[Cite as *State v. Hill*, 2025-Ohio-798.]

Released 2/28/25

THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
JACKSON COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 23CA11
	:	
v.	:	
	:	DECISION AND JUDGMENT
QUAYMAR HILL,	:	ENTRY
	:	
Defendant-Appellant.	:	

APPEARANCES:

Elizabeth Miller, Ohio Public Defender, Russell Patterson and Max Hersch, Assistant Ohio Public Defenders, Columbus Ohio, for Appellant.

Randy Dupree, Jackson County Prosecuting Attorney, Ohio, for Appellee.

Smith, P.J.

{¶1} Quaymar Hill, "Hill," appeals the February 14, 2023 Judgment of Conviction and the March 29, 2023 Uniform Sentencing Entry of the Jackson County Court of Common Pleas. A jury convicted Hill of three counts, Aggravated Possession of Drugs (Methamphetamine), R.C. 2925.11(A); Possession of Cocaine, R.C. 2925.11(A); and Aggravated Possession of Drugs (Fentanyl), R.C. 2925.11(A). The trial court imposed an aggregate term of imprisonment of 13 years.

{¶2} On appeal, Hill challenges: (1) the sufficiency of the evidence supporting his conviction as to Count Two, Possession of Cocaine; (2) the consecutive nature of his sentence; and (3) a clerical error contained in the sentencing entry. Based upon our review of the record, we find no merit to the first and second assignments of error. As such, those are overruled. However, Hill's third assignment of error has merit. Accordingly, it is hereby sustained and the matter is remanded to the trial court for resentencing.

FACTUAL AND PROCEDURAL BACKGROUND

{¶3} On May 25, 2021, Hill was indicted on three counts as follows:

> Count One: Aggravated Possession of Drugs (Methamphetamine), R.C. 2925.11(A), a felony of the second degree;
>
> Count Two: Possession of Cocaine, R.C. 2925.11(A), a felony of the second degree; and,
>
> Count Three: Aggravated Possession of Drugs (Fentanyl), R.C. 2925.11(A), a felony of the third degree.

{¶4} Hill was indicted pursuant to a traffic stop occurring on March 12, 2017. On that date, Hill was riding as a passenger in a rental car in which the above-referenced illegal substances were located. The underlying facts pertinent to Hill's arguments will be set forth within the body of this opinion.

{¶5} Due to various circumstances, Hill's jury trial did not occur until February 13, 2023. Hill was sentenced on March 24, 2023. The trial court imposed a prison sentence of six years each on Counts One and Two, and a one-year sentence on Count Three. The trial court ordered that the terms be served consecutively for a total maximum prison sentence of 13 years. Hill was later granted a delayed appeal.

ASSIGNMENT OF ERROR I

> THE TRIAL COURT VIOLATED QUAYMAR HILL'S DUE PROCESS RIGHTS WHEN IT ENTERED A JUDGMENT OF CONVICTTION UNDER COUNT TWO OF THE INDICTMENT FOR POSSESSION OF AT LEAST 20 GRAMS OF COCAINE, IN VIOLATION OF R.C. 2925.11(C)(4)(d), WITHOUT LEGALLY SUFFICIENT EVIDENCE.

Standard of Review

{¶6} 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. *See State v. Foster*, 2023-Ohio-746, ¶ 20 (4th Dist.); *State v. Wickersham*, 2015-Ohio-2756, ¶ 22 (4th Dist.); *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). When reviewing the sufficiency of the evidence, our inquiry focuses primarily upon the adequacy of the evidence; that is, whether the evidence, if believed, reasonably could support a finding of guilt beyond a reasonable doubt. *Thompkins*, syllabus. The

standard of review is whether, after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Jenks*, 61 Ohio St.3d 259, 273 (1991). Furthermore, a reviewing court is not to assess "whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction." *Thompkins*, 78 Ohio St.3d at 390 (Cook, J., concurring).

{¶7} Thus, when reviewing a sufficiency-of-the-evidence claim, an appellate court must construe the evidence in a light most favorable to the prosecution. *See Wickersham, supra*, at ¶ 23; *State v. Hill*, 75 Ohio St.3d 195, 205 (1996). A reviewing court will not overturn a conviction on a sufficiency-of-the-evidence claim unless reasonable minds could not reach the conclusion that the trier of fact did. *See State v. Tibbetts*, 92 Ohio St.3d 146, 162 (2001); *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001).

Legal Analysis

{¶8} Pursuant to Count Two, Hill was convicted of R.C. 2925.11(A), which provides that "No person shall knowingly obtain, possess, or use a

controlled substance or a controlled substance analog." R.C. 2925.11(C)(4)(d) further provides:

> If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of possession of cocaine. The penalty for the offense shall be determined as follows: …If the amount of the drug involved equals or exceeds twenty grams but is less than twenty-seven grams of cocaine, possession of cocaine is a felony of the second degree…

To support Hill's conviction for Possession of Cocaine, the State needed to prove that Hill knowingly possessed the crack cocaine found in the vehicle's glove box and front and rear headliner areas.

{¶9} Hill contends that the State improperly relied upon Hill's mere presence in the car and upon an audio recording from the trooper's cruiser. Hill apparently concedes that knowledge was proven as to the crack cocaine located in the glove box and argues, however, that the evidence was insufficient to prove that he constructively possessed the 21.32 grams of crack cocaine which was discovered in the front and rear headliners of the vehicle. Hill concludes that his conviction under Count Two must be reduced from a second-degree felony under R.C. 2925.11(C)(4)(d) to a fifth-degree felony under R.C. 2925.11(C)(4)(a).

{¶10} " 'Possession * * * may be individual or joint, actual or constructive.' " *Foster, supra,* at ¶ 26, quoting *State v. Wolery,* 46 Ohio

St.2d 316, 332 (1976); *State v. Fry,* 2004-Ohio-5747, ¶ 39 (4th Dist.). " ' "Actual possession exists when the circumstances indicate that an individual has or had an item within his immediate physical possession." ' " *Whitehead, supra* at ¶ 89, quoting *State v. Kingsland,* 2008-Ohio-4148, ¶ 13 (4th Dist.), quoting *Fry* at ¶ 39. "Constructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within his immediate physical possession." *State v. Hankerson,* 70 Ohio St.2d 87 (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.).

{¶11} "Possession"… may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found." R.C. 2925.01(K). *Foster,* supra, ¶ 5 (4th Dist.). *See also Whitehead, supra,* at ¶ 88. R.C. 2901.22(B) states in part: "[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." *State v. Hudson,* 2018-Ohio-133, ¶45 (11th Dist.). "Whether a person knowingly possessed a controlled substance 'is to be determined from all the attendant facts and circumstances available.' " *Id.,* quoting *State v. Teamer,* 82 Ohio St.3d 490, 492 (1998). In this case, Hill was traveling with others when the group was stopped by an officer of the Ohio State Highway Patrol. The key witness at Hill's trial was Trooper Spencer Large.

{¶12} Trooper Large testified that on March 12, 2017, he was patrolling U.S. 35 in Jackson County when he stopped a vehicle being operated at 72 mph in a 60-mph zone. As Trooper Large approached the vehicle, he noticed the smell of raw marijuana from inside the vehicle. There were four occupants of the vehicle. Hill was a front seat passenger. The vehicle was later determined to have been a rental.

{¶13} Trooper Large radioed for assistance and another officer, Deputy Rutherford arrived. Trooper Large placed Hill and the driver, Xavier Mack, inside his cruiser. Once everyone was removed from the vehicle, the troopers searched it. Behind the glove box, the troopers found a bag containing several knotted bags with different substances inside. The

troopers found other bags inside the headliner.[1] A gun box containing a gun and a bag of marijuana was discovered in the trunk. All occupants of the vehicle denied knowledge of the drugs.

{¶14} Trooper Large also testified that his cruiser was equipped with a front camera and a rear camera and audio. The video camera pointed outward from the front of the vehicle. The audio picked up sounds from both inside and outside the vehicle. Trooper Large also wore a belt microphone. When Trooper Large later reviewed the in-car audio and video, he observed Mr. Hill and Mr. Mack having a discussion. At this point in trial, the prosecutor played portions of the video.

{¶15} Trooper Large testified that he was able to recall Mr. Hill's voice. The trooper was questioned as follows:

> Q: [I]s this the conversation that you were referencing a moment ago?
>
> A: Yes.
>
> Q: Where is the comment you were referring to where Mr. Hill says "they're going to have to break it, if they break if, they're going to find some shit?"
>
> A: Yes.

[1] Trooper Large explained that the "headliner" is a cloth piece "where the windshield meets the top of the headliner."

Q: And toward the end of that video, it appears someone whispers "they found it, they found it"?

A: Correct.

{¶16} A second audio clip was played. Trooper Large further testified:

Q: This clip is also a conversation…more of a conversation between Mr. Mack and Mr. Hill?

A: Yes.

Q: [I]t appears that Mr. Hill is trying to come to an agreement as to who will take responsibility for different parts of what was found in the vehicle?

A: Yes….Mr. Hill wanted to cop for the drugs and wanted Mr. Mack to cop the gun.

Q: And this comment was actually Mr. Hill who had commented on the fact that "they were going to find some shit behind the glove box"?

A: Yes.

* * *

Q: Is there anything else that you feel that I have missed here today…that is relevant that leads you to believe…strengthen your belief from Mr. Hill's involvement?

A: Just based on the…more than the conversation that we've heard there's other comments that are made in my patrol car

> that…would obviously suggest that Mr. Hill and Mr. Mack…knew about the …substances in the vehicle.
>
> Q: And can you describe or summarize those?
>
> A: Uh…they knew the location…Mr. Hill didn't know that there was a gun in…the truck until Mr. Mack…spoke about it. In summary, his…he knew about the gun, he didn't know it was in the vehicle then…and then…they obviously have a conversation about the drugs…that were behind…the glove box. You know, they you can clearly hear them talk about if they, you know, if they break the glove box you're going to find, you know some stuff…and then they continue the conversations and try and plea with each other to see who was going to come to which…charge.

{¶17} On cross-examination, Trooper Large reiterated that Mr. Hill did not own the vehicle. Trooper Large agreed that the chain of custody was very important. He also admitted that he did not know Mr. Hill prior to the stop. Trooper Large did not recall when he first reviewed the video. He also admitted he wasn't a voice analysis expert.

{¶18} On cross-examination, Trooper Large also admitted that the bag of "off-white substances" found in the front headliner area was not visible to someone sitting in the passenger seat. He explained that a person would have to pull down the headliner to retrieve the bag. He also acknowledged that the bag of "off-white substances" found in the rear

headliner was not visible from the front seat. Trooper Large also testified that the bag found behind the glove box could not be viewed by simply opening the glove box door. Defense counsel also elicited testimony that a bag of marijuana was located in the passenger floorboard, near where Mr. Hill was seated.

{¶19} On appeal, Hill has not questioned the training and experience of the troopers; the authenticity of the lab reports identifying the substances obtained from the vehicle; the reliability of the chain of custody of the substances at issue; nor the drug analyst's credentials and expertise. While three bags of crack cocaine were found, including one behind the glove box of the car, the resolution of the first assignment of error turns solely upon the issue of whether or not Hill jointly and constructively possessed the bags of crack cocaine found in the front and rear headliner of the rental vehicle.

{¶20} The State's evidence against Hill may be summarized as follows:

1. Hill was traveling as a front seat passenger in a rental vehicle;

2. Upon search of the vehicle, three bags of cocaine were found: (1) 2.051 grams hidden behind the glove box; (2) 13.76 grams hidden in the front headliner; and (3) 7.587 grams hidden in the rear headliner;

3. A bag containing marijuana residue was found in the floorboard near Hill's seat;

4. The bag of crack cocaine found in the front cloth headliner was easily accessible to Hill;

5. Trooper Large recorded a conversation between Hill and the driver of the vehicle as they sat in the back of Large's cruiser;

6. Trooper Large could not see Hill or the driver speaking but testified he could distinguish Hill's voice though not having previously met him;

7. According to Trooper Large, Hill said, in reference to the vehicle's glove box, "they're going to have to break it, if they break if, they'll find some shit";

8. Trooper Large testified that Hill and Mack discussed who would take responsibility for the contraband found in the vehicle and that Hill agreed to "cop for the drugs," while Mack would "cop for the gun";

9. Hill was the only occupant of the vehicle who claimed responsibility for the drugs.

{¶21} 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. *Kingsland,* at ¶ 13; *Fry* at ¶ 40. Thus, presence in the vicinity of contraband, coupled with another factor or factors probative of dominion or control over the contraband, may establish constructive possession. *State v. Riggs*, 1999 WL 727952, *5 (4th Dist.). And, both dominion and control, and whether a person was conscious of the object's presence, may be established through circumstantial evidence.

Foster, ¶ 28; *See Brown* at ¶ 19; *see also State v. Jenks*, 61 Ohio St.3d 259, (1991), paragraph one of the syllabus ("[c]ircumstantial evidence and direct evidence inherently possess the same probative value"). "Circumstantial evidence is defined as '[t]estimony not based on actual personal knowledge or observation of the facts in controversy, but of other facts from which deductions are drawn, showing indirectly the facts sought to be proved. * * *' " *State v. Nicely*, 39 Ohio St.3d 147, 150 (1988), quoting Black's Law Dictionary (5 Ed.1979) 221.

{¶22} "Furthermore, to establish constructive possession the state need not show that the defendant had '[e]xclusive control' over the contraband." *Whitehead*, at ¶ 91, quoting *State v. Tyler*, 2013-Ohio-5242, ¶ 24 (8th Dist.) (citation omitted), citing *In re Farr*,1993 WL 464632, *6 (10th Dist.) (nothing in R.C. 2925.11 or 2925.01 "states that illegal drugs must be in the sole or exclusive possession of the accused at the time of the offense"). Instead, " '[a]ll that is required for constructive possession is some measure of dominion or control over the drugs in question, beyond mere access to them.' " *Howard* at ¶ 15, quoting *Farr* at *6. Thus, simply because others may have access in addition to the defendant does not mean that the defendant "could not exercise dominion or control over the drugs." *Tyler* at ¶ 24; *accord State v. Walker*, 2016-Ohio-3185, ¶ 75 (10th Dist.).

We further note that multiple persons may have joint constructive possession of an object. *See State v. Philpott*, 2020-Ohio-5267, ¶ 67 (8th Dist.); *Wolery*, 46 Ohio St.2d at 332, 329 ("[p]ossession * * * may be individual or joint" and "control or dominion may be achieved through the instrumentality of another").

{¶23} We are mindful that, when evaluating sufficiency, the law dictates that we must construe the evidence in a light most favorable to the prosecution. And, we must determine whether, if believed by any rational trier of fact, the evidence supports a conviction. Based on our review of the evidence presented to the jurors, we find there was sufficient evidence for any rational trier of fact to find beyond a reasonable doubt that Hill knowingly possessed the crack cocaine found in bags in both the front and rear headliner of the rental vehicle.

{¶24} Although Hill's defense is that he did not possess the cocaine located in the front and rear headliner areas, the trier of fact is free to believe all, some, or none of the evidence presented by the State or defense at trial. *See State v. Frank*, 2024-Ohio-3098, ¶ 53 (5th Dist.); *State v. Smith*, 2010-Ohio-4006, ¶ 16 (8th Dist.). And, "[a] jury can make reasonable inferences from the evidence." *Foster*, ¶ 29; *State v. Knight*, 2016-Ohio-8134, ¶ 26 (10th Dist.). " 'It is permissible for a jury to draw inferences from the facts

presented to them.' " *Id*., quoting *State v. Sanders*,1998 WL 78787, *3, citing *State v. Palmer*, 80 Ohio St.3d 543, 561 (1997).

{¶25} In our view, the circumstantial evidence sufficiently demonstrates that Hill actually possessed the crack cocaine located in the front headliner. The front headliner was in close proximity to the front passenger seat where Hill was sitting during the traffic stop. The crack cocaine there was easily accessible to Hill. *See State v. Troche*, 2023-Ohio-565 (3d Dist.) (Numerous inferences can be made from State's evidence). One reasonable inference is that Hill could have simply reached up to insert or remove the crack cocaine hidden in the front headliner on the passenger side where he was sitting, thereby exercising dominion and control over the items. And even though Hill denies knowledge of the crack cocaine in the front headliner herein, his assertion is inconsequential in light of the evidence that he exercised dominion and control. Furthermore, Hill's denial relates to the weight of the evidence, not the sufficiency. *See Troche*, ¶ 30.

{¶26} And, although likely that Hill could not have easily reached the crack cocaine located in the rear headliner, again we find that the circumstantial evidence sufficiently demonstrates that Hill constructively possessed it. Trooper Large testified a bag of marijuana was located on the floorboard near the front passenger seat where Hill had been sitting prior to

the stop. Trooper Large further testified that Mr. Hill had commented that "if they break it," "they were going to find some shit behind the glove box," which is a reasonable inference of Hill's knowledge of the crack cocaine hidden behind the glove box.

{¶27} Furthermore, Trooper Large testified that Hill suggested to Mack an agreement where Hill would "cop for the dope." We see no reason that Hill's statement would be interpreted as limited to the crack cocaine found behind the glove box. One reasonable inference from Hill's statement is that he would take responsibility for all the drugs found in the vehicle.

{¶28} Finally, "[t]he presence of such a vast amount of drug evidence in the car supports an inference that the appellant knew about the presence of drugs and that he * * * exercised control over each of the items found." *State v. Robinson*, ¶ 37 (citations omitted.) Based on Hill's statements of knowledge of the crack cocaine located in the glove box, his statement that he would take responsibility for the drugs, reasonably and broadly construed, and the vast amount of drugs found in the vehicle, we conclude that any rational trier of fact could have found that Hill constructively possessed the crack cocaine hidden in the rear headliner area.

{¶29} Based on the foregoing, we find no merit to Hill's argument that the evidence of constructive possession of the cocaine located in the

front and rear headliners is insufficient. Accordingly, the first assignment of error is hereby overruled.

ASSIGNMENT OF ERROR II

> THE TRIAL COURT ERRED IN IMPOSING CONSECUTIVE SENTENCES UNDER R.C. 2929.14(C)(4).

Standard of Review

{¶30} When reviewing felony sentences, appellate courts apply the standard set forth in R.C. 2953.08(G)(2). *State v. Spencer,* 2024 Ohio-59, ¶ 13(4th Dist.). *E.g., State v. Nelson,* 2023-Ohio-3566, ¶ 63 (4th Dist.). R.C. 2953.08(G)(2)(a) provides that "[t]he appellate court's standard for review is not whether the sentencing court abused its discretion." Instead, the statute authorizes appellate courts to "increase, reduce, or otherwise modify a sentence" "if it clearly and convincingly finds either of the following":

> (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;
>
> (b) That the sentence is otherwise contrary to law.

R.C. 2953.08(G)(2).

Legal Analysis

{¶31} Hill asserts that the trial court's sentence findings that consecutive sentences were proportional and necessary are not clearly and convincingly supported by the record. The Supreme Court of Ohio has recognized that R.C. 2953.08(G)(2) means that appellate courts ordinarily, " 'defer to trial courts' broad discretion in making sentencing decisions.' " *State v. Collins,* 2024-Ohio-2891, ¶ 22 (4th Dist.), quoting *State v. Gwynne,* 2023-Ohio-3851, ¶ 11. (Citations omitted.) As recently stated by the Supreme Court of Ohio in *State v. Glover,* 2024-Ohio-5195, ¶ 39:

> That makes sense: the trial judge presided over the trial and heard the witnesses testify, the defendant made his allocution to the sentencing judge directly, and the trial judge will often have heard directly from the victims at sentencing. Thus, an appellate court's role is not to be a "second-tier sentencing court." *State v. Ladson*, 2016-Ohio-7781, ¶ 9 (8th Dist.); *State v. Jones*, 2020-Ohio-6729, ¶ 41-42.

{¶32} In *State v. Hammons,* 2024-Ohio-6128, the Sixth District court recently provided a thorough discussion of the Supreme Court's decision in *Glover, supra*. "The Ohio Supreme Court has made it clear that 'an appellate court may not reverse or modify a trial court's sentence based on its subjective disagreement with the trial court.' " *Hammons, supra,* at ¶ 22, quoting *Glover,* 2024-Ohio-5195, ¶ 45 ("*Glover II*"). In *Glover II*, the Ohio Supreme Court reversed the First District's decision in *State v. Glover,* 2023-

Ohio-1153 (1st Dist.) ("*Glover I*").[2] There, the trial court had imposed consecutive sentences for multiple counts of aggravated robbery and kidnapping at gunpoint, for an aggregate prison term of 60 years. The First District reversed the consecutive sentences after finding that the lack of physical harm to the victims, combined with appellant's lack of criminal history, undermined the trial court's proportionality determination. *Glover I* at ¶ 101. The First District compared the aggregate length of the appellant's sentence to the potential sentence for a single instance of violent crime, like murder, and observed that "a person who purposely takes another person's life ..." could be eligible for parole after 15 years, but the appellant "who did not take his victims' lives or cause them physical harm, would have no chance of parole at 15, 20, 25, or even 50 years." *Id.* at ¶ 98.

{¶ 33} In *Hammons*, the court noted that the Ohio Supreme Court found, among other things, that the First District erred because it did not "limit its review to the trial court's findings." *Glover II* at ¶ 57. *See Hammons*, ¶ 23. The *Glover* court noted that "[t]he court of appeals may have disagreed with the trial court's assessment of the magnitude of the harm inflicted by Glover, but this disagreement with the trial court's assessment is

[2] *State v. Hobbs*, 2024-Ohio-5435, fn 2, (3d Dist.), decided on November 18, 2024, pointed out that the Supreme Court's decision in *Glover* was "divided."

far different from concluding that the record clearly and convincingly does not support the trial court's consecutive-sentence findings." *Id.* at ¶ 55. In *Glover II*, the court also found that the First District had "strayed from its role when it compared Glover's sentence to the sentences imposed under other statutes and in other cases" because the appellate review statute, R.C. 2953.08(G)(2), does not permit such a "comparative analysis[.]" *Id*. at ¶ 59.

{¶34} Thus, R.C. 2953.08(G)(2) provides that an appellate court may increase, reduce, or otherwise modify consecutive sentences only if the record does not "clearly and convincingly" support the trial court's R.C. 2929.14(C)(4) consecutive-sentence findings. The clear-and-convincing standard for appellate review in R.C. 2953.08(G)(2) is written in the negative. *Collins*, ¶ 22; *Gwynne*, 2023-Ohio-3851, at ¶ 13. Moreover, "clear and convincing evidence" is "that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶35} In general, a statutory presumption exists in favor of concurrent sentences pursuant to R.C. 2929.41(A) and R.C. 2929.14(C)(4) governs the

imposition of consecutive terms of imprisonment. *Collins,* ¶ 23; *Glover, supra,* at ¶ 38. To justify the imposition of consecutive terms of imprisonment, "a trial court must make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but the court has no obligation to state reasons to support its findings." *State v. Blair,* 2019-Ohio-2768 ¶ 52 (4th Dist.), citing *State v. Bonnell,* 2014-Ohio-3177, syllabus. This Court explained the findings required to support the imposition of consecutive sentences:

> "Under the tripartite procedure set forth in R.C. 2929.14(C)(4), prior to imposing consecutive sentences a trial court must find that: (1) consecutive sentences are necessary to protect the public from future crime or to punish the offender; (2) consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public; and (3) that one of three circumstances specified in the statute applies."

State v. Cottrill, 2020-Ohio-7033, ¶ 14 (4th Dist.), quoting *State v. Baker,* 2014-Ohio-1967, ¶ 35-36 (4th Dist.).

{¶36} Further, as we outlined in *Cottrill,* and more recently in *Collins,* the three circumstances are:

> "(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

> (b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.
>
> (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender."

Cottrill at ¶ 14, and *Collins*, ¶ 24, quoting R.C. 2929.14(C)(4)(a)-(c). In particular, the *Glover II* court noted that "the negative constructions in [R.C. 2953.08(G)(2)(a) and R.C. 2929.14(C)], combined with the clear-and-convincing standard constrain the appellate court's review of a trial court's proportionality finding." *Id.* at ¶ 52.

{¶37} The record must support any findings that the applicable statutory sentencing provisions require and made by the sentencing court, such as those contained in R.C. 2929.14(C)(4)(c). *Collins*, ¶ 25; *State v. Gray*, 2019-Ohio-5317, ¶ 21 (4th Dist.); *State v. Drummond*, 2024-Ohio-81, ¶ 11 (4th Dist.). Further, in *Drummond* we observed that the plain language of R.C. 2953.08(G)(2) requires an appellate court to defer to a trial court's consecutive-sentence findings, and to uphold the trial court's findings unless those findings are clearly and convincingly not supported by the record.

Drummond at ¶ 12. In *State v. Bonnell*, 2014-Ohio-3177, the Supreme Court of Ohio held, "In order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry[.]" *Id.* at ¶ 37.

{¶38} Here, it is undisputed that the trial court included the necessary findings under R.C. 2929.14(C)(4) to support the imposition of Hill's consecutive sentences in the March 29, 2023 Uniform Sentencing Entry. Hill, however, asserts that his 13-year aggregate sentence is disproportionate and not necessary to protect the public. The trial court sentenced Hill to prison terms of six years for possession of methamphetamine, six years for possession of cocaine, and one year for possession of Fentanyl. If the court had not deviated from concurrent sentencing, Hill would have received an aggregate six-year sentence. Hill asks this court to modify his sentences to run concurrently.

{¶39} Hill first points out that prior to trial he was offered a plea deal in which he would have received concurrent three-year sentences. He argues that the State's offer demonstrates that a concurrent sentence would have been proportional and sufficient to protect the public. In *State v. Harris*, 2021-Ohio-4007, the Fifth District considered a proportionality

argument based on comparing an actual sentence to the sentence offered prior to trial pursuant to a plea agreement. The *Harris* court looked to a First District case, *State v. Ryan*, 2003-Ohio-1188, ¶ 10, which explained as follows:

> The Ohio plan attempts to assure proportionality in felony sentencing through consistency. R.C. 2929.11(B). Consistency, however, does not necessarily mean uniformity. Instead, consistency aims at similar sentences. Accordingly, consistency accepts divergence within a range of sentences and takes into consideration the trial court's discretion to weigh relevant statutory factors. *Id.* [Griffin and Katz, Sentencing Consistency: Basic Principles Instead of Numerical Grids: The Ohio Plan (2002), 53 Case W.R.L.Rev. 1, 12] at 12. The task of the appellate court is to examine the available data not to determine if the trial court has imposed a sentence that is in lockstep with others, but whether the sentence is so unusual as to be outside the mainstream of local judicial practice. *Id.* at 13. Although offenses may be similar, distinguishing factors may justify dissimilar sentences. *Id.* at 15. [3]

Harris, ¶ 52; *Ryan*, ¶ 10. In resolving the appeal, the *Harris* court commented that it had reviewed the record and did not find the sentence imposed "so unusual as to be outside the mainstream of local judicial practice." The trial court in *Harris* had considered the necessary factors and imposed a sentence within the guidelines. The *Harris* court found nothing in

[3] The majority opinion in *Glover* noted that there is a "myriad of case-specific factors that influence a trial court's sentencing decision in a particular case." *Id.* at ¶ 59.

the record to demonstrate that Harris's sentence was disproportionate. Moreover, the Court in *Glover* has recently noted that, "nothing in the appellate review statute allows a court of appeals to consider a plea offer or a state's sentencing request in its review of consecutive sentences. The court of appeals must limit its review to the trial court's findings." *Id.* at ¶ 57.

{¶40} Hill next points out that Mack, the driver of the car and admitted possessor of the gun, received a community control sentence. Hill contends that Mack's community control sentence, when compared with Hill's own 13-year sentence, further demonstrates disproportionality. Finally, Hill contends that the limited information in the trial court record about his criminal history did not support the trial court's deviation from concurrent sentencing.

{¶41} In response, the State of Ohio first points out that Hill did not present any evidence to demonstrate that his sentence was directly disproportionate to other offenders with similar records who had committed similar offenses. Next, the State points out that Mr. Mack and Mr. Hill are not "similarly situated" defendants. Mr. Mack had no prior criminal record while Hill had previous felony convictions for burglary and a felony "weapons under disability" offense resulting from the same burglary conviction.

{¶42} Although the record must contain a basis upon which a reviewing court can determine that the trial court made the R.C. 2929.14(C)(4) findings, "a word-for-word recitation of the language of the statute is not required, and as long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld." *State v. Conn*, 2023-Ohio-2669, ¶ 26 (4th Dist.), citing *State v. Brickles*, 2021-Ohio-178, ¶ 9, 11 (4th Dist.). *Bonnell* at ¶ 29. In the case at bar, at sentencing the trial court stated the following regarding its decision to impose consecutive sentences:

> The Court has considered all the sentencing factors and revised code sections 2929.11 and 2929.12; the Court would note there are convictions for possession of methamphetamine, cocaine of the second-degree level, and fentanyl of the felony of the fifth-degree level….I've taken into consideration the evidence that I heard at trial, as well as the criminal history. The Court is going to issue the following sentence, Count One, a felony of the second degree that would be a six-year sentence, Count Two, a felony of the second degree that would be a six-year sentence, Count Three, a felony of the fifth degree, a one-year sentence, those terms will be served consecutively. It is necessary to protect the public. The punishment is not disproportionate. The criminal history demonstrates that consecutive sentences are necessary.

{¶43} In the sentencing entry, the court further found:

> In fashioning the sentence(s) in this case, the Court has considered the need to protect the public from future

> crime by the defendant and others, to punish the defendant, and to promote the defendant's effective rehabilitation while using the minimum sanctions to accomplish those purposes without imposing an unnecessary burden on state or local government resources. This includes the need for incapacitation, deterrence, rehabilitation of the defendant, and restitution to the victim and/or the public. This sentence is commensurate with, and not demeaning to, the seriousness of the defendant's conduct and its impact on the victim, consistent with sentences for similar crimes by similar offenders, and is in no way based on the defendant's race, ethnicity, gender, or religion.

{¶44} We do not find Hill's arguments to be persuasive. In *State v. Alexander* 2024-Ohio-2565, ¶ 112 (7th Dist.), the court held that "[a] defendant alleging disproportionality in felony sentencing has the burden of producing evidence to 'indicate that his sentence is directly disproportionate to sentence given to other offenders with similar records who have committed these offenses.' " *State v. Williams*, 2015-Ohio-4100, ¶ 52 (7th Dist.), citing *State v. Wilson*, 2013-Ohio-3915, ¶ 16 (8th Dist.). Thus, not only must a defendant demonstrate a disproportionate sentence, he must also provide evidence of a similarly situated defendant, including consideration of all prior criminal records.

{¶45} Furthermore, proportionality review should focus on individual sentences, rather than on the cumulative impact of multiple sentences imposed consecutively. *State v. Taylor*, 2024-Ohio-238 (5th Dist.) (citations omitted), at ¶ 20. "Where none of the individual sentences imposed on an

offender are grossly disproportionate to their respective offenses, an aggregate prison term resulting from consecutive imposition of those sentences does not constitute cruel and unusual punishment." *Id.* As a general rule, a sentence falling within the terms of a valid statute cannot amount to a cruel and unusual punishment. *Id.* at ¶ 21.[4] Moreover, the *Glover* court also noted that, "[n]owhere does the appellate-review statute direct an appellate court to consider the defendant's aggregate sentence." *Id*. at ¶ 43; *See also, State v. Scott*, 2024-Ohio-5849, ¶ 108 (6th Dist.)

{¶46} Herein, Hill has not argued the disproportionality of his individual sentences. Each of the individual sentences was within the statutory range. Furthermore, Hill and co-defendant Mack are not similarly situated. To support a proportionality argument, Hill should have presented evidence to indicate that his sentence is "directly disproportionate to sentences given other offenders with similar records" who have committed the same offenses. As Hill did not, he has failed to present the type of evidence required by Ohio law.

{¶47} Hill also contends that the limited information in the trial court record did not support the court's deviation from a concurrent sentence. The

[4] In *Taylor*, the appellant argued that his sentence was disproportionate based in part on the Sate's original plea offer. Based on the law as discussed above, the *Taylor* court found no merit to his argument.

sentencing transcript reveals that the parties discussed Hill's two prior felony convictions. Otherwise, it appears Hill did not have an extensive and lengthy criminal adult record. Hill contends that the brief discussions about his prior felonies did not assist the court in gaining insight as to whether he posed a particular danger to the public. For this reason as well, Hill argues that his consecutive sentence was not necessary or proportional or supported by the record.

{¶48} We observe that the trial court did not order a presentence investigation. However, Crim.R. 32.2 states:

> In felony cases the court shall, and in misdemeanor cases the court may, order a presentence investigation and report before imposing community control sanctions or granting probation.

Thus, a presentence investigation is not mandatory where the court orders imprisonment rather than community control sanctions. *State v. Woodruff*, 2008-Ohio-967 (4th Dist.). *See State v. Cyrus* (1992), 63 Ohio St.3d 164, syllabus.

{¶49} We begin by noting that "[a] trial court's proportionality analysis 'does not occur in a vacuum, but, instead, focuses upon the defendant's current conduct and whether this conduct, in conjunction with the defendant's past conduct, allows a finding that consecutive service is not

disproportionate [to the danger the defendant poses to the public.' "
(Citations omitted.) *State v. Williams*, 2024-Ohio-5999, ¶ 19 (11th Dist.)
At Hill's sentencing, the trial court stated: "I've taken into consideration the evidence that I heard at trial, as well as the criminal history." The trial court later commented: "these were extremely serious cases of drugs, a complete blight and epidemic." Then, the sentencing entry set forth the following:

> The Court has weighed the following R.C. 2929.12 seriousness and recidivism factors in imposing the sentence in this case:
>
> This Court believes the defendant is more likely to commit future crimes as:
>
> The defendant has a history of criminal convictions or juvenile delinquency adjudications.

{¶50} In *State v. Kendall*, 2021-Ohio-1551, (6th Dist.), Appellant argued that because his offenses were non-violent drug offenses he was not a danger to the public. However, the appellate court disagreed and affirmed his consecutive sentence. While distinguishing this court's decision in *State v. Fisher*, 2009-Ohio-2915, ¶ 97 (4th Dist.), the *Kendall* court noted our pronouncement that "in the abstract, drug trafficking can certainly be seen as a crime which causes serious physical harm to numerous people." *Fisher* at ¶ 14. In *State v. Morris*, 2023-Ohio-3412, the appellate court rejected

Morris' contention that his substance abuse issues did not demonstrate that he presented a danger to the public, stating:

> It is general knowledge that substance abuse (methamphetamine use, specifically), crime, and danger to the public, are often intertwined. While the record does not provide much detail with regard to the role that Morris' drug use played with respect to his many criminal acts, we cannot ignore that, for Morris, substance abuse and other criminal acts seem to go hand in hand.

{¶51} Based on our review of Hill's arguments and the trial court record, we can find no sentencing error in this case. The trial court gave due deliberation to the relevant statutory considerations. The court considered the purposes and principles of felony sentencing under R.C. 2929.11 and balanced the seriousness and recidivism factors under R.C. 2929.12. In addition, the trial court made the requisite consecutive sentence findings, which are supported by the record, at the sentencing hearing and in its sentencing entry. The trial court did not err in finding that consecutive sentences are necessary to protect the public from future crime or to punish Hill and that consecutive sentences are not disproportionate to the seriousness of his conduct and to the danger he poses to the public. R.C. 2929.14(C)(4).

{¶52} Further, Hill has not shown that the trial court imposed the sentence based on impermissible considerations—i.e., considerations that

fall outside those that are contained in R.C. 2929.11 and 2929.12. Because the record contains evidence supporting the trial court's findings under R.C. 2929.14(C)(4), we have no basis for concluding that Hill's consecutive sentence is contrary to law. *See State v. Rolf*, 2022-Ohio-3049, ¶42 (5th Dist.). For the above reasons, Hill's second assignment of error is hereby overruled.

ASSIGNMENT OF ERROR III

> THE TRIAL COURT ERRED IN ISSUING A JUDGMENT ENTRY OF CONVICTION AND A SENTENCING ENTRY FINDING THAT QUAYMAR HILL'S CONVICTION FOR POSSESSION OF METHAMPHETAMINE UNDER COUNT THREE OF THE INDICTMENT, IN VIOLATION OF R.C. 2929.11(C)(1)(a), WAS A FELONY IN THE THIRD DEGREE. [5]

Legal Analysis

{¶53} Under the third assignment of error, Hill points out a clerical error in both the Judgment of Conviction and the Uniform Sentencing Entry. The degree of Hill's conviction under Count Three is set forth as a "felony of the third degree." The trial court noted at sentencing that the entry was incorrect.

[5] We note that Hill's indictment as to Count Three is set forth as "Aggravated Possession of Drugs (Fentanyl)." We presume the reference to methamphetamine set forth in the third assignment of error is a scrivener's error.

> The Court noted that it would need to correct the …judgment entry of conviction…the court had indicated that entry that Mr. Hill had been found guilty of Count Three, which is correct but at the felony of the third-degree level. It is only fifth degree level because the jury did not find the …bulk amount therefore, as a matter of law, it's a felony of the fifth degree. So, I will correct that but we will sentence today based on it's a felony of the fifth degree not a third although Counts One and Two are based on felonies of the second degree.

{¶54} Nevertheless, the sentencing entry sets forth the same incorrect information. Hill requests the case be remanded to the trial court in order to issue a corrected judgment of conviction and sentencing entry to reflect the finding that Hill's conviction under Count Three is actually a felony of the fifth degree. The State of Ohio concedes the error.

{¶55} While a court speaks through its journal entries, clerical errors in judgments, orders, or other parts of the record may be corrected at any time. *State v. Robinson,* 2016-Ohio-905, ¶ 48 (4th Dist.); Crim.R. 36. Trial courts retain jurisdiction to correct clerical errors in judgment entries so that the entries accurately reflect the trial court's decision. *State v. Contes,* 2024-Ohio-2580, ¶21 (8th Dist.); *See State v. Liddy,* 2022-Ohio-1673, ¶ 16 (8th Dist.) (remanded case to correct clerical error in judgment entry so that the judgment entry reflects the findings made pursuant to 2929.14(C)(4)(c)), citing *State ex rel. Cruzado v. Zaleski*, 2006-Ohio-5795, ¶ 19; Crim.R. 36.

{¶56} Based on the foregoing, we hereby sustain the third assignment of error and remand to the trial court for the limited purpose of issuing a nunc pro tunc order to correct the journal entry to match the findings made in open court.

JUDGMENT AFFIRMED IN PART AND REVERSED IN PART.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED IN PART AND REVERSED IN PART and costs be assessed equally to the parties.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Jackson County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. and Hess, J. concur in Judgment and Opinion.

For the Court,

_____

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.