

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-150532
Plaintiff-Appellee,	:	TRIAL NO. B-1406569
vs.	:	<i>JUDGMENT ENTRY.</i>
DONNELL WOODS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

A jury acquitted defendant-appellant Donnell Woods of trafficking in heroin, possession of heroin and obstructing official business, but found him guilty of having weapons under disability. The trial court imposed a 30-month prison term. Woods now appeals, bringing forth two assignments of error.

At trial, the evidence presented by the state demonstrated that Woods had been driving late at night when Cincinnati police officers attempted to stop his car after noticing traffic violations. Woods immediately pulled over, but as the police officers were about to exit from their vehicle, Woods moved the car forward 100 feet and his front-seat passenger, Quaran Hamm, exited from the car, fired a shot in the air and fled from the police. Woods admitted that he had moved the car forward to facilitate Hamm's escape. Woods was driving his girlfriend's car. Heroin, cellular

phones and \$451 in cash were found in the car. Woods told police officers that he had recognized Hamm from the neighborhood and had offered him a ride, but did not know his name. Woods and Hamm were the only two passengers in the car. Woods did not deny that he knew about the gun in the car.

In his first assignment of error, Woods contests the sufficiency and weight of the evidence underlying his conviction. When considering a challenge to the sufficiency of the evidence, we must determine, after viewing the evidence in the light most favorable to the state, whether any rational trier of fact could have found all the essential elements of the crime proved beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 491 (1991), paragraph two of the syllabus. When considering a challenge to the weight of the evidence, the court must examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

Woods argues that the state did not prove that he had constructive possession of the gun. We disagree. Constructive possession is “knowingly exercising dominion and control over an object, even though the object is not within the person’s immediate physical possession.” *State v. Hankerson*, 70 Ohio St.2d 87, 434 N.E.2d 1362 (1982), syllabus. Here, there was sufficient evidence presented that Woods had knowledge of the gun and that he exercised dominion and control over it. First, Hamm and Woods were the only two people in the car and when questioned by the police, Woods never denied knowing about the gun. Further, Woods’s DNA was found on the handle of the gun, allowing the jury to reasonably infer that he knew the gun was in the car. Finally, Woods exercised control over the gun as he was driving

the car where the gun was located, and he admitted that after he had initially stopped for the police officers, he then moved the car forward 100 feet in order to help Hamm escape. *See State v. English*, 1st Dist. Hamilton No. C-080872, 2010-Ohio-1759, ¶ 32 (defendant's exercise of dominion and control over the area where object is found supports inference that the defendant exercised dominion and control over the object).

We also hold that the jury did not lose its way and create a manifest miscarriage of justice by finding Woods guilty of having weapons under a disability. Although there was a mixture of DNA found on the handle of the gun, the forensic expert testified that Woods's DNA profile that was found on the handle of the gun would appear in only one of 1.5 million individuals in the general population.

The first assignment of error is overruled.

In his second assignment of error, Woods maintains that his sentence is contrary to law. We may modify or vacate Woods's sentence only if we determine by clear and convincing evidence that the record does not support the trial court's findings under relevant statutes or that the sentence is contrary to law. *State v. Marcum*, Slip Opinion No. 2016-Ohio-1002; *see State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, ¶ 11 (1st Dist.).

Woods argues that the trial court failed to properly consider the sentencing factors set forth in R.C. 2929.11 and 2929.12 and, thus, imposed an excessive sentence. R.C. 2929.11 requires a trial court, in imposing a felony sentence, "to be guided by the overriding purposes of felony sentencing." R.C. 2929.12 confers upon the trial court the "discretion to determine the most effective way to comply with the purposes and principles of sentencing" and sets forth multiple factors that the court, in exercising its discretion, must "consider." But we will presume that the court

considered the sentencing factors set forth in these statutes, even from a silent record, unless the appellant can demonstrate affirmatively that the court failed to do so. *See State v. Alexander*, 1st Dist. Hamilton Nos. C-110828 and C-110829, 2012-Ohio-3349.

Here, Woods had previously been convicted of manslaughter in Kentucky and had served a lengthy sentence. Within months of being released from prison, Woods was charged with having weapons under a disability as well as the other charges he was acquitted of. Woods also had a juvenile record. The trial court determined that a prison sentence was necessary in this case after considering “the risks that [Woods] will commit another offense * * * [and] [Woods’s] history character and condition.” The record demonstrates that the trial court, which had presided over the trial, properly considered the sentencing factors set forth in R.C. 2929.11 and 2929.12.

Therefore, the second assignment of error is overruled, and the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on August 24, 2016

per order of the court _____.
Presiding Judge