[Cite as *State v. Price-Tuggle*, 2026-Ohio-1027.]

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

STATE OF OHIO,	:	CASE NO. 23CA4049
Plaintiff-Appellee,	:	
v.	:	
JALISA PRICE-TUGGLE,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

James Sidney Jones, Cleveland, Ohio, for appellant[1].

Shane A. Tieman, Scioto County Prosecuting Attorney, and Jay Willis, Assistant County Prosecuting Attorney, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 3-18-26
ABELE, J.

{¶1} This is an appeal from a Scioto County Common Pleas Court judgment of conviction and sentence. Jalisa Price-Tuggle, defendant below and appellant herein, raises five assignments of error for review:

FIRST ASSIGNMENT OF ERROR:

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

[1] Different counsel represented appellant during the trial court proceedings.

SECOND ASSIGNMENT OF ERROR:

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

THIRD ASSIGNMENT OF ERROR:

"WITHDRAWING MOTION TO SUPPRESS WAS INEFFECTIVE ASSISTANCE OF COUNSEL."

FOURTH ASSIGNMENT OF ERROR:

"FAILURE TO CALL CO-DEFENDANT TEVIN ROBINSON AS A WITNESS FOR APPELLANT WAS INEFFECTIVE ASSISTANCE OF COUNSEL."

FIFTH ASSIGNMENT OF ERROR:

"TRIAL COUNSEL'S TRIAL PERFORMANCE WAS INEFFECTIVE ASSISTANCE OF COUNSEL."

{¶2} During a May 2021 traffic stop, Ohio State Highway Patrol Trooper Nick Lewis discovered heroin, fentanyl, and cocaine on a person in a rental vehicle in which appellant was the back seat passenger. A Scioto County Grand Jury later returned an indictment that charged appellant with (1) one count of trafficking in a fentanyl-related compound in violation of R.C. 2925.03(A)(2), a first-degree felony, (2) one count of trafficking in heroin in violation of R.C. 2925.03(A)(2), a second-degree felony, (3) one count of trafficking in cocaine in violation of R.C. 2925.03(A)(2), a first-degree felony, (4) one count of possession of a fentanyl-related compound in violation of R.C. 2925.11(A), a first-degree felony, (5) one count of

possession of heroin in violation of R.C. 2925.11(A), a second-degree felony, (6) one count of possession of cocaine in violation of R.C. 2925.11(A), a first-degree felony, and (7) one count of possession of criminal tools in violation of R.C. 2923.24(A), a fifth-degree felony. Appellant entered not guilty pleas.

{¶3} On July 24, 2023, appellant filed a motion to suppress evidence obtained as a result of the traffic stop. Two days later, appellant filed a motion to withdraw her motion to suppress evidence. Front seat passenger and co-defendant, Jassmin James, through her attorney, also withdrew her motion to suppress.

{¶4} At appellant's jury trial, Trooper Nick Lewis testified that around 5:30 p.m. on May 30, 2021, he observed a white SUV with Michigan plates driving on U.S. 23 in Scioto County. Lewis noticed "the driver is at 10 and 2 and sitting straight up, doesn't look comfortable at all." Lewis followed and also observed the SUV following another vehicle too closely. As Lewis caught up to the SUV, he also observed "a couple lane violations, crossing over the white fog line on the right side of the roadway."

{¶5} At trial, appellee played Trooper Lewis's dashboard camera and backseat cruiser camera video footage. When Lewis initiated a traffic stop, he spoke with driver Tevin Robinson at

the driver's side. After he asked Robinson for his driver's license, "[h]e hands me his Michigan ID card and states that he doesn't have a valid driver's license." Initially, Robinson told Lewis that the group intended to travel to Ashland, Kentucky. In addition, Lewis learned that Robinson was from:

> I believe Detroit [, Michigan] . . . Detroit for us is a major hub, a source city. If you watch any news, they call Huntington [West Virginia] little Detroit. There's so much traffic between Detroit and Huntington. A lot of it is drug trafficking, and so obviously, any time I hear something coming out of Detroit heading back to Ashland or Huntington, it just sparks my interest.

Because Robinson is not permitted to drive without a valid driver's license, Lewis advised Robinson to exit the vehicle so Lewis could check his driving status and issue a citation. After Lewis patted down Robinson for weapons and placed him in the rear of the cruiser, Lewis and Robinson discussed Robinson's driving status. Robinson then advised Lewis that one of the girls in the vehicle has a valid driver's license.

{¶6} After Robinson told Trooper Lewis that one of the passengers possessed a valid driver's license, Lewis returned to the vehicle and made contact with the front seat passenger, Jassmin James, and the rear passenger, the appellant. Lewis then learned that neither James and appellant, both from Detroit, possessed a valid driver's licenses.

{¶7} After Robinson told Trooper Lewis that they "were headed to Ashland, and I think that this was a Sunday evening, and they were staying until Tuesday," "[t]hen he said he's coming down to see his homeboy, Delo . . . And that Delo plays basketball in Charleston and then goes on about that he works at Footlocker down here and he was coming down here to visit him." First, Robinson said they were going to Ashland, "and then as I further talk to him he states now he's going to Charleston to visit Delo."

{¶8} Trooper Lewis also inquired with Robinson about luggage because the group allegedly planned to stay at their destination for two nights. Robinson told Lewis that "there's one bag of luggage in there and it belonged to him. So, the females didn't have any luggage at all." Lewis explained that the lack of luggage caused concern: "Um, basically, um just doing body couriers, probably the sole purpose. When I teach these classes, the sole purpose of them being in the vehicle is to conceal contraband. Once it gets to wherever it's going, they're going to get paid and turn around to right back to where they came from." Lewis added that Robinson told him that "his father's friend" rented the vehicle and Robinson gave Lewis permission to search the vehicle.

{¶9} Trooper Lewis reapproached the vehicle to advise the passengers that, because no one possessed a valid driver's

license, they needed to contact someone to get them. After appellant exited the vehicle at Lewis's request, she consented to a weapons pat-down search and he placed her in the rear of his cruiser with Robinson. In the backseat camera video appellee played for the jury, appellant said, "ahh shit, he about (sic.) to check the car." The two also compared notes about what they told Trooper Lewis about their travel plans, and appellant stated, "We need to sweet-talk him."

{¶10} Trooper Lewis then asked Jasmin James to exit the cruiser, executed a consensual weapons pat-down search, and placed James near the guardrail at his cruiser's right rear passenger door. Lewis explained that when he ordered James to exit, on the front passenger floor he "notice[d] that there's a blue rubber glove on the floor" [that] "looks like it has a plastic baggie that was basically put inside the glove and then the plastic baggie and the glove were tied into a knot." Lewis observed that "at some point the palm of it looks like it was just ripped out and it had a brownish substance all over it." Appellant initially stated that the glove may have been from her hair dye, but later stated that it was not her glove.

{¶11} The three codefendants also had a conversation about how the Trooper must have been racist to pull them over for no real reason:

> So they really think black people just out of control, huh? They only stop black people. That sh*t blows my mind. And when they stop a white person they don't do all this extra ass sh*t. That is crazy. Discrimination at its f*cking best. I thought you could sue for that. How the f*ck don't they ever get sued? That shit weird as hell.

{¶12} Trooper Lewis waited for Sergeant Ryan Robirds to arrive so Lewis could conduct the vehicle consent search. When Robirds arrived, Lewis field tested the substance and it tested positive for heroin. "So, we basically went from the consent search now to a probable cause search." Lewis also testified about a condom wrapper in James's purse, which Lewis said is something drug interdiction officers often observe with drug couriers as they "put it [the drugs] inside of a condom and once they do get stopped, it will get inserted." Lewis explained that officers will often find condom wrappers in purses or on the floor of the vehicle, "which is something that catches our attention for body couriers." In addition, Lewis found a "little bit of marijuana residue" on the back floor, "but nothing of substance."

{¶13} Because the evidence pointed toward body couriers, Trooper Lewis testified that his focus shifted to appellant and James. Lewis reviewed his in-car camera footage, which appellee played for the jury, to see if any discussions or movements occurred that would indicate which defendant possessed the narcotics. Lewis explained that when appellant arrived at his

cruiser, she said to Robinson, "they're going to check that car." Robinson asked appellant if "he touched that one, did he touch that one," concerning the pat-down search. Robinson and appellant discussed and opined that Trooper Lewis "didn't do a very good job" on the pat-down search. Robinson also said to appellant, "ask her if it's good," as James "is standing beside the car door." When Lewis heard, "ask if it's good," he believed James probably had something concealed that appellant and Robinson were concerned about. Appellant "bangs on the window, you actually hear her knock on the window and ask her if it's good." Lewis explained, "typically in just street slang and when I'm doing this, if someone says 'are we good? Is it good?' they're referring to are we going to get arrested or is the dope hidden well."

{¶14} Trooper Lewis described the codefendants' roles as appellant/driver, James/courier, and Robinson/dealer. Lewis testified that Robinson told him that he took over driving when appellant got tired and Robinson believed appellant had a valid driver's license. Lewis stated that after he found the drug evidence in the SUV, he advised all three of their *Miranda* rights and mentioned to them that body couriers often transport narcotics in order to see what reaction he would get. At some later point, defendant James "voluntarily surrendered what she had concealed inside of her."

{¶15} Ohio Bureau of Criminal Investigation Forensic Biologist Heidi Tincher testified concerning State's Exhibits 4 and 5, items submitted to the Ohio State Highway Patrol Crime Lab, and explained that the "sealed plastic bag enclosing one condom, enclosing one other . . . bag contain[ed] a dark gray substance." Tincher's testing also revealed 49.4755 grams of "diacetylmorphine or more commonly known as heroin, fentanyl and cocaine."

{¶16} Enterprise Holdings Group Risk Manager Robert Iddings testified that each rental vehicle is cleaned and sanitized, and all compartments are opened and checked to ensure that a previous lessee left nothing behind. Iddings explained that on May 24, 2021 a Louis Swanigan rented a 2020 White Nissan Rogue from Troy, Michigan, "just northwest of Detroit," with a June 21, 2021 return date. No other driver was authorized to operate the rental vehicle.

{¶17} Codefendant Jassmin James testified that she is 28 years old and lives in Madison Heights, Michigan, about 15 minutes from Detroit. She and Robinson, her former boyfriend, met in 2020 and James discovered a few weeks into their relationship that Robinson was a drug dealer. Prior to May of 2021, "it got violent. . . he put his hands on me like often." James testified that in the spring of 2021, she and Robinson

held a gathering at their house, and she observed appellant approach Robinson and ask if she could "make money."

{¶18} James testified that she had not planned to go with Robinson on May 30, 2021 because they had a big fight that morning and he packed "all of his stuff and said that he was leaving." However, "because [appellant] wasn't answering the phone, he came back to the house and asked me to drop him off and take the rental car back to the person who got the rental for him." Robinson then told James to drop him off in Kentucky and James agreed to it, "[t]o get him away from me. To get him out of my house."

{¶19} James testified that after appellant became emotional while driving, Robinson took over driving about an hour from their destination. At that point, when Robinson realized he would be pulled over, he pulled drugs from his hoodie pocket and gave them to James and told her that "with him being the driver and being a man, they'll check him and then me and her would just, you know, we'll be okay." James said she initially lied about concealing the narcotics because she "was afraid. I've never been in a situation like that before." James stated that Robinson has been harassing James and her family, and that appellant had "been harassing me, too." James said that when she was in the Scioto County Jail with Robinson and appellant, they tried to pressure her. Appellant "kept saying clear her,

um, and then Tevin [Robinson] wanted me to say that I was using."

{¶20} James testified that, after appellee charged all three codefendants, James entered a guilty plea to second-degree felony attempted trafficking and third-degree felony possession. James conceded that, in exchange for her truthful testimony, she would receive "the lower end two to three-year mandatory prison term" on the second-degree felony, followed by an 18-month term on the third-degree felony. Further, her agreement provided for judicial release eligibility after two years. When asked to what extent appellant was involved in the plan, James indicated that "she was involved or else she wouldn't have been in the car." James described a phone call at the jail in which she was asked to speak with appellant's mother, who asked James to "clear" her daughter. James said she distanced herself from appellant after that because "she [appellant] wasn't being truthful."

{¶21} Scioto County Sheriff's Detective Sergeant Jodi Conkel testified that, over a period of four days in the Scioto County Jail, Robinson called appellant 14 times. Then, over two days, "another substantial amount of phone calls." Conkel also testified to other calls made from a different inmate's identification number, but explained that inmates commonly use each other's inmate numbers to try to fool those monitoring the

calls. Conkel also testified about calls in which Robinson and appellant tried to blame James for the drugs and one in which appellant threatened James that "she was going to 'beat her ass.'" Appellee played selected recorded jail phone calls for the jury. At the close of appellee's evidence, the trial court denied appellant's Crim.R. 29 motion for judgment of acquittal.

{¶22} Appellant testified that she has always lived in Detroit, works for Henry Ford Hospital, and, in May 2021, was employed by Ford Motor Company. Appellant has known Robinson, a family friend, and James, an acquaintance, since 2020. In May 2021, Robinson told her that he planned to travel to Kentucky soon and did not want James to "ride back by herself." Appellant said that she did not approach Robinson about "making some money." Appellant explained that she and James would drive Robinson to Kentucky and "come right back."

{¶23} Appellant stated that she knew nothing about the glove on the vehicle floor and also that it "didn't have nothing to do with me." Appellant also said she did not see James conceal the drugs. In the back of Trooper Lewis's cruiser, she said Robinson asked her to ask James if she was okay, "[s]o, I mouthed to her like 'you okay?' and she said, 'yes,' and then I told him that." Appellant said that she did not know that Robinson had drugs until she "got in the police car."

{¶24} Appellant further stated that while she was incarcerated for two weeks, James was also incarcerated and they discussed the case. Appellant testified that James told her she would clear her name and that she had nothing to worry about. Regarding the phone call appellee played for the jury that involved appellant's mother, appellant stated that when her mother spoke with James, she asked whether James would clear her name. "She was just like we all want to clear and then she was just of course she going to clear my name when its time. She already told them once. She couldn't do it again I guess until either she testified or something, but I don't know. But she said she was going to clear my name."

{¶25} On cross-examination, appellant stated that she had no idea that appellant trafficked drugs and did not approach him seeking to "make money." Appellant said she was not close enough to Robinson to discuss money or his personal affairs. Appellant described the trip as: "we drove, we smoke [sic.], we drunk [sic.] wine the whole ride there. I was drunk when we got pulled over. I was drunk off of wine when we got pulled over. . . We drunk [sic.] a whole gallon of wine." She conceded that she agreed to drive Robinson on a 12-hour round trip to Kentucky and return the same day.

{¶26} Appellant also claimed that, after the traffic stop, she "ended them," meaning she had no further relationship with

Robinson or James. She did concede on cross-examination, however, that she "was close" to James while in jail and acknowledged 40-50 calls between her and Robinson during their incarceration.

{¶27} When asked, on cross-examination, about the first thing appellant said to Robinson after Trooper Lewis placed them in the cruiser, and appellant said something to the effect that "he's going to check or he's going to search this car," appellant continued to deny knowledge of drugs in the vehicle. Further, appellant continued to deny that she asked James if she had concealed the drugs. Rather, she asserted that she asked whether she "was personally okay." Appellant also acknowledged that Robinson is not her cousin, so she lied to Trooper Lewis at the scene.

{¶28} Appellant did concede that at the scene, she told Trooper Lewis that the glove in the front seat was used to dye her hair. However, in her trial testimony she stated, "Oh, no, that ain't got nothing to do with me." Appellant also conceded that, although she said she cut off communication with Robinson, dozens of phone calls occurred between the two during Robinson's incarceration.

{¶29} After hearing the evidence and deliberation, the jury found appellant guilty of all charges.

{¶30} At the sentencing hearing, appellee agreed that the trafficking and possession convictions should merge and elected to proceed with the trafficking count (Count 1). The trial court considered the pertinent sentencing statutes and factors, merged Counts 1, 2, 3, 4, 5, and 6 for purposes of sentencing, and proceeded to sentence on Count 1 (trafficking in a fentanyl-related compound) and Count 7 (possession of criminal tools).

{¶31} At her allocution, appellant stated:

> Yes, I just wanted to say that throughout this whole thing, I pretty much just stayed as strong as I could and just got myself together. The things that I was doing and like that I need to fix, like my traffic tickets and you know, like just hanging around with the wrong crowds and trusting the wrong people and being gullable (sic.) and trusting people word and trusting that people don't put me in bad situations and I would like to just trust my first thoughts and stop trusting what people say over there. And trusting that people got good intentions because sometimes they really just don't. So, I'm just, whatever sentence you give me today, I'm just going to take it and learn from it. . .
>
> I've pretty much learned from this whole experience. I learned people. I learned how people will take your kindness for weakness. They know how you are as a person. They know that they can manipulate your mind and they'll do that. I thought that communicating with him was helping him. You know, just because I know that he can't comprehend properly. I didn't know that it would backfire and would be made as if I'm his friend and I'm in cahoots with him. And all this and that, because throughout this whole thing the only reason why I even considered socializing with him is because you had nothing to do with this. You didn't know this. But not once has he stood up and said anything to you and that was all I needed today to realize like I just should've never even trusted a person out there, you know. And that's my biggest problem in life I am a very gullible nice person and uh, I'm just

> going to take this time to really just get myself together like mentally because this has really been a lot for me.

{¶32} After consideration, the trial court sentenced appellant to: (1) serve a mandatory minimum of 4-years to an indefinite maximum of 6 years on Count 1, (2) serve a 12-month prison term on Count 7, (3) serve Counts 1 and 7 concurrently with each other, for a total intended sentence of 4-6 years, (4) serve a mandatory 2–5-year postrelease control term, and (5) pay costs. This appeal followed.

I.

{¶33} In her first assignment of error, appellant asserts that her convictions should be reversed because insufficient evidence supports a finding of guilt beyond a reasonable doubt. In her second assignment of error, appellant contends that her convictions are against the manifest weight of the evidence. As a threshold matter, because appellant challenges both the sufficiency of the evidence and the manifest weight of the evidence, we initially address both standards of review.

{¶34} 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), syllabus; *State v. Blevins*, 2019-Ohio-2744, ¶ 18 (4th Dist.). When reviewing the

sufficiency of the evidence, an appellate court's inquiry focuses primarily on the adequacy of the evidence; that is, whether the evidence, if believed, could reasonably support a finding of guilt beyond a reasonable doubt. *Id.* 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 beyond a reasonable doubt. *E.g., Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Jenks*, 61 Ohio St.3d 259, 273 (1991).

{¶35} Furthermore, under the sufficiency of the evidence standard, a reviewing court does not 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). Therefore, when reviewing a sufficiency of the evidence claim, an appellate court must construe the evidence in a light most favorable to the prosecution. *See, e.g., 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 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).

{¶36} "Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may nevertheless conclude that the judgment is against the weight of the evidence." *Thompkins*, 78 Ohio St.3d at 387. "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.' " *State v. Leonard*, 2004-Ohio-6235, ¶ 81, quoting *State v. Getsy*, 84 Ohio St.3d 180, 193–194 (1998), citing *State v. Eley*, 56 Ohio St.2d 169 (1978), syllabus. A court that considers 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. However, the reviewing court must bear in mind 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 (2d Dist. Aug. 22, 1997).

{¶37} Thus, an appellate court will generally defer to the trier of fact on issues of evidence weight and credibility, as long as a rational basis exists in the record for the fact-finder's determination. *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."). 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. *Accord Eastley v. Volkman*, 2012-Ohio-2179, ¶ 12, quoting *Thompkins*, 78 Ohio St.3d at 387, quoting Black's Law Dictionary 1594 (6th Ed.1990) (a judgment is not against the manifest weight of the evidence when " ' "the greater amount of credible evidence" ' " supports it).

{¶38} Consequently, when an appellate court reviews a manifest weight of the evidence claim, the 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.' " *Thompkins*, 78 Ohio St.3d at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983); *accord McKelton* at ¶ 328. Finally, 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; *accord State v. Clinton*, 2017-Ohio-9423, ¶ 166; *State v. Lindsey*, 87 Ohio St.3d 479, 483 (2000); *State v. Hodges,* 2025-Ohio-2050, ¶ 29-30 (4th Dist.).

{¶39} R.C. 2925.11(A) sets forth the essential elements of the offense of possession of drugs. The statute provides: "No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog." 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.

{¶40} Whether a defendant knowingly possessed a controlled substance "is to be determined from all the attendant facts and circumstances available." *State v. Teamer*, 82 Ohio St.3d 490,

492 (1998); *accord State v. Corson*, 2015-Ohio-5332, ¶ 13 (4th Dist.). To establish knowing possession of a controlled substance under R.C. 2925.11(A), the state is not required to prove that "a defendant knew the specific characteristics of the item possessed that made it" a controlled substance. *State v. Jordan*, 89 Ohio St.3d 488, 494 (2000); *accord State v. Williams*, 2005-Ohio-1597, ¶ 34 (2d Dist.).

{¶41} "Possession of drugs can be either actual or constructive." *State v. Bustamante*, 2013-Ohio-4975, ¶ 25 (3d Dist.), citing *State v. Cooper*, 2007-Ohio-4937, ¶ 25 (3d Dist.), citing *State v. Wolery*, 46 Ohio St.2d 316, 329 (1976). " 'Actual possession exists when the circumstances indicate that an individual has or had an item within his immediate physical possession.' " *State v. Kingsland*, 2008-Ohio-4148, ¶ 13 (4th Dist.), quoting *State v. Fry,* 2004-Ohio-5747, ¶ 39 (4th Dist.). "Constructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within his immediate physical possession." *State v. Hankerson*, 70 Ohio St.2d 87, (1982), syllabus; *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.); *Criss v. City of Kent*, 867 F.2d 259, 263 (6th Cir. 1988) ("Ohio law is clear that a suspect can be in 'constructive possession' of . . . property without having actual physical possession of the property if it is located within premises under the suspect's control and he was conscious of its presence.").

{¶42} Both dominion and control, and whether a person was conscious of the object's presence, may be established through circumstantial evidence alone. *E.g., Brown* at ¶ 19; *see, e.g., 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"); *State v. Davis*, 2018-Ohio-4268, ¶ 50 (3d Dist.)(prosecution may establish constructive possession by circumstantial evidence alone.). "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 221 (5th Ed.1979).

{¶43} Furthermore, to establish constructive possession, the State need not show that the defendant had "[e]xclusive control" over the contraband. *State v. Tyler*, 2013-Ohio-5242, ¶ 24 (8th Dist.), citing *State v. Howard*, 2005-Ohio-4007, ¶ 15 (8th

Dist.), citing *In re Farr*, 1993 WL 464632, *6 (10th Dist. Nov. 9, 1993) (nothing in R.C. 2925.11 or 2925.01 states that illegal drugs must be in sole or exclusive possession of accused at time of 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 to the contraband, 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.) because multiple persons may have joint constructive possession of an object. *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"); *State v. Russell,* 2022-Ohio-1746, ¶ 43 (4th Dist.). Although a defendant's mere proximity is in itself insufficient to establish constructive possession, proximity to the object may constitute some evidence of constructive possession. *Fry* at ¶ 40. Therefore, "presence in the vicinity of contraband, coupled with another factor or factors probative of dominion or control over the contraband, may establish constructive possession." *Kingsland*, 2008-Ohio-4148, at ¶ 13.

{¶44} In the case sub judice, appellant contends that *Kingsland* compels reversal. In *Kingsland, supra,* this Court considered whether the State presented sufficient evidence for the jury to determine whether Kingsland knowingly exercised dominion and control over the chemicals found in a pickup truck. We noted that the officer's testimony and the exhibits admitted at trial made clear that Kingsland could be a passenger in the truck and be unaware of the bottles, jars, and chemicals to manufacture methamphetamine in the back of the truck. We observed that the State presented no evidence to show that Kingsland had any specialized knowledge regarding methamphetamine production, or that he should have recognized these objects as components in the production of methamphetamine. Further, the State produced no evidence regarding when Kingsland entered the truck, or how long he had been in the truck. Thus, we concluded that the evidence adduced at trial only proved mere proximity to the illegal chemicals. *Id.* at ¶ 16.

{¶45} Once again, in *Kingsland* we noted that the State's evidence showed that although chemicals were found in the pickup, neither the driver nor Kingsland owned the pickup, and Kingsland was a passenger in the pickup for some unknown duration. Also, the driver did not testify and none of the State's evidence indicated that Kingsland should have, or could

have, known his proximity to illegal chemicals based on their appearance and location in the truck. We pointed out that, to conclude that Kingsland controlled the chemicals, jars, and bottles rather than the driver or the truck's owner, the jury would have to speculate. We added that the officer's testimony that Kingsland appeared "somewhat very nervous" did not, in itself, establish guilt in the absence of any other evidence. *Id.* at ¶ 20.

{¶46} We, however, believe that *Kingsland* is distinguishable from the case at bar. Although appellant claims that appellee adduced no evidence to prove constructive possession, we point out that evidence adduced at trial showed, inter alia, that (1) appellant rode in a rental vehicle with two other people, (2) the car traveled from Detroit, Michigan, a narcotics source city, (3) unlicensed driver Robinson changed his story regarding their intended destination, (4) none of the vehicle's occupants possessed a valid driver's license, (5) cruiser camera footage revealed that appellant said, "ahh, sh*t, he about to check the car," (6) only 1 of 3 travelers possessed luggage for an alleged 3-day trip, (7) appellant and James planned to drop off Robinson and immediately return to Detroit, a 12-hour round trip, and (8) at Robinson's direction, appellant asked James, "is it good?." Consequently, when James voluntarily surrendered the narcotics

from her person, it is reasonable for a jury to conclude that appellant constructively possessed those drugs.

{¶47} We recently considered a similar fact pattern in *State v. Hodges, supra,* 2025-Ohio-2050 (4th Dist.). In Hodges, an officer found cocaine and fentanyl on a fellow passenger's person and a bag of marijuana in the center console of a rental vehicle in which the defendant was the front seat passenger. Hodges argued that (1) he did not rent the vehicle, (2) he did not drive the vehicle, (3) no evidence suggested that he knew of the trip's purpose, (4) no evidence proved that he knew another passenger possessed narcotics, (5) no evidence suggested that appellant knew about or owned the box of plastic bags found in the glove compartment, and (6) another passenger's plea agreement made his testimony suspect. *Id.* at ¶ 31.

{¶48} We observed in *Hodges* that the State did adduce evidence to show that (1) appellant rode in a rental vehicle with two other passengers, (2) the car traveled on a known drug corridor, (3) appellant and the driver gave conflicting answers in response to the question, "where are you headed," (4) codefendant Heard testified that when the officer stopped them, the driver and appellant panicked because "they had drugs on them," (5) codefendant Heard testified that appellant and the driver tried to pour their drugs into "pop" on the floor of the vehicle, and (6) codefendant Heard testified that appellant

"tossed them [the drugs] back to" him in the backseat and told Heard to "do something with them." *Id.* at ¶ 38. Thus, when the officer found drugs on another passenger's person, it was reasonable for the jury to conclude that appellant constructively possessed those drugs. *See also State v. Davis,* 2018-Ohio-4368 (3d Dist.)(constructive possession requires ability to exercise dominion and control over item, even without immediate physical possession; readily usable drugs in close proximity to accused can constitute sufficient circumstantial evidence to support constructive possession); *State v. Dues*, 2014-Ohio-5276 (8th Dist.)(constructive possession proven via circumstantial evidence after delay in opening apartment door and codefendant threw drugs off of defendant's balcony); *State v. McClain*, 2020-Ohio-1436 (3d Dist.)(mere proximity to drugs is insufficient to establish constructive possession, but proximity combined with other factors indicative of dominion or control, such as furtive movements, can support a finding of constructive possession); *State v. Fulton*, 2024-Ohio-671 (7th Dist.)(readily usable drugs found in close proximity to defendant can be sufficient circumstantial evidence for constructive possession; defendant did not own vehicle, but drugs where within reach); *State v. Dixon*, 2016-Ohio-1491, ¶ 19 (4th Dist.)(defendant driver constructively possessed drugs contained in another passenger's buttocks); *State v. Crocker*, 2015-Ohio-2538, (4th

Dist.)(constructive possession of drugs carried in codefendant's vagina proven when defendant was driver of vehicle and text messages and jail phone calls proved knowledge).

{¶49} Similarly, in the case at bar after our review of the evidence in a light most favorable to appellant, we believe that the evidence adduced at trial is sufficient to support the jury's verdict concerning appellant's constructive possession of a fentanyl-related compound, heroin, and cocaine.

Trafficking

{¶50} R.C. 2925.03(A)(2) defines trafficking in fentanyl/heroin/cocaine (Counts 1, 2, & 3):

> (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.

{¶51} Again, in the case sub judice our review of the evidence reveals, inter alia, that (1) appellant rode in a rental vehicle, (2) the car traveled on a known drug corridor, (3) from a narcotics source city (Detroit), (4) appellant agreed to drive on a 12-hour round trip drive intended to be completed in one day, (5) Robinson gave inconsistent answers to the question, "where are you headed," first claiming Ashland, KY and then Charleston, WV (6) none of the occupants were licensed

drivers, (7) Robinson stated that his father's friend rented the SUV, but could not provide rental information to Lewis, (8) in the backseat of Lewis's cruiser, appellant stated to Robinson, "they're going to check the car," (9) appellant and Robinson discussed how Lewis did not do a very good job on his weapons pat-down search, (10) with James standing outside but near the cruiser, Robinson told appellant to "ask her if it's good," (11) James testified that Robinson told her to conceal the drugs in her body and all three occupants of the vehicle knew about the drugs in their possession and appellant agreed to drive and intended to "make some money," and (12) Robinson made dozens of phone calls from the Scioto County Jail to appellant including June 1, 2023, June 20, 2023, July 5, 2023, and July 6, 2023, during which they discussed co-defendant James, and Robinson said, "I'm not going to lie, I want everything on her," and another call in which appellant stated to Robinson, "I'm going to beat her ass," (referring to James).

{¶52} Accordingly, when the evidence adduced at trial is viewed in a light most favorable to appellee, we believe sufficient evidence exists to support the jury's determination.

Possession of Criminal Tools

{¶53} In addition to possession and trafficking, the jury also found appellant guilty of the possession of criminal tools, i.e., the rental vehicle. R.C. 2923.24(A) defines possession of

criminal tools (Count 7): "(A) No person shall possess or have under the person's control any substance, device, instrument, or article, with purpose to use it criminally."

{¶54} The statute requires proof of both control over the item and the specific intention to use it to commit a crime. *In re L.M.*, 2024-Ohio-2974 (1st Dist.). In the context of a rental vehicle, an automobile can be considered a criminal tool if a defendant uses the vehicle with the intent to facilitate a crime. *State v. Hodge*, 2020-Ohio-3002, ¶ 47 (5th Dist.). Generally, the key element is control over the vehicle and the intent to use it criminally. For example, in *State v. Tell*, 2005-Ohio-1178, ¶ 25 (8th Dist.), the court found sufficient evidence to support a possession of criminal tools conviction when the defendant used his vehicle to commit a crime. Similarly, in *State v. Gibson*, 2003-Ohio-5839 (8th Dist.), the court upheld a conviction when the defendant used his car to facilitate drug transactions.

{¶55} However, if a person is neither the vehicle's driver nor the renter, establishing control over the vehicle becomes more challenging. In *State v. McShan*, 77 Ohio App.3d 781 (Oct. 21, 1991, 8th Dist.), the Eighth District concluded that when the defendant was the front seat passenger, the driver had title to the vehicle, and nothing demonstrated that the defendant could exercise dominion or control over the vehicle, the State

failed to adduce sufficient evidence to support a possession of criminal tools conviction based on the vehicle. *Id.* at 783-784. This suggests that mere presence in the vehicle, without evidence of control or intent to use it criminally, may not be sufficient for a conviction.

{¶56} In the case sub judice, like *Hodges, supra,* 2025-Ohio-2050 (4th Dist.), although appellant was neither the vehicle's driver (at the time of the stop) nor the renter, evidence adduced at trial through codefendant James' testimony did establish that appellant, James, and Robinson intended to use the rental car to travel from Detroit to Kentucky to sell narcotics. *See Hodges* at ¶ 15. Further, James testified that appellant intended to be the driver, drove before the traffic stop, and Robinson stated at the scene that he thought appellant possessed a valid driver's license. Thus, after we view the evidence in a light most favorable to appellee, we believe sufficient evidence supports the jury's determination concerning the possession of criminal tools.

{¶57} Accordingly, based upon the foregoing reasons, we overrule appellant's first assignment of error.

III.

{¶58} In her second assignment of error, appellant asserts that her convictions are against the manifest weight of the evidence. Specifically, appellant contends that, although James

testified that appellant knew that Robinson planned the trip from Detroit, Michigan, to Kentucky to transport drugs, and that appellant approached Robinson at a gathering prior to the trip and told him she needed to make some money, appellee presented no other evidence to establish that appellant knew the purpose of the trip. Appellant further argues that the fact that James entered into a plea agreement to testify in exchange for a lighter sentence renders her testimony inherently unreliable.

{¶59} To determine whether the case sub judice is an exceptional case in which the evidence weighs heavily against conviction, this court must review the record, weigh the evidence and all reasonable inferences, and consider witness credibility. *Hodges, supra,* 2025-Ohio-2050, at ¶ 53, citing *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983). However, a reviewing court must bear in mind that credibility generally is an issue for the trier of fact to resolve. *State v. Schroeder*, 2019-Ohio-4136, ¶ 61 (4th Dist.); *State v. Dunn*, 2012-Ohio-518, ¶ 16 (4th Dist.); *State v. Wickersham*, 2015-Ohio-2756, ¶ 25 (4th Dist.). Because the trier of fact sees and hears the witnesses, an appellate court will afford substantial deference to a trier of fact's credibility determinations. *Shroeder* at ¶ 62. The jury has the benefit of seeing witnesses testify, observing facial expressions and body language, hearing voice inflections, and discerning qualities such as hesitancy,

equivocation, and candor. *State v. Fell*, 2012-Ohio-616, ¶ 14 (6th Dist.); *State v. Pinkerman*, 2024-Ohio-1150, ¶ 26 (4th Dist.). Thus, an appellate court may reverse a conviction only if the trier of fact clearly lost its way in resolving conflicts in the evidence and created a manifest miscarriage of justice. *State v. Benge*, 2021-Ohio-152, ¶ 28 (4th Dist.); *Hodges* at ¶ 53.

{¶60} Only in extraordinary circumstances when evidence presented at trial weighs heavily in favor of acquittal, will an appellate court overturn a conviction on the manifest weight of the evidence grounds. *State v. Ridenour*, 2023-Ohio-2713, ¶ 50 (12th Dist.). After our review, we do not believe that the case sub judice is an extraordinary case. Here, the evidence adduced at trial does not weigh heavily in favor of acquittal. Consequently, after our review of the record, we conclude that ample, competent, credible evidence supports appellant's felony convictions. Here, the prosecution presented substantial, credible evidence upon which the trier of fact could reasonably conclude, beyond a reasonable doubt, that the essential elements of the offenses had been established. Thus, appellant's convictions are not against the manifest weight of the evidence.

{¶61} As appellee points out, all three occupants of the rental vehicle had their roles to play in this criminal endeavor as Trooper Lewis outlined in his testimony: Robinson was the drug dealer, James was the drug courier, and appellant was the

intended driver. The jury chose to believe James and the evidence appellee adduced at trial, which is within the province of the jury. " 'A reviewing court should not disturb the factfinder's resolution of conflicting evidence unless the factfinder clearly lost its way.' " *State v. Newman*, 2015-Ohio-4283, ¶ 56 (4th Dist.), quoting *State v. Davis*, 2010-Ohio-555, ¶ 16-17 (4th Dist.). After our review, we do not believe the present case is exceptional in which the evidence weighs heavily against the conviction. As we noted above, the record is replete with evidence, if believed, that appellant committed the charged crimes. Accordingly, we cannot say the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction is against the manifest weight of the evidence. *See State v. Kyle*, 2020-Ohio-3281, ¶ 41-44 (8th Dist.).

{¶62} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error.

III.

{¶63} In her third assignment of error, appellant asserts that her trial counsel rendered ineffective assistance of counsel in violation of her constitutional guarantees. In particular, appellant contends that her counsel should not have withdrawn her motion to suppress evidence.

{¶64} The Sixth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution provide that defendants in all criminal proceedings shall have the assistance of counsel for their defense. The United States Supreme Court has generally interpreted this provision to mean a criminal defendant is entitled to the "reasonably effective assistance" of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984).

{¶65} To establish constitutionally ineffective assistance of counsel, a defendant must show that (1) his counsel's performance was deficient and (2) the deficient performance prejudiced the defense and deprived the defendant of a fair trial. *See Strickland*, 466 U.S. at 687; *State v. Myers*, 2018-Ohio-1903, ¶ 183; *State v. Powell*, 2012-Ohio-2577, ¶ 85. "Failure to establish either element is fatal to the claim." *State v. Jones*, 2008-Ohio-968, ¶ 14 (4th Dist.). Moreover, if one element is dispositive, a court need not analyze both. *State v. Madrigal*, 87 Ohio St.3d 378, 389 (2000).

{¶66} The deficient performance part of an ineffectiveness claim "is necessarily linked to the practice and expectations of the legal community: 'The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.' " *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010), quoting *Strickland*, 466 U.S. at 688. Prevailing professional norms dictate that "a lawyer must have 'full authority to manage

the conduct of the trial.' " *State v. Pasqualone*, 2009-Ohio-315, ¶ 24, quoting *Taylor v. Illinois*, 484 U.S. 400, 418 (1988).

{¶67} Further, "the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances." *Strickland*, 466 U.S. at 688. Accordingly, "[i]n order to show deficient performance, the defendant must prove that counsel's performance fell below an objective level of reasonable representation." *State v. Conway*, 2006-Ohio-2815, ¶ 95 (citations omitted). In addition, when considering whether trial counsel's representation amounts to deficient performance, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689. Thus, "the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id.* Additionally, "[a] properly licensed attorney is presumed to execute his duties in an ethical and competent manner." *State v. Taylor*, 2008-Ohio-482, ¶ 10 (4th Dist.), citing *State v. Smith*, 17 Ohio St.3d 98, 100 (1985). Therefore, a defendant bears the burden of showing ineffectiveness by demonstrating that counsel's errors were "so serious" that counsel failed to function "as the 'counsel' guaranteed . . . by the Sixth Amendment." *Strickland*, 466 U.S. at 687; *e.g.*, *State v. Gondor*,

2006-Ohio-6679, ¶ 62; *State v. Hamblin*, 37 Ohio St.3d 153, 156 (1988).

{¶68} To establish prejudice, a defendant must demonstrate that a reasonable probability exists that "but for counsel's errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine the outcome." *Strickland*, 466 U.S. at 694; *e.g.*, *State v. Short*, 2011-Ohio-3641, ¶ 113; *State v. Bradley*, 42 Ohio St.3d 136 (1989), paragraph three of the syllabus; *accord State v. Spaulding*, 2016-Ohio-8126, ¶ 91 (prejudice component requires a "but for" analysis). "[T]he question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Strickland*, 466 U.S. at 695. Further, courts ordinarily may not presume the existence of prejudice; rather, they must require a defendant to establish prejudice affirmatively. *State v. Clark*, 2003-Ohio-1707, ¶ 22 (4th Dist.). Moreover, we have recognized that speculation is insufficient to establish the prejudice component of an ineffective assistance of counsel claim. *E.g.*, *State v. Tabor*, 2017-Ohio-8656, ¶ 34 (4th Dist.); *State v. Jenkins*, 2014-Ohio-3123, ¶ 22 (4th Dist.); *State v. Simmons*, 2013-Ohio-2890, ¶ 25 (4th Dist.); *accord State v. Powell*, 2012-Ohio-2577, ¶ 86.

{¶69} Our review of the record in the case sub judice reveals that appellant filed a motion to suppress the evidence obtained as a result of the May 30, 2021 traffic stop. Later, however, counsel filed a motion to withdraw the motion to suppress. We begin by noting that a trial counsel's failure to file a motion to suppress evidence does not, per se, constitute ineffective assistance of counsel. *State v. Thompkins,* 2024-Ohio-4927, ¶ 66, citing *State v. Walters*, 2013-Ohio-772, ¶ 20 (4th Dist.), citing *State v. Madrigal*, 87 Ohio St.3d 378, 389 (2000). To establish ineffective assistance of counsel for the failure to file a motion to suppress evidence one must establish that: (1) a basis existed to suppress the evidence in question, and (2) the failure to file the motion to suppress caused prejudice. *State v. Marneros*, 2021-Ohio-2844, ¶ 17 (8th Dist.), citing *State v. Garcia*, 2010-Ohio-5780, ¶ 8 (8th Dist.); *State v. Robinson*, 108 Ohio App.3d 428, 433 (3d Dist.1996). Thus, the failure to file a motion to suppress constitutes ineffective assistance of counsel only if the motion would have been granted. *Id.,* citing *State v. Willis*, 2008-Ohio-444, ¶ 48 (8th Dist.)(citations omitted).

{¶70} In other words, a trial counsel's failure to file a motion to suppress constitutes ineffective assistance of counsel only if a reasonable probability exists that, had the motion to suppress been filed, it would have been granted and that

suppression of the challenged evidence would have affected the outcome of the case. *See, e.g., State v. Frierson*, 2018-Ohio-391, 105 N.E.3d 583, ¶ 17 (8th Dist.). Counsel is not required to file a motion to suppress if doing so would be a futile act. *See, e.g., State v. Armstrong*, 2016-Ohio-2627, ¶ 30 (8th Dist.); *State v. Moon*, 2015-Ohio-1550, ¶ 28 (8th Dist.) (" 'Even if some evidence in the record supports a motion to suppress, counsel is still considered effective if counsel could reasonably have decided that filing a motion to suppress would have been a futile act.' "), quoting *State v. Suarez*, 2015-Ohio-64, ¶ 13 (12th Dist.); *State v. Brooks*, 2013-Ohio-58, ¶ 57 (11th Dist.) (" 'If case law indicates the motion would not have been granted, then counsel cannot be considered ineffective for failing to prosecute it.' "), quoting *State v. Gaines*, 2007-Ohio-1375, ¶ 17 (11th Dist.); *State v. Grimes*, 2011-Ohio-4406, ¶ 30 (8th Dist.) ("[W]here there is no basis for the suppression of evidence, defense counsel has no duty to pursue a motion to suppress evidence ... and where the claim of ineffective assistance is premised upon the failure to file a baseless motion to suppress, such claim must fail."), citing *State v. Gibson*, 69 Ohio App.2d 91, 95 (8th Dist. 1980); *State v. White*, 2022-Ohio-2182, ¶ 11 (12th Dist.).

{¶71} We further note that counsel's failure to file a futile or frivolous motion " 'cannot be the basis for claims of

ineffective assistance of counsel and is not prejudicial.' " *State v. Waters*, 4th Dist. Vinton No. 13CA693, 2014-Ohio-3109, ¶ 12, quoting *State v. Witherspoon*, 8th Dist. Cuyahoga No. 94475, 2011-Ohio-704, ¶ 33.

{¶72} " 'Where the record contains no evidence which would justify the filing of a motion to suppress, the appellant has not met his burden of proving that his attorney violated an essential duty by failing to file the motion.' " *State v. Drummond*, 2006-Ohio-5084, ¶ 208, quoting *State v. Gibson*, 69 Ohio App.2d 91, 95 (8th Dist.1980). " 'Even if some evidence in the record supports a motion to suppress, counsel is still considered effective if counsel could reasonably have decided that filing a motion to suppress would have been a futile act.' " *State v. Moon*, 2015-Ohio-1550, ¶ 28 (8th Dist.), quoting *State v. Suarez*, 2015-Ohio-64, ¶ 13 (12th Dist.); *see State v. Waters*, 2014-Ohio-3109, ¶ 12 (4th Dist.), quoting *State v. Witherspoon*, 2011-Ohio-704, ¶ 33 (8th Dist.) (" '[t]he failure to do a futile act cannot be the basis for claims of ineffective assistance of counsel and is not prejudicial' ").

{¶73} As we have repeatedly recognized, however, speculation is insufficient to establish the prejudice component of an ineffective assistance of counsel claim. *E.g., State v. Tabor*, 2017-Ohio-8656, ¶ 34 (4th Dist.); *State v. Jenkins*, 2014-Ohio-3123, ¶ 22 (4th Dist.); *State v. Simmons*, 2013-Ohio-2890, ¶ 25

(4th Dist.); *State v. Halley*, 2012-Ohio-1625, ¶ 25 (4th Dist.); *State v. Leonard*, 2009-Ohio-6191, ¶ 68 (4th Dist.); *accord State v. Powell*, 2012-Ohio-2577, ¶ 86 (a purely speculative argument cannot serve as the basis for an ineffectiveness claim).

{¶74} Turning to the alleged merits of the suppression motion in the case sub judice, after our review we conclude that appellant has not established that the motion would have been successful if the hearing had moved forward. Thus, appellant did not suffer prejudice from counsel's decision to withdraw the motion to suppress evidence. The trial court's July 28, 2023 entry indicated that both defendants could refile their suppression motions by August 23, 2023, and states:

> This matter comes before the Court on the Motion to Suppress filed by defendant, Jassmin L. James, and defendant Jalisa Price-Tuggle. . . Defendant Jalisa Price-Tuggle was present with her attorney, Valerie Webb. Prior to the suppression hearing, defendant Jassmin L. James, through her attorney, notified this Court that she was withdrawing her Motion to Suppress. Valerie Webb, on behalf of defendant Jalisa Price-Tuggle, advised the Court she was withdrawing her Motion to Suppress.

{¶75} As noted above, the evidence adduced at trial reveals that Trooper Lewis observed an out-of-state rental vehicle follow another vehicle too closely in violation of R.C. 4511.34 and then commit at least two R.C. 4511.33 marked lane violations. Relevant to the case at bar, a police officer who observes a de minimis violation of traffic laws may stop a

driver. *State v. Debrossard,* 2015-Ohio-1054, ¶ 13 (4th Dist.), citing *State v. Guseman*, 2009-Ohio-952, ¶ 20 (4th Dist.), citing *State v. Bowie*, 2002-Ohio-3553, ¶ 8, 12, and 16 (4th Dist.), citing *Whren v. United States*, 517 U.S. 806, 809–810 (1996). Moreover, the Supreme Court of Ohio has held, "Where a police officer stops a vehicle based on probable cause that a traffic violation has occurred or was occurring, the stop is not unreasonable under the Fourth Amendment to the United States Constitution even if the officer had some ulterior motive for making the stop[.]" *Dayton v. Erickson*, 76 Ohio St.3d 3, 11–12 (1996), paragraph one of the syllabus. Here, the dashboard camera video shows the marked lane violations. Thus, Trooper Lewis possessed a sufficient lawful basis for the traffic stop.

{¶76} After the stop, driver Robinson consented to a search of the vehicle and Trooper Lewis found a rubber glove that contained a brown substance, suspected to be heroin. After Lewis field-tested the substance, which tested positive for heroin, Lewis possessed probable cause to search the car. After finding the condom wrapper in James' purse and reviewing the backseat camera recording, James voluntarily provided Lewis with the narcotics that she had concealed.

{¶77} In the case sub judice, after our review of the evidence we do not believe that appellant has shown a valid basis to suppress the evidence discovered during the traffic

stop. Consequently, trial counsel reasonably could have decided that filing the motion would have constituted a futile act. Appellant has not, therefore, shown that trial counsel violated an essential duty by failing to file, or refile, a motion to suppress evidence. *See State v. Whitehead,* 2022-Ohio-479, ¶ 46-47 (4th Dist.)(when officer observed vehicle in question failed to maintain safe distance from vehicle in front of it, slowed to 40 miles per hour while traveling in 55-mile-per-hour zone, and made unexpected lane change, totality of circumstances supported finding that officer possessed reasonable suspicion that criminal activity may be afoot and probable cause that traffic violation occurred; thus, officer possessed lawful basis to conduct traffic stop and trial counsel's failure to file suppression motion does not constitute ineffective assistance of counsel.).

{¶78} Thus, because appellant cannot demonstrate that the filing of the motion to suppress the narcotics found during the traffic stop would have been granted, appellant did not demonstrate ineffective assistance of counsel.

{¶79} Accordingly, based on the foregoing reasons, we overrule appellant's third assignment of error.

IV.

{¶80} In her fourth assignment of error, appellant asserts that her trial counsel's failure to call codefendant Robinson as

a witness amounted to deficient performance and that this deficient performance prejudiced appellant's defense. Appellant argues that trial counsel made a post-conviction statement to appellate counsel and appellant's mother on a February 18, 2025 phone call that alleged that trial counsel did not call Robinson as a witness because counsel "heard the prosecutor say that if Robinson testified, he would be charged with perjury." In support of her claim, appellant attached Exhibit A (Affidavit of Appellate Counsel), Exhibit B (Affidavit of Tevin Robinson), Exhibit C (Ohio Department of Rehabilitation and Correction Offender Search Results for Jasmine James), and Exhibit D (Affidavit of India Tuggle, AKA McKinney).

{¶81} Appellee, however, argues that when affidavits or other proof outside the record are necessary to support an ineffective assistance claim, such a claim is not appropriate for consideration on direct appeal. We agree. In a direct appeal, "it is impossible to determine whether [an] attorney was ineffective in his [or her] representation . . . where the allegations of ineffectiveness are based on facts not appearing in the record." *State v. Cooperrider*, 4 Ohio St.3d 226, 228 (1983); *accord State v. Cole*, 2025-Ohio-675, ¶ 7 (2d Dist.) ("Off-the-record events or conversations will not support an ineffective-assistance claim on direct appeal."). Consequently, a direct appeal is not the appropriate place to consider a claim

of ineffective assistance of trial counsel that turns on information that is outside the record. *State v. Bunch*, 2022-Ohio-4723, ¶ 35; *accord State v. Kennard*, 2016-Ohio-2811, ¶ 23 (holding that, where proof outside the record is necessary to support a claim for ineffective assistance of trial counsel, the claim is purely speculative and not appropriate for consideration on direct appeal); *State v. Houser,* 2026-Ohio-32, ¶ 25 (10th Dist.)(because defendant bases his ineffective assistance of counsel claim in direct appeal on evidence outside the record, claim is barred for review).

{¶82} In the case sub judice, because appellant bases this particular ineffective-assistance claim on evidence outside the record we cannot consider that claim on direct appeal. *See State v. Spurling*, 2021-Ohio-3056, ¶ 12 (1st Dist.) (court unable to determine on direct appeal an ineffective-assistance claim that trial counsel gave false assurances that the trial court would sentence defendant to less than six years based on facts outside the record); *State v. Bloodworth*, 2019-Ohio-1222, ¶ 6 (9th Dist.) (court could not review on direct appeal defendant's argument that his counsel was ineffective for inducing him to plead guilty based on an expectation of a shorter prison term because the record did not include counsel's statements); *State v. Radel*, 2009-Ohio-3543, ¶ 18 (5th Dist.) ("Because a determination of appellant's claim of ineffective

assistance of counsel involves facts outside the record, appellant's argument concerning ... alleged erroneous advice that she would receive the minimum sentence must fail based on the authority of *Cooperrider*."); *State v. Ahart*, 2025-Ohio-1561, ¶ 17 (we cannot review Ahart's ineffective-assistance claim because Ahart bases it on proof that is not in the record.).

{¶83} Further, as for appellant's attached affidavits, "[a] reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter." *State v. Ishmail*, 54 Ohio St.2d 402 (1978), paragraph one of the syllabus. Thus, we may not consider appellant's attached affidavits.

{¶84} Accordingly, we overrule appellant's fourth assignment of error.

V.

{¶85} In appellant's final assignment of error, she asserts that trial counsel performed ineffectively. In particular, appellant contends that counsel (1) failed to object to appellee's use of the body-camera and cruiser-camera footage of the traffic stop, (2) failed to vigorously cross-examine Trooper Lewis, and (3) failed to call co-defendant Robinson to testify as a witness.

{¶86} With respect to the body-camera and cruiser-camera footage, appellant contends that trial counsel failed to object

to the videos, which appellant refers to as "a hot mess" being offered for any reason. However, appellee counters that because James, Robinson, and appellant were co-conspirators with defined roles in this drug trafficking offense, Robinson and James's statements are not hearsay. Evid.R. 801(D) provides that a statement is not hearsay if:

> (2) Admission by party-opponent. The statement is offered against a party and is (a) the party's own statement, in either an individual or a representative capacity, or (b) a statement of which the party has manifested an adoption or belief in its truth, or (c) a statement by a person authorized by the party to make a statement concerning the subject, or (d) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (e) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy upon independent proof of the conspiracy.

{¶87} As appellee points out, " '[t]here is no requirement that the defendant be charged with the crime of conspiracy in order to introduce out-of-court statements by co-conspirators under Evid.R. 801(D)(2)(e).' " *State v. Johnson*, 2015-Ohio-3248, ¶ 104 (10th Dist.), quoting *State v. Eacholes*, 2014-Ohio-3993, ¶ 19 (12th Dist.). Moreover, " '[i]ndependent proof of conspiracy merely requires that the State present evidence sufficient to raise the inference of conspiracy.' " *Johnson* at ¶ 104, quoting *State v. Croom*, 2013-Ohio-3377, ¶ 66 (2d Dist.).

{¶88} Second, appellant argues that trial counsel failed to vigorously cross-examine Trooper Lewis because (1) counsel

should have objected when Trooper Lewis stated that the lack of luggage indicated drug "body couriers" because typical females at least have an overnight bag when appellee did not offer Trooper Lewis as an expert on "criminal behavior," and (2) did not vigorously cross-examine Trooper Lewis regarding Robinson's alleged lies, failing to photograph the drugs in plain sight, using the video as coercion, his statement that appellant asked James, "Is it good?", and the videos.

{¶89} Appellee, however, contends that the scope of cross-examination falls within the ambit of trial strategy, and debatable trial tactics do not establish ineffective assistance of counsel. *State v. Spaulding,* 2016-Ohio-8126, ¶ 90, quoting *State v. Conway*, 2006-Ohio-2815, ¶ 101; *State v. Leonard,* 2004-Ohio-6235, ¶ 146. In fact, "[t]rial counsel need not cross-examine every witness; indeed, doing so can backfire . . . The strategic decision not to cross-examine witnesses is firmly committed to trial counsel's judgment." *State v. Otte*, 74 Ohio St.3d 555, 565 (1996). Moreover, counsel's decision to limit cross-examination may be part of a strategy to avoid eliciting any further damaging testimony. *See State v. Reeves*, 2005-Ohio-5838, ¶ 26 (10th Dist.) (during closing, counsel challenged both the credibility of the witness and his ability to remember events; furthermore, the strategic decision whether or not to

cross-examine a witness is firmly committed to the judgment of trial counsel.).

{¶90} Finally, appellant contends that trial counsel rendered ineffective assistance of counsel when she did not call a potential witness (Robinson) to testify. In support, appellant refers to the Robinson affidavit discussed above, which we may not consider as it is outside of the trial record. Furthermore, we again note that it is well-established that the decision to call or not to call a witnesses is generally viewed as a trial tactic. *State v. Jones,* 2002-Ohio-5505 (12th Dist.), ¶ 22. Therefore, the decision not to call a witness is presumed reasonable. To overcome that presumption, and to establish prejudice, a defendant "must establish that the testimony of [a] witness would have significantly assisted the defense[,] and that the testimony would have affected the outcome of the case." *Id. See State v. Ramirez*, 2005-Ohio-2662, ¶ 41 (12th Dist.)(record indicates counsel was aware of the potential witnesses; thus, the decision not to have them testify does not appear to have been one of uninformed judgment. . . and even assuming that defense counsel lacked a sufficient reason for not calling the potential witnesses, we are not convinced their testimony would have significantly assisted the defense).

{¶91} Similarly, in the case at bar, we believe that appellant has not established any prejudice from trial counsel's

strategy not to call Robinson as a witness. As appellee points out, it is impossible to know whether Robinson would testify consistently with his affidavit, and whether Robinson's prior criminal record could generate questions regarding credibility and could have damaged appellant's defense.

{¶92} Furthermore, no indication exists that the outcome of the trial would have been different had trial counsel called Robinson to testify. To conclude that appellant's trial counsel performed ineffectively, appellant must establish prejudice. In other words, appellant must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, *supra,* 466 U.S. 668, 694. A "reasonable probability" is more than "some conceivable effect," but less than "more likely than not [the error] altered the outcome of the case." *Strickland* at 693. A "reasonable probability" is a probability sufficient to undermine confidence in the result of the proceeding. *Strickland* at 690-691; *Williams v. Taylor*, 529 U.S. 362, 390-391 (2000).

{¶93} As appellee points out, appellant has not established prejudice. As noted above, it is well-settled that debatable strategic and tactical decisions may not form the basis of a claim for ineffective assistance of counsel, even if a better strategy is arguably available. *State v. Phillips*, 74 Ohio

St.3d 72, 85 (1995); *State v. Lawrence*, 2019-Ohio-2788, ¶ 19 (12th Dist.). In the case sub judice, even if we accept, for purposes of argument, that trial counsel's alleged failure to (1) challenge the dash-camera video and cruiser-camera video, (2) cross-examine Trooper Lewis more vigorously, and (3) call Robinson to testify on appellant's behalf constituted ineffective assistance, appellant nevertheless failed to establish a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Hughes, supra,* 2025-Ohio-894, at ¶ 61, citing *Spaulding*, *supra,* 2016-Ohio-8126, at ¶ 153, quoting *Strickland* at 694.

{¶94} Thus, we do not believe that trial counsel provided deficient performance, nor do we believe that counsel's actions rose to the level of prejudice as defined in *Strickland.* Consequently, we believe that appellant did not establish that she received ineffective assistance of trial counsel.

{¶95} Accordingly, for all of the foregoing reasons, we overrule appellant's final assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed. Appellee shall recover of appellant the costs herein taxed.

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 the 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 that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Hess, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.