[Cite as *State v. Shropshire*, 2023-Ohio-2783.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

WILLIE SHROPSHIRE

Defendant-Appellant

JUDGES:
Hon. W. Scott Gwin, P.J.
Hon. John W. Wise, J.
Hon. Craig R. Baldwin, J.

Case No. 2022 CA 00159

O P I N I O N

CHARACTER OF PROCEEDING:	Criminal Appeal from the Court of Common Pleas, Case No. 2022 CR 00376
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	August 10, 2023

APPEARANCES:

For Plaintiff-Appellee

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Wise, J.

{¶1} Appellant Willie Cassie Shropshire appeals his conviction on one count of Aggravated Trafficking in Drugs and one count of Aggravated Possession of Drugs, entered in the Stark County Court of Common Pleas following a jury trial.

{¶2} Appellee is the state of Ohio.

STATEMENT OF THE FACTS

{¶3} For purposes of this Opinion, the relevant facts and procedural history are as follows:

{¶4} On March 2, 2022, the Stark County Grand Jury indicted Appellant Willie Cassie Shropshire on one count of Aggravated Trafficking in Drugs, in violation of R.C. §2925.03(A)(2)/(C)(1)(f), a first-degree felony, and one count of Aggravated Possession of Drugs, in violation of R.C. §2925.11(A)/(C)(1)(e), a first-degree felony. Each count also contained a Major Drug Offender specification pursuant to R.C. §2941.1410(A).

{¶5} These charges arose from a traffic stop which took place in Massillon, Ohio, on February 21, 2022.

{¶6} On May 12, 2022, Appellant filed a Motion to Suppress challenging the lawfulness of the traffic stop and the subsequent search of the vehicle.

{¶7} On June 27, 2022, the trial court held a hearing on Appellant's motion to suppress. At the hearing, the trial court heard testimony from Patrolman Matthew Kruger and Detective Shaun Dadisman. Also presented as evidence was the Massillon Police Department dash cam video.

{¶8} By Judgment Entry filed August 2, 2022, the trial court denied Appellant's Motion to Suppress.

{¶9} On August 19, 2022, Appellant filed a Motion to Reconsider the denial of Motion to Suppress with the trial court.

{¶10} By Judgment Entry filed September 8, 2022, the trial court denied the Motion.

{¶11} On November 2-3, 2022, the case proceeded to jury trial. At trial, the state of Ohio presented testimony and evidence from Det. Shaun Dadisman, Det. Mike Volpe, Patrolman Matthew Kruger, and Officer Ryan Wood, as follows:

{¶12} Detective Dadisman testified that he is employed by the Massillon Police Department and is a member of the FBI Safe Streets Task Force. (T. at 196). He explained that he was in charge of a drug investigation involving Appellant Willie Shropshire and was one of several law enforcement officers personally surveilling a particular area of Massillon on the evening of February 21, 2022. (T. at 198-199). While surveilling the area for drug activity, he observed a Kia Sportage in the Jimmy John's parking lot and watched it for approximately ten minutes until it eventually pulled out and left the parking lot. (T. at 199-200, 223).

{¶13} Officers Kruger and Wood were also both on duty that evening, in separate marked cruisers. Det. Dadisman had asked them to remain in the area to assist with the Shropshire investigation and to conduct a traffic stop. (T. at 242, 247, 259-260). Officer Kruger observed the Kia Sportage exit the Jimmy John's parking lot and proceed eastbound on Federal Avenue Northwest. (T. at 243). He positioned his cruiser behind the Sportage to follow it, but the Sportage immediately made a right hand turn into the backside of a McDonald's parking lot. (T. at 242-243). The vehicle failed to use its turn

signal prior to turning into the McDonald's lot, so he initiated a traffic stop. (T. at 242-243, 247).

{¶14} At that time, the remaining officers all converged on that location. (T. at 211, 224, 260). Officer Wood described the scene as "chaotic." (T. at 274). Officers yelled verbal commands for the suspects to stay in the vehicle, but Appellant Shropshire failed to listen and instead immediately exited the passenger side of the vehicle. (T. at 223-224, 244, 261, 279, 283-284). Shropshire then made furtive movements toward the vehicle and reached back into it one or two times as the officers continued shouting their commands. (T. at 225, 227, 244, 260).

{¶15} According to Det. Dadisman, Shropshire looked back at the officers and then "made several motions down toward the floorboard with his hands, almost in debate of movement, whether or not to grab what was located right there." (T. at 218).

{¶16} Det. Volpe believed Shropshire was "preparing for either fight or flight." (T. at 224). From his position, Det. Volpe also observed a white, plastic, grocery-style bag on the passenger side floor of the vehicle, and saw Shropshire attempting to reach for something in that location every time he reached inside the vehicle. (T. at 225, 231, 234). Although Shropshire was reaching in that general area, Det. Volpe was unable to tell if he ever actually touched the bag. (T. at 227). However, Det. Volpe was certain that Shropshire was reaching for the bag because there was nothing else in that area to grab. (T. at 227). He testified that he believed Shropshire was going to grab the bag and flee. (T. at 225).

{¶17} Shropshire "continued to shuffle back and forth and look in different directions," which Officer Wood perceived as "implying that he was going to run." (T. at

261). Officer Wood brought out K-9 Loki in a bulletproof vest and harness lead, and yelled warnings that the K-9 would be "sent" and Shropshire would be bitten if he did not comply and get on the ground. (T. at 261, 278-279, 284). Shropshire was "literally surrounded" by officers, so he eventually surrendered and complied by getting on the ground. (T. at 225, 228, 261, 281, 284). Both the driver and Shropshire were taken into custody, handcuffed, and detained in separate cruisers. (T. at 225, 245, 249, 261).

{¶18} Once the scene was secured, Det. Dadisman gave permission for Officer Wood to have Loki perform an "open air sniff' around the vehicle. (T. at 202, 226, 262, 282). Loki alerted on the passenger side door on two separate passes around the vehicle, indicating the presence of illegal narcotics within the vehicle. (T. at 262, 272). The first time around the vehicle, Loki's "head snapped" and his behavior changed as he jumped on the passenger side door, which Officer Wood testified is his "final trained response" and a "true alert that you cannot fake." (T. at 271).

{¶19} The second time around the vehicle, Loki alerted in the same area again, with his "head snapping" and "jumping up," again indicating the presence of narcotics within the vehicle. (T. at 271). Law enforcement officers then searched the vehicle. (T. at 202, 226, 262-263). On the floor on the passenger side of the vehicle, Officer Wood retrieved the white, plastic grocery bag, which was tied closed. (T. at 272-273, 282-283, 285). Two clear, gallon-sized bags were found inside of the grocery bag, containing almost two pounds (895 grams) of a white, rock-like substance, which was sent to the crime lab for analysis and was later determined to be crystal methamphetamine. (T. at 202-204, 213, 226, 262-263, 272).

{¶20} Appellant Shropshire did not have any drugs or money on or about his person, but the driver had approximately $1,800.00 in one of his pockets. (T. at 215, 231, 251).

{¶21} Officer Kruger asked investigators what to do with the $1,800 cash, and he was advised to return it to the driver, which he did. (T. at 216, 255-256). According to Det. Volpe, the federal threshold to seize money is $5,000.00, and they cannot seize any amount less than that. (T. at 232). The driver was cited for driving while under an OVI suspension, but was eventually released from the scene and the vehicle was towed. (T. at 215-216, 246, 250, 252-253).

{¶22} Appellant Shropshire was arrested and taken to jail. During his time at the jail, Shropshire made a couple of phone calls. (T. at 204). During a jail call on February 21, 2022, an unidentified man says, "Whoever you was meetin' put the play down," and Shropshire replied, "I mean, I mean, that's, that's a fact. I mean, there can't be no other way." (T. at 207). Based on Det. Dadisman's experience with drug investigations, he understood the phrase "somebody put a play down" to mean that a "setup" had occurred and the situation was potentially set up by someone else. (T. at 207-208; State's Ex. 2 at 02:20).

{¶23} While speaking to an unidentified female in another jail call on February 22, 2022, Shropshire discussed the driver's decision to pull over, saying, "That bitch ass nigger just pulled over. Like, he seen 'em and everything. I didn't even see 'em. He literally just pulled over. I was mad as fuck, for real." (State's Ex. 4 at 02:16).

{¶24} The state also presented the following evidence: the crime lab report, the bags of methamphetamine, two audio recording of jail calls, the dash camera video from the Massillon Police Department and a body camera video from Officer Wood.

{¶25} The defense did not present any witnesses.

{¶26} Following deliberations, the jury returned guilty verdicts on both counts and the trial court made the additional finding that the State proved the Major Drug Offender specification beyond a reasonable doubt.

{¶27} At the sentencing hearing, the trial court found that the Aggravated Possession count merged with the Aggravated Trafficking count. The court imposed an indefinite sentence of a minimum mandatory term of eleven (11) years and a maximum mandatory term of sixteen-and-a-half (16 ½) years.

{¶28} Appellant now appeals, raising the following errors for review:

ASSIGNMENTS OF ERROR

{¶29} "I. THE TRIAL COURT ERRED IN NOT GRANTING THE APPELLANT'S MOTION TO SUPPRESS.

{¶30} "II. APPELLANT'S CONVICTIONS WERE AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE.

{¶31} "III. THE REAGAN TOKES ACT AND SUBSEQUENT VERSIONS OF THE OHIO REVISED CODE ENACTING THE SAME IMPOSING SENTENCES FOR FIRST AND SECOND DEGREE QUALIFYING FELONIES VIOLATE THE UNITED STATES AND OHIO CONSTITUTIONS."

I.

{¶32} In his first assignment of error, Appellant argues that the trial court erred in not granting his motion to suppress. We disagree.

{¶33} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether said findings of fact are against the manifest weight of the evidence. *See*, *State v. Fanning* (1982), 1 Ohio St.3d 19, 437 N.E .2d 583; *State v. Klein* (1991), 73 Ohio App.3d 486, 597 N.E.2d 1141; *State v. Guysinger* (1993), 86 Ohio App.3d 592, 621 N.E.2d 726. Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. *See State v. Williams* (1993), 86 Ohio App.3d 37, 619 N.E.2d 1141, overruled on other grounds. Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry* (1994), 95 Ohio App.3d 93, 641 N.E.2d 1172; *State v. Claytor* (1993), 85 Ohio App.3d 623, 620 N.E.2d 906; *Guysinger, supra*. As the United States Supreme Court held in *Ornelas v. U.S.,* (1996), 517 U.S. 690, 116 S.Ct. 1657, "... as a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal."

{¶34} In a motion to suppress, the trial court assumes the role of trier of fact, and, as such, is in the best position to resolve questions of fact and evaluate witness credibility. *Guysinger, supra*, at 594 (citations omitted). Accordingly, an appellate court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *Id.,* citing *State v. Fausnaugh* (Apr. 30, 1992), Ross App. No. 1778, 1992 W L 91647.

{¶35} Herein, Appellant challenges the traffic stop and the subsequent search of the vehicle.

Traffic Stop

{¶36} "Before a law enforcement officer may stop a vehicle, the officer must have a reasonable suspicion, based upon specific and articulable facts that an occupant is or has been engaged in criminal activity." *State v. Gedeon* (1992), 81 Ohio App.3d 617, 618. Reasonable suspicion constitutes something less than probable cause. *State v. Carlson* (1995), 102 Ohio App.3d 585, 590. "[I]f the specific and articulable facts available to an officer indicate that a motorist may be committing a criminal act, * * * the officer is justified in making an investigative stop." *Id.* at 593. The propriety of an investigative stop must be viewed in light of the totality of the circumstances. *State v. Bobo* (1988), 37 Ohio St.3d 177, paragraph one of the syllabus.

{¶37} Thus, if the specific and articulable facts indicate to the officer the driver of an automobile may be committing a criminal act, which includes a violation of a traffic law, the officer can justifiably make an investigative stop. *State v. Carlson* (1995), 102 Ohio App.3d 585, 593, 657 N.E.2d 591. In a situation where the officer has observed a traffic

violation, the stop is constitutionally valid. *Dayton v. Erickson* (1996), 76 Ohio St.3d 3, 9, 665 N.E.2d 1091.

{¶38} At the hearing on the motion to suppress, Officer Kruger testified that he observed the driver of the vehicle in this case fail to signal before making a turn into the parking lot.

{¶39} It is well established an officer may stop a motorist upon his or her observation the vehicle in question violated a traffic law. *Dayton v. Erickson*, 76 Ohio St.3d 3, 11-12, 665 N.E.2d 1091 (1996). "[E]ven a de minimis traffic violation provides probable cause for a traffic stop." *Id.* at 9. "Trial courts determine whether any violation occurred, not the extent of the violation." *State v. Hodge*, 147 Ohio App.3d 550, 2002-Ohio-3053, 771 N.E.2d 331, ¶ 27. Moreover, an officer is not required to prove the suspect committed an offense beyond a reasonable doubt or even satisfy the lesser standard of probable cause to believe the defendant violated the law. *Westlake v. Kaplysh*, 118 Ohio App.3d 18, 20, 691 N.E.2d 1074 (1997).

Search of the Vehicle

{¶40} When Appellant exited the vehicle, after being told to remain in the vehicle, the white, plastic grocery bag was readily visible through the open passenger side door. The officers then closed the door of the vehicle, without looking in the bag, and had the K-9 do a "sniff" test of the vehicle, which resulted in the K-9 alerting to the presence of drugs on the passenger side of the vehicle.

{¶41} The use of a narcotics dog to detect the odor of drugs does not constitute a "search" and an officer is not required, prior to a dog sniff, to establish either probable cause or a reasonable suspicion that drugs are concealed in a vehicle. *See Illinois v.*

Caballes, 543 U.S. 405, 409, 125 S.Ct. 834, 838, 160 L.Ed.2d 842 (2005); *United States v. Place*, 462 U.S. 696, 707, 103 S.Ct. 2637, 2645, 77 L.Ed.2d 110 (1983); *State v. Carlson*, 102 Ohio App.3d 585, 594, 657 N.E.2d 591 (9th Dist.1995); *United States v. Seals*, 987 F.2d 1102, 1106 (5th Cir.1993).

{¶42} Further, it is well established that the automobile exception to the warrant requirement allows police to conduct a warrantless search of a vehicle if there is probable cause to believe the vehicle contains contraband. *State v. Ortiz*, 5th Dist. Guernsey No. 00CA38, 2001WL520976 (May 11, 2001) citing *State v. Mills*, 62 Ohio St.3d 357, 367, 528 N.E.2d 972 (1992). When a narcotics dog alerts to the odor of drugs from a lawfully detained vehicle, an officer has probable cause to search the vehicle for contraband. *See State v. Woodson*, 5th Dist. Stark No. 2007-CA-00151, 2008-Ohio-670, ¶ 20; *See also State v. Elliot*, 5th Dist. Guernsey No. 18 CA 22, 2019-Ohio-4411.

{¶43} Here, because the vehicle was lawfully stopped, when the narcotics dog alerted to the odor of drugs coming from vehicle, we find no warrant was required prior to the search of the vehicle which resulted in seizure of the methamphetamines.

{¶44} Having found that the officers had probable cause to initiate a traffic stop based on the observation of a traffic violation, we decline to address Appellant's argument regarding whether the confidential tip in this case was corroborated. We further find that Appellant did not raise this argument in his motion to suppress. “It is well-settled law that issues not raised in the trial court may not be raised for the first time on appeal because such issues are deemed waived.” *Columbus v. Ridley,* 2015-Ohio-4968, 50 N.E.3d 934, ¶ 28 (10th Dist.), *quoting State v. Barrett*, 10th Dist. Franklin No. 11AP-375, 2011-Ohio-4986, 2011 WL 4489169, ¶ 13; *see State v. Comen*, 50 Ohio St.3d 206, 211, 553 N.E.2d

640 (1990). This principle also applies to arguments not asserted either in a written motion to suppress or at the suppression hearing. *Id. State v. Stevens*, 5th Dist. No. 2022CA0017, 2023-Ohio-889, 210 N.E.3d 1154, ¶ 20

{¶45} Based on the foregoing, we find the traffic stop and subsequent search of the vehicle was justified, and the trial court's denial of Appellant's motion to suppress was based on competent, credible evidence.

{¶46} Appellant's first assignment of error is overruled.

II.

{¶47} In his second assignment of error, Appellant argues his convictions were against the manifest weight and sufficiency of the evidence. We disagree.

{¶48} On review for manifest weight, a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine "whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Martin,* 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). *See also State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997). The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175.

{¶49} On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks,* 61 Ohio St.3d 259, 574 N.E.2d 492 (1991). "The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt."

Id. at paragraph two of the syllabus, following *Jackson v. Virginia,* 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

{¶50} Appellant herein was convicted of Aggravated Trafficking in Drugs, in violation of R.C. §2925.03(A)(2)(C)(1) and Aggravated Possession of Drugs, in violation of R.C. §2925.11(A)/(C)(1)(c), which state:

R.C. §2925.03 Trafficking Offenses

(A) No person shall knowingly do any of the following:

***

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person.

***

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or schedule II, with the exception of marihuana, cocaine, L.S.D., heroin, hashish, and controlled substance analogs, whoever violates division (A) of this section is guilty of aggravated trafficking in drugs. The penalty for the offense shall be determined as follows:

***

(f) If the amount of the drug involved equals or exceeds one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

R.C. §2925.11 Drug Possession Offenses

(A) No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog.

***

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, any fentanyl-related compound, hashish, and any controlled substance analog, whoever violates division (A) of this section is guilty of aggravated possession of drugs. The penalty for the offense shall be determined as follows:

***

(e) If the amount of the drug involved equals or exceeds one hundred times the bulk amount, aggravated possession of drugs is a felony of the first degree, the offender is a major drug offender, and the court shall

impose as a mandatory prison term a maximum first degree felony mandatory prison term.

R.C. 2941.1410 Major Drug Offender Specification

(A)Except as provided in sections 2925.03 and 2925.11 and division (E)(l) of section 2925.05 of the Revised Code, the determination by a court that an offender is a major drug offender is precluded unless the indictment, count in the indictment, or information charging the offender specifies that the offender is a major drug offender. The specification shall be stated at the end of the body of the indictment, count, or information, and shall be stated in substantially the following form …

{¶51} R.C. §2901.22(B) sets forth the definition of how and 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 the 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.

{¶52} R.C. §2901.22

{¶53} The intent with which an act is committed may be inferred from the act itself and the surrounding circumstances, including acts and statements of a defendant. *State*

v. Garner, 74 Ohio St.3d 49, 60, 1995-Ohio-168, 656 N.E.2d 623, 634(1995); *State v. Wallen*, 21 Ohio App.2d 27, 34, 254 N.E.2d 716, 722(5th Dist. 1969).

{¶54} "Whether a person acts knowingly can only be determined, absent a defendant's admission, from all the surrounding facts and circumstances, including the doing of the act itself." *State v. Johnson*, 56 Ohio St.3d 35, 38, 381 N.E.2d 637, 56 Ohio St.2d 35 (1978) *citing State v. Huffman,* 131 Ohio St. 27, 1 N.E.2d 313 (1936): *State v. Rojas*, 64 Ohio St.3d 131, 139, 592 N.E.2d 1376 (1992); State *v. Huff*, 145 Ohio App.3d 555, 563, 763 N.E.2d 695 (1st Dist. 2001). (Footnote omitted.) Thus, "[t]he tests for whether a defendant acted knowingly is a subjective one, but it is decided on objective criteria." *Id. citing State v. Adams*, 4th Dist. Ross No. 94 CA 2041, 1995 WL 360247(June 8, 1995) and *State v. Paidousis*, 10th Dist. Franklin No. 00AP-118, 2001 WL 436079 (May 1, 2001). *See also, State v. Butler*, 5th Dist. Holmes No. 2012-CA-7, 2012 WL 5306217, 2012-Ohio-5030, ¶ 25.

{¶55} Appellant herein argues the State failed to prove the drugs belonged to Appellant or any physical connection to him to the bags of drugs through DNA or fingerprints. (Appellant's Brief at 13).

{¶56} R.C. §2925.01(K) defines possession as follows:

> 'Possess' or 'possession' means having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.

{¶57} R.C. §2901.21 provides the requirements for criminal liability and provides that possession is a "voluntary act if the possessor knowingly procured or received the

thing possessed, or was aware of the possessor's control of the thing possessed for sufficient time to have ended possession." R.C. §2901.21(D)(1).

{¶58} Possession may be actual or constructive. *State v. Butler*, 42 Ohio St.3d 174, 176, 538 N.E.2d 98 (1989); *State v. Haynes*, 25 Ohio St.2d 264, 267 N.E.2d 787 (1971); *State v. Hankerson*, 70 Ohio St.2d 87, 434 N.E.2d 1362 (1982), syllabus. To establish constructive possession, the evidence must prove that the defendant was able to exercise dominion and control over the contraband. *State v. Wolery*, 46 Ohio St.2d 316, 332, 348 N.E.2d 351 (1976). Dominion and control may be proven by circumstantial evidence alone. *State v. Trembly*, 137 Ohio App.3d 134, 738 N.E.2d 93 (8th Dist. 2000). Circumstantial evidence that the defendant was located in very close proximity to the contraband may show constructive possession. *State v. Butler, supra; State v. Barr*, 86 Ohio App.3d 227, 235, 620 N.E.2d 242, 247-248 (8th Dist. 1993); *State v. Morales*, 5th Dist. Licking No. 2004 CA 68, 2005-Ohio-4714, ¶ 50; *State v. Moses*, 5th Dist. Stark No. 2003CA00384, 2004 WL 2260571, 2004-Ohio-4943, ¶ 9. Ownership of the contraband need not be established in order to find constructive possession. *State v. Smith*, 9th Dist. Summit No. 20885, 2002 WL 1363704, 2002-Ohio-3034, ¶ 13, *citing State v. Mann*, 93 Ohio App.3d 301, 308, 638 N.E.2d 585 (8th Dist. 1993). Furthermore, possession may be individual or joint. *Wolery,* 46 Ohio St.2d at 332, 348 N.E.2d 351.

{¶59} Upon review, we find that based on the testimony of the officers as set forth above, the state of Ohio presented sufficient evidence to prove that Appellant possessed the drugs in this case.

{¶60} The jury in this case heard testimony from multiple police officers and watched the dash-cam and body-cam videos of the stop and search. The evidence

showed that Appellant was the front-seat passenger and the drugs were found on the floor where he had been sitting immediately before he exited the vehicle. Appellant's actions in attempting to reach back into the area where the drugs were located indicate that he had knowledge of the drugs and was exercising dominion or control over same. As such, we find that the state established that Appellant was in constructive possession of the drugs.

{¶61} The jury also heard the telephone calls from the jail wherein Appellant discussed being set up and his irritation that the driver pulled over for the police.

{¶62} The weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison,* 49 Ohio St.3d 182, 552 N.E.2d 180 (1990). The trier of fact "has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page." *Davis v. Flickinger,* 77 Ohio St.3d 415, 418, 674 N.E.2d 1159 (1997). We note circumstantial evidence is that which can be "inferred from reasonably and justifiably connected facts." *State v. Fairbanks,* 32 Ohio St.2d 34, 289 N.E.2d 352 (1972), paragraph five of the syllabus. "[C]ircumstantial evidence may be more certain, satisfying and persuasive than direct evidence." *State v. Richey,* 64 Ohio St.3d 353, 1992-Ohio-44, 595 N.E.2d 915. It is to be given the same weight and deference as direct evidence. *State v. Jenks,* 61 Ohio St.3d 259, 574 N.E.2d 492 (1991).

{¶63} Based on the foregoing, we find that viewing the evidence in the light most favorable to the prosecution, the jury could find that Appellant possessed the methamphetamine found in the passenger compartment of the vehicle in this case. The jury was in the best position to determine the credibility of the witnesses and could choose

to believe the State's witnesses over Appellant's version of events. The jury thus had sufficient evidence to find Appellant guilty as charged.

{¶64} After a careful review of the entire record, weighing the evidence and all reasonable inferences and considering the credibility of the witnesses, this Court cannot conclude that the trier of fact clearly lost its way when it found Appellant guilty of Aggravated Trafficking in Drugs and Aggravated Possession of Drugs. Based on the foregoing, this Court does not find that Appellant's convictions were against the manifest weight of the evidence

{¶65} Accordingly, we find Appellant's convictions are supported by sufficient evidence and are not otherwise against the manifest weight of the evidence.

{¶66} Assignment of error II is denied.

III.

{¶67} In his third assignment of error, Appellant argues that the trial court erred in sentencing him to an indefinite sentence under the Reagan Tokes Law. We disagree.

{¶68} Under the Reagan Tokes Law, qualifying first- and second-degree felonies committed on or after March 22, 2019 are subject to the imposition of indefinite sentences. Appellant contends that the Reagan Tokes Law violates his constitutional right to a trial by jury, the separation-of-powers doctrine and due process.

{¶69} The arguments presented in this case do not present novel issues or any new theory challenging the constitutional validity of any aspect of the Reagan Tokes Law left unaddressed by the Ohio Supreme Court's decision in *State v. Hacker*, Slip Opinion No. 2023-Ohio-2535.

{¶70} Accordingly, pursuant to *Hacker*, *supra*, we overrule Appellant's third assignment of error.

{¶71} For the reasons stated in the foregoing opinion, the decision of the Court of Common Pleas, Stark County, Ohio, is affirmed.

By: Wise, J.

Gwin, P. J., and

Baldwin, J., concur.

JWW/kw 0807