

[Cite as *State v. Griffith*, 2015-Ohio-4112.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

|                        |   |                                   |
|------------------------|---|-----------------------------------|
| STATE OF OHIO          | : |                                   |
|                        | : | Appellate Case No. 26451          |
| Plaintiff-Appellee     | : |                                   |
|                        | : | Trial Court Case No. 2013-CR-1302 |
| v.                     | : |                                   |
|                        | : | (Criminal Appeal from             |
| GERRY E. GRIFFITH, JR. | : | Common Pleas Court)               |
|                        | : |                                   |
| Defendant-Appellant    | : |                                   |
|                        | : |                                   |

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OPINION

Rendered on the 30th day of September, 2015.

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MATHIAS H. HECK, JR., by CARLEY J. INGRAM, Atty. Reg. No. 0020084, Montgomery County Prosecutor’s Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45402  
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FAIN, J.

{¶ 1} Defendant-appellant Gerry Griffith, Jr., appeals from his convictions and sentence for Possession of Drugs. He contends that the trial court erred in preventing

him from testifying as to a statement he claims was made by a supervising officer during his arrest. He further contends that the trial court erred in permitting testimony regarding “residue” on a digital scale when there was no evidence that the substance was an illegal drug. He contends that the trial court erred by denying his motion to reveal the identity of a confidential informant. Griffith claims that the conviction is not supported by sufficient evidence, and that it is against the manifest weight of the evidence. Finally, he claims that cumulative error mandates reversal of his conviction.

{¶ 2} We conclude that even if the trial court erred by preventing Griffith’s testimony regarding a statement made at the time of his arrest by an investigator, who testified at the trial, any error in this regard was not sufficiently prejudicial to merit reversal of the conviction. The evidence upon which the State relied in the Drug Possession prosecutions was the location of the drugs found in an apartment, and the reasonable inferences to draw therefrom. The location of the drugs is a matter of objective fact. Stiver did not testify concerning the location of the drugs; she did not participate in the actual search of the premises. Therefore, any demonstrated bias on Stiver’s part would not likely have affected the verdict. Even if the trial court erred in initially permitting evidence regarding residue, this error was not sufficiently prejudicial to warrant reversal, in view of the fact that the trial court subsequently struck this evidence from the record, and Griffith sought no further remedy. We find that there is sufficient evidence to sustain the conviction, and that the conviction is not against the manifest weight of the evidence. The trial court did not err in denying the motion to reveal the confidential informant; this information was neither relevant to an element of the offense, nor vital to Griffith’s defense. Finally, we find that any cumulative error was not so great as to require

reversal. Accordingly, the judgment of the trial court is Affirmed.

### **I. The Circumstances Leading to Griffith's Arrest**

{¶ 3} In April 2013, Dayton Police Detectives met with a confidential informant in order to conduct controlled purchases of illegal drugs from Apartment 12, 303 Superior Avenue, Dayton, Ohio. Later that month, the officers obtained a warrant to search that apartment.

{¶ 4} The search was conducted on April 25, 2013. On that date, Dayton Police Detective Gregory Orick was observing the apartment building, when he observed a man, later identified as Griffith, use a key to enter the outer front door of the apartment building about 30 to 40 minutes before the execution of the warrant.

{¶ 5} The police used a device called a halligan tool to open the rear door of the apartment building. The device consists of a large pry bar, which is inserted into the door jamb. The tool is then driven into the jamb using a ram tool, resulting in a loud noise. As the police entered the building, they observed Griffith run from apartment 12.

{¶ 6} Orick stayed just outside the front door of the building during the execution of the warrant. He was able to see inside the building through the glass door, but could not enter the locked door. Orick was wearing plain clothes, but had on a black tactical vest with the word "Police" in five to six-inch letters "emblazoned" across the front. Tr. p. 194. Orick saw Griffith try to exit the building. Orick drew his gun and ordered Griffith to stop. However, Griffith continued down the stairs to a lower level in the building, where he was apprehended. Several detectives were involved in the subsequent search of the apartment. Dayton Police Lieutenant Wendy Stiver was the supervisor during the

execution of the search.

## **II. Course of the Proceedings**

{¶ 7} Griffith was indicted on one count of Possession of Cocaine; one count of Possession of Heroin; one count of Possession of Marijuana; and one count of Possession of Drug Paraphernalia. He moved to suppress evidence. Following a hearing, the trial court denied the motion, with the exception of two items found on Griffith's person, which were suppressed.

{¶ 8} The State filed a Certificate of Non-Disclosure regarding the identity of the confidential informant used by the police in obtaining the search warrant for the apartment. Griffith moved to compel the disclosure of the informant. He later re-filed this motion, and the State filed its objection thereto. A hearing on the issue was conducted on March 14, 2014. That same day, the trial court entered an order denying the motion, "for the reasons this Court placed into the record at the conclusion of the hearing."

{¶ 9} The matter was tried to a jury in September 2014. At the conclusion of the State's case, Griffith made a motion for a Crim.R. 29 acquittal regarding the charge of Possession of Drug Paraphernalia, which was sustained. The jury convicted Griffith on the three remaining charges of Possession of Drugs. The trial court sentenced Griffith to an aggregate mandatory prison term of three years. Griffith appeals.

### **III. If the Trial Court Erred by Excluding Griffith's Testimony Concerning a Statement by an Investigator at the Scene, any Error in this Regard Was Not Sufficiently Prejudicial**

### **to Warrant Reversal**

**{¶ 10}** Griffith's First Assignment of Error states:

THE TRIAL COURT ERRED IN SUSTAINING THE OBJECTION OF THE STATE, ON HEARSAY GROUNDS, AS TO A STATEMENT MADE BY A GOVERNMENT INVESTIGATOR WHICH INDICATED THAT SHE WAS PURSUING A VENDETTA AGAINST DEFENDANT FOR HIS ALLEGED INVOLVEMENT IN A NINE-YEAR OLD ABDUCTION.

**{¶ 11}** Griffith contends that the trial court erred in preventing him from testifying as to a statement he alleges was made to him by Dayton Police Lieutenant Stiver during the execution of the search warrant and attendant arrest of Griffith. This argument is based upon Griffith's defense theory that the Dayton Police Department, and Stiver, had a motive to harass him.

**{¶ 12}** Specifically, on April 2, 2004, Griffith, a Dayton resident, was observed driving in Cleveland near a school. A school security officer observed Griffith stop and speak, from his vehicle, to a female pedestrian whom the officer estimated to be approximately nine years old. The officer believed that the girl was trying to avoid Griffith, who eventually drove away. The incident was not immediately reported to the police. However, later that day, a fourteen-year-old girl named Gina DeJesus was abducted from a nearby part of Cleveland. The girl was still missing on April 8, when the security officer reported the incident between Griffith and a girl near the school.

**{¶ 13}** An arrest warrant was issued by a prosecutor, rather than a magistrate, for Griffith on a charge of Abduction. Officers from the Dayton and Cleveland police departments, as well as agents from the Bureau of Alcohol, Tobacco, and Firearms, were

present in Dayton for the execution of the warrant. Stiver placed a telephone call to Griffith, who was at work, telling him that his house had been burglarized, and that he needed to return home. Once home, Griffith was arrested. A consent search of his home did not reveal any evidence related to the abduction, but did uncover a gun and drugs. It was later discovered that the girl to whom Griffith had spoken was actually eighteen years old. Thereafter, the abduction charges were dismissed.

{¶ 14} Griffith's defense noted that, in the present case, Stiver was the officer in charge of the execution of the search warrant at the Superior Avenue apartment. The defense claimed that Stiver, and the police department, believed that Griffith had played some role in the disappearance of DeJesus, who was still missing at the time of the search warrant. Griffith attempted to testify that during the execution of the search warrant, Stiver approached him and stated, "I got you, you sick son of a bitch, and I can make this stick." The trial court ruled the statement hearsay, and precluded Griffith from so testifying.

{¶ 15} We note that Griffith attempted to argue that the statement should come in pursuant to the excited utterance exception to the hearsay rule. However, the trial court found that he had not laid any foundation for the exception. Griffith did not pursue the issue. And he did not attempt to argue that the testimony would demonstrate bias.

{¶ 16} This issue may have been more aptly argued as an attempt to show the bias of the witness. Evid.R. 616(A) states that "[b]ias, prejudice, interest, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by extrinsic evidence." Although Stiver was called by Griffith as a witness, the Evid.R. 607(A) limitation against impeaching one's own witness applies only to impeachment by means of a prior inconsistent statement. "Because the possible bias of

a witness is always significant in assessing credibility, the trier of fact must be sufficiently informed of the underlying relationships, circumstances, and influences operating on the witness \* \* \*.” *State v. Williams*, 61 Ohio App.3d 594, 597, 573 N.E.2d 704 (9th Dist. 1988). Ohio does not “require that a foundation be laid as a prerequisite for the introduction of extrinsic evidence of witness bias.” *Id.*

{¶ 17} Even if the trial court erred in denying Griffith the opportunity to testify to the statement, any error in this regard would not require overturning the jury's verdict. Stiver did not testify on behalf of the State. She was called by the defense, which asked about her role in the execution of the warrant. Stiver testified that her role as supervisor is to stay outside of the building and focus on the perimeter. She further testified that the supervisor is present to ensure officer safety, and to make certain that the operation is conducted pursuant to police department policy. She testified that she had no involvement in the arrest of Griffith. She further testified that once the scene is secure, the supervisor tends to leave the premises.

{¶ 18} The evidence upon which the State relied in the Drug Possession prosecutions was the location of the drugs found in the apartment, and the reasonable inferences to draw therefrom. The location of the drugs is a matter of objective fact. Stiver did not testify concerning the location of the drugs; she did not participate in the actual search of the premises. Therefore, any demonstrated bias on Stiver's part would not likely have affected the verdict. Furthermore, Stiver was specifically asked whether she had stated, “[w]e got you this time, you sick son of a bitch, and I can make it stick[.]” Although she denied the statement, the jury was made aware of the allegation, at least, that she had made the statement. Finally, this issue is not preserved for appellate

review, since Griffith's argument to the trial court was that the out-of-court statement, which was not hearsay,<sup>1</sup> satisfied the excited-utterance exception to the hearsay rule. He did not make an argument germane to the trial court's conclusion that the statement was not relevant.

{¶ 19} The First Assignment of Error is overruled.

**IV. Even if the Trial Court Erred in Initially Permitting Testimony Concerning Unidentified "Residue" Found on a Scale, this Error Was Harmless in View of the Trial Court's Subsequent striking From the Record of All Evidence Concerning the Scale**

{¶ 20} Griffith's Second Assignment of Error is as follows:

THE TRIAL COURT ERRED IN PERMITTING THE STATE OF OHIO'S WITNESS TO TESTIFY AS TO DRUG "RESIDUE" ON A SCALE, WHERE NO EVIDENCE WAS INTRODUCED TO PROVE THAT THE "RESIDUE" WAS A CONTROLLED SUBSTANCE, AND WHERE SUCH TESTIMONY SUGGESTED THAT DRUGS WERE BEING TRAFFICKED IN THE PREMISES WHERE DEFENDANT WAS ALLEGED TO BE PRESENT.

{¶ 21} Griffith contends that the trial court erred by permitting the State to introduce testimony that there was drug/cocaine residue on a digital scale found in the kitchen of the apartment. In support, he notes that the State did not present any evidence that any substance found on the scale was a controlled substance. The State contends that

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<sup>1</sup> The statement was not being offered to prove a factual proposition contained in the statement; it was being offered merely to prove that Stiver uttered the statement.

Griffith did not interpose an objection to the testimony that there was residue. The State claims he only objected when the prosecutor asked if the residue could be measured. Thus, the State argues that this argument is waived.

{¶ 22} We note that the State is incorrect. Griffith objected both to the testimony that there was residue on the scale, as well as to the question about measuring the residue. However, we note that Griffith's Crim.R. 29 motion for acquittal on the charge of drug paraphernalia related to the scale was sustained, and the scale was excluded from evidence. The trial court informed the jury that it had dismissed the Drug Paraphernalia charge related to the scale.

{¶ 23} If it was error to permit the testimony regarding the residue, we note that Griffith did not ask for any limiting instruction concerning this testimony. Nor did he seek any further remedy from the trial court in this regard. Accordingly, the Second Assignment of Error is overruled.

**V. Griffith's Convictions Are Supported by Sufficient Evidence, and  
Are Not Against the Manifest Weight of the Evidence**

{¶ 24} The Third Assignment of Error provides as follows:

THE JUDGMENT OF CONVICTION IS AGAINST THE WEIGHT OF  
THE EVIDENCE, AND IS NOT SUPPORTED BY SUFFICIENT  
EVIDENCE, IN THAT THE STATE OF OHIO FAILED TO PROVE THAT  
DEFENDANT KNOWINGLY POSSESSED CONTROLLED  
SUBSTANCES.

{¶ 25} Griffith contends that his conviction should be overturned because the State

failed to prove that he had possession of the drugs found in the apartment. In support, he argues that the State failed to prove that he either occupied or rented the apartment.

**{¶ 26}** When a defendant challenges the sufficiency of the evidence, the defendant is arguing that the State presented inadequate evidence on an element of the offense to sustain the verdict as a matter of law. *State v. Hawn*, 138 Ohio App.3d 449, 471, 741 N.E.2d 594 (2d Dist. 2000). “An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

**{¶ 27}** Our analysis is different when reviewing a manifest-weight argument. When a conviction is challenged on appeal as being against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, and determine whether, in resolving conflicts in the evidence, 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.” *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). Consequently, a judgment should be reversed as being against the manifest weight of the evidence “only in the exceptional case in which the evidence weighs heavily against the conviction.” *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist. 1983).

**{¶ 28}** The credibility of the witnesses and the weight to be given to their testimony are primarily matters for the trier of facts to resolve. *State v. DeHass*, 10 Ohio St.2d 230, 231, 227 N.E.2d 212 (1967). “Because the factfinder \* \* \* has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the factfinder's determinations of credibility. The decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness.” *State v. Lawson*, 2d Dist. Montgomery No. 16288, 1997 WL 476684 (Aug. 22, 1997). This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the trier of fact lost its way in arriving at its verdict. *State v. Bradley*, 2d Dist. Champaign No. 97–CA–03, 1997 WL 691510 (Oct. 24, 1997).

**{¶ 29}** Griffith was convicted of three counts of Possession of Drugs, in violation of R.C. 2925.11(A). That statute provides that “[n]o person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog.” “Knowingly” is defined by R.C. 2901.22(B) which states that “[a] person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.” R.C. 2901.22(B). R.C. 2925.01(K) states that “ ‘[p]ossess’ or ‘possession’ means having control over a thing or substance, but 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.” In

order to prove a violation of R.C. 2925.11(A), the State was required to prove beyond a reasonable doubt that Griffith knowingly possessed a controlled substance.

{¶ 30} Griffith's argument rests upon his claim that the State merely showed that he was in the apartment, which he notes, is not sufficient to prove possession. He claims that he was in the apartment, and that his documents were in the apartment, because a woman he identified only as "Dee," lived there, and she was helping him sort through his court documents in order to help him redress his wrongful prosecution from 2004.

{¶ 31} This court has noted that "[p]ossession of a drug may be either actual physical possession or constructive possession. A person has constructive possession of an item when he is conscious of the presence of the object and able to exercise dominion and control over that item, even if it is not within his immediate physical possession. Readily usable drugs found in very close proximity to a person may constitute circumstantial evidence sufficient to support a finding that the person constructively possessed those drugs. In determining whether a defendant knowingly possessed a controlled substance, it is necessary to examine the totality of the relevant facts and circumstances. The State may prove constructive possession solely through circumstantial evidence. Circumstantial evidence and direct evidence have the same probative value." *State v. Peterson*, 2d Dist. Champaign No. 2014-CA-1, 2015-Ohio-789, ¶¶ 19- 20.

{¶ 32} In this case, the evidence shows that the apartment was leased to someone named Simone Fultz. However, no clothing or other evidence that a woman was living there was found. Griffith did not call Dee as a witness, nor did anyone else identify her. No one other than Griffith was seen exiting the apartment at the time of the search, and

no one else was found in the apartment.

**{¶ 33}** About 30 to 40 minutes before the search, a police detective observed Griffith use a key to enter the front door of the apartment building. At the onset of the police entry, the police observed Griffith running from the apartment before they captured him in a downstairs hallway. A detective stationed outside the front door of the building observed Griffith running toward the lower level of the apartment.

**{¶ 34}** “It is well established that evidence of flight from the scene of a crime, resisting arrest, escape, and the like are permissible as evidence of consciousness of guilt and, thus, of guilt itself.” *State v. Frock*, 2d Dist. Clark No. 2004 CA 76, 2006-Ohio-1254, ¶ 57; *State v. Wood*, 2d Dist. Clark No. 2010 CA 42, 2011-Ohio-2314, ¶ 30. Griffith testified that he ran from the apartment as soon as he heard the banging caused by the police entry into the building. He testified that he did so because he was scared of the police, based upon his 2004 arrest. He later testified that he had not run from the apartment, but was merely walking around trying to find Dee. The jury was free to accept or reject Griffith’s explanation for his flight.

**{¶ 35}** The police executing the raid indicated that the apartment was small, and that all of the drugs were out in the open. The evidence shows that the police recovered three baggies of marijuana from a coffee table in the living room. Griffith’s pants, with his driver’s license, were found on the living-room floor. A pile of documents with Griffith’s name on them was stacked on the television stand under a disc.

**{¶ 36}** In the kitchen, the police recovered a bag containing heroin and cocaine on the kitchen counter. They also collected a bill with Griffith’s name on it beside the bag. In the cupboards, the police found stacks of documents bearing Griffith’s name. Among

these were mail and court documents bearing Griffith's name, and a written estimate bearing Griffith's signature. The documents also included Griffith's identification card, a contract signed by Griffith, an obituary notice with his name noted, and various other receipts bearing his name. They also found a bill bearing his name, and dated April 2013, on top of a George Foreman grill.

**{¶ 37}** A search of the bedroom revealed a bag with documents again bearing Griffith's name. Also, they found a plastic container containing his mail and other documents, including two greeting cards and a real estate purchase addendum bearing his name. The closet contained only men's clothing; all of which was determined to be Griffith's size. Also, the shoes found in the apartment were determined to be Griffith's size.

**{¶ 38}** Griffith claimed that he had changed clothes at the apartment because he was going to leave and go do some painting. He testified that he did not want to get his good clothes dirty. He also testified that his documents and mail were in the apartment because Dee was helping him with issues related to his 2004 prosecution. He repeatedly emphasized, as did two of his witnesses, that he kept those documents with him at all times. However, there is no evidence that Griffith carried any documents into the apartment when he arrived 30 to 40 minutes before the search. Also, he had no explanation as to why the documents were found all over the place.

**{¶ 39}** Given that the drugs were found in the open in the kitchen and living room, in proximity to documents relating to Griffith, and that there was evidence upon which a reasonable juror could find that Griffith lived in the apartment, we conclude that a reasonable fact finder could have inferred, and found beyond a reasonable doubt, that

Griffith had possession of the drugs found in the apartment. We conclude that Griffith's conviction is supported by legally sufficient evidence and is not against the manifest weight of the evidence. The Third Assignment of Error is overruled.

**VI. The Trial Court Did Not Abuse its Discretion by Overruling Griffith's Motion for Disclosure of the Identity of the Confidential Informant**

**{¶ 40}** Griffith's Fourth Assignment of Error is as follows:

THE TRIAL COURT ERRED IN OVERRULING DEFENDANT'S MOTION TO REVEAL THE IDENTITY OF THE CONFIDENTIAL INFORMANT WHOSE INFORMATION WAS THE BASIS FOR THE ISSUANCE OF THE SEARCH WARRANT.

**{¶ 41}** Griffith contends that the trial court should have sustained his motion for disclosure of the identity of the confidential informant used by the police in obtaining a search warrant for the Superior Avenue apartment. In support, he argues that since the informant had made controlled buys from the apartment, the informant would be able to identify the seller, and thereby undermine the State's argument that Griffith possessed the drugs by his mere occupancy of the apartment.

**{¶ 42}** "The state has an obvious interest in preserving the confidentiality of informants to whom it has promised confidentiality. Every time this promise cannot be honored, it becomes more difficult to secure the cooperation of informants in the future upon a promise of confidentiality. Nevertheless, the identity of an informant must be revealed to the criminal defendant when the testimony of the informant is vital to establishing an element of the crime or would be helpful or beneficial to the accused in

preparing and making a defense to criminal charges.” *State v. DeLeon*, 131 Ohio App.3d 632,635-636, 723 N.E.2d 188 (2d Dist. 1999), citing *State v. Williams*, 4 Ohio St.3d 74, 446 N.E.2d 779 (1983), syllabus. The defendant has the burden to demonstrate the need for the identity. *State v. Daniels*, 1st Dist. Hamilton No. C-990549, 2000 WL 282437, \*1 (March 17, 2000). “The trial court must then balance, on a case-by-case basis, the defendant’s right to present witnesses with the state’s right to protect the identity of its confidential informant.” *Id.* “Mere speculation or the possibility that the informant might be of some assistance is not enough to show that the testimony of the informant would be helpful in preparing a defense.” *Id.*

**{¶ 43}** The transcript of the hearing on this motion is not before this court. Along with his notice of appeal, Griffith filed a praecipe seeking the transcript of the trial and sentence. He did not include a request for the hearings of either the motion to suppress or the motion to disclose the confidential informant. Furthermore, the trial court did not include findings of fact or conclusions of law in its decision denying the motion. Instead, the trial court noted that the reasons for the decision had been stated on the record at the conclusion of the hearing. Thus, we have no way to review whether the trial court abused its discretion in denying the motion.

**{¶ 44}** In any event, it appears that the confidential informant was merely used to make two controlled drug purchases from the apartment, which then established a basis for the issuance of the search warrant. Griffith claims that the disclosure of the identity is essential to his defense because it would show that “someone” was dealing drugs from that apartment, and that revealing the identity of that drug trafficker would undermine the State’s claim that Griffith had possession of the drugs found in the apartment.

{¶ 45} Had Griffith been charged with trafficking, this argument would have more merit. However, even if another person had sold drugs in the apartment, that fact would be immaterial to the issue of whether Griffith possessed the drugs found in the apartment at the time of the search.

{¶ 46} We conclude that, under the facts in this case, the testimony of the confidential informant was not essential to establishing a defense at trial, nor to establishing an element of the offense charged. Thus, we conclude that the trial court did not abuse its discretion in denying the motion. The Fourth Assignment of Error is overruled.

**VII. Any Errors Committed by the Trial Court, when Cumulated, Are Not Sufficiently Prejudicial to Warrant Reversal**

{¶ 47} Griffith's Fifth and Sixth Assignments of Error state as follows:

THE TRIAL COURT'S VARIOUS ERRORS, SET FORTH IN ASSIGNMENTS OF ERROR ONE THROUGH FOUR ABOVE, CUMULATIVELY PREJUDICED DEFENDANT AND PREVENTED HIM FROM HAVING A FAIR TRIAL.

THE TRIAL COURT'S VARIOUS ERRORS, SET FORTH IN ASSIGNMENTS OF ERROR ONE THROUGH FOUR ABOVE, INDIVIDUALLY AND CUMULATIVELY DEPRIVED APPELLANT OF HIS RIGHTS TO DUE PROCESS, A FUNDAMENTALLY FAIR TRIAL, AND RIGHT OF CONFRONTATION, IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH

AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ART. I  
SECTION 10 OF THE OHIO CONSTITUTION THE [SIC]  
CONSTITUTIONS OF THE STATE OF OHIO AND THE UNITED STATES.

{¶ 48} Griffith contends that he was deprived of a fair trial by virtue of the cumulative error doctrine.

{¶ 49} Under the doctrine of cumulative error, “[s]eparately harmless errors may violate a defendant's right to a fair trial when the errors are considered together. \* \* \* In order to find cumulative error, we first must find that multiple errors were committed at trial.” *State v. Harris*, 2d Dist. Montgomery No. 19796, 2004-Ohio-3570, ¶ 40. “A conviction will be reversed when the cumulative effect of errors in a trial deprives a defendant of a fair trial even though each of the numerous instances of trial-court error does not individually constitute cause for reversal.” *State v. Powell*, 132 Ohio St.3d 233, 2012–Ohio–2577, 971 N.E.2d 865, ¶ 223, citing *State v. DeMarco*, 31 Ohio St.3d 191, 509 N.E.2d 1256 (1987), paragraph two of the syllabus.

{¶ 50} Even if the trial court erred in connection with Griffith’s First and Second Assignments of Error, we have concluded that neither error requires reversal of Griffith’s conviction. We further conclude that any prejudice resulting from both errors, combined, is not sufficient to warrant reversal of the judgment.

{¶ 51} The Fifth and Sixth Assignments of Error are overruled.

### VIII. Conclusion

{¶ 52} All of Griffith’s Assignments of Error having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN and HALL, JJ., concur.

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