

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY**

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

HARRY W. DUKES,

Defendant-Appellant.

CASE NO. 2025-P-0068

Criminal Appeal from the
Court of Common Pleas

Trial Court No. 2025 CR 00168

OPINION AND JUDGMENT ENTRY

Decided: September 28, 2026

Judgment: Affirmed

Connie J. Lewandowski, Portage County Prosecutor, and *Vincent V. Vigluicci*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Wesley C. Buchanan, 50 South Main Street, Suite 625, Akron, OH 44308, and *Eric R. Fink*, 11 South River Street, Kent, OH 44240 (For Defendant-Appellant).

JOHN J. EKLUND, J.

{¶1} Appellant, Harry W. Dukes, appeals his convictions for possession of cocaine, two counts of trafficking in a fentanyl-related compound, and two counts of trafficking in cocaine following a jury trial in the Portage County Court of Common Pleas.

{¶2} Appellant raises six assignments of error, arguing that (1) the trial court erred by denying his motions to suppress; (2) the trial court erred by failing to strike a juror for cause; (3) his convictions were not supported by sufficient evidence; (4) his convictions are against the manifest weight of the evidence; (5) he received ineffective assistance of trial counsel; and (6) the trial court improperly admitted evidence.

{¶3} Having reviewed the record and the applicable law, we find that Appellant's assignments of error are without merit. First, the trial court did not err by denying Appellant's two motions to suppress. The officers did not violate the "knock and announce" rule in executing the search warrant. In addition, the trial court applied the appropriate law in finding that the search warrant was not stale.

{¶4} Second, the trial court did not err by failing to strike two jurors for cause. Contrary to Appellant's assertion, we find no misstatement of law on the part of the trial court. In addition, we see no basis upon which to disturb the trial court's credibility determination that the jurors could be fair and impartial.

{¶5} Third, the trial court properly admitted videos into evidence that depicted two instances of Appellant selling drugs to a confidential source. A detective authenticated the videos under the pictorial-testimony theory. In addition, Appellant has not established that the videos contained inadmissible hearsay.

{¶6} Fourth, the jury's guilty verdicts on count 2 (first-degree possession of cocaine) and counts 7 and 8 (both trafficking in cocaine) were supported by sufficient evidence. When viewed in a light most favorable to the State, the evidence supported an inference that Appellant constructively possessed the cocaine. In addition, this Court reviews both admissible and inadmissible evidence in a sufficiency analysis.

{¶7} Fifth, Appellant fails to present a proper argument regarding the manifest weight of the evidence. In addition, the evidence suggesting that a detective may have continued to investigate the case after the jury trial began does not weigh heavily against Appellant's convictions.

{¶8} Sixth, Appellant has not established ineffective assistance based on trial counsel's failure to object to the prosecutor referring to Appellant as a "drug dealer" during closing arguments.

{¶9} Therefore, we affirm the judgment of the Portage County Court of Common Pleas.

I. Substantive and Procedural History

{¶10} The Portage County Sheriff's Office began investigating Appellant after receiving complaints that he was selling narcotics in the Ravenna, Ohio, area. The Drug and Violent Crime Unit of the sheriff's office ultimately arranged four controlled drugs buys where Appellant sold illegal drugs to a confidential source. Before each buy, a detective met with the source, searched the source's person and vehicle, and provided the source with cash and a covert recording device. The detective also set up video cameras so that detectives could monitor the transaction live in high-definition video and audio. Next, the detective briefed the source on the events to occur and recorded an introductory message. After the buy, the detective met with the source, searched the source's person and vehicle, retrieved the purchased drugs, and debriefed the source regarding the events that occurred. The detective then sent the suspected drugs to the Ohio Bureau of Criminal Investigation ("BCI") for testing.

{¶11} Det. Hubbard arranged the first and second controlled buys. The first buy occurred on April 22, 2024. The confidential source contacted Appellant and asked to purchase seven grams of fentanyl for \$80 per gram. Appellant responded that he did not have that amount but that he would put together four grams. The source drove to Appellant's house on Diamond Street in Ravenna and parked in the driveway. Appellant

got into the passenger seat and gave the confidential source what he described as two or three grams of fentanyl in exchange for \$160. In conversation, Appellant commented that he was involved in a “rent to own situation” with the Diamond Street house, and he referred to it as “his crib.”

{¶12} The second controlled buy occurred the following day on April 23, 2024. The source contacted Appellant and arranged to purchase four grams of fentanyl. The source drove to a parking lot located across from the BMV in Ravenna and parked. Appellant got into the passenger seat and exchanged drugs for money.

{¶13} Det. Rogers transported the suspected drugs to BCI, where they tested positive for a fentanyl-related compound.

{¶14} Det. Russ arranged the third and fourth controlled buys, which involved a different confidential source. The third buy occurred on February 7, 2025. The source contacted Appellant and arranged to purchase cocaine. The source drove to a Taco Bell parking lot in Ravenna and parked. Appellant got into the passenger seat and exchanged drugs for money.

{¶15} The fourth controlled buy occurred on February 12, 2025. The confidential source contacted Appellant and again arranged to purchase cocaine. The source drove to an Arby's parking lot in Ravenna and parked. The source exited her vehicle and went to the passenger side of a vehicle in which Appellant was seated and completed the transaction. After the source got back into her vehicle, she noticed that Appellant had sold her crack cocaine instead of powder cocaine. The source contacted Appellant, who went to the Diamond Street house and retrieved powder cocaine.

{¶16} Det. Rogers transported the suspected drugs to BCI, where they tested positive for cocaine.

{¶17} On February 14, 2025, the sheriff's office obtained a warrant to search the Diamond Street house.

{¶18} On February 17, 2025, about 20 officers executed the search warrant. Based on their surveillance, the officers believed that Appellant resided in the house with a middle-aged woman. However, approximately four additional individuals were present during the search.

{¶19} In the rear of the house was a gated-off room containing dog kennels. Det. Hubbard searched a closet in that room and discovered approximately 28.29 grams (or one ounce) of suspected cocaine in a black trash bag on top of a shelf. Meanwhile, Appellant was hiding in a bedroom closet on the other side of the house. Officers also found plastic baggies, a digital scale, and a cell phone in that bedroom. Based on the clothing present in the room, and after a conversation with the middle-aged woman, the officers concluded that the bedroom belonged to Appellant.

{¶20} Det. Rogers transported the suspected drugs to BCI, where they tested positive for cocaine.

{¶21} On February 27, 2025, the Portage County Grand Jury indicted Appellant on eight counts: trafficking in cocaine, a first-degree felony in violation of R.C. 2925.03 (count 1); possession of cocaine, a first-degree felony in violation of R.C. 2925.11 (count 2); possession of criminal tools, a fifth-degree felony in violation of R.C. 2923.24 (count 3); receipt of proceeds derived from commission of an offense subject to forfeiture proceedings, a first-degree misdemeanor in violation of R.C. 2927.21 (count 4); two

counts of trafficking in a fentanyl-related compound, fourth-degree felonies in violation of R.C. 2925.03 (counts 5 and 6); and two counts trafficking in cocaine, fifth-degree felonies in violation of R.C. 2925.03 (counts 7 and 8). Counts 1, 2, and 4 each contained a forfeiture specification pursuant to R.C. Ch. 2981.

{¶22} On March 3, 2025, Appellant was arraigned and pleaded not guilty.

{¶23} On March 28, 2025, Appellant filed a motion to suppress the evidence that law enforcement obtained from the search of the Diamond Street house. Appellant argued that the officers violated R.C. 2935.12 and the United States and Ohio Constitutions by failing to “knock and announce” before forcibly entering the house.

{¶24} On April 28, 2025, the trial court held a hearing on Appellant’s March 2025 motion to suppress. The State presented testimony from Det. Russ and introduced several body-camera videos.

{¶25} On May 8, 2025, the trial court filed a judgment entry overruling Appellant’s motion to suppress. The trial court found that the officers’ actions complied with the “knock and announce” rule.

{¶26} On July 21, 2025, Appellant filed a second motion to suppress. Appellant argued that the affidavit Det. Russ submitted in support of the search warrant was “stale” because it included information that was 10 months old.

{¶27} On August 11, 2025, the grand jury indicted Appellant on an amended indictment that revised counts 1 and 7 (both trafficking in cocaine).

{¶28} On August 12, 2025, Appellant was arraigned on the amended indictment and pleaded not guilty.

{¶29} Also on August 12, 2025, the trial court held a hearing and heard argument on Appellant's July 2025 motion to suppress.

{¶30} On August 14, 2025, the trial court filed a judgment entry overruling Appellant's July 2025 motion to suppress. The court found that the search warrant was issued upon a proper showing of probable cause and that the information in the affidavit was not stale.

{¶31} On August 19, 2025, Appellant filed a motion to sever the indictment.

{¶32} On August 21, 2025, the trial court filed a judgment entry overruling Appellant's motion to sever.

{¶33} On the day of trial, Appellant filed six motions in limine. Most relevant here, Appellant requested that the trial court limit the State's introduction of the controlled- buy videos unless a witness with "first-hand knowledge" properly authenticated them. Appellant renewed this objection at various points during the trial.

{¶34} The matter was tried to a jury from August 26 through 29, 2026. During jury selection, Appellant moved to strike Juror 162 for cause because the juror worked in law enforcement and because the trial court judge knew and had worked with the juror in the past. Appellant also moved to strike Juror 163 for cause because the juror had friends and family with drug addiction. The trial court denied Appellant's motions.

{¶35} The State presented testimony from Det. Hubbard, Det. Russ, and other investigating detectives; the confidential source for the April 2024 controlled buys; and three scientists from BCI. As exhibits, the State submitted multiple videos and photographs and the BCI lab reports.

{¶36} Following its case-in-chief, the State moved to dismiss count 4 (receipt of proceeds derived from commission of an offense subject to forfeiture proceedings) and the forfeiture specifications in counts 1, 2, and 4. Appellant moved for acquittal pursuant to Crim.R. 29. The trial court granted Appellant's motion in relation to count 3 (possession of criminal tools) but overruled it in relation to the remaining six counts.

{¶37} Appellant presented testimony from Det. Kennedy, Corporal Bradley, and Major Davis, all from the sheriff's office, and a minor whom we will refer to as K.K.

{¶38} Det. Kennedy testified that after the jury trial had begun, the prosecutor's office asked him to interview the other individuals who were present at the Diamond Street house during the search. On cross-examination, Det. Kennedy testified that his purpose was to determine if the individuals would testify against Appellant or provide useful information to aid the State's case.

{¶39} Corporal Bradley testified that he deployed a canine officer throughout the Diamond Street house during the search. Corporal Bradley testified that his canine officer did not alert to anything in the house. On cross-examination, Corporal Bradley testified that he did not direct the canine officer to search the room with the dog kennels because he was informed that the room was covered in dog feces and urine.

{¶40} K.K. testified that she was seventeen years old and resided at the Diamond Street house with her mother and two brothers on the date that it was searched. She stated that law enforcement never questioned her until after the jury trial had begun. At that time, law enforcement asked her if she knew whose narcotics were in the house, and she responded that she did not. She further stated that Appellant was a family friend and that she had never seen or heard of him selling drugs. On cross-examination, K.K. stated

that Appellant was in an “on and off” relationship with her mother, who owned the residence.

{¶41} Following the submission of evidence, Appellant renewed his Crim.R. 29 motion for acquittal, which the trial court overruled.

{¶42} On August 29, 2025, the jury found Appellant guilty on the remaining six counts.

{¶43} On September 15, 2025, the trial court held a sentencing hearing. The trial court merged count 1 (first-degree trafficking in cocaine) into count 2 (first-degree possession of cocaine), and the State elected to proceed on count 2. The trial court sentenced Appellant to an aggregate prison sentence of 11 to 15.5 years.

{¶44} On September 19, 2025, the trial court filed the sentencing entry.

{¶45} On September 26, 2025, Appellant timely appealed and raises six assignments of error.

II. Motions to Suppress

{¶46} Appellant’s first assignment of error states: “The trial court erred by not granting [Appellant’s] motions to suppress.”

{¶47} “Appellate review of a motion to suppress presents a mixed question of law and fact.” *State v. Burnside*, 2003-Ohio-5372, ¶ 8. “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.” *Id.* Consequently, an appellate court must accept the trial court’s findings of fact if they are supported by competent, credible evidence.” *Id.* “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.*

A. Knock and Announce

{¶48} Appellant first challenges the trial court’s denial of his March 2025 motion to suppress. Appellant argues that the officers violated the “knock and announce” rule during its execution of the search warrant at the Diamond Street house.

{¶49} The “knock and announce” principle “predates the United States Constitution but is reflected in the Fourth Amendment and codified in statute.” (Citation omitted.) *State v. Oliver*, 2007-Ohio-372, ¶ 9. “Exceptions exist, but the rule directs police officers executing a search warrant at a residence to first knock on the door, announce their purpose, and identify themselves before they forcibly enter the home.” *Id.*

{¶50} Specifically, the Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures.” (Emphasis added.) The Fourth Amendment’s “reasonableness” inquiry incorporates the common-law principle of “knock-and-announce” prior to law enforcement officers entering a residence. *State v. Campana*, 112 Ohio App.3d 297, 302 (11th Dist. 1996), citing *Wilson v. Arkansas*, 514 U.S. 927 (1995). “Once an officer has properly knocked and announced his presence, he may enter the premises upon refusal to admit. A refusal to admit may be actual or constructive.” *State v. Dixon*, 141 Ohio App.3d 654, 660 (3d. Dist. 2001). “Officers are constructively refused admittance when the occupant of the premises fails to respond to the officers within a reasonable period of time.” *Id.* Thus, an officer must wait a reasonable amount of time after knocking and announcing his presence before entering the premises. *Id.*; *Campana* at 302. These same

protections apply even if the door is ajar with an occupant visible therein (absent exigent circumstances). *Campana* at 303.

{¶51} Whether an officer paused long enough before admitting themselves depends on the totality of the circumstances. *Id.*; *Dixon* at 660. An interval of 10 to 20 seconds has been found to be reasonable in certain circumstances. See *State v. Edmonds*, 2002-Ohio-3807, ¶ 12-19 (2d Dist.) (no violation where officers rammed open defendant's back door approximately 10 to 20 seconds after the knock and announce); *State v. Lam*, 2007-Ohio-5664, ¶ 9 (2d Dist.) (finding 15 seconds was a reasonable time to respond); *State v. Blue*, 2004-Ohio-2953, ¶ 13 (2d Dist.) (citing *United States v. Banks*, 540 U.S. 31 (2003), where the United States Supreme Court held that an interval of 15-20 seconds was reasonable).

{¶52} In Ohio, the “knock and announce” principle is codified in R.C. 2935.12(A), which provides in relevant part:

[W]hen executing a search warrant, the peace officer, law enforcement officer, or other authorized individual . . . executing the warrant . . . may *break down an outer or inner door or window of a dwelling house or other building*, if, after notice of his intention . . . to execute the warrant . . . , he is refused admittance, but the law enforcement officer or other authorized individual executing a search warrant shall not enter a house or building not described in the warrant.

(Emphasis added.)

{¶53} The trial court's factual findings from the suppression hearing provide in relevant part:

Det. Russ testified that he and the assembled law enforcement officers staged the execution of the warrant, and were wearing body-worn cameras. They were aware of the potential for contraband and firearms in the home. Detective Russ described the manner in which they entered the residence, accompanied by his body worn camera video.

As Det. Russ approached the side door of the residence, the screen/storm door is seen fully open due to broken closer hardware. (see Det. Russ Exhibit 1)

As Det. Russ reaches to knock on the inside door, it opens immediately and is clearly not latched or closed fully given how easily it opens up into the room when touched. Det. Russ is simultaneously announcing the presence of officers repeatedly. Approximately 15 seconds pass while he is announcing their presence before officers enter the residence. An individual is observed laying on a couch, unable to be seen fully until entrance is made. He is ordered outside, and officers proceed to secure the home.

{¶54} According to Appellant, the video evidence demonstrated that (1) Det. Russ knocked on the door, and it swung open, at which time Det. Russ was able to see inside the house; (2) Det. Russ did not see anyone fleeing or in possession of a firearm; (3) the officers announced their presence *after* the door was opened; and (4) the officers waited only 14 seconds to the enter the home.

{¶55} We find no error in the trial court's denial of Appellant's March 2025 motion to suppress. With respect to R.C. 2935.12, this Court has held that it only applies only when "an officer makes a forced entry by breaking down a door or window." *State v. Campana*, 112 Ohio App.3d 297, 302 (11th Dist. 1996); *State v. McDivitt*, 2012-Ohio-2243, ¶ 33 (11th Dist.). See also *State v. Baker*, 87 Ohio App.3d 186, 193 (1st Dist. 1993) ("R.C. 2935.12 applies only if law enforcement officials break down a door to enter . . . [or engage in] violent, forcible entry.") Appellant acknowledges that Det. Russ merely "knocked on the door" and that it "swung open." Therefore, R.C. 2935.12 is inapplicable. *McDivitt* at ¶ 34.

{¶56} With respect to the Fourth Amendment, Appellant does not appear to challenge the trial court's factual findings. However, Appellant fails to explain how those findings demonstrate a violation of the governing law, or how any such violation was

unreasonable under the totality of the given circumstances. Appellant also fails to cite any supporting case law. See App.R. 16(A)(7) (an appellant's brief shall include an argument containing reasons in support and citations to authorities).

{¶57} This Court's review of the video evidence demonstrates that execution of the search warrant was noisy (which perhaps should be expected for knock-and-announce) and involved multiple officers with their weapons drawn. However, Det. Russ both knocked and announced the officers' presence before entering the house. The fact that the door immediately swung open was certainly unusual; however, the officers waited a reasonable amount of time (approximately 15 seconds) and observed an occupant in the house before entering. We observed no conduct on the part of the officers that violated either R.C. 2935.12 or the Fourth Amendment.

{¶58} Further, the Supreme Court of Ohio has observed that "[d]espite the fact that the knock-and-announce principle is 'an element of the reasonableness inquiry under the Fourth Amendment,' *Wilson* at 934, the United States Supreme Court held in *Hudson* [v. *Michigan*, 547 U.S. 586 (2006),] that suppression is categorically the wrong remedy when police armed with a valid warrant violate the knock-and-announce principle." *State v. Bembry*, 2017-Ohio-8114, ¶ 20; see *Hudson* at 599 ("Resort to the massive remedy of suppressing evidence of guilt is unjustified" for "knock-and-announce violations.")

{¶59} In denying Appellant's March 2025 motion to suppress, the trial court expressly found that the search warrant was issued upon a proper showing of probable cause. Appellant's argument does not challenge that determination. Therefore, even if we found that the officers violated the knock-and-announce principle, that violation would

not justify suppression of the evidence seized at the Diamond Street house. See, e.g., *State v. Gilbert*, 2007-Ohio-2717, ¶ 39 (4th Dist.).

B. Staleness

{¶60} Appellant next challenges the trial court’s denial of his July 2025 motion to suppress. Appellant argues that the search warrant was “stale” because the affidavit in support contained information from April 2024, while law enforcement executed the search warrant in February 2025.

{¶61} The Fourth Amendment provides in relevant part that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” “For a search warrant to issue, the evidence must be sufficient for the magistrate to conclude that there is a fair probability that evidence of a crime will be found in a particular place.” *State v. Castagnola*, 2015-Ohio-1565, ¶ 35. “The reviewing court then must ensure that the magistrate had a substantial basis for concluding that probable cause existed.” *Id.*

{¶62} This Court and others have held that “an affidavit for a search warrant must present timely information.” *State v. Hollis*, 98 Ohio App.3d 549, 554 (11th Dist. 1994), quoting *State v. Jones*, 72 Ohio App.3d 522, 526 (6th Dist. 1991). “[T]he proof must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time.” (Emphasis in original.) *Id.*, quoting *Jones* at 526. However, courts have also held that an affidavit that establishes a pattern of conduct or that indicates an ongoing investigation can justify the granting of a search warrant based on old information. *State v. McKenzie*, 1998 WL 636784, *5 (6th Dist. Sept. 18, 1998). Further, even if some of the information that forms the basis of probable cause is stale,

probable cause may be found when recent information corroborates it. *State v. Reece*, 2017-Ohio-8789, ¶ 15 (3d Dist.).

{¶63} Here, the trial court found that the affidavit in support of the search warrant, in addition to containing information regarding the April 2024 controlled buys, contained information regarding the February 2025 buys, which occurred days prior. The court also found that the April 2024 buys indicated “a course of conduct, adding to the finding of probable cause.” Appellant does not acknowledge the trial court’s findings, much less challenge them. Therefore, we find no error.

{¶64} The court did not err by denying Appellant’s March and July 2025 motions to suppress. Accordingly, Appellant’s first assignment of error without merit.

III. Juror Challenges

{¶65} Appellant’s second assignment of error states: “The trial court erred by not striking a juror for cause.

{¶66} “The Sixth Amendment to the United States Constitution guarantees a defendant the right to a trial by fair and impartial jurors.” *State v. Oliver*, 2012-Ohio-122, ¶ 37 (11th Dist.). “In order to protect this fundamental right, the court conducts voir dire with the purpose of empaneling a fair and impartial jury, free from prejudice or bias.” *Id.*

{¶67} A prospective juror in a criminal case may be challenged for various causes. See R.C. 2313.17; R.C. 2945.25; Crim.R. 24(C). “On a challenge for cause, the ultimate question is whether the juror swore that he could set aside any opinion he might hold and decide the case on the evidence, and whether the juror’s protestation of impartiality should be believed.” (Cleaned up.) *State v. Madison*, 2020-Ohio-3735, ¶ 42. “This determination necessarily involves a judgment on credibility, so deference must be paid

to the trial judge who sees and hears the juror.” (Cleaned up) *Id.* “Hence, a trial court’s resolution of a challenge for cause will be upheld unless it is unsupported by substantial testimony, so as to constitute an abuse of discretion.” *Id.* An abuse of discretion is the trial court’s “failure to exercise sound, reasonable, and legal decision-making.” *State v. Beechler*, 2010-Ohio-1900, ¶ 62 (2d Dist.), quoting *Black’s Law Dictionary* (8th Ed. 2004).

{¶68} Appellant argues that the trial court should have struck Juror 162 for cause because the trial court judge knew and worked with that person in the past. Appellant contends that the trial court misstated Crim.R. 24(C)(14), which provides, “A person called as a juror may be challenged for the following causes: . . . [t]hat the juror is otherwise unsuitable for any other cause to serve as a juror.” We find no misstatement of law by the trial court. In denying Appellant’s motion to strike Juror 162 for cause, the trial court stated, “I’m going to say no only because she didn’t give me anything to remove her for other than she’s worked with me so I can’t excuse her.” Thus, it appears the trial court did not find Juror 16 to be “unsuitable” to serve.

{¶69} Appellant next argues that the trial court should have struck Juror 163 for cause because she had friends and family with drug addiction. Juror 163 unequivocally stated that she could decide the case based on the evidence and the law. Although defense counsel questioned her credibility, the trial court apparently did not, stating “I see no reason to remove for cause, honestly.” We see no compelling basis upon which to disturb the trial court’s credibility determination.

{¶70} The trial court did not err by denying Appellant’s motions to strike Jurors 162 and 163 for cause. Accordingly, Appellant’s second assignment of error is without merit.

IV. Admissibility of Evidence

{¶71} We review Appellant's remaining assignments of error out of order.

{¶72} Appellant's sixth assignment of error states: "The trial court improperly admitted evidence against [Appellant]."

{¶73} Appellant argues that the videos of the two February 2025 controlled buys were inadmissible because they were not authenticated and constituted hearsay.

A. Authentication

{¶74} We review the authentication of evidence under an abuse of discretion standard. *State v. White*, 2026-Ohio-1692, ¶ 117 (11th Dist.). "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Evid.R. 901(A). "This low threshold standard does not require conclusive proof of authenticity, but only sufficient foundational evidence for the trier of fact to conclude that the document is what its proponent claims it to be." *State v. Miller*, 2015-Ohio-956, ¶ 21 (11th Dist.), quoting *State v. Easter*, 75 Ohio App.3d 22, 25 (4th Dist. 1991). Authenticity may be demonstrated through direct or circumstantial evidence. *State v. Jaskiewicz*, 2013-Ohio-4552, ¶ 12 (11th Dist.). Evid.R. 901(B)(1) provides, by way of illustration, that testimony from a witness with knowledge that a matter is what it is claimed to be is sufficient to authenticate evidence. The proponent of the evidence need only demonstrate a reasonable likelihood that the evidence is authentic. *Jaskiewicz* at ¶ 14.

{¶75} Appellant contends the February 2025 videos were not authenticated because "no one who was involved in making" them "testified." Presumably, Appellant is

referring to the fact that the confidential source who recorded the videos did not testify at trial.

{¶76} Neither party cites the governing law on the authentication of video evidence. The Supreme Court of Ohio has held that video evidence may be admissible under one of two theories: the “pictorial testimony” theory or the “silent witness” theory. *Midland Steel Prods. Co. v. Internatl. Union, United Auto., Aerospace & Agricultural Implement Workers, Local 486*, 61 Ohio St.3d 121, 129-130 (1991). Under the pictorial-testimony theory, evidence is admissible when a sponsoring witness can testify that it is a fair and accurate representation of the subject matter, based on that witness’ personal observation. *Id.* Thus, the evidence is merely illustrative of a witness’ testimony. *Id.* Under the silent-witness theory, the evidence is a “silent witness which speaks for itself, and is substantive evidence of what it portrays independent of a sponsoring witness.” *Id.* at 129. The evidence may be admitted “upon a sufficient showing of the reliability of the process or system that produced the evidence.” *Id.* The witness is not required to produce expert testimony regarding reliability; rather, the witness may present lay testimony that the system was reliable.

{¶77} Appellant’s argument does not acknowledge Det. Russ’ testimony. Det. Russ testified that he set up the cameras to record the February 2025 buys and retrieved their data. He further testified that the videos played at trial were true and accurate based on his real-time observation of a separate live feed. Therefore, the videos were admissible under the pictorial-testimony theory.

B. Hearsay

{¶78} “‘Hearsay’ 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.” Evid.R. 801(C). A ‘statement’ is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.” Evid.R. 801(A). “Hearsay is not admissible except as otherwise provided by the Constitution of the United States, by the Constitution of the State of Ohio, by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio, by [the Ohio Rules of Evidence], or by other rules prescribed by the Supreme Court of Ohio.” Evid.R. 802. Evid.R. 801(D) describes statements that are not hearsay, and Evid.R. 803 and 804 set forth several exceptions to the hearsay rule.

{¶79} This Court has held that whether evidence constitutes inadmissible hearsay is a question of law subject to de novo review. *State v. Wallace*, 2025-Ohio-3032, ¶ 19 (11th Dist.). However, Appellant failed to object in the trial court on the basis of hearsay; therefore he can prevail only by showing plain error. To do so, Appellant “must demonstrate that an error occurred, that the error was obvious, and that there is a reasonable probability that the error resulted in prejudice, meaning that the error affected the outcome of the trial.” *State v. Echols*, 2024-Ohio-5088, ¶ 50. Plain error should be noticed only with the utmost caution, under exceptional circumstances, and only to prevent a manifest miscarriage of justice. *Id.*

{¶80} Appellant argues that “the video was being offered for the truth of the matter. (ie., [sic] [Appellant] was engaging in drug transactions)” and that “[t]he video involved statements from [the confidential source], who was not available to testify, and did not.”

Appellant appears to be challenging the entire content of the videos. As stated, however, the hearsay rule applies only to statements offered for their truth. Since Appellant has not challenged any specific statements, he has failed to demonstrate error, much less plain error.

{¶81} The February 2025 videos were admissible. Accordingly, Appellant's sixth assignment of error is without merit.

V. Sufficiency of the Evidence

{¶82} Appellant's third assignment of error states: "[Appellant's] convictions were supported by insufficient evidence as a matter of law."

{¶83} "'Sufficiency' is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law.'" *State v. Thompkins*, 1997-Ohio-52, ¶ 23, quoting *Black's Law Dictionary* (6th Ed. 1990). "In essence, sufficiency is a test of adequacy." *Id.* "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 (1991), paragraph two of the syllabus. "The 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.*

A. Trafficking in and Possession of Cocaine

{¶84} Appellant challenges the guilty verdicts on count 1, trafficking in cocaine, and count 2, possession of cocaine, both first-degree felonies. As stated, however, count

1 merged into count 2 at sentencing, and Appellant was sentenced on count 2. This Court has held that “[w]hen counts in an indictment are allied offenses and there is sufficient evidence to support the offense on which the [S]tate elects to have the defendant sentenced, the appellate court need not consider the sufficiency of the evidence on the count that is subject to merger because any error would be harmless.” *State v. Mugrage*, 2021-Ohio-4136, ¶ 133 (11th Dist.). Therefore, we first consider the sufficiency of the evidence in relation to count 2, possession of cocaine.

{¶85} R.C. 2925.11(A) provides that “[n]o person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog.” (Emphasis added.) Appellant argues that the State presented “no evidence” that he constructively possessed the 28.29 grams of cocaine. According to Appellant, the “uncontroverted” trial evidence indicated that he did not live at the property; he was not the only person present during the search when the cocaine was found; others lived at the property; and the cocaine was found hidden in an upstairs bedroom, while Appellant was found on a different floor in a closet of a locked room.

{¶86} “‘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). Possession of drugs can be actual or constructive. *State v. Adams*, 2013-Ohio-1603, ¶ 35 (11th Dist.). “A person has ‘actual possession’ of an item if the item is ‘within his immediate physical possession.’” *State v. Waters*, 2009-Ohio-6151, ¶ 19 (11th Dist.), quoting *State v. Fugate*, 1998 WL 729221, *7 (4th Dist. Oct. 2, 1998). “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.” *State v. Hankerson*, 70 Ohio St.2d 87 (1982), syllabus. To prove constructive possession, “[i]t must also be shown that the person was conscious of the presence of the object.” *Id.* at 91.

{¶87} Constructive possession may be supported solely by circumstantial evidence. *State v. Fogle*, 2009-Ohio-1005, ¶ 30 (11th Dist.). Circumstantial evidence is the proof of facts by direct evidence from which a factfinder may reasonably infer the existence of other facts. *State v. Pistillo*, 2004-Ohio-6333, ¶ 20 (11th Dist.). “Circumstantial evidence and direct evidence inherently possess the same probative value,” and “[i]n some instances certain facts can only be established by circumstantial evidence.” *Jenks*, 61 Ohio St.3d at 502. For instance, this court has recognized that “[a]bsent an admission by a defendant or direct testimony by another with knowledge, the defendant’s knowledge of the presence of illegal drugs where the crime charged is possession of drugs often must be proven via circumstantial evidence” *State v. Hudson*, 2018-Ohio-133, ¶ 48 (11th Dist.).

{¶88} We disagree with Appellant’s assertions that the State presented “no evidence” that he constructively possessed the 28.29 grams of cocaine. We also disagree that the “uncontroverted” trial evidence showed Appellant did not live at the Diamond Street house. Det. Russ testified that based on the law enforcement surveillance of the house and on Appellant’s use of the house during two controlled drug buys, Appellant appeared to live at the Diamond Street house. In addition, during the search, officers found plastic baggies, a digital scale, and a cell phone in the bedroom

where Appellant was hiding. Det. Russ testified that based on the personal items present therein, the bedroom appeared to belong to Appellant.

{¶89} While Appellant is correct that other persons may have lived at the house and/or were present during the search, there was no evidence indicating that any of them controlled or accessed the cocaine. Even if such persons may have had access to the cocaine, that is not dispositive as to whether Appellant had constructive possession. *State v. Adams*, 2013-Ohio-1603, ¶ 40 (11th Dist.); see *State v. Jackson*, 2003-Ohio-5863, ¶ 31-37 (11th Dist.) (where other adults are living in a home, with access to the area where drugs were discovered, a defendant can still be found in constructive possession of drugs).

{¶90} Further, whether the Diamond Street house was Appellant's official domicile is not dispositive. Det. Russ testified that drug traffickers typically keep their main stash of drugs at a residence. Since officers observed Appellant retrieving drugs from the Diamond Street house, they concluded it was that type of residence.

{¶91} The foregoing evidence, when viewed in a light most favorable to the State, supported an inference that Appellant constructively possessed the 28.29 grams of cocaine. Since count 2 was supported by sufficient evidence, we need not consider the sufficiency of the evidence to support count 1. See *Mugrage*, 2021-Ohio-4136, at ¶ 133 (11th Dist.).

B. Trafficking in Cocaine

{¶92} Appellant also challenges the guilty verdicts on counts 7 and 8, both fifth-degree felonies for trafficking in cocaine in violation of R.C. 2925.03. Appellant argues that the State did not produce any admissible evidence of the February 2025 controlled buys. As explained above, the videos were admissible. Even if the videos were inadmissible, however, Det. Russ testified at length about the facts underlying the February 2025 controlled buys. Further, this Court reviews the actual evidence admitted at trial, both admissible and inadmissible, when conducting a sufficiency-of-the-evidence analysis. *State v. Jones*, 2022-Ohio-3978, ¶ 80 (11th Dist.).

{¶93} Appellant's convictions were supported by sufficient evidence. Accordingly, Appellant's third assignment of error is without merit.

VI. Manifest Weight of the Evidence

{¶94} Appellant's fourth assignment of error states: "[Appellant's] convictions were against the manifest weight of the evidence."

{¶95} "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*, 1997-Ohio-52, at ¶ 24. "[W]eight of the evidence addresses the evidence's effect of inducing belief." *State v. Wilson*, 2007-Ohio-2202, ¶ 25. "[A] reviewing court asks whose evidence is more persuasive—the [S]tate's or the defendant's?" *Id.* In considering whether a conviction is against the manifest weight of the evidence, "[t]he court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury 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 ¶ 24, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983). “The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” *Id.*, quoting *Martin* at 175.

{¶96} Appellant argues that the State’s case was “inconclusive” because (1) the State “provided no direct evidence that the large amount of cocaine” was his; (2) the State “relied on inadmissible evidence for the February transactions”; and (3) three other people lived at the house. Appellant merely reiterates his arguments involving the sufficiency of the evidence, which is a separate legal concept. Therefore, Appellant has failed to present a proper manifest-weight argument.

{¶97} Appellant also argues that the State’s case was “inconclusive” because law enforcement was still investigating the matter. In support, Appellant cites Det. Kennedy’s testimony that after the jury trial had begun, the prosecutor’s office asked him to interview the other residents of the Diamond Street house. Det. Kennedy subsequently clarified that his purpose was to determine if the individuals would testify against Appellant or provide useful information to aid the State’s case. Therefore, the prosecutor’s request, on its own, does not weigh heavily against Appellant’s convictions.

{¶98} Appellant’s fourth assignment of error is without merit.

VII. Ineffective Assistance of Counsel

{¶99} Finally, Appellant’s fifth assignment of error states: “[Appellant] received ineffective assistance of counsel.”

{¶100} Appellant argues that his trial counsel was ineffective for failing to object to prosecutorial misconduct during closing arguments. In particular, Appellant challenges the prosecutor referring to him as a “drug dealer.” Appellant’s argument contains no reasoning and cites no relevant authority indicating that the use of the term “drug dealer” during closing arguments constitutes prosecutorial misconduct. See App.R. 16(A)(7). Therefore, we find no error.

{¶101} Appellant’s fifth assignment of error is without merit.

{¶102} For the foregoing reasons, the judgment of the Portage County Court of Common Pleas is affirmed.

MATT LYNCH, P.J.,

ROBERT J. PATTON, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, Appellant's assignments of error are without merit. It is the judgment and order of this Court that the judgment of the Portage County Court of Common Pleas is affirmed.

Costs to be taxed against Appellant.

JUDGE JOHN J. EKLUND

PRESIDING JUDGE MATT LYNCH,
concur

JUDGE ROBERT J. PATTON,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY
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A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.
