[Cite as *State v. Carr*, 2025-Ohio-2583.]

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

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 23CA4023
	:	
v.	:	
	:	
BRIAN C. CARR,	:	DECISION AND 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, Jay Willis, Assistant Prosecuting Attorney, Portsmouth, Ohio, for Appellee.

Smith, P.J.

{¶1} Brian C. Carr, "Carr," appeals the March 9, 2023 Judgment Entry of the Scioto County Court of Common Pleas. Carr was convicted on four drug-related counts after a jury trial. On appeal, Carr sets forth two assignments of error challenging both the sufficiency and the manifest weight of the evidence supporting his convictions. Upon review, we find no merit to Carr's arguments. Accordingly, we overrule both assignments of error and affirm the judgment of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

{¶2} On June 22, 2021, Carr was indicted by the Scioto County Grand Jury on four felony counts and specifications as follows: Count One: Aggravated Trafficking in Drugs, in violation of Ohio Revised Code Sections 2925.03(A)(2)/2925.03(C)(1)(f), a felony of the first degree and Specification to Count One, pursuant to Section 2941.1410(A), Major Drug Offender; Count Two: Aggravated Possession, in violation of Ohio Revised Code Sections 2925.11(A)/2925.11(C)(1)(e), a felony of the first degree and Specification to Count Two, pursuant to 2941.1410(A), Major Drug Offender; Count Three: Aggravated Possession of Drugs, in violation of Ohio Revised Code Sections 2925.11(A)/ 2925.11(C)(1)(a), a felony of the fifth degree; and Count Four: Possessing Criminal Tools, in violation of Ohio Revised Code Sections 2923.24(A)/(C), a felony of the fifth degree.

{¶3} Relevant to these proceedings, Count One, Aggravated Trafficking in Drugs, relates to 442 grams of methamphetamine in cellophane wrap found under Carr's living room couch. Count Two, Aggravated Possession of Drugs, relates to 22 grams of methamphetamine in a plastic bag, found in a plastic kitchen drawer. Count Three, Aggravated Possession of Drugs, relates to 15 pills later found to be hydrocodone. Count Four, Possessing Criminal Tools, relates to digital scales, cash, walkie

talkies, hypodermic syringes, and cell phones found in Carr's residence. Carr entered not guilty pleas to all counts. Carr proceeded to a jury trial on March 6, 2023.

{¶4} An overview of the testimony presented at trial demonstrates that in May 2021, Brian Carr resided in a double-wide trailer with a "makeshift garage" located on a private drive at 16747-B, U.S. Highway 52 in West Portsmouth. A neighbor, Terry Boland, also lived on the private drive at 16747. Mr. Boland testified the two residences were separated by a 50 to 60 foot strip of land. At least one officer testified that Carr's home was "secluded."

{¶5} Mr. Boland testified that in May 2021, he noticed a "bigger volume of vehicles" going to Carr's residence day and night. The cars would stay just a few minutes and leave. Some cars had West Virginia license plates. Mr. Boland knew Carr, Carr's family members, and Carr's girlfriend, Amber Aeh. While Mr. Boland recognized the former people, he did not recognize the other people who stopped briefly at Carr's home. The traffic to Carr's home was so heavy that Mr. Boland had to "scrape" his driveway every couple of weeks to "maintain it."

{¶6} Several law enforcement officers participated in a planned search of Carr's residence which occurred on May 13, 2021. Shawn Davis,

Chief Probation Officer in the Scioto County Common Pleas Court testified that on May 12, 2021, he received information from the Adult Parole Authority that Carr had been dealing drugs out of his residence and that, "possibly," Carr possessed a gun. Carr had missed a couple of months of reporting to probation. One of the terms of probation is the right to search a probationer's residence.

{¶7} Davis contacted the Portsmouth S.W.A.T. team[1] and Southern Ohio Drug Task Force (SODTF) to coordinate and assist in the search. On the morning of the search, the officers met at a nearby gas station to discuss and plan. The group then proceeded to Carr's driveway, with the search occurring between 7:30 and 8:00 a.m. Officer Shepherd testified he is assigned as a S.W.A.T team commander, firearms instructor, and part-time detective. The S.W.A.T. team escorted the probation officers to the front door. Carr's probation officer, Eric Flannery, also assisted. The search was conducted without incident.

{¶8} Officer Flannery testified that Carr's trailer was so cluttered one could barely walk through it. Other officers described the home's condition as "cluttered" and "deplorable." Brian Carr and Amber Aeh, his co-

[1] S.W.A.T. stands for "special weapons and tactics unit." Officer Nicholas Shepherd of the Portsmouth Police Department testified that the S.W.A.T. members have specialized skills, training, and tools to conduct high risk operations. The unit is mobilized in times of high risk or weapons involvement.

defendant, were immediately detained. The officers found items indicating Aeh also lived at the residence.[2]

{¶9} While Officer Davis did not enter Carr's residence, Carr was placed in the back of Davis's cruiser. Davis testified that when Carr was placed into the cruiser, Carr asked: "Who snitched on me?" Davis's general response was that no one had snitched on him but that Carr had not reported to probation for months. Carr then stated, according to Davis's direct testimony, that "the drugs inside the house were all his and didn't belong to his girlfriend." On cross-examination, Davis acknowledged that in his written statement of the events, he specifically wrote that Carr told him only that "the female had nothing to do with it."

{¶10} The officers searched Carr's residence, took photographs of the residence and the evidence obtained, and documented the evidence. The items seized consisted of: Carr's wallet and cash; white powdery substances discovered in two locations in the home; a large digital scale and a small digital scale; a metal weight; a set of walkie talkies; a plastic container of cash; hypodermic syringes in a cooler; fiber supplements; cell phones; and two shotgun shells. Two officers testified that, ultimately, no firearms were recovered. Additional relevant testimony will be set forth below.

[2] The couple was tried together.

{¶11} At the conclusion of Carr's trial, the jury found him guilty on all counts and specifications. He was sentenced on March 7, 2023. The trial court found that Counts One and Two merged for purposes of sentencing. The State elected to proceed on Count One.

{¶12} On Count One, the trial court sentenced Carr to an indefinite term of 11 mandatory years minimum to 16 1/2 years maximum in the custody of the Ohio Department of Rehabilitation and Corrections (ODRC). On Counts Three and Four, the court sentenced Carr to 11 months on each count to the custody of ODRC, to be served concurrent to one another and concurrent to the sentence on Count One. Carr timely appealed.

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.

{¶13} Because Carr's assignments of error are interrelated, we consider them jointly.

Standard of Review - Sufficiency of the Evidence and Manifest Weight of the Evidence

{¶14} A claim of insufficient evidence invokes a due process concern and raises the question whether the evidence is legally sufficient to support the verdict as a matter of law. *State v. Thompkins,* 78 Ohio St.3d 380, 386 (1997). When reviewing the sufficiency of the evidence, our inquiry focuses primarily upon the adequacy of the evidence; that is, whether the evidence, if believed, reasonably could support the finding of guilt beyond a reasonable doubt. *Thompkins*, syllabus. The standard of review is whether, after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt. *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,* 78 Ohio St.3d at 390 (Cook, J., concurring).

{¶15} Thus, when reviewing a sufficiency-of-the-evidence claim, 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). 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).

{¶16} "We observe that the 'question to be answered when a manifest-weight issue is raised is whether "there is substantial evidence upon which a jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt." ' " *Whitehead, supra,* at ¶ 101, quoting *State v. Leonard,* 2004-Ohio-6235, ¶ 81, in turn quoting *State v. Getsy,* 84 Ohio St.3d 180 (1998), citing *State v. Eley,* 56 Ohio St.2d 169 (1978), syllabus. A court that is considering a manifest-weight challenge must " 'review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses.' " *State v. Beasley*, 2018-Ohio-493, ¶ 208, quoting *State v. McKelton*, 2016-Ohio-5735, ¶ 328; *accord State v. Hundley,* 2020-Ohio-3775, ¶ 80. The reviewing court must bear in mind, however, that credibility generally is an issue for the trier of fact to resolve. *State v. Issa*, 93 Ohio St.3d 49, 67 (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.' " *Barberton v. Jenney,* 2010-Ohio-2420, ¶ 20, quoting *State v. Konya*, 2006-Ohio-6312, ¶ 6

(2d Dist.), quoting *State v. Lawson,* 1997 WL 476684, *4 (Aug. 22, 1997). As the court in *Eastley v. Volkman,* 2012-Ohio-2179, explained:

> " '[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts. * * *
> If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.' "

Id. at ¶ 21, quoting *Seasons Coal Co., Inc. v. Cleveland,* 10 Ohio St.3d 77, 80 (1984), fn.3, quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, at 191-192 (1978).

{¶17} Thus, an appellate court will leave the issues of weight and credibility of the evidence to the fact finder, as long as a rational basis exists in the record for its decision. *State v. Picklesimer,* 2012-Ohio-1282, ¶ 24 (4th Dist.); *accord 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.").

{¶18} Accordingly, 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 Whitehead,* at ¶ 102; *see also Eley; accord Eastley* at ¶ 12, quoting Thompkins, 78 Ohio St.3d at 387, quoting Black's Law Dictionary 1594 (6th ed.1990) (explaining that a judgment is not against the manifest weight of the evidence when " ' "the greater amount of credible evidence" ' " supports it). A court may reverse a judgment of conviction only if it appears that the fact finder, when it resolved 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.' " *Thompkin*s, 78 Ohio St.3d at 387, quoting *State v. Martin,* 20 Ohio App.3d 172, 175 (1st Dist.1983); *accord McKelton* at ¶ 328. 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.' " *Thompkins,* 78 Ohio St.3d at 387, quoting *Martin,* 20 Ohio App.3d at 175; acc*ord State v. Clinton*, 2017-Ohio-9423, ¶ 166; *State v. Lindsey,* 87 Ohio St.3d 479, 483 (2000).

Legal Analysis

{¶19} Carr asserts that his convictions should be reversed because there is insufficient evidence to support the finding of guilt beyond a reasonable doubt. Carr argues that he was charged and convicted because "drugs, paraphernalia, and other items associated with the drug trade were found at

his residence during a raid." Carr concedes that these items were found at his residence. However, Carr argues that at trial, he disputed ownership of "at least some of the items found, including the larger package of methamphetamine."[3] The representation that Carr disputed ownership of additional items, along with the large package of methamphetamine, is not completely accurate.

{¶20} As noted above, Count One pertained to alleged trafficking of 442 grams of methamphetamine. Count Two related to alleged possession of 22 grams of methamphetamine. Count Three involved alleged possession of 15 hydrocodone pills. Count Four was an allegation of possessing criminal tools. At the conclusion of the State's case-in chief, Carr's attorney made a Crim.R. 29 motion. " 'A motion for acquittal under Crim.R. 29(A) is governed by the same standard as the one for determining whether a verdict is supported by sufficient evidence.' " *State v. Smith,* 2021-Ohio-2866, ¶ 87 (4th Dist.), quoting *State v. Thacker,* 2020-Ohio-4620, at ¶ 31 (4th Dist.); *See State v. Tenace,* 2006-Ohio-2417, ¶ 37.

[3] At the outset we note that all investigating officers identified Carr in the courtroom. Moreover, Carr has not challenged the training or experience of the investigating officers who testified at his trial; the reliability of the chain of custody of the substances found in his home; the reliability of the lab report identifying the substances; or the credentials or experience of the analyst who prepared the lab report in this case.

{¶21} Upon review of the trial transcript, we observe that in making the Crim.R. 29 motion, defense counsel challenged only the element of possession as relates to Count One, arguing that the State had not specifically established "ownership, knowledge and possession of the bag of methamphetamine that weighted [sic] approximately 440 grams." Counsel did not challenge the element of possession as to the remaining counts, i.e., the small bag of methamphetamine, the hydrocodone pills, or the various other items commonly associated with drug trafficking. Counsel did not challenge proof of any other elements of the offenses. Later, in closing, Carr's counsel argued:

> "…Mr. Carr certainly does make a statement to Mr. Davis when this arrest is happening that 'oh, the drugs in the house are mine.' However, we are talking about at least three distinct batches of drugs. We are talking about a bag of methamphetamine that is approximately 440 grams. We are talking about a bottle of hydrocodone pills that are 15 pills. We are also talking about a smaller bag of methamphetamine that is 22 grams. I submit to you that *Mr. Carr was referring to the pills and the smaller bag of methamphetamine and had no awareness of this bag of 440 grams of meth*." (Emphasis added.)[4]

Possession of the alleged criminal tools was not challenged at all.

[4] Counsel reiterated that "the amount found in the smaller bag is 22 grams. The amount Mr. Carr took responsibility for immediately upon his arrest and says, 'this is mine.'"

{¶22} This court and others have held that when an appellant sets forth specific grounds in a Crim.R. 29 motion, he or she forfeits all other arguments on appeal. *See State v. Swanner,* 2001 WL 548719, *6 (4th Dist.) (While defendant did not waive his Crim.R. 29 motion by failing to renew it because case was tried to court, because he set forth specific grounds but did not include ground asserted on appeal, he waived the argument); *State v. Cayson,* 1998 WL 241949, *2 (8th Dist.) (While there is no duty to set forth specific grounds in a motion for judgment of acquittal, if specific grounds are asserted, all grounds not specified are waived)*; State v. Sebring*, 2023-Ohio-2911, ¶ 23 (9th Dist.) (Because defendant asserted specific grounds in his Crim.R. 29 motion below, he forfeited non-asserted issue on appeal). *But see also State v. Harris,* 2017-Ohio-5594, ¶32 (1st Dist.) (Limiting review to plain error); *State v*. *Fletcher,* 2017-Ohio-9207, ¶41 (5th Dist.), (Choosing to address argument on the merits).

{¶23} Arguably, Carr has conceded his guilt as to Counts Two, Three, and Four and we would be within our purview to decline addressing the other counts.[5] However, assuming Carr has not waived his right to challenge his convictions on Counts One, Three, and Four based upon

[5] Furthermore, the trial court merged the possession offense with the trafficking offense. Thus, if sufficient evidence supports Carr's trafficking conviction, an erroneous verdict on the merged count would be harmless. *See State v. Foster,* 2023-Ohio-746, ¶ 22 (4th Dist.) (Citations omitted.) Therefore, whether or not Carr has conceded guilt as to Count Two, we need not consider it.

sufficiency and manifest weight grounds, for the following reasons we nevertheless conclude that there was ample evidence to support a verdict that Carr was guilty on all counts.

{¶24} Count One, Aggravated Trafficking in Drugs, R.C. 2925.03(A)(2), contains the essential elements of trafficking in drugs:

> No person shall knowingly
>
> * * *
>
> (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.

As to Aggravated Possession, R.C. 2925.11(A) provides:

> No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog.

{¶25}Counts One and Three contain the element of "knowingly." R.C. 2901.22(B) defines when a person acts knowingly:

> A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when a person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

{¶26} Count Four, Possessing Criminal Tools, R.C. 2923.24(A)/(C) provides:

> A) No person shall possess or have under the person's control any substance, device, instrument, or article, with purpose to use it criminally.
>
> (C) Whoever violates this section is guilty of possessing criminal tools. Except as otherwise provided in this division, possessing criminal tools is a misdemeanor of the first degree. If the circumstances indicate that the substance, device, instrument, or article involved in the offense was intended for use in the commission of a felony, possessing criminal tools is a felony of the fifth degree.

R.C. 2923.24 does not require proof of a felony, but rather that the tool was "intended for use in the commission of a felony." *State v. Sines-Riley*, 2023-Ohio-2860, ¶ 42 (4th Dist.).

{¶27} Ohio law defines "possession" as "having control over a thing or substance but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found." R.C. 2925.01(K). *State v. Foster,* 2023-Ohio-746, ¶ 26 (4th Dist.); *State v. Whitehead,* 2020-Ohio-479,¶ 88 (4th Dist.). "Whether a person knowingly possessed a controlled substance 'is to be determined from all the attendant facts and circumstances available.' " *Id*.,

quoting *State v. Teamer,* 82 Ohio St.3d 490, 492 (1998). "Possession * * * may be individual or joint, actual or constructive." *State v. Wolery,* 46 Ohio St.2d 316, 332 (1976); *State v. Fry,* 2004-Ohio-5747, ¶ 39 (4th Dist.) " ' "Actual possession exists when the circumstances indicate that an individual has or had an item within his immediate physical possession." ' " *Whitehead, supra* at ¶ 89, quoting *State v. Kingsland,* 2008-Ohio-4148, ¶ 13 (4th Dist.), quoting *Fry* at ¶ 39. "Constructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within his immediate physical possession." *State v. Hankerson,* 70 Ohio St.2d 87, 434 N.E.2d 1362 (1982), syllabus; *State v. Brown*, 2009-Ohio-5390, ¶ 19 (4th Dist.). For constructive possession to exist, the state must show that the defendant was conscious of the object's presence. *Hankerson,* 70 Ohio St.2d at 91; *Kingsland* at ¶ 13; *accord State v. Huckleberry,* 2008-Ohio-1007, ¶ 34 (4th Dist.); *State v. Harrington,* 2006-Ohio-4388, ¶ 15 (4th Dist.).

{¶28} Both dominion and control, and whether a person was conscious of the object's presence, may be established through circumstantial evidence. *See Foster, ¶ 27; Brown* at ¶ 19; *see also State v. Jenks,* 61 Ohio St.3d 259 (1991), paragraph one of the syllabus ("[c]ircumstantial evidence and direct evidence inherently possess the same probative value"). "Circumstantial

evidence is defined as '[t]estimony not based on actual personal knowledge or observation of the facts in controversy, but of other facts from which deductions are drawn, showing indirectly the facts sought to be proved. * * *' " *State v. Nicely,* 39 Ohio St.3d 147, 150 (1988), quoting Black's Law Dictionary (5 Ed.1979) 221.

{¶29} "Furthermore, to establish constructive possession the state need not show that the defendant had '[e]xclusive control' over the contraband." *Whitehead,* at ¶ 91, quoting *State v. Tyler,* 2013-Ohio-5242, ¶ 24 (8thDist.), citing *State v. Howard*, 2005-Ohio-4007, ¶ 15 (8thDist.), citing *In re Farr,*1993 WL 464632, *6 (10thDist.) (Nov. 9, 1993) (nothing in R.C. 2925.11 or 2925.01 "states that illegal drugs must be in the sole or exclusive possession of the accused at the time of the offense"). Instead, " '[a]ll that is required for constructive possession is some measure of dominion or control over the drugs in question, beyond mere access to them.' " *Howard* at ¶ 15, quoting *Farr* at *6. Thus, simply because others may have access in addition to the defendant does not mean that the defendant "could not exercise dominion or control over the drugs." *Tyler* at ¶ 24; *accord State v. Walker,* 2016-Ohio-3185, ¶ 75(10th Dist.). Multiple persons may have joint constructive possession of an object. *See State v. Philpott,* 2020-Ohio-5267, ¶ 67 (8th Dist.); *Wolery,* 46 Ohio St.2d at 332, 329 ("[p]ossession * * * may

be individual or joint" and "control or dominion may be achieved through the instrumentality of another").

{¶30} Based on our review of the evidence presented to the jurors, we find there was sufficient evidence for any rational trier of fact to find beyond a reasonable doubt that Carr knowingly possessed the large quantity of methamphetamine found in his home, along with the hydrocodone pills, and the various items used as criminal tools. Here, we set forth additional testimony from the various State's witnesses.

Probation Officer Eric Flannery

{¶31} Officer Flannery testified that upon entrance into Carr's residence, he saw keys, drug paraphernalia, needles, and a large digital scale. Flannery assisted Deputy Jay Springs in searching a living room couch where they found Carr's wallet stuffed into the couch cushions. Flannery and Springs turned over the couch. Flannery testified that white powdery substances were found in two locations: (1) a larger quantity in cellophane wrap under the couch; (2) a smaller quantity in a plastic bag in the bottom of plastic drawers in the kitchen area.

Detective Kevin Metzler - Portsmouth Police Department

{¶32} Detective Metzler is also assigned to the SCDTF.

After Carr and Aeh were detained, Metzler assisted by taking photographs of the evidence. He identified several photographs which included the coffee table showing digital scales, a set of "walkie-talkies," a plastic container of cash, and fiber supplements. He also testified that two shotgun shells were found in the residence.

{¶33} Detective Metzler explained that through his experience with the task force, he has learned it is common for drug traffickers to have walkie-talkies if they are transporting drugs in two separate cars. He testified that traffickers, as with the plastic container of cash found in the kitchen, commonly keep cash in that manner. He explained that traffickers use fiber supplements to "cut" drugs. Metzler further explained that cell phones may contain information as to drug transactions or possession. Amber Aeh gave him her cell phone password.

{¶34} Detective Metzler also explained that when conducting field tests of unknown substances, the item is placed on digital scales. Because the item is weighed in its packaging as found, the item will weigh more than when tests are conducted in a laboratory setting. Here, the larger quantity of the white powdery substance found in Carr's residence and later determined to be methamphetamine weighed approximately 450 grams in the field. However, the weight was approximately 442 grams after analysis by the

Ohio Bureau of Criminal Investigation (BCI). Detective Metzler testified that in his experience, drug users typically have one to three grams in their possession. He also testified that when methamphetamine is purchased on the street, the price for one gram is generally between $40 and $60.

Detective Joel Robinson - Portsmouth Police Department

{¶35} Detective Robinson is also assigned to the SODTF. Detective Robinson inventoried the evidence which was placed in a secure location at the Portsmouth Police Department. Detective Robinson explained the chain of custody and identified State's Exhibit 55, an impound routing form with his initials. Robinson testified the following items were sent to the BCI lab:

> Item #1- clear Ziploc bag containing a white crystalline substance in a clear plastic wrap.[6]
>
> Item #7- 15 white capsule-shaped pills, M-365 printed on one side.
>
> Item #12- knotted plastic baggie containing a white crystalline substance, field weight 25 grams.

Detective Robinson testified that the field weight of the larger bag of methamphetamine found in Carr's residence, approximately 455 grams, would cost thousands of dollars to purchase. He would not expect to find

[6] While Exhibit 55 does not list the field weight on Item One, the inventory form does reflect that it was found under the couch by Deputy Springs, consistent with his testimony and Officer Flannery's, that this was the larger quantity of white powdery substance wrapped in cellophane.

large amounts of cash before the sale. On cross-examination, Detective Robinson admitted that sandwich baggies were not listed on the inventory.

{¶36} Pam Farley, an analyst employed by Ohio BCI, explained the process for identifying narcotics. She identified the photographic exhibits of the substances submitted by the task force. She also identified State's Exhibit 60, a copy of the report she prepared. Ms. Farley explained her findings listed in the report as follows: Item #1, 442.97 grams of methamphetamine; Item #2, the 15 tablets containing hydrocodone; and Item #3, 22.6 grams of methamphetamine. Ms. Farley testified her findings were within a reasonable degree of scientific certainty.

{¶37} On cross-examination, Ms. Farley admitted that DNA or fingerprint tests had not been requested on the items she analyzed. Ms. Farley was further questioned about a discrepancy in the affidavit attached to her report as follows:

Q: You testified on direct a couple of documents provided by the prosecutor. One was your CV correct?

A: It's an affidavit, but it's-

Q: Well it's an affidavit but it kind of - - goes through and in that affidavit you swore before a notary or acknowledged that the statements contained therein were true and accurate?

A: Yes…..

Q: Do you recall in your affidavit the case that you acknowledged that you had prepared the case number that you had prepared your analysis for? The- your lab number?
A: The lab number should be the same as what is on the report of analysis. I would need to look at the affidavit just to verify that's the same number…

A: This one has the number 20-11112

Q: I believe on direct, as to the process how information's received, that we went through the different labeling numbers and things like that. Do you recall what the lab number was for those items?

A: I believe it was 21-16455.

Q: So those are not the same cases correct?

A: As what's listed on the affidavit, no.

{¶38} Thereafter, Ms. Farley clarified that she was in fact the analyst who conducted the testing discussed in the report. Counsel on behalf of Defendant Aeh continued:

Q: Ma'am you would agree in your profession it is important to be detail oriented, correct?

A: Yes.

Q: And the discrepancy between your affidavit and the lab report that you submitted to is an important detail, correct?

A: Yes.

On redirect, Ms. Farley testified that the discrepancy in the case numbers was a simple typographical error.

Detective Springs - Scioto County Sheriff's Department

{¶39} Detective Springs, also a member of the SODTF, testified his role was to search the Carr residence. He identified State's Exhibit 19 as the larger quantity of methamphetamine located in Carr's residence under the couch. He also identified the exhibit photographs showing the following items seized from the Carr residence: digital scales found under the couch; a silver weight; a brown wallet; the 15 white capsule-shaped pills; cash totaling $50 from the living room; and two cell phones. Based on his experience, Detective Springs testified these are items commonly seen for use in drug trafficking. He explained that the silver weight is used for weighing exact amounts of the drug to be trafficked.

{¶40} Detective Springs also testified his experience with the task force has provided him some knowledge of the "lingo" of addicts and drug traffickers. He identified State's Exhibit 38, the cell phone for which Amber Aeh took responsibility. Detective Springs used the Cellebrite system to extract data from Aeh's cell phone. He explained the Cellebrite program as one which enables an investigator to go through contents of a cell phone and review conversations.

{¶41} Springs identified State's Exhibit 51 as a printout of the extraction report from Amber Aeh's cell phone. The exhibit showed a text

conversation between Amber Aeh and another person. Springs read aloud, testifying as follows:

Q: Just read that text to the jury please.

A: Are you still living by Boland's?

Q: Okay and then the response to that-

A: Yes, baby, sorry, I'm just seeing this.

Springs identified State's Exhibit 52, another printout of a text conversation between Aeh and an unidentified person.

Q: If you would just read the last two lines of that text?

A: Okay, uh. I've been in bed all week. Uh, swelling's slowly going down I'd like a baseball please, have a hundred dollars but need some change for food.

Q: [F]rom your experience with the SODTF, are you familiar with the term baseball being used in this context?

A: Yes, the word that you're after on this one is in parentheses on the message and that's the word ball.

Q: Okay, what does that mean?

A: [A]ddicts will use that and the traffickers has the term ball, which is 3.5 grams of whatever drug they're after.

{¶42} Springs was next questioned about State's Exhibit 53, another printout of a text conversation he believed to be between Amber Aeh and an unknown party.

Q: If you would read that first text that's there on the page, it's

dated 4-29-2021 at 9:00 p.m.?

A: Are you guys good?

Q: From a drug task force perspective, do you hear that phrase often?

A: We hear it quite often. [T]hey're trying to check to see if it's time to come and get whatever they're trying to pick up dope wise.

Q: Okay, and what's the response to that at 9:20 p.m.?

A: Not yet, sorry.

The text conversation and testimony continued as follows:

Q: Okay, and then the response from the third party on the next page at 9:34 p.m.?

A: Sorry. When do you think?

Q: And the response from Defendant Amber Aeh at 9:35 p.m.?

A: Couple hours, but maybe sooner. Just found some good, gotta see if he wants it.

Q: Again, is that common language that you hear?

A: Yes.

Q: In your line of employment?

A: They refer to that because there's some dope there that's uh quality. Not quite as good as the next and they'll use that word to show that they've got really good product now.

Q: Okay and the response from the third party at 9:36 p.m.? The very next text?

A: Please try to find some. I'm sitting here sick. Life just sucks right now. I'm not doing too good.

Q: Okay, do you hear that conversation a lot in your line of work, I'm sick?

A: Quite often it's just for an addict if they don't get, within a certain amount of hours, if they don't get their drug of choice they start to get pretty sick from it.

Q: Okay. Let me refer you to page five please. And if you would just read the middle incoming text, dated 5-8-2021 at 11:56 p.m.?

A: Are you all home?

Q: And the response at 12:51 a.m.?

A: I have no idea where he is and there's nothing here.

{¶43} The prosecutor next questioned Detective Springs about State's Exhibit 54, which he identified as a conversation between Brian Carr and Amber Aeh. Springs testified that the source of the conversation was instant messaging from Facebook Messenger. He testified as follows:

Q: If you would read the message in the middle from Defendant Amber Aeh,...I think it says 5/8/2021 at 11:31 p.m. is that what yours says?

A: Yes.

Q: Okay if you would read that text?

A: And I'm glad you took off you – I'm sorry, and I'm glad you took all your dope laugh out loud or lol.

Q: Okay, does Defendant Carr respond to that at that point?

A: [Y]es, it appears to be three minutes later.

Q: Okay, what's his response?

A: Maybe we should just pull [sic] this to an end. I'll never understand how you can hurt me so bad when all I want to do is love you.

Q: I'm going to refer you to page 71. [T]he message there is in the middle that's dated 5-12-2021 at 9:46 p.m.?

A: Call Alan and Mark and your money from Ed is in glass thing on table.

Q: Okay, and there's a message right after that?

A: Kim is going to call.

Q: Okay and then if I could refer you to page 73. The message in the middle that's dated 5-13 at 1:06 a.m.?

A: I wish you were here to deal with people because I don't want to.

Q: Okay, that message is hours, just hours before the search warrant, is that right?

A: Yes…

Q: And then, Mr. Carr doesn't seem to be responding to these messages at that point, does he?

A: No.

Q: This is just- would it be accurate to say this is just a sample of some of the, the ones, the messages you pulled from that phone.

{¶44} On cross examination, Detective Springs admitted that he could not be sure of Carr's identity by the Facebook account. He admitted that he could not be sure whose fingers were actually hitting the keyboard on Carr's Facebook account. He also admitted that he was unable to download the other phones located at Carr's house.

Detective Sergeant Jodi Conkel - Scioto County Sheriff's Department

{¶45} Detective Conkel, a 30-year veteran of the department, assisted in the Carr/Aeh investigation by listening to the jail phone calls. She has training in ICES Solutions, a program which maintains jail communications. She testified that the sheriff's office has used the ICES system for years.

{¶46} Detective Conkel explained how jail inmates use the jail phone system and how their calls are tracked. She explained that inmates try to use other inmates' identification numbers because they know the calls are recorded. Detective Conkel is familiar with Carr's and Aeh's voices. She reviewed recorded jail phone calls between them. Detective Conkel identified State's Exhibit 61, a recording of a jail phone call dated October 21, 2021, which was played for the jury.

{¶47} The main topic throughout the conversation between the voices Detective Conkel testified to be Carr and Amber Aeh is whether or not they should fire their court-appointed lawyers. Carr can be heard urging Aeh to

ask her father for money to retain a lawyer. Interspersed throughout, Carr declares his love for Aeh and she responds similarly. Early in the conversation, Carr clearly states: "I wish I knew if they showed you the picture of the big dope or not." Aeh responds describing a "big thing" and "packing stuff." Carr explains how the supposed dope "should have been." After additional conversation, Carr states: "I ain't blaming it on you." He also tells Aeh that he told his lawyer that "she ain't going to testify on me." Later, Aeh also states "[she] ain't testifying against [him]."

{¶48} After Exhibit 61 was finished playing, Detective Conkel testified that she had listened to Carr's initial booking calls. Her identification of Carr's voice on Exhibit 61 was consistent with his initial booking calls. Detective Conkel also informed that Carr was making his phone calls under the name and identification number of another inmate, Kevin Loop. However, the outgoing number dialed was to Amber Aeh.

{¶49} On cross-examination, Detective Conkel admitted that she had not talked to Carr or Aeh in person. She admitted that Carr had used several different inmates' identification numbers to place outgoing calls. She also agreed that while she did identify a phone call to the name "Amber Aeh" and to Carr's Route 52 address, she could not be sure who actually registered the cell phone with Aeh's identification information.

{¶50} At the conclusion of the State's case, the trial court admitted State's Exhibits 1 through 61, which consisted of all the previously discussed photographs of the Carr residence and living room with glass coffee table; the white powdery substances found in two locations; the kitchen area; Carr's wallet and cash; Carr and Aeh themselves; large digital scale with residue; walkie talkies; plastic container with currency; fiber supplements; hypodermic syringes; two cell phones; Amber Aeh's cell phone; and two shotgun shells. The State's exhibits also included Ms. Farley's report prepared at BCI, the transcribed text conversations from Aeh's phone, and the recording of the jail phone calls. Carr did not testify.

{¶51} In closing, the State focused on the trafficking count, emphasizing the numerous photographs showing the large amount of methamphetamine and the various instruments of drug trafficking; the testimony of the experienced officers on the drug task force; and the damaging jail phone call and text messages on Aeh's phone. The prosecutor noted that the "only evidence came from the witness stand," and reminded the jurors that they were the judges of credibility. The prosecutor urged the jurors not to "leave their common sense at the door." The prosecutor argued that just because "the analyst messed up and put the wrong case number on her certificate" does not mean the test results were not valid.

{¶52} Carr argued at closing and now does so on appeal that:

> 1) there is a lack of evidence such as DNA testing or fingerprint analysis connecting Carr to the items seized which calls into question the identity of the person who may have had the last possession of the illegal substances.
>
> 2) there is evidence that Carr's residence was not secure, raising the inference that persons other than Carr and his girlfriend had access to the premises.

{¶53} Our review of the trial transcript reveals that Officer Shepherd, along with Mr. Boland, testified that Carr's home had two entrances. Officer Flannery and Detective Metzler both identified State's Exhibit 22, a photograph of Carr's back door with a string attached, showing that the back door was held closed by a string. On cross-examination, Officer Flannery testified that the string held the door shut and he also admitted that the residence did not seem to be "terribly secure."

{¶54} We observe that " '[t]he intent of an accused person dwells in his mind' " and that intent " 'can never be proved by the direct testimony of a third person.' " *State v. Johnson*, 56 Ohio St.2d 35, 38 (1978), quoting *State v. Huffman,* 131 Ohio St. 27 (1936), paragraph four of the syllabus. Instead, intent " 'must be gathered from the surrounding facts and circumstances under proper instructions from the court.' " *Id*., quoting *Huffman,* paragraph four of the syllabus; *e.g*., *State v. Conway,* 2006-Ohio-791, ¶ 143; *State v. Garner,* 74 Ohio St.3d 49, 60 (1995). We further

observe that "[i]ntention is a question of fact, and not one of law." *Koenig v. State,* 121 Ohio St. 147, 151 (1929); *State v. Wamsley,* 2003-Ohio-1872, ¶ 18 (6th Dist.). In this case, the trial court properly instructed the jury as to the State's burden of proof; Carr's right not to testify; the elements of the offenses charged; all pertinent legal definitions; direct and circumstantial evidence; and the concept of credibility and the tests of credibility. We are mindful that circumstantial evidence and direct evidence inherently possess the same probative value and therefore should be subjected to the same standard of proof. *See State v. Kozee*, 2025-Ohio-364, ¶ 35 (4th Dist.), citing *State v. Jenks,* 61 Ohio St.3d 259 (1991), paragraph one of the syllabus, (superseded by Constitutional Amendment as stated in *State v. Knuff,* 2024-Ohio-902 ¶ 199, citing *State v. Smith,* 80 Ohio St.3d 89, 102 (1997).

{¶55} Based on our review, we find that when viewed in a light most favorable to the prosecution, the evidence demonstrates that Carr knowingly trafficked in drugs and knowingly possessed the larger bag of methamphetamine, the smaller bag of methamphetamine, and the hydrocodone pills. Here, Carr has not argued that trafficking itself was not proven, only knowing possession. At the least, Carr's own remarks to Officer Davis may reasonably be construed as Carr's conscious knowledge

of the presence of the drugs in his home. *Whitehead, supra,* at ¶ 89. However, Carr's remarks are in addition to the officers' testimony, the multiple photographic exhibits, the incriminating text conversations from Aeh's phone, and the October 21, 2021 jail phone call. And, Carr's incriminating statement to Davis indicates he took general responsibility for the drugs inside his house and, at that time, in no way specifies that he was claiming responsibility for only the smaller quantity of methamphetamine and the hydrocodone pills.[7] The foregoing substantial circumstantial evidence in this case demonstrates that Carr knowingly possessed the larger bag of methamphetamine.

{¶56} Carr's defense counsel was able to elicit testimony demonstrating some evidence that the home had multiple entrances, one secured by only a string. The jury could have made an inference favorable to Carr's theory of the case, but it did not. Defense counsel was also able to cast doubt on the State's case in that officers did not request fingerprint or DNA evidence. The jury also had the absence of forensic evidence, and what that may have implied, to consider. Importantly, the jurors were in the best position to evaluate the quality of the evidence presented and obviously credited the

[7] Although the jury did not hear this evidence, our review of the entire record reveals that during his arraignment, Carr also stated in open court: "Hey Judge, she's innocent, man."

State's theory of the case. As trier of fact, the jury is free to " 'believe or disbelieve any witness and accept part of what a witness says and reject the rest.' " *State v. Thompkins*, 2024-Ohio-4927, ¶ 88 (4th Dist.), quoting *State v. McFarland,* 2020-Ohio-3343, ¶ 37.

{¶57} As to Count Four, Possessing Criminal Tools, we observe that the offense is accomplished when someone possesses or has under their control any substance, device, instrument, or article with the purpose of using it criminally. R.C. 2923.24(A). *See State v. Corcoran,* 2023-Ohio-1218, ¶ 31 (8th Dist.); *State v. Tackett,* 2019-Ohio-5188, ¶ 45 (11th Dist.) In this case, sufficient evidence was presented that Carr's residence contained assorted items used in the trafficking of drugs. For the reasons discussed above, when the evidence presented at trial is taken together and viewed in a light most favorable to the State, there is sufficient and convincing evidence that could lead a rational trier-of-fact to conclude that Carr possessed the criminal tools located in this residence with purpose to traffic drugs.

{¶58} Furthermore, based upon our review, we do not believe that the evidence weighs heavily against Carr's convictions for Aggravated Trafficking of Drugs, two counts of Aggravated Possession of Drugs, and Possessing Criminal Tools. As previously explained, the State presented ample circumstantial evidence to show that Carr actually and constructively

possessed the drugs and criminal tools (with purpose to commit a felony) found in his home. Thus, we are unable to conclude that the jury committed a manifest miscarriage of justice by convicting Carr.

{¶59} For the foregoing reasons, we find no merit to Carr's first and second assignments of error. Accordingly, both assignments of error are hereby overruled. The judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED. 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 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.

Abele, 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.