[Cite as *State v. Harold,* 2015-Ohio-954.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2014-P-0012**
- vs -	:	
MATTHEW R. HAROLD,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Court of Common Pleas, Case No. 2013 CR 0257.

Judgment: Affirmed.

Victor V. Vigluicci, Portage County Prosecutor, and *Kristina Drnjevich,* Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

George C. Keith, 135 Portage Trail, P.O. Box 374, Cuyahoga Falls, OH 44223 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Matthew R. Harold, appeals his conviction, following a jury trial, of illegal manufacture of methamphetamine ("meth"), illegal assembly or possession of chemicals for the manufacture of meth, and aggravated possession of meth. At issue is whether appellant's conviction was supported by sufficient, credible evidence. For the reasons that follow, we affirm.

{¶2} Appellant was indicted in a three-count indictment charging him with illegal manufacture of meth, a felony of the second degree, in violation of R.C. 2925.04 (Count One); illegal assembly or possession of chemicals for the manufacture of meth, a felony of the third degree, in violation of R.C. 2925.041(A)(C) (Count Two); and aggravated possession of meth, a felony of the fifth degree, in violation of R.C. 2925.11(A)(C)(1)(a). Appellant pled not guilty and the case was tried to a jury.

{¶3} Deputy James Kordinak of the Portage County Sheriff's Office testified that on February 13, 2013, he was dispatched to meet a Joseph Brown near the Mogadore Reservoir in Suffield Township, Portage County. Mr. Brown had called the Portage County Sheriff's Office and reported a possible meth lab. He reported that, while walking in the area, he found a five-gallon bucket on the side of the road, opened the lid, and smelled a strong chemical odor emanating from inside the bucket.

{¶4} Upon arrival, Mr. Brown led Deputy Kordinak to the site. Mr. Brown pointed out the bucket, which Deputy Kordinak said was about 100 feet from the road. The Portage County Sheriff's Office Dispatch Center advised Deputy Kordinak that the Portage County Drug Task Force had been informed and were on their way to investigate. Mr. Brown and Deputy Kordinak waited until officers from the task force arrived.

{¶5} Detective Steve Lincoln of the Portage County Sheriff's Office, assigned to the Portage County Drug Task Force and certified to investigate clandestine labs, testified that on February 13, 2013, he was assigned to investigate a possible meth lab on the side of the road at Lansinger and Ticknor Roads.

{¶6} When he arrived, Detective Lincoln met with Deputy Kordinak and Mr. Brown. Deputy Kordinak directed Detective Lincoln's attention to the bucket on the side of the road. Detective Lincoln testified the bucket was apparently placed there in an attempt to hide it in the brush. Detective Lincoln brought the bucket to a safe location in a clearing for processing. He opened the bucket and found seven one-pot meth labs inside. Also inside he found a package of lithium batteries and an empty box of instant cold compresses, both of which are used to manufacture meth; a piece of plastic tubing, used to extract gas from a cooking meth lab to make the finished product; and a rubber glove, similar to those used by persons cooking meth to protect their skin from the chemicals and acids used to manufacture meth.

{¶7} Detective Lincoln removed the seven one-pot meth labs from the bucket, opened each, and took samples of the chemicals inside. He later sent the samples to the State Fire Marshal for analysis. He said the one-pot meth labs presented a risk of fire and explosion and respiratory illness. He sent the samples to the Fire Marshal, rather than B.C.I., because the samples were also a fire hazard and, as a result, B.C.I. would not accept them. After the samples were taken, a hazmat company was called to remove the hazardous chemicals from the site. Detective Lincoln also sealed the rubber glove in an evidence bag and submitted it to B.C.I. for DNA analysis in an attempt to determine the owner of the meth labs.

{¶8} Sometime later, B.C.I. advised Detective Lincoln that DNA was found inside the glove and that in uploading the DNA into the Combined DNA Index System ("CODIS"), a computerized program designed to house DNA profiles from suspects and

convicted offenders in various searchable databases, the DNA was identified as being that of appellant.

{¶9} Detective Lincoln then obtained a search warrant to extract DNA from appellant. Appellant's whereabouts were unknown so the detective also obtained an arrest warrant for him. Appellant eventually turned himself in. Detective Lincoln obtained DNA swabs from appellant's cheeks, sealed them in evidence bags, and sent them to B.C.I. Several months later, B.C.I. sent a report to the task force, confirming a match between the DNA found inside the glove and the DNA taken from appellant.

{¶10} Emily Feldenkris, forensic scientist with B.C.I. in the DNA section, testified that making a DNA comparison is a four-step process, which involves: (1) extraction of DNA from cells; (2) quantification, where the scientist determines the amount of DNA available; (3) amplification, a chemical Xeroxing process that allows the scientist to make millions of copies of the target areas on the DNA being analyzed; and (4) comparison of the DNA obtained from evidence to a known standard.

{¶11} Ms. Feldenkris said that the glove found in the bucket was examined by a forensic biologist at B.C.I., who swabbed the *area inside the glove* and then sent the swabs to the DNA section for analysis.

{¶12} Ms. Feldenkris developed a DNA profile from the swabs taken from the glove. A DNA profile consists of a series of numbers that represent different characteristics that are present at 15 different locations on the DNA. Those numbers constitute the DNA profile used by the DNA section in making comparisons. She also developed a separate DNA profile from the swabs taken from appellant. She compared the two profiles and determined that appellant could not be excluded as the source of

the DNA inside the glove; that the DNA taken from inside the glove was consistent with appellant; and that the expected frequency of occurrence, or how often she would expect to find this DNA profile from the glove, is one in every 195 quintillion, 200 quadrillion individuals, which is far more than the seven billion inhabitants of the earth.

{¶13} Christa Rajendram, chemist with the State Fire Marshal Forensic Lab, testified she tested three samples of liquids taken from the suspected meth labs found in the five-gallon bucket. One sample contained petroleum distillate, which is found in ignitable liquids such as paint thinners, charcoal starters, and lamp oils, and two other samples contained sodium hydroxide, which is lye. She concluded these chemicals are consistent with the manufacture of meth.

{¶14} One of the elements of appellant's illegal-manufacturing and illegal-possession-of-chemicals charges in Counts One and Two of the indictment, respectively, is that he was previously convicted of illegal assembly or possession of chemicals for the manufacture of drugs. The parties stipulated that appellant was previously convicted of that offense in 2006.

{¶15} Appellant presented no witnesses or exhibits on his behalf and the state's evidence was therefore undisputed.

{¶16} The jury found appellant guilty of all three counts. The court referred the matter for a pre-sentence investigation.

{¶17} The case came on for sentencing. The court noted that in September 2005, appellant was convicted of illegal assembly or possession of chemicals for the manufacture of drugs and aggravated possession of drugs and placed on probation. Seven months later, in April 2006, appellant was convicted in another case of attempted

illegal manufacture of drugs and illegal assembly or possession of chemicals to manufacture drugs, and was sentenced to three years in prison.

{¶18} The court sentenced appellant on Count One, illegal manufacture of meth, to seven years in prison. On Count Two, illegal assembly or possession of chemicals for the manufacture of meth, the court sentenced appellant to two years. On Count Three, aggravated possession of meth, the court sentenced appellant to one year. The court ordered all sentences to be served concurrently to each other, for a total of seven years in prison.

{¶19} Appellant appeals his conviction, asserting five assignments of error. Because the first three assignments of error are related, they are considered together. They allege:

{¶20} "[1.] The trial court erred in failing to grant Mr. Harold's motion for judgment of acquittal on all charges, as the evidence presented was not legally sufficient to support a conviction.

{¶21} "[2.] The trial court erred to the detriment of Mr. Harold when it gave great weight to DNA evidence when the state hadn't established the required chain of custody.

{¶22} "[3.] Mr. Harold's convictions are against the manifest weight of the evidence."

{¶23} An appellate court reviewing the sufficiency of the evidence examines the evidence admitted at trial and determines whether, after viewing the evidence in a light most favorable to the state, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks*, 61 Ohio

St.3d 259, 273 (1991). “On review for sufficiency, courts are to assess not whether the state’s evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction.” *State v. Thompkins*, 78 Ohio St.3d 380, 390 (1997) (Cook, J., concurring). Whether the evidence is legally sufficient to sustain a verdict is a question of law, which we review de novo. *Id*. at 386.

{¶24} An appellate court also applies the foregoing test in reviewing the trial court’s ruling on a motion for directed verdict under Crim.R. 29 as such motion also tests the sufficiency of the evidence. *State v. Hall*, 11th Dist. Trumbull No. 2011-T-0115, 2012-Ohio-4336, ¶7.

{¶25} In contrast, a court reviewing the manifest weight observes the entire record, weighs the evidence and all reasonable inferences, and considers the credibility of the witnesses. *Thompkins, s*upra, at 387. The court determines whether, in resolving conflicts in the evidence and deciding witness credibility, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *Id*. The discretionary power to grant a new trial should only be exercised in the exceptional case in which the evidence weighs heavily against the conviction. *Id*. Witness credibility rests solely with the finder of fact, and an appellate court is not permitted to substitute its judgment for that of the jury. *State v. Awan*, 22 Ohio St.3d 120, 123 (1986). The role of the reviewing court is to engage in a limited weighing of the evidence in determining whether the state properly carried its burden of persuasion. *Thompkins, supra*, at 390. If the evidence is susceptible to more than one interpretation, an appellate court must interpret it in a manner consistent with the verdict. *State v. Banks*, 11th Dist. Ashtabula No. 2003-A-0118, 2005-Ohio-5286, ¶33.

{¶26} Appellant was convicted of illegal manufacture of meth, in violation of R.C. 2925.04; illegal assembly or possession of chemicals for the manufacture of meth, in violation of R.C. 2925.041; and aggravated possession of meth, in violation of R.C. 2925.11(A)(C)(1)(a). R.C. 2925.04(A), illegal manufacture of meth, provides, "[n]o person shall knowingly * * * manufacture * * * [meth]." "A person acts knowingly * * * when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature." R.C. 2901.22(B).

{¶27} R.C. 2925.041(A), illegal assembly or possession of chemicals to manufacture meth, provides, "[n]o person shall knowingly assemble or possess one or more chemicals that may be used to manufacture [meth] * * * with the intent to manufacture [meth] * * *." R.C. 2925.041(B) provides, "[i]n a prosecution under this section, it is not necessary to allege or prove that the offender assembled or possessed all chemicals necessary to manufacture [meth] * * *. The assembly or possession of a single chemical that may be used in the manufacture of [meth] * * *, with the intent to manufacture [meth] * * *, is sufficient to violate this section."

{¶28} "'Possession of drugs can be either actual or constructive.'" *State v. Herman*, 11th Dist. Portage No. 2008-P-0067, 2009-Ohio-1318, ¶38, quoting *State v. Rollins*, 3d Dist. Paulding No. 11-05-08, 2006-Ohio-1879, ¶22. "Even if the contraband is not in a suspect's 'immediate physical possession,' the suspect may still constructively possess the item, so long as the evidence demonstrates that he or she 'was able to exercise dominion and control over the controlled substance.'" *Herman, supra*, quoting *State v. Lee*, 11th Dist. Trumbull No. 2002-T-0168, 2004-Ohio-6954, ¶41. "To prove constructive possession, '[i]t must also be shown that the person was

conscious of the presence of the object.'" *Herman, supra*, quoting *State v. Hankerson*, 70 Ohio St.2d 87, 91 (1982).

{¶29} Constructive possession of contraband may be proven solely by circumstantial evidence. *Rollins, supra*. "'"[C]ircumstantial evidence and direct evidence inherently possess the same probative value and therefore should be subjected to the same standard of proof."'" *Herman* at ¶39, quoting *State v. Biros*, 78 Ohio St.3d 426, 447 (1997), quoting *Jenks*, *supra,* at paragraph one of the syllabus.

{¶30} R.C. 2925.11(A)(C)(1)(a), aggravated possession of meth, provides, "no person shall knowingly * * * possess [meth]."

{¶31} Appellant argues that the state's evidence was insufficient to prove that he knowingly manufactured meth, knowingly possessed chemicals used to manufacture meth, or that he knowingly possessed meth. We do not agree.

{¶32} The state presented direct, scientific evidence that appellant's DNA was found on the area *inside* the glove. Moreover, Detective Lincoln testified that makers of meth wear rubber gloves like the glove found in the bucket to protect their skin from the chemicals and acids used to make meth. In addition, the glove was found with seven meth labs and chemicals and other items used to manufacture meth. There were no items in the bucket that were unrelated to the manufacture of meth. Ms. Rajendram of the State Fire Marshal's Office said that the chemicals extracted from the meth labs in the bucket contained lye and petroleum distillate, which is consistent with the manufacture of meth. Further, while it is unclear exactly when the glove and other items were placed in the bucket, it was recent enough that the contents of the bucket still produced a strong chemical odor.

{¶33} The state's evidence, when taken together and viewed most strongly in favor of the state, was sufficient for the jury to conclude that appellant knowingly manufactured meth; that he knowingly or constructively possessed one or more chemicals used to manufacture meth; and that he knowingly or constructively possessed meth. We therefore hold the trial court did not err in denying appellant's motion for a directed verdict.

{¶34} For appellant's manifest-weight challenge, he argues the jury improperly found the DNA evidence was credible because the state failed to prove the chain of custody of the glove. We do not agree.

{¶35} The admission or exclusion of relevant evidence, such as the glove at issue here, is within the trial court's discretion. *State v. Robb*, 88 Ohio St.3d 59, 68 (2000). Absent an abuse of discretion, as well as a showing of prejudice, an appellate court will not disturb the ruling of the trial court as to the admissibility of evidence. *State v. Martin*, 19 Ohio St.3d 122, 129 (1985).

{¶36} This court in *State v. Blumensaadt*, 11th Dist. Lake No. 2000-L-107, 2001 Ohio App. LEXIS 4283 (Sep. 21, 2001), stated:

> **{¶37}** Evidence may be authenticated by testimony that a matter is what it is claimed to be. Evid.R. 901(B). "Chain of custody is a part of the authentication and identification mandate set forth in Evid.R. 901 and the state has the burden of establishing the chain of custody of a specific piece of evidence." *State v. Brown*, 107 Ohio App.3d 194, 200 ([3d Dist.]1995), citing *State v. Barzacchini*, 96 Ohio App.3d 440, 457-458 ([6th Dist.]1994). The state's burden, however, is not

> absolute since "the state need only establish that it is reasonably certain that substitution, alteration or tampering did not occur." *State v. Blevins*, 36 Ohio App.3d 147, 150 ([10th Dist.]1987). A chain of custody may be established by direct testimony or by inference. *State v. Conley*, 32 Ohio App.2d 54, 60 ([3d Dist.]1971). The proponent of the evidence need not offer conclusive evidence as a foundation but must offer sufficient evidence to allow the question as to authenticity or genuineness to reach the jury. *State v. Ewing*, [9th Dist.] Lorain No. 97CA006944, 1999 Ohio App. LEXIS 1725 (Apr. 14, 1999). The trier of fact has the task of determining whether a break in the chain of custody exists. *Columbus v. Marks*, 118 Ohio App. 359 ([10th Dist.]1963). *Any breaks in the chain of custody go to the weight of the evidence and not to the admissibility of the evidence. State v. Mays*, 108 Ohio App.3d 598 ([8th Dist.]1995). (Emphasis added.) *Blumensaadt, supra*, at *11-*12.

{¶38} Further, when a chemical analysis is involved, the chain of custody must be established up to the moment of analysis since this provides the basis for the expert testimony and makes that testimony relevant. *Conley*, *supra.*

{¶39} Here, the record shows that Detective Lincoln placed the glove in an evidence bag and sealed it. His partner Detective Centa, who was on scene with him, did not touch the glove, but filled out a form that was submitted with the glove to B.C.I. Matthew Noah, evidence custodian with the Portage County Drug Task Force,

transported the glove to B.C.I. Appellant argues there is a break in the chain of custody because the evidence was analyzed by more than one scientist at B.C.I. However, Ms. Feldenkris said the DNA testing process at B.C.I. is similar to an assembly line in that, first, the evidence is examined by a forensic biologist for the presence of touched DNA samples. Then, the samples are sent to B.C.I.'s DNA laboratory where all the lab work is performed on them. Thereafter, Ms. Feldenkris analyzes the data associated with the lab work. Although Ms. Feldenkris did not personally receive the glove and performed only the fourth step of the DNA testing, i.e., the DNA comparison, her testimony showed there was no "substitution, alteration, or tampering." *Blumensaadt, supra*. Thus, the state presented sufficient evidence concerning the chain of custody of the glove. *Id*.

{¶40} Moreover, Ms. Feldenkris said the DNA testing process was reliable as all steps were performed by qualified scientists, and controls were in place for each step of the test to ensure that the test was working properly and that none of her equipment was contaminated or malfunctioning. Contrary to appellant's argument, Ms. Feldenkris did *not* state she was unsure her testing methods were working properly. Rather, she merely stated that, during a second test she ran as a control, a small amount of additional information was generated, but the amount was so low she could not make any conclusion about its source. In any event, she said that this did not detract from her conclusion about appellant being the source of the DNA inside the glove and the expected frequency of occurrence of that DNA.

{¶41} Appellant argues that the jury improperly gave the DNA evidence great weight. However, in light of the testimony presented regarding B.C.I.'s procedures, the jury was entitled to find, as it obviously did, that there were no breaks in the chain of

custody. As noted above, challenges to the chain of custody go to the *weight or credibility,* rather than the *admissibilit*y, of the evidence. Because the state presented sufficient evidence concerning the chain of custody of the glove, it was for the jury to determine the weight or credibility of that evidence.

{¶42} Appellant also asserts a manifest-weight challenge based on the evidence presented by the state in support of the three counts of which appellant was convicted. In light of the presence of appellant's DNA inside the glove; the fact that the glove was found in the bucket containing seven meth labs, chemicals, and other items used to manufacture meth; and the fact that the bucket was dumped recent enough for its contents to still emanate a strong chemical odor, this is not the exceptional case in which the evidence weighs heavily against the conviction such that the verdict was against the manifest weight of the evidence.

{¶43} The jury, as the trier of fact, was entitled to believe the officers and expert witnesses, which it obviously did. In doing so, we cannot say the jury clearly lost its way and created such a manifest miscarriage of justice that appellant was entitled to a new trial.

{¶44} We therefore hold the state presented sufficient, credible evidence to support appellant's conviction.

{¶45} Appellant's first, second, and third assignments of error are overruled.

{¶46} For appellant's fourth assigned error, he contends:

{¶47} "The trial court erred to the detriment of Mr. Harold when it imposed sentence upon him without any review or consideration of R.C. 2929.11 and 2929.12."

{¶48} Post-H.B. 86, in reviewing whether the trial court's findings are supported by the record and whether a sentence is otherwise contrary to law, this court applies the standard set forth under R.C. 2953.08(G)(2). *State v. Moore,* 11th Dist. Geauga No. 2014-G-3183, 2014-Ohio-5182, ¶29. That statutory provision provides:

> **{¶49}** The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:
>
> **{¶50}** (a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant; [or]
>
> **{¶51}** (b) That the sentence is otherwise contrary to law.

{¶52} In *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, the Supreme Court held that at sentencing:

> **{¶53}** [I]n exercising its discretion the court must carefully consider the statutes that apply to every felony case. Those include R.C. 2929.11, which specifies the purposes of sentencing, and R.C. 2929.12, which provides guidance in considering factors relating to

the seriousness of the offense and recidivism of the offender. *Id*. at ¶38.

{¶54} Appellant argues the trial court did not consider the guidelines and factors in R.C. 2929.11 and 2929.12 because the trial court did not expressly state on the record or in its sentencing entry that it had done so. However, in *State v. Adams*, 37 Ohio St.3d 295 (1988), the Supreme Court of Ohio stated that a trial court's failure to state on the record that it considered the sentencing criteria in R.C. 2929.11 and 2929.12 "raises a presumption that the trial court did, indeed, consider these factors."

{¶55} The Supreme Court in *Adams* held: "A silent record raises the presumption that a trial court considered the factors contained in R.C. 2929.12." *Id*. at paragraph three of the syllabus.

{¶56} This court adopted the *Adams* rule in *State v. Rattay*, 11th Dist. Lake No. 13-048, 1988 Ohio App. LEXIS 4594, *8 (Nov. 18, 1988).

{¶57} Prior to the Supreme Court's holding in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856 and post-*Foster*, Ohio Appellate Districts have repeatedly followed the Supreme Court's holding in *Adams*. For example, the Seventh District adopted the *Adams* rule in *State v. Poindexter*, 7th Dist. Mahoning No. 05 MA 45, 2006-Ohio-3525, ¶10. Also, in *State v. Muhammad*, 8th Dist. Cuyahoga No. 88834, 2007-Ohio-4303, the Eighth District held: "In exercising its discretion, * * * the trial court must consider the factors set forth in R.C. 2929.12." *Muhammad* at ¶14. However, the Eighth District also held: "The trial court is not required to expressly state on the record that it considered statutorily enumerated sentencing factors. Where the record is silent there exists a presumption that the trial court has considered the factors. * * *" *Id*. Further, the

defendant has the burden of coming forward with evidence to rebut the presumption that the trial court considered R.C. 2929.11 and R.C. 2929.12. *State v. Bernadine*, 11th Dist. Portage No. 2010-P-0056, 2011-Ohio-4023, ¶36.

{¶58} From our review of the record, it is clear that the trial court considered the purposes and principles of felony sentencing and the seriousness and recidivism factors in the sentencing statutes in imposing appellant's sentence. The trial court had presided over appellant's trial and had heard the evidence in the case. The court stated in appellant's sentencing entry that it had considered the presentence report, appellant's comments, and the evidence presented by counsel. While the court did not specifically mention R.C. 2929.11 at the sentencing hearing or in the judgment on sentence, the court complied with that statute by stating in its entry that it "considered the purpose of felony sentencing which is to protect the public from future crimes committed by the Defendant and to punish the Defendant," and also by stating that it "considered the need for incapacitating the Defendant, deterring the Defendant and others from future crime, rehabilitating the Defendant, making restitution to the victim of the offense, the public or both." Further, the court considered the seriousness and recidivism factors at the sentencing hearing by considering appellant's history of criminal convictions. Finally, the court's sentence was within the statutory range for the offenses for which appellant stood convicted.

{¶59} In light of the foregoing, the record shows that the trial court considered the sentencing guidelines in R.C. 2929.11 and R.C. 2929.12, but even if the record was silent in this regard, appellant did not meet his burden to rebut the presumption that the

trial court considered the sentencing criteria in R.C. 2929.11 and R.C. 2929.12 in imposing appellant's sentence.

{¶60} Appellant's fourth assignment of error is overruled.

{¶61} For his fifth and final assignment of error, appellant alleges:

{¶62} "The cumulative effect of the errors committed by the trial court combined to deny Mr. Harold due process and a fair trial as guaranteed by the United States and Ohio Constitutions."

{¶63} In *State v. DeMarco*, 31 Ohio St.3d 191 (1987), paragraph two of the syllabus, the Supreme Court of Ohio recognized the cumulative error doctrine. Pursuant to this doctrine, "a conviction will be reversed where the cumulative effect of errors in a trial deprives a defendant of the constitutional right to a fair trial even though each of numerous instances of trial court error does not individually constitute cause for reversal." *State v. Garner*, 74 Ohio St.3d 49, 64 (1995). The doctrine is not applicable unless the record reveals numerous instances of trial court error. *Id*.; *State v. Davis*, 62 Ohio St.3d 326, 348 (1992) ("Inasmuch as the other propositions [of law] are not well taken, their cumulative effect cannot be error.")

{¶64} Appellant argues that the alleged errors set forth in his previous assigned errors amounted to cumulative error. However, since appellant's other assigned errors are not well taken, their cumulative effect is not error. *Id*. Because appellant has failed to demonstrate numerous instances of trial court error, the cumulative error doctrine does not apply.

{¶65} Appellant's fifth assignment of error is overruled.

{¶66} For the reasons stated in the opinion of this court, appellant's assignments of error lack merit and are overruled. It is the judgment and order of this court that the judgment of the Portage County Court of Common Pleas is affirmed.

DIANE V. GRENDELL, J.,

THOMAS R. WRIGHT, J.,

concur.