[Cite as *State v. Tucker*, 2025-Ohio-2108.]

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

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	Case No. 23CA4042
	:	
v.	:	
	:	DECISION AND
Michael Tucker,	:	JUDGMENT ENTRY
	:	
Defendant-Appellant.	:	

APPEARANCES:

Valerie M. Webb, The Law Office of Valerie M. Webb, LLC, Portsmouth, Ohio, for Appellant.

Shane A. Tieman, Scioto County Prosecuting Attorney, and Jay Willis, Scioto County Assistant Prosecuting Attorney, Portsmouth, Ohio, for Appellee.

Smith, P.J.

{¶1} Appellant, Michael Tucker, appeals the judgment of the Scioto County Court of Common Pleas convicting him of one count of trafficking in marijuana, one count of possession of marijuana, and one count of possessing criminal tools. On appeal, appellant contends that the trial court erred in overruling his motion to suppress, which challenged the initial stop of his vehicle. He also challenges the sufficiency of the evidence introduced by the State during trial and further argues that his convictions were against the manifest weight of the evidence. However,

because we find no merit to the arguments raised on appeal, they are all overruled and the judgment of the trial court is affirmed.

FACTS

{¶2} On November 28, 2021, appellant's vehicle was stopped while traveling southbound on State Route 823 in Scioto County, Ohio. After a search of his vehicle was conducted, appellant was arrested and later indicted for one count of trafficking in marijuana, a fourth-degree felony in violation of R.C. 2925.03(A)(2) and (C)(3)(c), one count of possession of marijuana, a fifth-degree felony in violation of R.C. 2925.11(A) and (C)(3)(c), and one count of possessing criminal tools, a fifth-degree felony in violation of R.C. 2923.24(A) and (C). appellant pled not guilty to the charges and filed a motion to suppress on July 16, 2023, the day prior to the scheduled jury trial.

{¶3} The suppression motion alleged there was no lawful cause for the stop of appellant's vehicle. Over the objection of the State, the trial court held a suppression hearing the next morning, on July 17, 2023, just prior to the start of trial. Trooper Nick Lewis testified on behalf of the State. He testified that he was the officer who initiated the stop of appellant's vehicle on the day in question. He explained that he was working drug interdiction that day and was sitting stationary on U.S. Route 23 when he noticed appellant's vehicle pass him and then pull onto State Route 823. He testified that he noticed appellant push himself behind the B

Pillar, or door pillar, of the car as he passed. As a result of that observation, he pulled out to follow the vehicle onto State Route 823.

{¶4} While following him, he observed that appellant was traveling between 60 and 70 mph, despite the fact that the posted speed limit was 70 mph and the flow of traffic was between 70 and 80 mph. Upon following the vehicle, he also observed that the car appeared to be a rental vehicle in that it had out of state tags and no "dealership badging." Trooper Lewis testified that the use of rental vehicles is tied to drug trafficking. He testified that he thereafter witnessed appellant commit a lane violation by drifting over the "center dash lane line" by a tire width as he negotiated a curve near mile marker 14.8. He testified that as a result of the lane violation, he initiated a stop of appellant's vehicle. Lewis further testified that upon confronting both appellant and his wife, appellant essentially admitted the violation by explaining that he had been "messing with" something on the steering wheel while he was driving.

{¶5} A video of the cruiser cam from the traffic stop was played for the court during the hearing. Lewis testified that although he observed the lane violation from the left lane while Appellant was traveling in the same direction in the right lane, the violation was not observable on the video. He testified that cruiser cams are designed to record the events during the traffic stop itself, and that the camera does not pick up everything that troopers can see with their eyes.

However, he confirmed during his testimony that he observed appellant travel over the "dash center lane line" by a tire width. The trial court orally denied appellant's motion to suppress from the bench, referencing Trooper Lewis's testimony that appellant's vehicle went over the line. The trial court stated that although he did not believe appellant's statement constituted a full admission, it was a "quasi-admission."

{¶6} The matter then proceeded to a jury trial. The State introduced the testimony of Trooper Lewis, who testified regarding the initial stop of appellant's vehicle and the discovery of a one-pound bag of marijuana under the driver's seat. The video from the cruiser cam was introduced and played for the jury. The State also introduced the testimony of a drug chemist from the Ohio State Highway Patrol Crime Lab, as well as a representative from Avis, a car rental company. Appellant's only witness was his wife, Toni Tucker, who claimed the marijuana found in the vehicle belonged to her and that appellant did not know it was in the car until the "last minute." The jury ultimately found appellant guilty on all counts. Appellant now brings his timely appeal, setting forth three assignments of error for our review.

ASSIGNMENTS OF ERROR

I. APPELLANT'S CONVICTIONS SHOULD BE REVERSED BECAUSE THERE IS INSUFFICIENT EVIDENCE TO SUPPORT A FINDING OF GUILT BEYOND A REASONABLE DOUBT.

II. APPELLANT'S CONVICTIONS ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND SHOULD BE REVERSED.

III. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS.

ASSIGNMENT OF ERROR III

{¶7} We address appellant's third assignment of error out of order for ease of analysis. In his third assignment of error, appellant contends that the trial court erred in overruling his motion to suppress, which argued there was no lawful cause to initiate a traffic stop. He argues that Trooper Lewis only stopped his vehicle after "he saw that appellant drifted over the center line." In support of his argument, he claims that the 8th Dist. Court of Appeals held in 2010 that "inconsequential movements within a lane does not create reasonable, articulable suspicion for an investigatory stop and is insufficient for probable cause." *See State v. Grigoryan*, 2010-Ohio-2883, ¶ 25 (8th Dist.) (finding stop invalid where officer testified the driver was weaving within his lane and drove *on* the yellow line on the left).

Standard of Review

{¶8} Generally, "appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Codeluppi*, 2014-Ohio-1574, ¶ 7, citing *State v. Burnside*, 2003-Ohio-5372, ¶ 8. The Supreme Court of Ohio has explained 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.

(Citations omitted.) *Burnside* at ¶ 8.

Legal Analysis

{¶9} "The Fourth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 14, prohibit unreasonable searches and seizures." *State v. Emerson*, 2012-Ohio-5047, ¶ 15. The Supreme Court of Ohio has held that these provisions provide the same protection in felony cases. *State v. Hawkins*, 2019-Ohio-4210, ¶ 18 (4th Dist.). "This constitutional guarantee is protected by the exclusionary rule, which mandates the exclusion at trial of evidence obtained from an unreasonable search and seizure." *State v. Petty*, 2019-Ohio-4241, ¶ 11 (4th Dist.).

{¶10} " '[S]earches [and seizures] conducted outside the judicial process, without prior approval by [a] judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.' " (Citations omitted.) *State v. Conley*, 2019-Ohio-4172, ¶ 17 (4th Dist.), quoting *Katz v. United States*, 389 U.S. 347, 357 (1967). "Once a

defendant demonstrates that he or she 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." *State v. Dorsey*, 2019-Ohio-3478, ¶ 13 (4th Dist.). In this case, it is clear that Trooper Lewis acted without a warrant in initiating the traffic stop at issue.

Lawfulness of Stop

{¶11} The record before us indicates that this case involved an investigatory stop. Investigatory stops "must be supported by a reasonable, articulable suspicion that the driver has, is, or is about to commit a crime, including a minor traffic violation." *Petty* at ¶ 12, citing *State v. Hudson*, 2018-Ohio-2717, ¶ 14 (4th Dist.), and *State v. Fowler*, 2018-Ohio-241, ¶ 16 (4th Dist.), in turn citing *United States v. Williams*, 525 Fed.Appx. 330, 332 (6th Cir. 2013) and *Florida v. Royer*, 460 U.S. 491, 501-507 (1983). In *Petty*, *supra*, we recently explained as follows:

> "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." *State v. Taylor*, 2016-Ohio-1231, 62 N.E.3d 591, ¶ 18 (4th Dist.). The existence of 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.*
>
> Moreover, a police officer may stop the driver of a vehicle after observing even a de minimis violation of traffic laws. *See State v. Williams*, 4th Dist. Ross No. 14CA3436, 2014-Ohio-4897,

> 2014 WL 5513050, ¶ 9, citing *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996), and *Dayton v. Erickson*, 76 Ohio St.3d 3, 665 N.E.2d 1091 (1996), syllabus. "[A] traffic stop with the proper standard of evidence is valid regardless of the officer's underlying ulterior motives as the test is merely whether the officer 'could' have performed the act complained of; pretext is irrelevant if the action complained of was permissible." *See State v. Koczwara*, 7th Dist. Mahoning No. 13MA149, 2014-Ohio-1946, 2014 WL 1877464, ¶ 22, citing *Erickson* at 7 and 11, 665 N.E.2d 1091.

Petty at ¶ 12-13.

{¶12} Furthermore, " ' "[t]he propriety of an investigative stop by a police officer must be viewed in light of the totality of the surrounding circumstances." ' " *State v. Strong*, 2019-Ohio-2888, ¶ 19 (4th Dist.), quoting *State v. Eatmon*, 2013-Ohio-4812, ¶ 13 (4th Dist.), in turn quoting *State v. Freeman*, 64 Ohio St.2d 291 (1980), paragraph one of the syllabus. The totality of the circumstances approach " 'allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that "might well elude an untrained person." ' " *Strong* at ¶ 19, quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (overruled in part on separate grounds by *Davis v. Washington*, 547 U.S. 813 (2006)), in turn quoting *U.S. v. Cortez*, 449 U.S. 411, 418 (1981).

{¶13} Here, Trooper Lewis testified that he observed appellant's vehicle go over the "center dash lane line" by a tire width, which led him to initiate a traffic stop. He conceded that the lane violation was not visible on the cruiser cam video,

but affirmed that he observed the lane violation with his eyes. R.C. 4511.33(A)(1) governs rules for driving in marked lanes and requires that all vehicles "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." A marked lanes violation constitutes a de minimis violation of traffic law and provides justification for an investigatory stop. *See State v. Alexander-Lindsey*, 2016-Ohio-3033, ¶ 11 (4th Dist.).

{¶14} The Supreme Court of Ohio has recently explained that although *driving on* or *touching* the white fog line does not constitute a marked lanes violation, the plain language of R.C. 4511.33(A)(1) " 'discourages or prohibits' a driver from crossing it." *State v. Turner*, 2020-Ohio-6773, ¶ 37; *State v. Duncan*, 2025-Ohio-1504, ¶ 21 (4th Dist.) (relying on *State v. Turner, supra*); *see also State v. Webb*, 2016-Ohio-4896, ¶ 10-11 (2d Dist.) (finding officer had reasonable articulable suspicion to believe the appellant had committed a traffic violation upon observing the appellant's driver's side tires cross over the "white dashed line" separating the two west-bound lanes). Although the lane violation in this case was not visible on the cruiser cam video, Trooper Lewis was clear and detailed in his testimony that he observed appellant's tire cross over the "center dash lane line" by a tire width.

{¶15} Although the trial court, as the trier of fact, was free to discount or outright reject Trooper Lewis's testimony in the absence of accompanying video footage confirming the trooper's testimony, it was also free to accept the testimony, which it apparently did. *State v. Hammond*, 2019-Ohio-4253, ¶ 56 (4th Dist.); *State v. Wooten*, 2002-Ohio-1466, *4 (4th Dist.). We must accord deference to the trier of fact on credibility issues because "it is in the best position to gauge the witnesses' demeanor, gestures, and voice inflections, and to use these observations to weigh their credibility." *Hammond* at ¶ 56. Furthermore, as set forth above, the commission of even a de minimis traffic violation, of which a marked lanes violation qualifies, provides probable cause to stop a vehicle. Moreover, as noted by Trooper Lewis during the hearing and as referenced by the trial court in support of its denial of the motion, when approached by law enforcement, appellant volunteered that he had been "messing with" the steering wheel while driving.

{¶16} In light of the foregoing, we cannot conclude that the trial court erred in denying appellant's motion to suppress based upon the grounds that the initial investigatory stop was invalid. Thus, because we find no merit to the argument raised under appellant's third assignment of error, it is overruled.

ASSIGNMENTS OF ERROR I AND II

{¶17} We address appellant's first and second assignments of error in conjunction with one another for ease of analysis. In his first assignment of error, appellant contends that his convictions were not supported by sufficient evidence. In his second assignment of error, he contends that his convictions were against the manifest weight of the evidence. In short, he disputes that he ever had actual or constructive possession of the marijuana at issue.

Standard of Review

{¶18} A claim of insufficient evidence invokes a due process concern and raises a question of whether the evidence is legally sufficient to support the verdict as a matter of law. *See State v. Thompkins*, 78 Ohio St.3d 380, 386, (1997). "Whether the evidence is legally sufficient to sustain a verdict is a question of law." *Id.* "Therefore, our review is de novo." *State v. Groce*, 2020-Ohio-6671, ¶ 7, citing *In re J.V.*, 2012-Ohio-4961, ¶ 3.

{¶19} 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* at 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 proven beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Jenks*, 61 Ohio St.3d 259, 273 (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* at 390 (Cook, J., concurring).

{¶20} Thus, when reviewing a sufficiency-of-the-evidence claim, an appellate court must construe the evidence in a light most favorable to the prosecution. *See State v. Hill*, 75 Ohio St.3d 195, 205 (1996); *State v. Grant*, 67 Ohio St.3d 465, 477 (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 (2001); *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001).

{¶21} However, 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 all reasonable inferences, and consider the witness credibility. *See State v. Dean*, 2015-Ohio-4347, ¶ 151; citing *State v. Thompkins, supra*, at 387. A reviewing court must bear in mind, however, that credibility generally is an issue for the trier of fact to resolve. *See State v. Issa*, 93 Ohio St.3d 49, 67 (2001); *State v. Murphy*, 2008-Ohio-1744, ¶ 31 (4th Dist.). " ' "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." ' " *State v. Kuntz*, 2024-Ohio-1680, ¶ 20 (4th Dist.), quoting *Barberton v. Jenney*, 2010-Ohio-2420, ¶ 20, quoting *State v. Konya*, 2006-Ohio-6312, ¶ 6 (2d Dist.), in turn quoting *State v. Lawson*, 1997 WL 476684 (Aug. 22, 1997, 2d Dist.).

{¶22} As the Court explained in *Eastley v. Volkman*, 2012-Ohio-2179:

> " '[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.' "

Eastley, supra at ¶ 21, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984), in turn quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, 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. *See State v. Picklesimer*, 2012-Ohio-1282, ¶ 24 (4th Dist.); *see also State v. Howard*, 2007-Ohio-6331, ¶ 6 (4th Dist.) ("We will not intercede as long

as the trier of fact has some factual and rational basis for its determination of credibility and weight".).

{¶23} 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." *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983). *See also Thompkins, supra*, at 387. If the prosecution presented substantial credible evidence upon which the trier of fact reasonably could conclude, beyond a reasonable doubt, that the essential elements of the offense had been established, the judgment of conviction is not against the manifest weight of the evidence. *See State v. Eley*, 56 Ohio St.2d 169 (1978), syllabus, superseded by state constitutional amendment on other grounds in *State v. Smith*, 80 Ohio St.3d 89 (1997); *see also Eastley* at ¶ 12 and *Thompkins* at 387 (explaining that a judgment is not against the manifest weight of the evidence when "the greater amount of credible evidence" supports it). Thus, " '[w]hen conflicting evidence is presented at trial, a conviction is not against the manifest weight of the evidence simply because the jury believed the prosecution testimony.' " *State v. Cooper*, 2007-Ohio-1186, ¶ 17 (4th Dist.), quoting *State v. Mason*, 2003-Ohio-5785, ¶ 17 (9th Dist.). Instead, 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." ' " *State v. Lindsey*, 87 Ohio St.3d 479, 483 (2000), quoting *Thompkins* at 387, in turn quoting *Martin* at 175.

Legal Analysis

{¶24} As set forth above, appellant contends the trial court failed to introduce sufficient evidence to establish that he ever had actual or constructive possession of the marijuana at issue. In support of his argument, he notes that there was no forensic evidence in the form of fingerprint or DNA analysis linking him to the bag of marijuana that was found under his seat in the vehicle he was driving. He further contends that despite statements he made at the time of the stop indicating that the marijuana belonged to him, his wife testified during his trial that the marijuana belonged to her, and she had already pled guilty to a misdemeanor charge of possession of marijuana as a result of the traffic stop.

{¶25} The State argues that the one-pound bag of marijuana far exceeded an amount for personal recreational use and was found underneath appellant's driver's seat in a rental vehicle, which evidence demonstrated was inspected and cleaned by the rental company prior to appellant renting it. The State further directs our attention to evidence in the record that appellant claimed ownership of the package during his encounter with Trooper Lewis. The State also argues, with respect to appellant's claim the marijuana belonged to his wife, that two or more persons may

have joint constructive possession of the same object, citing to *State v. Brown*, 2009-Ohio-5390, ¶ 19 (4th Dist.) and *State v. Smith*, 2020-Ohio-5316, ¶ 36 (4th Dist.) in support.

{¶26} Appellant was charged and convicted of trafficking in marijuana, possession of marijuana, and possessing criminal tools. His arguments primarily challenge his convictions for trafficking in marijuana and possession of marijuana. R.C. 2925.03 governs trafficking offenses and provides, in pertinent part, as follows:

> (A) No person shall knowingly do any of the following:
>
> * * *
>
> (2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person.
>
> * * *
>
> (C) Whoever violates division (A) of this section is guilty of one of the following:
>
> * * *
>
> (3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of trafficking in marihuana. The penalty for the offense shall be determined as follows:

> * * *
>
> (c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred grams but is less than one thousand grams, trafficking in marihuana is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

{¶27} R.C. 2925.11 governs drug possession offenses and provides, in pertinent part, as follows:

> (A) No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog.
>
> * * *
>
> (C) Whoever violates division (A) of this section is guilty of one of the following:
>
> * * *
>
> (3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:
>
> * * *
>
> (c) If the amount of the drug involved equals or exceeds two hundred grams but is less than one thousand grams, possession of marihuana is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

{¶28} As set forth above, appellant's arguments on appeal focus on whether the State proved that he was in actual or constructive possession of the marijuana

found in his rental vehicle. 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). "Whether a person knowingly possessed a controlled substance 'is to be determined from all the attendant facts and circumstances available.' " *State v. Smith*, 2022-Ohio-371, ¶ 60 (4th Dist.), quoting *State v. Teamer*, 82 Ohio St.3d 490, 492 (1998). Possession " 'may be individual or joint, actual or constructive.' " *State v. Whitehead*, 2022-Ohio-479, ¶ 89 (4th Dist.), quoting *State v. Wolery*, 46 Ohio St.2d 316, 332 (1976). "Actual possession exists when the circumstances indicate that an individual has or had an item within [the individual's] immediate physical possession." *State v. Fry*, 2004-Ohio-5747, ¶ 39 (4th Dist.).

{¶29} "Constructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within [the individual's] immediate physical possession." *State v. Hankerson*, 70 Ohio St.2d 87 (1982), syllabus. "For constructive possession to exist, the state must show that the defendant was conscious of the object's presence." *Whitehead* at ¶ 89, citing *Hankerson* at 91. "Both dominion and control, and whether a person was conscious of the object's presence, may be established through circumstantial evidence." *Smith*, 2022-Ohio-371, at ¶ 62 (4th Dist.). "Moreover, 'a factfinder can

"conclude that a defendant who exercises dominion and control over an automobile also exercises dominion and control over illegal drugs found in the automobile." ' " *Id.* at ¶ 64, quoting *State v. Yakimicki*, 2013-Ohio-2663, ¶ 23 (10th Dist.), in turn quoting *State v. Rampey*, 2006-Ohio-1383, ¶ 37 (5th Dist.).

{¶30} In this case, the State presented sufficient evidence that, if believed, established that appellant knowingly transported, and exercised dominion and control over, the marijuana at issue. Trooper Lewis testified that he located a bag containing a pound of marijuana under the driver's seat of the vehicle appellant was driving. Although the vehicle did not belong to appellant, the evidence introduced at trial established that the vehicle had been rented under appellant's name. Chris Dale, a representative from Avis, testified that vehicles are inspected and cleaned once returned and before they are rented out again. The process involves vacuuming and checking compartments, including checking floorboards and under seats, to be sure vehicles are safe to rent out again. Appellant's dominion and control over the vehicle permitted an inference that he also was conscious of and had dominion and control over the marijuana discovered inside it. *See Smith,* 2022-Ohio-371, at ¶ 64-65; *see also State v. Crumpton*, 2024-Ohio-5064, ¶ 34 (4th Dist.).

{¶31} In addition, the jury could have inferred that appellant not only knew the marijuana was in the vehicle, but also that he knew or had reasonable cause to

believe that it was intended for sale or resale by him or another person. The State established, through cross-examination of appellant's wife, Toni Tucker, that in the six months leading up to appellant's arrest, appellant had spent in excess of $4,000 on vehicle rentals, despite the fact that he did not receive a regular paycheck from anywhere and had not filed taxes. Further, the jury could logically infer that the marijuana was not limited to personal use in light of the amount of marijuana found.

{¶32} Appellant's wife testified during trial that the marijuana belonged to her, that appellant did not know about its presence until after they were pulled over, that the marijuana was a gift from someone she knows only as "Face," and that she had intended to use it for recreational purposes. However, there is also evidence in the record that the street value of the amount of marijuana found in the vehicle was approximately $5,000, and that appellant stated while in the cruiser speaking to his wife, "don't worry, its mine, everything's mine." Trooper Lewis further testified that when appellant was taken to jail, "he basically admitted everything – the marijuana was his."

{¶33} Viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, we conclude any rational trier of fact could have found all the essential elements of both the trafficking and possession offenses proven beyond a reasonable doubt. Thus, we cannot conclude

that appellant's convictions are not supported by sufficient evidence. Moreover, despite Toni Tucker's testimony that the marijuana belonged to her and appellant had no knowledge of its existence until after they were stopped, the jury was free to accept or reject that testimony in favor of Trooper Lewis's testimony, and other evidence indicating that the marijuana not only belonged to appellant, but that appellant was trafficking in marijuana. For the reasons set forth above, we hold that the jury did not clearly lose its way and, therefore, we cannot conclude that appellant's convictions are against the manifest weight of the evidence.

{¶34} Having found no merit to the arguments raised under appellant's first and second assignments of error, they are both overruled.

{¶35} Accordingly, having found no merit in any of the assignments of error raised on appeal, the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto 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 BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

Hess, J. and Wilkin, J. concur in Judgment and Opinion.

For the Court,

_____

Jason P. Smith
Presiding 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.