[Cite as *State v. Hinton*, 2025-Ohio-2291.]

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

STATE OF OHIO,	:	Case No. 24CA10
Plaintiff-Appellee,	:	
v.	:	DECISION AND JUDGMENT ENTRY
JONATHAN D. HINTON,	:	
Defendant-Appellant.	:	**RELEASED 6/24/2025**

APPEARANCES:

L. Scott Petroff, Athens, Ohio, for appellant.

Lisa Eliason, Athens City Law Director, Athens, Ohio, for appellee.

Hess, J.

{¶1} Jonathan D. Hinton appeals his conviction following a bench trial of two counts of operating a vehicle under the influence of alcohol and one count each of operating without a license and a marked lane violation. Hinton raises three assignments of error. Hinton contends that the trial court erred when it allowed the full video footage of law enforcement's body and patrol car camera and a copy of a driving record that was not properly authenticated. He contends that his conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. Last, Hinton contends that his trial counsel was ineffective for failing to object to the admission of his driving record.

{¶2} For the following reasons, we overrule Hinton's assignments of error and affirm his conviction.

I. FACTS AND PROCEDURAL HISTORY

{¶3} Hinton was charged with operating a vehicle under the influence in violation of R.C. 4511.19(A)(1)(a); operating a vehicle under the influence and refusing a chemical test with a prior OVI conviction within 20 years in violation of R.C. 4511.19(A)(2); fictitious license plates in violation of R.C. 4549.08; operating without a license in violation of R.C. 4510.12; expired tags in violation of R.C. 4503.11; and a marked lane violation in violation of R.C. 4511.33.[1] Hinton pleaded not guilty, and the matter proceeded to a bench trial.

{¶4} The State called two law enforcement witnesses, Deputy Marshal Michael Hupp and Ohio State Trooper Nathan Rubenstein. Deputy Hupp testified that he was at a gas station in Tuppers Plains when he saw Hinton getting out of his truck. Hinton asked Deputy Hupp where he was and stated, "he did not know where the hell he was." When Deputy Hupp told him he was in Tuppers Plains, Hinton followed that up with more profanities, "saying fuck and hell and other stuff." Hinton told Deputy Hupp that he was trying to get to Columbus and repeated that "he didn't know where the hell he was at."

{¶5} Deputy Hupp noticed that Hinton's speech was slurred, and he was unstable on his feet, swaying back and forth and "high stepping it" as if his depth perception was off. Deputy Hupp testified that based on his training, "I quickly identified that he appeared to be impaired or under the influence of something." When Deputy Hupp walked past Hinton's truck, he saw an open can with the colors that resembled an alcohol container, which caused him to believe Hinton was drinking in his truck. Deputy Hupp called the Ohio State Highway Patrol and followed Hinton as he left the gas station

[1] According to the parties, in a separate, unconsolidated case, Hinton was charged with receiving stolen property. He was tried and found not guilty of that charge during the bench trial in this case. The record from that case is not part of our record on appeal.

because Hinton had left the station before Deputy Hupp could stop him. Deputy Hupp witnessed Hinton driving left of center multiple times, "even all the way into the other lane" and at a high rate of speed of over 65 or 70 mph. Deputy Hupp witnessed Hinton "cut all the way across to take the exit to Athens, last minute almost missing the exit to Athens."

{¶6} Trooper Nathan Rubenstein testified that dispatch informed him that an off-duty deputy had observed a driver at the Tuppers Plains gas station who appeared to be intoxicated and was driving recklessly. Trooper Rubenstein identified Hinton's truck and started following it. Trooper Rubenstein witnessed the truck go back and forth and cross the left line. Based on the erratic driving and marked lane violation, Trooper Rubenstein initiated a stop of Hinton's vehicle. Trooper Rubenstein testified that he wears a body camera as part of his duties and was wearing one that evening. Trooper Rubenstein testified that the body camera video the prosecutor was playing was his body camera and was an accurate description of what happened.

{¶7} As Trooper Rubenstein approached the truck, he "detected a strong odor of an alcoholic beverage irradiating from the vehicle, and the closer I got to it the stronger it did get." Trooper Rubenstein also smelled the odor of alcohol coming off Hinton and observed that he had "bloodshot, glassy eyes." He asked Hinton if he had anything to drink and Hinton told him, "I haven't had anything that's inside the truck." Hinton admitted to Trooper Rubenstein that he did not have a license and later told him that he had nothing to drink and that he did not drink, but he admitted that there were empty beer cans inside the truck. Trooper Rubenstein asked Hinton to count backwards from 63 to 37 but Hinton was unable to do so without stopping and asking questions. This indicated to Trooper Rubenstein that Hinton was under the influence of alcohol or a narcotic. Hinton removed

his top denture plate because he claimed it would help him count more clearly, but Trooper Rubenstein observed slurred speech both before and after Hinton removed his top denture plate.

{¶8} Trooper Rubenstein offered to administer three standardized sobriety tests, but Hinton would not consent to them and had trouble following directions. Instead, Hinton wanted to "negotiate the traffic stop." Trooper Rubenstein placed him under arrest and secured him in the back seat of the patrol car. Trooper Rubenstein located several empty Bud Light beer cans in the truck and an open can of root beer. Trooper Rubenstein also checked Hinton's driving record during the traffic stop. The certified copy of the driving record was placed into evidence and Trooper Rubenstein testified that it showed that Hinton had prior OVI convictions in 2002, 2006, and 2008. Trooper Rubenstein testified that based on his observation and training, Hinton was not eligible to operate a vehicle safely based on "the strong odor of alcoholic beverage coming from the vehicle, coming from his person, the bloodshot glassy eyes, and I observed the slurred speech that I observed, and the inability to remain balanced." Trooper Rubenstein also testified that the license plates on the truck were invalid.

{¶9} Trooper Rubenstein testified that his patrol car has two cameras, one facing outward and one facing into the interior back seat area. He testified that the video was an accurate depiction of what happened during the traffic stop. Hinton's attorney objected to the State playing the interior video on the ground that Hinton's statements were irrelevant and contained inflammatory, offensive language. However, the State argued that the full video showed that Hinton's demeanor changed rapidly back and forth as an

indicator of impairment. The trial court determined that it would watch the video and if it found it was not relevant, then it would disregard it.

{¶10} Trooper Rubenstein testified that the video shows Hinton laying down in the back of the cruiser and he stays in that position until they arrive at the jail. Also, during the trip, Hinton kicks the cruiser door with his right leg, which was the same leg Hinton complained was problematic. Trooper Rubenstein testified that Hinton's behavior ranged from "obviously high in emotions and anger and to just lying on the backseat, quiet." After they arrived at the jail, Trooper Rubenstein read from a form that explains the consequences of refusing a chemical test, but Hinton refused to consent to a chemical test.

{¶11} On cross-examination, Trooper Rubenstein testified that when Hinton got out of the truck during the traffic stop, he told the trooper he had a bad knee, or a tear in the knee and that he was supposed to have surgery, but his insurance would not cover it. Trooper Rubenstein also testified that Hinton's dentures fell out of his mouth and Trooper Rubenstein refused to put the dentures back into Hinton's mouth for him while he was handcuffed. Trooper Rubenstein explained it was because they fell "on a surface that, I would say hundreds and hundreds of people have stepped on" and into "a cesspool of bacteria." Trooper Rubenstein suggested Hinton have them rinsed off first before placing them back into his mouth. Hinton told Rubenstein, "please give me a little dignity, and wipe am [sic] my fucking nose off and – pick my fucking teeth up" but Trooper Rubenstein placed Hinton's dentures in a bag instead.

{¶12} The trial court found Hinton guilty of operating a vehicle under the influence of alcohol, operating a vehicle under the influence and refusing a chemical test with a

prior OVI conviction within 20 years, operating without a license, and a marked lane violation. The trial court noted that Hinton spoke over the officer when the officer was explaining the chemical test and engaged in obstructive behavior such that evidence that would normally be collected during field sobriety testing was not available. Looking at the totality of the circumstances, the court considered the testimony of the two officers, the erratic, marked lane driving violation, difficulty walking, the glassy, bloodshot eyes, the video evidence of slurred speech, particularly the speaking manner and cadence, which the court found was evidence of impairment beyond what is explainable through dentures. The trial court found that the video evidence was not merely evidence of inappropriate behavior but showed indicators of impairment and impaired decision making. "My ultimate conclusion is that under the totality of the circumstances, there is proof beyond the reasonable doubt of impairment." Hinton was sentenced to 180 days of jail time with 160 days suspended on both OVI counts, to be served concurrently, and various fines on all counts.

II. ASSIGNMENTS OF ERROR

{¶13} Hinton presents the following assignments of error:

I. The trial court erred to the prejudice of Appellant when it allowed the introduction of irrelevant and inadmissible evidence.

II. The conviction was against the manifest weight of the evidence and based upon insufficient evidence in violation of Appellant's right to due process as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Section 10, Article I of the Ohio Constitution.

III. Appellant suffered prejudice due to the ineffective assistance of counsel, in violation of his right to due process as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Section 10 Article I of the Ohio Constitution when trial counsel failed to object to the introduction of inadmissible evidence.

III. LAW AND ANALYSIS

A. Evidentiary Rulings – Body/Patrol Car Footage and Ohio Driving Record

{¶14} Hinton contends that the trial court erred when it admitted the body and patrol car camera footage because it was not relevant, and it erred when it admitted the driving record without proper authentication. He also argues that the body and patrol car video was admitted without proper authentication. Hinton concedes that his trial counsel failed to object to the driving record and the lack of authentication of the video and has forfeited all but plain error review on those issues. Finally, he contends that the State never moved to have any of the exhibits admitted into evidence.

1. Body/Patrol Car Footage

{¶15} Hinton used derogatory, inflammatory language while he was in the back of the patrol car being transported to jail. His trial counsel objected to the admission of this camera footage on the grounds that it was not relevant because Hinton did not make any incriminating statements. The State argued that it was very relevant because it showed Hinton's demeanor and mannerisms, which go to whether Hinton was impaired. The trial court determined that it would admit the video and, "If I find after watching that it's not relevant to this case, then I'll disregard it to the extent that I as [a] human being can disregard things I've seen." In announcing its verdict, the trial court found that the video went beyond depictions of "inappropriate behavior" and showed "indicators of impairment and impaired decision making." The court distinguished between Hinton's offensive, inflammatory language, which it acknowledged was not relevant to or part of the OVI charge, and the video's depiction of Hinton's decision making, which it found "to be impaired in many different ways."

{¶16} The admission or exclusion of relevant evidence rests within the sound discretion of the trial court. *State v. Dean*, 2015-Ohio-4347, ¶ 91. Therefore, an appellate court will not disturb evidentiary rulings unless the trial court abused its discretion. *State v. Morris*, 2012-Ohio-2407, ¶ 14. A trial court abuses its discretion when the decision is "unreasonable, unconscionable, or arbitrary." *State v. Keenan*, 2015-Ohio-2484, ¶ 7.

{¶17} Generally, all relevant evidence is admissible. Evid.R. 402. Evid.R. 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evid.R. 401 and Evid.R. 402. However, a trial court must exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury." Evid.R. 403. A trial court has broad discretion to determine whether to exclude evidence under Evid.R. 403(A), and we will not interfere absent an abuse of discretion. *State v. Yarbrough*, 95 Ohio St.3d 227, 767 ¶ 40 (2002); *State v. Pennington*, 2024-Ohio-5681, ¶ 51 (4th Dist.).

{¶18} This was a bench trial, and the trial court explicitly acknowledged that it would disregard any evidence that was not relevant. When it announced its verdict, the trial court stated that it did not base its findings of impairment solely on the contents of the video and it did not consider Hinton's inflammatory comments to the extent they were irrelevant. In a bench trial, "[a]s a matter of law, a reviewing court presumes that a judge will consider only relevant, material, and competent evidence. . . . absent an affirmative showing that the trial court failed to consider only properly admitted evidence,

there is no reversible error." *State v. Moreland*, 2004-Ohio-6622, ¶ 13 (8th Dist.); *State v. Mamounis*, 2005-Ohio-2654, ¶ 28 (11th Dist.) ("In a bench trial, the trial judge is presumed to possess the ability to remain objective when examining the evidence, determine the credibility of witnesses, and 'know the applicable law and apply it accordingly.' ").

{¶19} Here, we find that the trial judge considered only relevant, material, and competent evidence. There is no indication in the record that the trial judge considered the racist content of Hinton's inflammatory comments as evidence that he was impaired by alcohol or a drug of abuse. The trial court judge's remarks expressly state the contrary, "Regardless of what I might think of your racism, regardless of what I might think of the threats that you were making, those are not directly part of the OVI offense, they're not punishable under the OVI offense. . . ." Instead, it was Hinton's decision to make the inflammatory comments in the time, place, and manner he did that indicated impairment, "'I am considering your decision making as you were making those factors – those statements as part of the indication of impairment that you – your decision making appears to be impaired in many different ways." Further, the trial judge stated that Hinton's statements were only one factor in the overall totality of factors the court considered in reaching its determination that Hinton was impaired. We find no abuse of discretion in the trial court's decision to admit the body and patrol car video.

2. The Bureau of Motor Vehicle Driving Record

{¶20} Hinton also argues that the trial court committed plain error in admitting Hinton's driving record from the Bureau of Motor Vehicles because it was signed by someone from the BMV, "but there is no indication that the signatory is a custodian of the

record or authorized individual to certify the record." He concedes his trial attorney did not object, therefore he forfeited all but plain error.

{¶21} An appellate court " 'will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court.' " *State v. Awan*, 22 Ohio St. 3d 120, 122 (1986), quoting *State v. Childs*, 14 Ohio St.2d 56 (1968), paragraph three of the syllabus. Appellate courts may, however, consider a forfeited argument using a plain-error analysis. *State v. Shields*, 2023-Ohio-2331, ¶ 72 (4th Dist.). Crim.R. 52(B) states: "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." It is the defendant's burden to "establish that an error occurred, it was obvious, and it affected his or her substantial rights." *State v. Fannon*, 2018-Ohio-5242, ¶ 21 (4th Dist.) "Notice of plain error under Crim.R. 52(B) is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus; *State v. Pettiford*, 2024-Ohio-4447, ¶ 16 (4th Dist.).

{¶22} Evid.R. 902(4) provides that extrinsic evidence of authenticity is not required for certified copies of public records:

> (4) Certified Copies of Public Records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any law of a jurisdiction, state or federal, or rule prescribed by the Supreme Court of Ohio.

Paragraph (1) states, "(1) Domestic Public Documents Under Seal. A document bearing a seal purporting to be that . . . of any State, . . . or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution."

{¶23} Here, the BMV record contains a certification letter from the Ohio Department of Public Safety, Bureau of Motor Vehicles, captioned "Record Request Certification" and states that the attached documents are "true and accurate copies of the files or records of the Registrar." A seal is affixed in accordance with R.C. 4501.34(A):

> (A) . . . .The registrar shall adopt a seal bearing the inscription: "Motor Vehicle Registrar of Ohio." The seal shall be affixed to all writs and authenticated copies of records, and, when it has been so attached, the copies shall be received in evidence with the same effect as other public records. All courts shall take judicial notice of the seal.

Additionally, the document bears the signature and the authorized signature block of the Registrar, "Registrar, Ohio Bureau of Motor Vehicles, By: M. Shuttleworth."

{¶24} Hinton argues that the issue with his driving record is the same as it was in *State v. Lee*, 2010-Ohio-6276 (12th Dist.). However, as the State correctly argues, in *Lee* there was no signature like there is here, nor was there an official seal. In *Lee,* the court found that the BMV record did not contain a seal in compliance with R.C. 4501.34(A), and alternatively, it was not signed and notarized by someone authorized to certify the record. Therefore, the BMV record in *Lee* was not self-authenticating under Evid.R. 902(1), (2), (4), (8) or (10). *See also State v. McCallum*, 2009-Ohio-1424, ¶ 22, 23 (BMV driving record did not contain an official seal and therefore was not self-authenticating under Evid.R. 902(4)). Here, the BMV record was properly self-authenticating under Evid.R. 902(4) because it was a copy of an official record, certified as correct by the Registrar,

with a certification that complied with Evid.R. 902(1) (i.e., an official seal that conforms with R.C. 4501.34(A)).

{¶25} Additionally, the body and patrol car video were properly authenticated by Trooper Rubenstein during his testimony. He testified that the videos were from his cameras and were accurate representations of the actions that were recorded by them.

> Before a trial court may admit evidence, Evid.R. 901 requires the proponent to identify or authenticate the evidence. Evid.R. 901(A) states: "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(B) outlines a non-exclusive list of the means by which a proponent may demonstrate authenticity. . . .For instance, a proponent may identify or authenticate evidence by presenting "[t]estimony that a matter is what it is claimed to be." Evid.R. 901(B)(1).

State v. Stapleton, 2020-Ohio-4479, ¶ 34 (4th Dist.). "This threshold requirement for authentication of evidence is low and does not require conclusive proof of authenticity." *State v. Kolle*, 2022-Ohio-4322, ¶ 54 (4th Dist.).

{¶26} Hinton has failed to establish any error, plain or otherwise, in the admission of the certified copy of the BMV driving record or the body and patrol car video. Both were properly authenticated.

{¶27} Last, Hinton argues that the State failed to move to have its exhibits admitted into evidence. The State counters this argument by citing to the place in the record where the exhibits were accepted. We find that the record shows that the State moved to enter its exhibits, Hinton's counsel had no objections, and the trial court told the State to give them to the court reporter by responding to the State with "Please do." Hinton argues that the record shows that, despite indicating to the State to give the exhibits to the court reporter, the trial court did not allow the State's exhibits.

> State: Thank you. Your honor, at this time, the State would like to enter into [inaudible] Exhibits A through, I believe, E. A being the videos that were placed.
>
> Judge: Any response?
>
> Defense: No. [Inaudible]
>
> State: I will give this to [the court reporter].
>
> Judge: Please do.
>
> State: I apologize, your honor, I didn't hear if the Court accepted that into evidence? You honor, at this time, the State would rest.

{¶28} Again, Hinton's trial counsel did not object at the time and has forfeited any error. Any confusion or question about the trial court's statements concerning admission of the State's evidence could have been clarified at the time had Hinton raised it. Moreover, we do not interpret the State's subsequent apology for its inability to hear the trial court's ruling on "that" whatever the "that" might be referring to, as an indication that the trial court implicitly denied the admission of the State's exhibits A through E. The State apologized for not having heard the court's remark about something being accepted. There would need to be clear, unequivocal, and specific statements in the record for us to read in between the lines as Hinton asks and find that the trial court refused to admit the State's exhibits. The State moved to have its exhibits admitted, defense counsel had no objections, and the trial court appeared to instruct the State to give the exhibits to the court reporter as an indicator that they were accepted.

{¶29} We overrule Hinton's first assignment of error.

B. Sufficiency of the Evidence and Manifest Weight of the Evidence

{¶30} Hinton contends that the evidence did not support his convictions because "the State relied upon inflammatory statements" and "those statements do not

demonstrate impairment." Hinton was convicted on four different counts. We read his assignment of error and argument as only challenging his OVI conviction. Further, he does not argue that he did not have a prior OVI within 20 years or that he did not refuse a chemical test. "Under the influence" is the only element of his OVI convictions that he challenges.

1. Standard of Review

a. Sufficiency

{¶31} "When a court reviews the record for sufficiency, '[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.' " *State v. Maxwell*, 2014-Ohio-1019, ¶ 146, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus; following *Jackson v. Virginia*, 443 U.S. 307 (1979); *State v. Bennington,* 2019-Ohio-4386, ¶ 11 (4th Dist.).

{¶32} An appellate court must construe the evidence in a "light most favorable to the prosecution." *State v. Hill*, 75 Ohio St.3d 195, 205 (1996); *State v. Grant*, 67 Ohio St.3d 465, 477 (1993). Further, "[t]he court must defer to the trier of fact on questions of credibility and the weight assigned to the evidence." *State v. Dillard*, 2014-Ohio-4974, ¶ 22 (4th Dist.) citing *State v. Kirkland*, 2014-Ohio-1966, ¶ 132; *State v. Lodwick*, 2018-Ohio-3710, ¶ 9 (4th Dist.). Thus, "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.' " *State v. Davis*, 2013-Ohio-1504, ¶ 12 (4th Dist.), quoting *State v. Thompkins,* 78 Ohio St.3d 380, 390 (1997) (Cook, J., concurring). Rather, 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).

b. Manifest Weight

{¶33} In determining whether a criminal conviction is against the manifest weight of the evidence, we 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 reversal of the conviction is necessary. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997); *State v. Hunter*, 2011-Ohio-6524, ¶ 119. To satisfy this test, the State must introduce substantial evidence on all the elements of an offense, so that the jury can find guilt beyond a reasonable doubt. *See State v. Eskridge*, 38 Ohio St.3d 56 (1988), syllabus; *State v. Harvey*, 2022-Ohio-2319, ¶ 24 (4th Dist). Because a trier of fact sees and hears the witnesses, appellate courts will also afford substantial deference to a trier of fact's credibility determinations. *State v. Schroeder*, 2019-Ohio-4136, ¶ 61 (4th Dist.); *State v. Colonel*, 2023-Ohio-3945, ¶ 50-54 (4th Dist.).

2. Elements of OVI

{¶34} Hinton was convicted of operating a vehicle under the influence of alcohol in violation of R.C. 4511.19(A):

> (A)(1) No person shall operate any vehicle . . . within this state, if, at the time of the operation, any of the following apply:
> (a) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

{¶35} Hinton argues that the trial court relied primarily on Hinton's "expression of racist language to bolster an otherwise weak case for the State." However, we find there was sufficient evidence to support the OVI conviction and the trial court's verdict was not against the manifest weight of the evidence. The trial court stated that it relied upon the testimony of the witnesses who testified that Hinton was impaired, swaying back and forth, walking like his depth perception was off, smelled strongly of alcohol, had glassy, bloodshot eyes, could not properly perform a backwards counting task, was using excessive profanity in a way that reflected impaired judgment, and was driving erratically and in violation of traffic laws. The trial court also reviewed the video from the body and patrol car cameras and determined that Hinton exhibited signs of impairment in the videos. Based on the totality of the circumstances, the trial court determined that Hinton was guilty of OVI.

{¶36} After viewing the evidence in a light most favorable to the prosecution, we conclude that any rational trier of fact could have found Hinton was operating a vehicle under the influence of alcohol. And, after our review of the record, and after we consider the evidence and testimony adduced at trial and all reasonable inferences therefrom, witness credibility, and the conflicts in the evidence or lack thereof, we do not believe that the trial judge, acting as factfinder, clearly lost its way so as to create a manifest miscarriage of justice such that Hinton's convictions must be reversed and a new trial ordered.

{¶37} We overrule Hinton's second assignment of error.

C. Ineffective Assistance of Trial Counsel

{¶38} Hinton contends that his trial counsel was ineffective for failing to object to the admission of the BMV driving record. He argues that the record would not have been admitted and he would not have been convicted of the enhanced offense of OVI with a refusal to a chemical test with prior convictions.

{¶39} To prevail on an ineffective assistance claim, a defendant must show: "(1) deficient performance by counsel, i.e., performance falling below an objective standard of reasonable representation, and (2) prejudice, i.e., a reasonable probability that, but for counsel's errors, the proceeding's result would have been different." *State v. Short*, 2011-Ohio-3641, ¶ 113, citing *Strickland v. Washington*, 466 U.S. 668, 687-688 (1984). Failure to satisfy either part of the test is fatal to the claim. *See Strickland* at 697. The defendant "has the burden of proof because in Ohio, a properly licensed attorney is presumed competent." *State v. Gondor*, 2006-Ohio-6679, ¶ 62. We "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.' " *Strickland* at 689, quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955); *State v. Spencer*, 2019-Ohio-3800, ¶ 13 (4th Dist.).

{¶40} Here, we have determined that the BMV driving record was properly self-authenticated under Evid.R. 902(4). Therefore, Hinton's trial counsel was not deficient for failing to make an objection to it. "[C]ounsel's failure to make a futile objection did not constitute deficient performance." *Spencer* at ¶ 18, citing *State v. Cordor*, 2012-Ohio-1995, ¶ 29 (4th Dist.).

{¶41} We overrule Hinton's third assignment of error.

IV. CONCLUSION

{¶42} We overrule Hinton's assignments of error and affirm his conviction.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Municipal 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.

Abele, J. & Wilkin, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, 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.