knowledge that there were drugs hidden in the car he was driving that day. Accordingly, we overrule Williams' fourth assignment of error.

MANIFEST WEIGHT

{¶38} In his fifth assignment of error, Williams argues that his convictions are against the manifest weight of the evidence. When determining whether a conviction is supported by the manifest weight of the evidence,

> "'an appellate court must review 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.'" *State v. Cepec*, 9th Dist. No. 04CA0075-M, 2005-Ohio-2395, at ¶6, quoting *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

We must only invoke the discretionary power to grant a new trial in "extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant." *State v. Flynn*, 9th Dist. No. 06CA0096-M, 2007-Ohio-6210, at ¶9, citing *Otten*, 33 Ohio App.3d at 340. When reviewing a conviction pursuant to the manifest weight standard, we must determine whether the State met its burden of persuasion. *Cepec* at ¶6.

{¶39} Williams argues that his convictions were against the manifest weight of the evidence because the evidence did not prove that Williams had knowledge that there were drugs in the vehicle. He further argues that although fingerprint evidence was taken, Williams' fingerprints were not found on the contraband. The State points out that this fact is of little consequence as no fingerprints were found on the bag.

{¶40} Williams testified at trial that he knew Ramsey and had met Graves previously. Thus, the three men were not strangers who just happened to be travelling together. Williams also told Sgt. Neff that he had an overnight bag in the trunk and testified at trial that he placed the bag in the trunk himself. Williams had a small quantity of marijuana in his pocket when he

was pulled over and some marijuana was also found under the passenger's seat. Before the troopers discovered the drugs in the trunk, Williams asked the other men in the back of the patrol car who was going to take the blame for what was happening. He also asked Ramsey whether "it" is still in the bag in the trunk. One could infer from these statements that Williams was speaking about the drugs. Finally, Williams did not act surprised once drugs were found in the car. Although Williams contends that he did not spend any time with the other men while they were all in Detroit and that neither man told Williams that they were transporting drugs, the trier of fact was free to disbelieve his testimony. *State v. Hicks*, 9th Dist. No. 24017, 2008-Ohio-4842, at ¶10, quoting *State v. Antill* (1964), 176 Ohio St. 61, 67. This is not the extraordinary circumstance where the evidence weighs heavily in favor of Williams so as to require this Court to grant a new trial. See *Flynn* at ¶9, citing *Otten*, 33 Ohio App.3d at 340. The State met its burden to persuade the trial court that Williams knew that there were drugs in the car. See *Cepec* at ¶6. Williams' fifth assignment of error is overruled.

CONCLUSION

{¶41} After review of the arguments of the parties, the record, and prevailing law, we find no merit in Williams' assignments of error and hold that the trial court did not commit reversible error. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EVE V. BELFANCE
FOR THE COURT

CARR, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

ZACHARY B. SIMONOFF, Attorney at Law, for Appellant.

DENNIS WILL, Prosecuting Attorney, and MARY R. SLANCZKA, Assistant Prosecuting Attorney, for Appellee.