[Cite as *State v. Hill*, 2024-Ohio-2744.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

QUENTIN A. HILL,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 23 JE 0014

Criminal Appeal from the
Court of Common Pleas of Jefferson County, Ohio
Case No. 22 CR 7

BEFORE:
Cheryl L. Waite, Mark A. Hanni, Judges, and William A. Klatt, Judge of the Tenth District Court of Appeals, Sitting by Assignment (Retired).

JUDGMENT:
Affirmed.

Atty. Jane M. Hanlin, Jefferson County Prosecutor and *Atty. Bernard C. Battistel*, Assistant Prosecutor, for Plaintiff-Appellee

Atty. Charles C. Amato, Amato Law Office, LPA, for Defendant-Appellant

Dated: June 3, 2024

WAITE, J.

{¶1} Appellant appeals a May 8, 2023 judgment entry of the Jefferson County Court of Common Pleas convicting him of multiple gun related offenses. He argues that his convictions are against the manifest weight of the evidence as the state failed to prove that he owned or possessed the two firearms at issue. For the reasons provided, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} This matter began with a simple traffic stop which led to the discovery of three firearms, two of which are involved in this appeal. Specifically at issue in this case is the ownership of those firearms. Several individuals involved in this matter have street names that were mentioned throughout trial testimony and in certain exhibits. These names are critical to understanding key pieces of evidence. Appellant is also known as "Crip" or "Little Crip" and Cin'cere Sinsel is also known as "Deebo", or "Bo." Although familiar references such as "uncle" and "cousin" are used throughout the record, these are street names and not actual familiar terms.

{¶3} On January 15, 2022, Detective Brandon Kelly of the Steubenville Police Department observed a vehicle driven by Robert Lanko. Det. Kelly was familiar with Lanko and knew he had a suspended driver's license, hence he initiated a traffic stop of the vehicle as it drove southbound on Fourth Street in Steubenville. While Det. Kelly spoke to Lanko and his front seat passenger, Sinsel, he detected the odor of marijuana, removed both passengers from the vehicle, and called for backup.

{¶4} At the time, Det. Kelly believed there were only two people in the vehicle, Lanko and Sinsel. However, body camera and a dash camera on Det. Kelly's cruiser

clearly show the back driver side door open while officers began to pat down Lanko and Sinsel. A man, later determined to be Appellant, can be seen exiting the backseat. Appellant, who seemed confused by the lack of attention to him, stood next to the car in the street and waited. Appellant wore a black puffy coat with the hood pulled over his head. The hood had distinctive silver lettering running down the center, from the forehead area to the back of the neck area. Appellant wore a cloth face mask. Between the hood and the mask, only his eyes are revealed.

{¶5} As Officer Jacob Mannarino addressed Lanko and Sinsel, he noticed Appellant and asked if he had been inside the car. Although his response is inaudible, it is clear Appellant denied that he had been inside the car. Officer Mannarino ordered Appellant to vacate the area. According to Officer Mannarino's testimony:

> At one point while Patrolman Kelly was searching Lanko, I discovered the subject appear to be in the back half -- or back driver-seat door passenger compartment. I immediately asked Patrolman Kelly if that subject was in the vehicle, and at that point, we were unsure. Patrolman Kelly said, "I don't believe so." We had the subject step back from the vehicle. Patrolman Kelly then began to search the vehicle as I stood by with Mr. Lanko and Mr. Sinsel.

(Trial Tr., p. 292.)

{¶6} Officer Mannarino asked Lanko if Appellant had been inside the car and he said no. A crowd began to form, and Appellant walked to the sidewalk. He left the scene

as police attempted to deescalate the aggressiveness of the crowd, which mostly consisted of Sinsel's family who heckled officers while they detained Sinsel.

{¶7} While Det. Kelly searched the car, Officer Mannarino stood with Lanko and Sinsel. Officer Mannarino's body camera recorded a conversation that occurred between Sinsel and Lanko, where Sinsel can be heard telling Lanko "they didn't see him sitting in the back. They probably didn't because of your windows." (State's Exh. 1, Kelly Body Cam, 3:30.) While Lanko's response is inaudible, Officer Mannarino asked Sinsel what he said and Sinsel replied "you probably didn't see him because of the windows." (State's Exh. 1, Kelly Body Cam, 3:46.) Officer Mannarino asked Sinsel if he was referring to Appellant and he bobbed his head to indicate the affirmative. By this time Officer Mannarino said Appellant "had left the scene. He had walked towards the -- there was an apartment building; it would be on the east side of the street. He had walked towards that, and from what the other by standers [sic] had told us, he had went through a backyard." (Trial Tr., p. 293.)

{¶8} During a search of the vehicle, Det. Kelly located three firearms and a substance presumed to be marijuana. The first firearm, a Sig Sauer pistol, was discovered within a backpack Sinsel was holding between his legs at the time of the traffic stop. Sinsel's mail was discovered in the same backpack. This firearm is not at issue on appeal. Lanko informed Officer Mannarino that Sinsel had a black bag and another bag. Lanko told the officers that Sinsel put at least one of the bags behind his front passenger seat.

{¶9} The second firearm, a Glock 22 pistol, was found in what was referred to as the map pouch behind the driver's seat. A photograph admitted into evidence shows the firearm positioned in the pouch with the barrel facing down.

{¶10} The third firearm was discovered in a black Adidas backpack. This bag also contained the presumed marijuana. No identifying documents were found in this backpack. All of the weapons were loaded.

{¶11} After the first firearm, the Sig Sauer, was found in Sinsel's bag, officers detained him in a police cruiser. While in the cruiser, Sinsel phoned his girlfriend, who is the mother of his child. A recording system in the cruiser recorded the conversation and because Appellant had the phone on speaker, his girlfriend can also be heard. During this conversation Sinsel implicates Appellant by use of his street name "Crip."

{¶12} While Det. Kelly transported him to jail, he told the officer the bag containing the Sig Sauer did not belong to him, even though his papers were found inside with the gun. Sinsel then told Det. Kelly that he had information for the U.S. Marshals; information that would likely result in his immediate release. Later, Sinsel did provide information to law enforcement incriminating Sir Dameon Harris. Harris apparently is the leader of a gang to which Appellant and Sinsel allegedly belong. Sinsel told investigators that Harris gave all three firearms to Appellant. Sinsel also implicated Harris in an unrelated case.

{¶13} Sinsel was charged with carrying a concealed weapon. The charge was later dismissed by the state in exchange for his cooperation with cases against Appellant and Harris. Lanko was cited for driving under a suspended license. Officers later located Appellant at a place called "Maryland Market" in Steubenville. Appellant resisted arrest

and two additional cruisers were called in to effectuate the arrest. This resulted in a misdemeanor resisting arrest charge, in addition to charges stemming from the firearms.

{¶14} Appellant and Harris were both detained in the Jefferson County Jail as they awaited their respective trials. A jailhouse call between Harris and his girlfriend revealed that Harris and Appellant knew Sinsel had provided information to law enforcement that both of them were involved in criminal activity. While most of Harris' statements to his girlfriend were excluded from Appellant's trial, several incriminating statements were made by Appellant when Harris handed him the phone at various points. These statements were admitted.

{¶15} On January 19, 2022, a felony complaint charged Appellant with multiple felony offenses: one count of possession of drugs (marijuana), receiving stolen property (the AK-47), two counts of having weapons while under a disability (Glock and AK-47), and two counts of improperly handling a weapon in a motor vehicle (Glock and AK-47). A second complaint, filed on January 21, 2022, charged Appellant with one count of resisting arrest, a misdemeanor.

{¶16} On January 25, 2022, the two cases were consolidated and transferred to the Jefferson County Common Pleas Court. On February 2, 2022, Appellant was indicted on two counts of having weapons while under disability (one count pertaining to the AK-47 and one pertaining to the Glock 22) stemming from prior case number 2015-DL-71, felonies of the third degree in violation of R.C. 2923.13(A)(2); two counts of improperly handling a firearm in a motor vehicle, felonies of the fourth degree in violation of R.C. 2923.16(B); one count of receiving stolen property (the Glock), a felony of the fourth degree in violation of R.C. 2913.51(A)(C); one count of possession of drugs (marijuana

above 100 grams but below 200 grams in weight), a felony of the fifth degree in violation of R.C. 2925.11(A), (C)(3)(c), and one count resisting arrest, a misdemeanor of the first degree in violation of R.C. 2921.33(B).

{¶17} In the midst of the two-day trial, Appellant pleaded guilty to resisting arrest. Trial continued on the remaining offenses. Following a Crim.R. 29 motion made by defense counsel, the trial court dismissed the possession of marijuana charge, finding that no evidence was admitted to establish the substance was, in fact, marijuana. The jury acquitted Appellant on the receiving stolen property charge. However, the jury found Appellant guilty on the remaining two counts of weapons disability and improper handling.

{¶18} On May 8, 2023, the court held a sentencing hearing. The court determined that counts one and two regarding weapons disability merged for purposes of sentencing, and the state elected to proceed on count one. The court sentenced Appellant to thirty-months in prison on count one (weapons disability), 12 months on count three (improper handling), 12 months on count four (improper handling), and 180 days in the local jail for resisting arrest. The court ordered the sentence for weapons disability to run consecutively to the sentence for the two improper handling convictions. The court further ordered all three felony sentences to run concurrently with the misdemeanor resisting arrest conviction, for an aggregate total of four and one-half years of incarceration, with credit for 469 days served. The court imposed a nonmandatory two-year term of postrelease control and waived court fees and costs.

{¶19} The court ordered the AK-47 be returned to its rightful owner and the Glock was forfeited to the Steubenville Police Department. The court further ordered that the presumed marijuana be destroyed by the police department, despite a request from

Appellant to have the substance returned to him given his Crim.R. 29 acquittal on that charge. Appellant timely appeals from this entry.

ASSIGNMENT OF ERROR

> The conviction of the Appellant for counts one through four, the two charges Having Weapons while under disability, and the two charges of Improper handling of a firearm in a motor vehicle, are against the manifest weight of the evidence in violation of Article IV, Section 3, of the Ohio Constitution and should be overturned.

{¶20} Appellant challenges both of his convictions for weapons disability and both convictions for improper handling. While Appellant was sentenced on only one weapons disability conviction, he challenges both, here.

{¶21} The crux of Appellant's argument is that the record is devoid of any credible evidence that he owned, possessed, or had knowledge of any firearm in the vehicle, thus it was not proved that he had either active or constructive possession of the weapons. Appellant cites Lanko's testimony that he did not believe the backpack containing the AK-47 belonged to Appellant. Lanko also testified that he was helping Sinsel move and members of Sinsel's family had placed several bags belonging to him in the backseat. Appellant contends that the sole evidence showing he possessed the firearms was testimony from Sinsel, who had his own weapons charge dismissed in exchange for his testimony against Appellant.

{¶22} The state responds that the guns were located near where Appellant was sitting in the vehicle. The state cites not only Sinsel's testimony, but a recorded phone

call where Appellant called Sinsel a “snitch” and complained that he “told on him.” The state urges that Sinsel took responsibility for the remaining firearm, for which charges against him were dismissed in exchange for his testimony.

General Law

{¶23} Weight of the evidence concerns “the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.” (Emphasis deleted.) *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). It is not a question of mathematics, but depends on the effect of the evidence in inducing belief. *Id.* Weight of the evidence involves the state's burden of persuasion. *Id.* at 390, 678 N.E.2d 541 (Cook, J. concurring). The appellate court reviews the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines 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. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 220, citing *Thompkins*, at 387, 678 N.E.3d 541, 678 N.E.2d 541. This discretionary power of the appellate court to reverse a conviction is to be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *Id.*

{¶24} “[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.” *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 118, quoting *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The trier of fact is in the best position to weigh the evidence and judge the witnesses' credibility by observing their gestures, voice inflections, and demeanor. *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461

N.E.2d 1273 (1984). The jurors are free to believe some, all, or none of each witness' testimony and they may separate the credible parts of the testimony from the incredible parts. *State v. Barnhart*, 7th Dist. No. 09 JE 15, 2010-Ohio-3282, ¶ 42, citing *State v. Mastel*, 26 Ohio St.2d 170, 176, 270 N.E.2d 650 (1971). When there are two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, we will not choose which one is more credible. *State v. Gore*, 131 Ohio App.3d 197, 201, 722 N.E.2d 125 (7th Dist.1999). Appellant does not challenge the remaining elements of either offense.

Relevant Statutes

{¶25} The elements of having weapons under a disability are set out in R.C. 2923.13. Applicable to the instant matter, those elements are:

> (A) Unless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:
>
> * * *
>
> (2) The person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence.

{¶26} The state introduced a judgment entry demonstrating that Appellant was subject to a weapons disability at the time of the incident and Appellant conceded he was

under a weapons disability at the time. The only remaining issue is whether he owned or possessed in some form two of the weapons found in the car. Again, our analysis is limited to the Glock and AK-47, as they formed the basis of Appellant's charges. To successfully appeal these charges, Appellant must establish that no evidence was offered to prove he owned or possessed these weapons. Appellant's argument centered solely on his contention that he was not in the car at the time of the traffic stop.

{¶27} The offense of improperly handling a weapon is described within R.C. 2923.16. In relevant part, the statute provides: "(B) No person shall knowingly transport or have a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle." The state presented evidence that the firearms were loaded at the time of their discovery. Again, the issue centers on whether Appellant owned or possessed those weapons.

Actual and Constructive Possession

{¶28} In order to "have" a weapon, a defendant must have either actual or constructive possession of the firearm. *State v. Hudson*, 2017-Ohio-645, 85 N.E.3d 371, ¶ 14 (7th Dist.), citing *State v. Haslam*, 7th Dist. Monroe No. 08 MO 3, 2009-Ohio-1663, ¶ 41. Actual possession can be established by proving that the defendant owned or physically controlled the firearm. *State v. Riley*, 7th Dist. Mahoning No. 13 MA 180, 2015-Ohio-94, ¶ 25. Constructive possession is where a defendant knowingly exercises dominion and control over the object regardless of whether the object is within his or her immediate physical possession. *State v. Wolery*, 46 Ohio St.2d 316, 329, 348 N.E.2d 351 (1976).

{¶29} There is no question that Appellant did not physically control the firearm at the time of its discovery. As to constructive possession, the analysis is fact intensive. Under Ohio law, "[a] person's mere presence or access to contraband or the area where contraband is found is insufficient to demonstrate dominion and control." *State v. Harrison*, 7th Dist. Jefferson No. 19 JE 0009, 2020-Ohio-3624, ¶ 76, citing *State v. Gardner*, 2017-Ohio-7241, 96 N.E.3d 925, ¶ 35 (8th Dist.); *State v. Hall*, 8th Dist. Cuyahoga No. 66206, 1994 WL 677554 (Dec. 1, 1994); *State v. Tucker*, 2016-Ohio-1353, 62 N.E.3d 903 (9th Dist.). There must be some evidence that the person exercised or had the ability to exercise dominion and control. *Harrison* at ¶ 76, citing *Gardner* at ¶ 35; *State v. Long*, 8th Dist. Cuyahoga No. 85754, 2005-Ohio-5344. "It must also be shown that the person was conscious of the presence of the object." *State v. Hankerson*, 70 Ohio St.2d 87, 91, 434 N.E.2d 1362 (1982). While it is not enough to simply show the firearms were located near Appellant, it is a factor to be considered.

{¶30} There are two firearms involved here, a Glock 22 and an AK-47. The Glock was located in the "map pouch" behind the driver's seat. The AK-47 was found in a black and white Adidas backpack on the floor behind the passenger seat. Unlike Sinsel's backpack, nothing within this backpack identifies its owner.

{¶31} We must first turn our attention to whether Appellant was the third passenger inside the vehicle at the time of the traffic stop. "While identity is an element that must be proven by the state beyond a reasonable doubt, the credibility of witnesses and their degree of certainty in identification are matters affecting the weight of the evidence." *State v. Bias*, 2022-Ohio-4643, 204 N.E.3d 639, ¶ 39 (10th Dist.), citing *State v. Reed*, 10th Dist. No. 08AP-20, 2008-Ohio-6082, ¶ 48.

{¶32} Officers, who admitted their actions in securing the scene that day "could have been better," approached the vehicle and removed only Lanko and Sinsel. Apparently, they did not see or hear any other passenger inside the vehicle. However, it is clear from multiple videos that a third person exited the vehicle and initially remained at the scene. The question becomes whether the state proved that Appellant was that person.

{¶33} While the man's exit is evident in multiple videos, the best evidence is a dash camera mounted on Det. Kelly's patrol cruiser. The cruiser was parked directly behind Lanko's vehicle and the recording system captured the entire vehicle within the camera frame during the encounter. At the 4:41 minute marker of that video, the backseat passenger door is opened. Two seconds later, a man begins to emerge from the backseat. At this time, Det. Kelly and Mannarino were completing a pat down of Lanko and Sinsel. At marker 4:49, the man has completely exited the vehicle and is standing next to it, seemingly confused. The man is dressed in a black puffy coat with the hood up and a cloth face mask covering his mouth, exposing only his eyes. Significantly, the coat hood bears distinctive silver lettering running down the center from the forehead area to the back of the neck.

{¶34} When officers notice the man standing in the street next to the vehicle, they ask if he was in the car. While his response is inaudible, it is clear he said no. They immediately order him to leave the area. As the man is seen to comply, the officers ask Lanko if the man was in the car. Lanko also said no. The man waited nearby on the sidewalk until officers attempted to take control over the crowd that had formed. As police attempt to keep order, they order the Sinsel family back and the man to leave.

{¶35} As the man exited the area, Sinsel engaged in a conversation with Lanko in the presence of Officer Mannarino, whose body camera captured the conversation. Sinsel can be heard telling Lanko "they didn't see him sitting in the back. They probably didn't because of your windows." (State's Exh. 1, Mannarino Body Cam, 3:30). While Lanko's response is inaudible, Officer Mannarino asked Sinsel what he said and Sinsel replied "you probably didn't see him because of the windows." (State's Exh. 1, Mannarino Body Cam, 3:46.) Officer Mannarino asked Sinsel if he was referring to the man in the black jacket and he indicated the affirmative. While officers were now aware that a third person was inside the vehicle, they did not yet know his identity.

{¶36} After discovering the firearm in the backpack that had been between Sinsel's legs, officers detained him in Det. Kelly's cruiser. While in the cruiser, Sinsel spoke to his girlfriend using the speaker function on his cell phone, thus both sides of the conversation were recorded. His girlfriend asked Sinsel whether anyone else had been arrested. He responded, "it's only me" and "I guess I'm the only one who is going down, here." (Trial Tr., p. 268.)

{¶37} Significantly, Sinsel made several references during this call both to "Crip," which is Appellant's street name, and to "Quentin," Appellant's legal name. Sinsel stated that "Crip was in the car," and that "Quentin had a bookbag." (State's Exh. 1, Kelly Dash Cam, 10:50.) Sinsel told the girlfriend that the guns did not belong to him and promised that he would take "it to the box." (State's Exh. 1, Kelly Dash Cam, 12:45.)

{¶38} She asked him if anyone else had been arrested and he responded that "Crip [inaudible] they didn't get him." (State's Exh. 1, Kelly Dash Cam, 13:21.) She asked "what do you mean they didn't get him?" (State's Exh. 1, Kelly Dash Cam, 13:20.) He

replied “I guess they didn’t see him. I was sitting in the front. Crip got in the back and I guess they ain’t seen him when they pulled up in the back.” (State’s Exh. 1, Kelly Dash Cam, 13:35.) Sinsel paused as dispatch could be heard over the radio system and he reported to his girlfriend that “they are calling for backup and shit. I don’t know, they are looking for Crip.” (State’s Exh. 1, Kelly Dash Cam, 15:34.) She said, “you need to figure something out.” (State’s Exh. 1, Kelly Dash Cam, 15:40.) Later in the call, Sinsel told her “Uncle Bob ain’t getting arrested” and “I guess I’m the only one going down here.” (State’s Exh. 1, Kelly Dash Cam, 24:57.) She responded, “where Crip at?” (State’s Exh. 1, Kelly Dash Cam, 25:22.) Appellant’s response is inaudible. A woman in the background can be heard calling out “don’t say nothing, Bo,” which is a reference to Sinsel’s street name “Deebo” or “Bo.” (State’s Exh. 1, Kelly Dash Cam, 25:47.)

{¶39} From this recorded conversation, law enforcement learned Appellant was the third passenger in the vehicle. While Appellant argued at trial and on appeal that Sinsel had reason to lie on the stand, this information was obtained before Sinsel entered into an agreement to cooperate with law enforcement. It appears Sinsel did not know the cruiser had a recording system. There were several instances during his conversation with his girlfriend that officers approached the cruiser and opened the trunk to pack up evidence where Sinsel stopped speaking, waiting to resume until the trunk had been closed and officers stepped away.

{¶40} During his transport to the Jefferson County Jail, the possibility of cooperation first arose. Appellant asked Det. Kelly about the U.S. Marshals and inquired about their location. Det. Kelly asked him if he had information for the marshals and Appellant responded in the affirmative, stating that his information would likely secure his

immediate release. As was revealed during trial, Sinsel assisted law enforcement in identifying and locating Appellant and another person of interest. The information did result in his immediate release from jail.

{¶41} Shortly thereafter, one officer arrived at the Maryland Market in Steubenville and observed Appellant outside near an entry door. When he approached Appellant a struggle ensued, requiring two additional cruisers to restrain and handcuff Appellant. While Appellant pleaded guilty to resisting arrest and this conviction is not at issue on appeal, a photograph taken during the arrest was admitted into evidence at trial. The photograph is instrumental in identifying Appellant as the third passenger.

{¶42} As earlier discussed, the man exiting the backseat during the traffic stop wore a black puffy coat with the hood pulled over his head. While the coat itself is not unique, the hood attached to the coat is, as it bears silver lettering down its entire center from front to back. Appellant wore a black puffy coat with an attached hood that had silver letters running down the center. Between Sinsel's statements to law enforcement and the hooded coat, there was ample evidence regarding Appellant's identity as the third passenger. While Appellant would have us dismiss Sinsel's statements due to his cooperation, Appellant and Harris made additional incriminating statements during a jail call.

{¶43} It appears the Jefferson County jail has a new call system allowing the caller and recipient to see one another while speaking on a landline phone. A side-by-side recording of both videos was admitted into evidence. While both Appellant and Harris were detained at the jail awaiting their respective trials, Harris called his girlfriend using the jail phone system. On one-half of the screen, Appellant's girlfriend and her friend can

be seen and heard, as both women spoke during the call. On the right hand side of the screen, Harris speaks during the majority of the call. During certain portions of the call, Appellant can be seen next to him and Harris hands him the phone several times to allow him to speak. The trial court allowed only certain excerpts of the call to be admitted into evidence. Only the first minute and one half of Harris' comments were admitted, and the remainder of Harris' statements were excluded. Three small appearances by Appellant when he speaks were also admitted. These statements are integral to our analysis, here.

{¶44} The beginning of the call was admitted to provide context for the jury before Harris handed Appellant the phone. Harris asked his girlfriend and the other woman "to go live," apparently on social media. Harris then spoke, addressing the "members" (Harris was allegedly the leader of a gang) and informing them that "Bo" (Sinsel) was a rat. Then he handed the phone to Appellant.

{¶45} When Appellant got on the line, he said, "you said too much then. Sayin' that you aren't allowed around me on grape. They didn't know who the fuck was in that car, nigga." (State's Exh. 1, Call 1, 1:55.) The state contended this statement implied that law enforcement would not have known he was in the car but for Sinsel's statements to police implicating him. Appellant reentered the call at a later point and Harris' girlfriend told him he should not be in jail. He replied, "I know, they didn't even know who the fuck, they could have said Donald Trump was in the backseat." (State's Exh. 1, Call 1, 8:13.)

{¶46} During Appellant's third appearance on the phone line, Harris' girlfriend says "I'm hot, Crip." (State's Exh. 1, Call 2, 4:15.) When he asks why, she explains that Sinsel's family lied about why Sinsel was released from jail and had accused her of incriminating Harris and Appellant. Appellant responds, "you couldn't even be half of the

reason why I'm in jail." (State's Exh. 1, Call 2, 5:10.) She responds that he should not even be in jail and he retorts, "you feel me?" (State's Exh. 1, Call 2, 5:22.) Appellant then alluded to the fact that Sinsel's cooperation with law enforcement would be revealed at trial: "they gonna see in court cause I'm taking my shit to the box. I'm taking my shit to the box. They gonna see this nigga bein' on the stand sayin' everything else. So, or I hope since she is sayin' that he didn't snitch." (State's Exh. 1, Call 2, 5:26.)

{¶47} It is clear Appellant believed Sinsel implicated him as the third passenger. It is equally clear that he was, in fact, that third person. He did not claim in this conversation he had been falsely implicated, but instead was upset that no one would have known who was inside the car were it not for Sinsel.

{¶48} Again, this analysis is entirely fact driven and largely depends on witness credibility. Ohio law affords great deference to a trier of fact in such determinations, as jurors are in the best position to assess and weigh credibility. Here, the trier of fact was charged with resolving with two inconsistent theories, each of which came from individuals (Appellant and Sinsel) who had much to gain through acceptance of their version of facts. Appellant sought to be acquitted of the charges and Sinsel admittedly avoided criminal charges for the firearm found in his backpack. The jury knew of Sinsel's cooperation with law enforcement and that he had his charge dismissed as a result of his cooperation. The jury had sole authority to resolve these competing and inconstant versions, resolve any discrepancies, and discount any testimony found incredible in ultimately reaching a verdict. Absent any indication that the jury clearly lost its way in doing so, its verdict must be accepted by a reviewing court. There is no evidence that

the jury lost its way in this case. As such, Appellant’s sole assignment of error is without merit and is overruled.

Conclusion

{¶49} Appellant argues that his weapons while under disability and improper handling a firearm in a motor vehicle convictions are against the manifest weight of the evidence. Because evidence was produced that, if believed, supports both convictions, Appellant’s arguments are without merit and the judgment of the trial court is affirmed.

Hanni, J. dissents; see dissenting opinion.

Klatt, J. concurs.

Hanni, J., dissenting

{¶50} With regard and respect to my colleagues, I must dissent from the majority opinion. I would find that Appellant's convictions were not supported by the manifest weight of the evidence because the evidence did not support a finding of constructive possession.

{¶51} Appellant was convicted of having weapons under a disability and improper handling of a firearm in a motor vehicle. R.C. 2923.12 provides no person shall knowingly "acquire, have, carry, or use" a firearm if under a disability. R.C. 2923.16(B) provides that no person shall knowingly "transport or have" a loaded firearm in a vehicle so that the firearm is accessible to the operator or passengers. There is no allegation here that Appellant acquired, carried, used, or transported the firearms in question. Thus, the issue is whether the State proved that Appellant "had" the firearms.

{¶52} In order to "have" a firearm within the meaning of the statutes, one must either actually or constructively possess it. *State v. Simpson*, 7th Dist. Columbiana No. 01 CO 13, 2002-Ohio-1565, ¶ 52, citing *State v. Moncrief*, 69 Ohio App.2d 51, 60, 431 N.E.2d 336 (8th Dist.1980). There is no evidence in this case that Appellant actually possessed the firearms.

{¶53} "To establish constructive possession, the state must prove that the defendant was conscious of the object, and able to exercise dominion or control over it even though that object may not be within his immediate physical possession." *State v. St. John*, 7th Dist. No. 09 BE 13, 2009-Ohio-6248, ¶ 19, citing *State v. Hankerson*, 70 Ohio St.2d 87, 90-91, 434 N.E.2d 1362 (1982). When considering the issue of constructive possession, we must keep in mind that a person's mere presence near or

access to the contraband or the area where contraband is found is not sufficient. *State v. Vaughn*, 2022-Ohio-3615, 197 N.E.3d 644, ¶ 21 (7th Dist.), citing *State v. Gardner*, 2017-Ohio-7241, 96 N.E.3d 925, ¶ 35 (8th Dist.). The evidence must establish the person was conscious of the fact that the contraband was present. *Id.*, citing *State v. Hankerson*, 70 Ohio St.2d 87, 91, 434 N.E.2d 1362 (1982).

{¶54} I would find in this case, the weight of the evidence did not demonstrate that Appellant was conscious of the fact that the firearms were present in the car within his reach. Appellant was neither the owner nor the driver of the vehicle where the firearms were found.

{¶55} The second firearm was found in the “map pouch” behind the driver’s seat while the third firearm was found in a bag on the floor behind the passenger seat.

{¶56} A photograph of the map pouch containing the gun from a direct angle shows that the gun was barely visible. The pouch appears to also contain numerous tissues sticking out, which make its appearance cluttered. The gun is nearly completely concealed within the pouch unless one were to look down into it from above. From a seated position in the backseat, it is difficult to say that one would certainly see the gun.

{¶57} And there was no evidence that the bag on the floor was open or unzipped or that its contents was visible to any passengers in the vehicle, including Appellant. In fact, a photograph of the bag where it was found shows the bag completely closed up with no indication of its contents.

{¶58} Additionally, the majority relies on allegedly incriminating statements made by Appellant during a jailhouse phone call. But in these calls Appellant never mentions or acknowledges that he knew of any firearms in the vehicle. Instead, his statements are

to the effect that the police did not even know he was in the car until Sinsel implicated him.

{¶59} Based on the above, I would find that the manifest weight of the evidence did not support a finding of constructive possession. For these reasons, I would reverse Appellant's convictions.

For the reasons stated in the Opinion rendered herein, Appellant's assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Jefferson County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.