**[Cite as *State v. Madden*, 2010-Ohio-176.]**

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ADAMS COUNTY

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| STATE OF OHIO, | : | Case No. 09CA883 |
| Plaintiff-Appellee, | : | |
| v. | : | DECISION AND JUDGMENT ENTRY |
| ROCKY MADDEN, | : | |
| Defendant-Appellant. | : | **Released 1/14/10** |

APPEARANCES:

Tanya Drinnon, West Union, Ohio, for appellant.

Aaron E. Haslam, Adams County Prosecutor, and David Kelley, Adams County Assistant Prosecutor, West Union, Ohio, for appellee.

Harsha, J.

**{¶1}** In the late evening hours, deputies discovered evidence of a methamphetamine lab in and around a camper trailer located on a property in Adams County, Ohio. When deputies arrived at the property, a number of individuals fled. The deputies later arrested Rocky Madden, who they believed owned the trailer and was manufacturing methamphetamine. After a trial, where one State's witness testified that Madden was in the trailer on the night in question, the jury convicted Madden of illegally possessing chemicals with the intent to manufacture a controlled substance.

**{¶2}** On appeal, Madden argues that his trial counsel provided ineffective assistance. He contends that his counsel should have moved to suppress evidence seized from the trailer and the property because the deputies did not obtain permission from either him or the property owner prior to the search. However, even had there been a basis to file a motion to suppress, we are not convinced that such a motion

would have a reasonable probability of success. Madden loosely supports his claim that the deputies did not obtain the property owner's permission to search the property with testimony that is ambiguous at best. Moreover, the record shows that the deputies had probable cause to believe the trailer contained an active methamphetamine lab. Thus, exigent circumstances existed to allow them to enter and secure the trailer without permission or a warrant.

**{¶3}** Next, Madden argues that his trial counsel provided ineffective assistance by failing to effectively cross-examine the State's witnesses. We find nothing in the record demonstrating that his trial counsel's method of cross-examination rose to the level of deficient performance. Trial counsel cross-examined each of the State's witnesses and specifically sought to undermine the credibility of the witness who placed Madden in the trailer that night.

**{¶4}** Madden also contends that the trial court abused its discretion by instructing the jurors on "constructive possession." We find no error here because the evidence adduced at trial supported an instruction on constructive possession. Furthermore, the trial court's wording of the instruction is an accurate statement of the law.

**{¶5}** Finally, Madden argues that the jury verdict was against the manifest weight of the evidence as the only witness placing him in the trailer that night was an admitted methamphetamine addict, and thus her testimony should be discredited. But, because her testimony was not totally lacking all credibility, we leave it to the jury to determine whether she or Madden's alibi witness was more believable. The jury

obviously chose to believe the State's witness. We see no manifest miscarriage of justice in that result.

## I. Facts

**{¶6}** On June 17, 2008, Adams County Sheriff's Deputies Kurt Beckman and Mike Estep responded to a call concerning a potential methamphetamine lab near Blue Creek, Ohio. The caller reported smelling a strong chemical odor, hearing shots fired, and seeing a large fire. The deputies entered a driveway leading to the property and came across Mark Taylor, whom they detained. The deputies then observed a car, a camper trailer, and some people who left a campfire and fled into the nearby woods.

**{¶7}** As they approached the trailer, Beckman noticed that the trailer door was wide open. Upon detecting a strong smell of ether, Beckman believed the trailer contained a "methamphetamine lab." So, he and other deputies secured the scene and called for the assistance of an officer trained in investigating methamphetamine labs.

**{¶8}** Detective Shawn Cooley, an expert in "clandestine methamphetamine labs," arrived to assist in the investigation. Cooley spoke to the owner of the property, Bobbie Haven, who gave him permission to search the property. He entered the trailer and located iodized salt, coffee filters containing white residue, partially stripped lithium batteries, "liquid fire" drain cleaner, and a digital scale. He also located a tank containing anhydrous ammonia underneath the steps of the trailer. Approximately fifteen feet from the trailer, Cooley discovered a jar containing anhydrous ammonia, lithium strips, starting fluid, and crushed ephedrine tablets. The sequence in which he discovered those items is not clear from the record.

**{¶9}** Although the deputies did not find Rocky Madden at the trailer or in a subsequent search of the area, they later charged him with aggravated possession of drugs, in violation of R.C. 2925.11, and illegal assembly or possession of one or more chemicals for the manufacture of a controlled substance in violation of R.C. 2925.041. Before trial, the State dismissed the aggravated possession charge.

**{¶10}** At trial, Cooley testified that a few weeks earlier he had encountered this same camper trailer before in a different location. He said that he had been inside the trailer and spoke with Madden, who indicated the trailer was his. Haven, the property owner, testified that a week prior to June 17, she gave Madden permission to park his camper trailer on the property.

**{¶11}** Barbara Crisp also testified at trial on the State's behalf. She said that she went to the trailer on the evening of June 17 to give Madden cigarettes and to sell him batteries and pseudoephedrine tablets to "cook meth." She also said she observed Madden flee from the trailer as police arrived and that he was carrying three jars of an unknown substance.

**{¶12}** Madden introduced the testimony of Tasha Boling, his girlfriend, who provided an alibi. She claimed that Madden was with her in her hotel room in Piketon, Ohio on June 17. She further claimed that Madden was with her for her entire stay at the hotel – from June 12 through mid July – and that he never left her presence.

**{¶13}** After the jury found Madden guilty, the court sentenced him accordingly. This appeal followed.

## II. Assignments of Error

**{¶14}** Madden assigns the following errors:

FIRST ASSIGNMENT OF ERROR

TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 10 OF THE OHIO CONSTITUTION FOR FAILING TO DEFEND THE APPELLANT'S FOURTH AMENDMENT PROTECTIONS AGAINST ILLEGAL SEARCH & SEIZURE.

SECOND ASSIGNMENT OF ERROR

MR. MADDEN WAS DEPRIVED A FAIR TRIAL IN VIOLATION OF THE FOURTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 10, 14, AND 16 OF THE OHIO CONSTITUTION BECAUSE HIS TRIAL ATTORNEY UNREASONABLY FAILED TO SEEK SUPPRESSION OF EVIDENCE OBTAINED DURING AN ILLEGAL SEARCH OF BARBARA HAVEN'S[1] PROPERTY.

THIRD ASSIGNMENT OF ERROR

TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 10 OF THE OHIO CONSTITUTION FOR FAILING TO EFFECTIVELY CROSS-EXAMINE THE STATE'S WITNESSES.

FOURTH ASSIGNMENT OF ERROR

THE TRIAL COURT ABUSED ITS DISCRETION * * * WHEN IT ALLOWED THE JURY INSTRUCTIONS TO INCLUDE CONSTRUCTIVE POSSESSION.

FIFTH ASSIGNMENT OF ERROR

THE JURY VERDICT ON THE ILLEGAL ASSEMBLY OR POSSESSION OF CHEMICALS FOR THE MANUFACTURE OF DRUGS WAS AGAINST THE WEIGHT OF THE EVIDENCE DENYING APPELLANT DUE PROCESS OF LAW.[2]

[1] Although the record is not clear, we assume that Barbara Haven is Bobbie Haven.

[2] Madden failed to provide this Court with a transcript of the record or an appropriate substitute under App.R. 9(C) or (D). As the appellant, it is his burden to provide this Court with a record of the "facts, testimony, and evidentiary matters necessary to support [his] assignment of error." *State v. Lewis*, Adams App. No. 02CA734, 2003-Ohio-1006, at ¶11, citing *State v. Robinson*, Scioto App. No. 00CA2698, 2000-Ohio-1972; *State v. Jones,* Butler App. No. CA2001-03-056, 2002-Ohio-5505; *State v. Tillman* (1997), 119 Ohio App.3d 449, 454, 695 N.E.2d 792. Where the record is silent, we must presume the validity of the trial court's decisions. Id., citing *Robinson*, supra. In the interest of justice, we directed the clerk to transmit the transcript to this Court, as provided for under App.R. 9(E).

III. Ineffective Assistance of Counsel

**{¶15}** Madden's first, second, and third assignments of error allege ineffective assistance by trial counsel, which we address together on a de novo basis.

A. The Strickland Test

**{¶16}** The Sixth Amendment to the United States Constitution states that an "accused shall enjoy the right to * * * have the Assistance of Counsel for his defense." Sixth Amendment to the United States Constitution. See, also, Section 10, Article 1, Ohio Constitution. Inherent in the right to the assistance of counsel is the requirement that counsel's advocacy must be "effective." See *McMann v. Richardson* (1970), 397 U.S. 759, 771 fn. 14, 90 S.Ct. 1441. On appeal, the test generally applied to a claim of ineffectiveness of trial counsel is set forth in *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052.

**{¶17}** The *Strickland* test involves two separate inquiries, both of which an appellant must satisfy. The first prong asks whether the representation was "deficient" or fell "below an objective standard of reasonableness." *Strickland* at 687-88. "Deficient" performance is described as "errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. In applying this standard, we presume trial counsel is competent. *State v. Newland*, Ross App. No. 02CA2666, 2003-Ohio-3230, at ¶30. Thus, the burden is on the defendant to demonstrate that the challenged action could not be considered within the range of "sound trial strategy." *Strickland* at 689.

**{¶18}** The second prong of *Strickland*, the prejudice inquiry, asks whether there exists "a reasonable probability that, but for counsel's unprofessional errors, the result

of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

B. Failure to seek suppression of evidence

**{¶19}** Madden contends that his trial counsel was ineffective for failing to move to suppress the evidence seized by the deputies. "The failure to file or pursue a motion to suppress does not automatically constitute ineffective assistance of counsel." *State v. Benjamin*, Scioto App. No. 08CA3249, 2009-Ohio-4774, at ¶23, citing *State v. Madrigal*, 87 Ohio St.3d 378, 389, 2000-Ohio-448, 721 N.E.2d 52, in turn, citing *Kimmelman v. Morrison* (1986), 477 U.S. 365, 384, 106 S.Ct. 2574. To demonstrate ineffective assistance for failing to file a motion suppress, a defendant must show: (1) a basis for the motion to suppress; (2) that the motion had a reasonable probability of success; and (3) a reasonable probability that suppression of the challenged evidence would have changed the outcome at trial. See *Madrigal* at 389; *Benjamin* at ¶23, citing *State v. Brown*, 115 Ohio St.3d 55, 2007-Ohio-4837, 873 N.E.2d 858, at ¶65; *State v. Chamblin*, Adams App. No. 02CA753, 2004-Ohio-2252, at ¶34.

**{¶20}** In his first assignment of error, Madden argues trial counsel should have sought suppression of the evidence found on Haven's property because Cooley did not have permission to search it. Although Cooley testified that Haven gave him permission to search the property, Madden suggests that Cooley did not acquire Haven's permission until the day after the search and seizure occurred. He points to a portion of the trial record where Haven states that Cooley interviewed her the day following the seizure of evidence from Madden's trailer. But this testimony does not refute Cooley's assertion that he talked to Haven to obtain permission to search the property shortly

after he arrived at the scene on the evening of the 17th. As the State suggests, the contact between Cooley and Haven appears to have occurred twice, initially for permission to search and subsequently to conduct an interview. Based upon the state of the record before us, any potential ambiguity that exists falls far short of establishing a reasonable probability that a motion to suppress the evidence found outside the trailer would have been successful.

**{¶21}** In his second assignment of error, Madden contends that Cooley believed that the camper trailer was owned by Madden, which put the deputies on notice that they needed permission from Madden, rather than Haven, to search his trailer. But even assuming that Haven could not legally give consent to search the trailer, we are not persuaded that a motion to suppress would have had a reasonable probability of success. Exigent circumstances appear to have justified a warrantless entry into the trailer. R.C. 2933.33 states:

> (A) If a law enforcement officer has probable cause to believe that particular premises are used for the illegal manufacture of methamphetamine, for the purpose of conducting a search of the premises without a warrant, the risk of explosion or fire from the illegal manufacture of methamphetamine causing injury to the public constitutes exigent circumstances and reasonable grounds to believe that there is an immediate need to protect the lives, or property, of the officer and other individuals in the vicinity of the illegal manufacture.

**{¶22}** In several recent cases, the Ninth District has applied this statute to permit officers to enter a residence without a warrant where they possessed probable cause to believe a methamphetamine lab was inside. See *State v. Eugeni A. Timofeev*, Summit App. No. 24222, 2009-Ohio-3007 (exigent circumstances and probable cause existed where police received tip from informant of active methamphetamine lab in basement of residence, test of white substance in purse of occupant leaving residence came back

positive for methamphetamine, and after knocking on residence door, suspect peered out and then darted back inside residence); *State v. White*, Summit App. No. 23955, 23959, 2008-Ohio-2432 (police trained in methamphetamine labs, after conducting "knock and announce," detected strong odor, probable cause and exigent circumstances found to exist); see, also, *State v. Sandor*, Summit App No. 23353, 2007-Ohio-1482.

**{¶23}** In this case, the deputies received a tip concerning a strong chemical odor and gun fire. They went to the property and encountered a camper trailer emitting a strong odor of ether through an open door. Beckham testified that the odor indicated to him that there was a methamphetamine lab inside. Deputy Cooley testified he discovered anhydrous ammonia, lithium batteries, starting fluid and crushed ephedrine tablets outside the camper. Given these facts, the deputies possessed probable cause to believe that there was a methamphetamine lab inside the trailer. Furthermore, the camper trailer was located near a large campfire. The risk of explosion and serious injury is obvious. Even without the campfire, the toxic and volatile nature of a methamphetamine lab poses a risk of danger to police and bystanders. We join our colleagues in *Timofeev*, supra, in concluding "clandestine methamphetamine laboratories pose a per se danger" and when there is probable cause to suspect the presence of an active methamphetamine lab, an exigent circumstance justifies a warrantless intrusion to secure the area.

**{¶24}** And more importantly, as already noted, some evidence of methamphetamine manufacture was located outside of the trailer, underneath its steps and near the campfire. Even if Madden had successfully suppressed the evidence

located inside the trailer, nothing in the record indicates that Madden could successfully suppress anything located outside the trailer. This evidence, when taken in conjunction with the testimony of Beckman, Cooley, and Crisp would have been sufficient to justify a conviction under the theory of constructive possession, which we discuss below. Thus, the failure to file the motion to suppress items from the trailer would not have been prejudicial. Accordingly, the first two assignments of error are meritless.

C. Failure to effectively cross-examine State witnesses

**{¶25}** For his third assignment of error, Madden also argues that his trial counsel was ineffective in the cross-examination of several of the State's witnesses. "The extent and scope of cross-examination clearly fall within the ambit of trial strategy, and debatable trial tactics do not establish ineffective assistance of counsel." *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, at ¶146, citing *State v. Campbell*, 90 Ohio St.3d 320, 339, 2000-Ohio-183, 738 N.E.2d 1178; *State v. Otte*, 74 Ohio St.3d 555, 565, 1996-Ohio-108, 660 N.E.2d 711.

**{¶26}** First, Madden argues trial counsel failed to question Beckham about an alleged inaccuracy in his testimony concerning the number of people he observed flee the crime scene. Beckham testified that he saw several people flee the crime scene. But Madden argues that this testimony was contradicted by Cooley, who stated that he saw only one or two people flee.

**{¶27}** Our review of the trial record indicates that Cooley did not see anyone flee the scene. Cooley arrived at the scene after Beckham and Estep. When Cooley testified that one or two people fled the scene, he was reporting what Sergeant Rick Phillips told him. Although this testimony was hearsay, we doubt it affected the

outcome of the trial. And the failure to probe Cooley or Beckham on this matter also appears harmless. Further cross-examination on this "inconsistency" was unlikely to so undermine the credibility of either officer as to render their testimony unbelievable. And because neither deputy testified that Madden was one of the several people who fled, the failure to cross-examine them on the exact number of fleeing suspects appears to be insignificant.

**{¶28}** Second, and along similar lines, Madden contends that his trial counsel should have questioned the State's witnesses about the number of people present at the crime scene and to establish that Madden was not found there. It is not clear how establishing the number of fleeing suspects would establish that Madden was not one of them. Perhaps Madden is arguing that if the jury compared the exact number of fleeing suspects with the number of individuals eventually detained, he could convince them, by process of elimination, that he was not present. But trial counsel took a more direct route to this end through the testimony of an alibi witness. The alleged failure to establish through cross-examination the exact number of fleeing suspects does not appear to us to be deficient representation.

**{¶29}** Third, Madden argues trial counsel was ineffective for failing to question Cooley after he allegedly contradicted himself. Madden argues Cooley testified that he assisted with interviews of some witnesses, yet later contradicted himself by stating that he had only been in contact with Crisp. First, we question whether there was any real inconsistency in Cooley's testimony. It is possible that he could "assist" in the interviews of some witnesses and yet only be in direct contact with one witness.

Regardless, we doubt further examination of this alleged inconsistency would have seriously damaged Cooley's credibility.

**{¶30}** Madden also points to trial counsel's failure to question Haven regarding the allegedly contradictory statement Cooley made concerning when Haven gave him permission to search the property. Our disposition of section III.B adequately addresses this matter. Even if trial counsel questioned Haven and discovered that Cooley obtained her permission only after searching her property, the deputies possessed probable cause to believe a methamphetamine lab was present. Exigent circumstances permitted them to secure and search the property without permission or a warrant.

**{¶31}** We find nothing in Madden's trial counsel's cross-examination strategy rising to the level of deficient performance. Madden's trial counsel conducted cross-examination of each of the State's four witnesses. Crisp was the only witness who placed Madden in the trailer on the night in question. Counsel attempted to undermine her credibility by asking her about her drug use and other possible bias. Accordingly, Madden has failed to overcome the presumption that trial counsel's method of cross-examination was "sound trial strategy." This assignment of error is also meritless.

## IV. Jury Instructions

**{¶32}** In his fourth assignment of error, Madden contends that the trial court should not have instructed the jury on constructive possession. The State argues that Madden failed to object to the instruction on constructive possession and we are limited to plain error review of this matter. However, the record confirms that counsel did object to the instruction.

A. Standard of Review

**{¶33}** The law requires a trial court to give the jury all instructions that are relevant and necessary for the jury to properly weigh the evidence and reach their verdict as the fact finder. *State v. Comen* (1990), 50 Ohio St.3d 206, 553 N.E.2d 640, at paragraph two of the syllabus. "The jury instructions 'must be based upon the actual issues in the case as presented by the evidence.'" *State v. Hendrickson*, Athens App. No. 08CA12, 2009-Ohio-4416, at ¶22, citing *State v. Tompkins* (Oct. 25, 1996), Clark App. No. 95-CA-0099, 1996 WL 612855, in turn citing *State v. Scimemi* (June 2, 1995), Clark App. No. 94-CA-58, 1995 WL 329031. Where it is possible that "reasonable minds might reach the conclusion sought by the instruction" the court must provide guidance to the jury. *Murphy v. Carrollton Mfg. Co.* (1991), 61 Ohio St.3d 585, 591, 575 N.E.2d 828. While the actual wording of the charge is left to the court's discretion, the need for an instruction presents a question of law. *Hendrickson* at ¶22.

B. Constructive Possession

**{¶34}** In *State v. Kingsland*, Adams App. No. 07CA853, 2008-Ohio-4148, at ¶13, we discussed constructive possession:

> Possession may be actual or constructive. Actual possession exists when the circumstances indicate that an individual has or had an item within his immediate physical possession. Constructive possession exists when an individual is able to exercise dominion or control of an item, even if the individual does not have the item within his immediate physical possession. For constructive possession to exist, it must also be shown that the person was conscious of the presence of the object. 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. 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. (Citations, quotations, and brackets omitted.)

**{¶35}** Madden argues that the trial court erred in instructing the jury on constructive possession of the evidence "when there is no evidence of actual possession." This argument is difficult for us to understand because "[n]othing requires the prosecution to prove actual possession before a trial court may give a constructive possession instruction." *State v. Moon*, Adams App. No. 08CA875, 2009-Ohio-4830, at ¶48.

**{¶36}** Madden also contends that the State did not present evidence "concerning the concept of 'constructive possession.'" However, the evidence in this case supports the trial court's decision to instruct the jurors on constructive possession. Cooley testified that Madden owned the trailer based upon an earlier encounter at a different location. At that time Madden identified himself as the owner of the trailer. Cooley also testified that he located evidence of a methamphetamine lab inside and around the trailer. And Crisp testified that Madden was inside the trailer on the night in question, and when the deputies arrived, he fled while carrying an unknown substance. This evidence could reasonably support a jury finding that Madden exercised dominion and control over the evidence seized from his trailer, even though he was not found in actual possession of it.

**{¶37}** Although Madden does not raise this issue, the court's wording of the instruction on constructive possession is an accurate statement of the law. The court gave the following instruction: "[c]onstructive possession exists when an individual exercises dominion and control over an object, even though that object may not be within his immediate physical possession." We recently held the same instruction to be an accurate statement of law. See *Moon*, supra, at ¶49.

**{¶38}** Accordingly we overrule Madden's fourth assignment of error.

V. Manifest Weight of the Evidence

**{¶39}** In his fifth assignment of error, Madden argues that his conviction for illegal assembly or possession of one or more chemicals for the manufacture of a controlled substance was against the manifest weight of the evidence. Madden contends that the State did not prove that he was present at the scene of the crime, i.e. that the testimony of Crisp, an admitted methamphetamine user, was not competent and credible evidence.

A. Standard of Review

**{¶40}** Our function when reviewing the weight of the evidence is to determine whether the greater amount of credible evidence supports the verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541. In doing so, we sit as a fictional "thirteenth juror" and review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. Id., citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. We will order a new trial only in the exceptional case in which the evidence weighs heavily against the conviction. *State v. Bethel*, 110 Ohio St.3d 416, 2006-Ohio-4853, 854 N.E.2d 150, at ¶100, citing *Martin* at 175. We will not reverse a conviction so long as the prosecution presented substantial evidence for a reasonable trier of fact to conclude that all of the essential elements of the offense were established beyond a reasonable doubt. *State v. Getsy*, 84 Ohio St.3d 180, 193-194, 1998-Ohio-533, 702 N.E.2d 866.

B. The Evidence

**{¶41}** We do not believe that the evidence adduced at trial weighs heavily against the conviction or that the jury's decision amounts to a manifest miscarriage of justice. The record demonstrates that the prosecution presented evidence on each element of the offense of illegal assembly or possession of chemicals for the manufacture of a controlled substance. Therefore the jurors did not clearly lose their way in reaching a guilty verdict.

**{¶42}** R.C. 2925.041(A) provides that "[n]o person shall knowingly assemble or possess one or more chemicals that may be used to manufacture a controlled substance in schedule I or II with the intent to manufacture a controlled substance in schedule I or II in violation of section 2925.04 of the Revised Code."

**{¶43}** Cooley, who testified as an expert in "clandestine methamphetamine labs," identified the components of a methamphetamine lab that he located in or near the camper trailer located on Haven's property. He stated that he found iodized salt, coffee filters containing white residue, partially stripped lithium batteries, "liquid fire" drain cleaner, and a digital scale inside the camper. Cooley further testified that he located a tank containing anhydrous ammonia, which he identified as another ingredient in the methamphetamine manufacturing process, underneath the steps of the trailer. And Cooley located a jar containing anhydrous ammonia, lithium strips, starting fluid, and crushed ephedrine tablets approximately fifteen feet from the trailer. He opined that, in conjunction, these products are used for manufacturing methamphetamine.

**{¶44}** Cooley also testified that he was familiar with this specific trailer because he had encountered Madden living in it two weeks prior at a different location. At that

time, Madden claimed that the trailer was his, and that he was living there because he was having problems with his wife.

**{¶45}** Haven testified that Madden asked her if he could place the trailer on her property. She said that it was located on her property for approximately a week before the night of June 17.

**{¶46}** Crisp testified that she encountered Madden in the trailer on June 17 and brought him cigarettes, pseudoephedrine tablets, and batteries. After she left the trailer and walked towards Haven's residence, she saw lights and heard Madden ask Taylor to go see who was at the end of the driveway. Then she saw Madden take off running through the woods, holding three jars and a flashlight.

**{¶47}** On cross examination, Crisp admitted to being a former methamphetamine addict. She said that she had taken methamphetamine on June 17, but that she had taken it early that morning and had not done any that night. She also testified that she was not under the influence of methamphetamine or any other illegal drug while giving her testimony.

**{¶48}** Tasha Boling testified as an alibi witness for Madden. She claimed that on the night in question Madden was with her at her motel room in Piketon, Ohio. On cross examination, Boling further claimed that Madden was constantly within her physical presence from June 12, when she checked in to the motel, until mid-July. But when pressed by the State for details concerning the days surrounding June 17, Boling was unable to describe her activities. She also admitted that Madden had been very good to her, and that although she did not feel like she owed him anything, she would do

anything for him. On redirect, Boling clarified that "anything" did not include lying under oath.

**{¶49}** The verdict here is not against the manifest weight of this evidence. The State presented credible evidence that Madden owned the trailer and was inside it on the night in question. The evidence, if believed, could convince reasonable jurors that he was in constructive, if not actual possession of one or more illegal chemicals used to manufacture a controlled substance. Cooley, Crisp, and Haven all testified that Madden either owned or resided in the trailer. And Cooley's expert testimony regarding the items he seized and their apparent use was credible. The presence of these items could convince jurors that their possessor was manufacturing methamphetamine.

**{¶50}** Crisp's testimony placed Madden in the trailer immediately before police arrived. Although she may have been a methamphetamine user, she stated that she was not under the influence when testifying. Her credibility was a matter for the jury to determine. There were no obvious inconsistencies in her testimony and there is no basis to find it totally untrustworthy just because it conflicts with the testimony of Madden's alibi witness, Boling.

**{¶51}** A reasonable jury could discount Boling's testimony. Quite possibly, the jury did not believe her when she said that Madden was within her physical sight for every moment from June 12 through mid-July, a purported fact that seems highly unlikely. Furthermore, the State properly questioned Boling's potential bias towards Madden. The record reflects that she became very emotional and admitted that she would do anything for him. Although she stated she would not lie under oath in order to save him from prosecution, the jury was free to discredit her testimony.

**{¶52}** Accordingly, we overrule Madden's fifth assignment of error.

## IV. Conclusion

**{¶53}** Madden has failed to establish his trial counsel provided ineffective assistance. He has failed to show that a motion to suppress on the basis that police failed to obtain a warrant to search the property and trailer would have a reasonable probability of success. Exigent circumstances permitted the police to search and secure the property and trailer without a warrant or Haven or Madden's prior permission. His trial counsel's method of cross-examination did not rise to the level of constitutionally deficient performance. Trial counsel cross-examined each of the State's witnesses and specifically sought to undermine the State's witness who placed Madden in the trailer. The trial court's decision to instruct jurors on constructive possession was merited by the evidence at trial and was an accurate statement of the law. Finally, we conclude that the jury verdict did not weigh so heavily against the evidence that it represents a manifest miscarriage of justice. Although the State's witness who placed Madden at the scene of the crime was an admitted former methamphetamine user, her testimony was consistent and substantial credible evidence supported the jury's verdict.

JUDGMENT AFFIRMED.

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Adams 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 sixty 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 sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five 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 sixty 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. Exceptions.

McFarland, P.J.: Concurs in Judgment and Opinion.
Kline, J.: Concurs in Judgment Only.

For the Court

BY: _____
William H. Harsha, 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.**