[Cite as *State v. Teague*, 2012-Ohio-983.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2011-T-0012**
- vs -	:	
MAURICE D. TEAGUE,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 10 CR 435.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos,* Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Stephen A. Turner, Turner, May & Shepherd, 185 High Street, N.E., Warren, OH 44481-1219 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Maurice D. Teague, appeals his conviction, following a jury trial, in the Trumbull County Court of Common Pleas of aggravated robbery with a firearm specification and various weapons offenses. Appellant challenges the sufficiency and weight of the evidence. We affirm the judgment of the trial court.

{¶2} Appellant was charged in a four-count indictment with complicity to aggravated robbery, in violation of R.C. 2923.03(A)(2) and (F) and R.C. 2911.01(A)(1)

and (C), a felony of the first degree, with a firearm specification, in violation of R.C. 2941.145 (Count 1); carrying a concealed weapon, to-wit: a handgun, in violation of R.C. 2923.12(A)(2) and (F)(1), a felony of the fourth degree (Count 2); improper handling firearms in a motor vehicle, in violation of R.C. 2923.16(B) and (I)(2), a felony of the fourth degree (Count 3); and having weapons while under disability, in violation of R.C. 2923.13, a felony of the third degree (Count 4).

{¶3} Appellant pled not guilty and the case proceeded to jury trial. Nick Spence testified that on June 15, 2010, at about 8:30 p.m., his friend, Eric Taylor, was driving him to Walmart, located on Elm Road in Bazetta Township, to purchase an air conditioner. Eric was driving his fully restored 1978 maroon Pontiac, and Nick was in the front passenger seat. While driving on Elm Road near Warren G. Harding High School in Warren, Ohio, they noticed a silver van following them. When they stopped at a red light in front of the high school, the van pulled up next to them. They noticed its rear passenger window was broken out and covered with plastic. After the light changed, the van followed them as they proceeded to Walmart. Eric drove into the parking lot and parked in a parking space in the middle of the lot. A security video camera set up in the parking lot recorded the ensuing confrontation. The recording, which was admitted in evidence, shows that Eric parked his car at 8:27 p.m. and that all relevant events occurred in broad daylight.

{¶4} As Eric and Nick were walking in the parking lot toward the front entrance of Walmart, they noticed the same silver van they had seen earlier slowly pull up to them. The van stopped by Nick, who was walking a few feet behind Eric. The passenger in the front seat of the van started talking to Nick. While talking to the

passenger, Nick noticed there were four black males in the van. Eric walked over to see what the passenger wanted. The passenger asked Nick and Eric if they had any drugs and they said no. The passenger then asked them if they wanted to buy any drugs and, again, they said no. Eric and Nick then continued walking toward the store. As they walked away, at 8:29 p.m., the rear passenger slid open the rear passenger door, jumped out, came around the back of the van, and grabbed Eric while holding a handgun on him. At the same time, the front passenger jumped out of the van and came after Nick with a handgun. The van then pulled away with its rear passenger door wide open. Nick testified the driver of the van drove to the back of the parking lot, made a u-turn, and then parked facing the robbery and waited for the assailants to return.

{¶5} The front passenger pointed his gun at Nick and grabbed his pockets. The rear passenger also held his gun on Eric, and told him he would shoot him if he did not give him the keys to his car. He was pulling Eric's jersey over his head and going through his pockets trying to find the keys. The rear passenger then yelled to the front passenger, "I can't find the keys, I can't find the keys, he don't have them." Eric's keys were in his pocket, but the rear passenger missed them. The rear passenger then said, "let's go, they don't have nothing."

{¶6} The two assailants then started walking toward the van. A few seconds later, the front passenger walked back to the scene, and picked up Nick's Cleveland Indians baseball cap, which had fallen off his head during the struggle. The front passenger taunted Nick with the baseball cap and then took it. Nick testified he was afraid and did not want to risk his life by going back for his cap, so he continued walking toward the store while the front passenger ran toward the van with Nick's baseball cap.

Eric testified that once both robbers were in the van, it drove out of the parking lot, heading left on Elm Road toward Warren. According to the security video, the van left the parking lot at 8:30 p.m.

{¶7} Once Eric and Nick reached the front entrance, Eric called 911 on his cell phone and reported the crime. In an effort to get the police to respond quickly, Eric falsely reported that the suspects had moved his car to the adjoining McDonald's parking lot. Eric and Nick waited for the police, who arrived at 8:34 p.m. Nick and Eric approached the police cruiser and reported the crime to the responding officer.

{¶8} Heather Rastetter testified that at about 8:30 p.m., her fiancé drove her and her two young children to Walmart. While they were checking out, Heather took her daughters to their car in the parking lot to wait for her fiancé. While sitting in her fiancé's car, she noticed a maroon car with large silver rims driving across the parking lot in which she saw two white males. That car parked in a parking space and the two occupants left their car and started walking toward the store.

{¶9} Ms. Rastetter then saw a van pull up to the two males in a traffic lane and stop them. Suddenly, a black male jumped out of the van from the passenger side, while another jumped out from the driver's side. One black male grabbed one of the white males and was grabbing his pockets. The other black male attacked the second white male and held a gun on him. The van then drove down the aisle, parked, and waited in the back of the parking lot.

{¶10} After the confrontation, the black males ran back to their van and the white males started walking toward the Walmart entrance. As the black males ran to the van, it pulled up to meet them and the driver picked them up.

{¶11} At that point Heather's fiancé returned to the car and she told him to get in quickly. She told him what she had just seen and said, "let's get out of here." As they were leaving the parking lot, both Heather's fiancé and the van stopped at the stop sign near the exit at the same time. Heather told her fiancé to let them go first so she could get their license plate number. As the van passed them, Heather wrote down the number.

{¶12} The van turned left onto Elm Road going toward the State Route 82 bypass, while Heather's fiancé turned right. When Heather and her fiancé saw the police pull into the Walmart parking lot, they turned around, went back into the parking lot, and approached the officer. Heather gave the officer the van's description and license plate number, and the officer broadcasted the information on police radio.

{¶13} Bazetta Township Police Officer Brian Galida testified that at 8:30 p.m., he was dispatched to the Walmart parking lot on a call of an armed robbery. After seeing the victims' vehicle was not present at the McDonald's parking lot, at 8:34 p.m. he entered the Walmart parking lot, where Nick, Eric, and Ms. Rastetter immediately approached him. Ms. Rastetter gave him the suspects' license plate number, and he immediately provided it to dispatch. Within minutes, appellant was stopped and arrested by Champion Police Officer Jason Manes on the nearby bypass. After completing his report, Officer Galida went to the area where the suspect van was stopped and inventoried it. The items discovered inside included two loaded handguns and Nick's Cleveland Indians baseball cap.

{¶14} Officer Manes testified that when he was informed of the robbery, which was at 8:30 p.m., he was on Mahoning Avenue in downtown Warren. He decided to get

on the nearby Route 82 bypass just in case the suspects were planning to use the bypass to make a getaway. He entered the bypass heading east on Route 82. Almost immediately, he saw a van matching the description of the suspect van with two black males in the front and two black males in the back. The van was then exiting Route 82 westbound using the Mahoning Avenue exit.

{¶15} Officer Manes had the license plate number of the suspect van, and decided to determine whether the registration of the van he observed was the same as the registration he had for the suspect van. He turned around, headed west on Route 82, and got off on Mahoning Avenue. As he went under the bypass, he saw the same van entering the Route 82 eastbound entrance ramp from Mahoning Avenue.

{¶16} Officer Manes pursued the van by getting on the entrance ramp behind it. According to police records, he first got behind the van at 8:38 p.m. The officer continued following the van on Route 82 eastbound. Shortly thereafter, Trumbull County Sheriff's Deputy Andre Jarrette got behind Officer Manes to provide backup. The van then got off at the next exit ramp at Larchmont Avenue, which is two miles east of Mahoning Avenue. Officer Manes followed the van and activated his overhead lights. The van drove to the traffic light, which was red, and stopped. Officer Manes testified that from the time he first saw the van, he never saw it stop or change drivers.

{¶17} As Officer Manes was about to exit his cruiser, three black males ran out of the van toward nearby woods. Deputy Jarrette exited his cruiser and took off on foot after them. Officer Manes approached appellant, who was still in the van's driver's seat. With his weapon drawn, Officer Manes told appellant to keep his hands on the wheel.

{¶18} As Officer Manes looked in the van, he saw that in the back directly behind the driver's seat, there was a black revolver, which, he said, was within appellant's reach. The officer instructed appellant to exit his van, handcuffed him, and put him in the rear of his cruiser.

{¶19} Officer Manes then returned to the van. The gun in the back seat was loaded so he unloaded and secured it. He then saw a second gun, which was between the driver and front passenger bucket seats and even closer to appellant than the first gun. Officer Manes saw both guns from outside the van. The second gun was also loaded, and Officer Manes removed its shells and secured it.

{¶20} Bazetta Township Police Detective Joseph Sofcek testified that at about 9:00 p.m., he was assigned to investigate the robbery at Walmart. When he arrived at the Larchmont Avenue exit, the suspect van had already been stopped; two males were in custody; and police were in the process of arresting a third suspect. The fourth suspect was arrested the following day. Detective Sofcek testified that appellant had previously been convicted of drug abuse in the Youngstown Municipal Court and that each of the three suspects who fled from the van had previously been convicted of serious felonies, including similar robbery offenses.

{¶21} Appellant presented no evidence to rebut any of the testimony and 23 exhibits presented by the state. The state's evidence was therefore undisputed.

{¶22} The jury found appellant guilty of all counts and the firearm specification charged in the indictment. At his sentencing, the court noted that appellant was convicted of drug abuse in 2009. In 2006, he pled guilty to aggravated assault in juvenile court. Later in 2006, while on probation, he pled guilty to gross sexual

imposition in juvenile court and was sentenced to three years in DYS. The court noted that in the instant case, despite his prior convictions, appellant was consorting with known felons and participated in an aggravated robbery in a public place in broad daylight. The court sentenced appellant to six years in prison for aggravated robbery plus three years on the gun specification, which was to be served prior to and consecutively to the term for aggravated robbery. The court sentenced appellant to 12 months for carrying a concealed weapon and also for improperly handling firearms in a motor vehicle, the two terms to be merged and served concurrently to the term for aggravated robbery. The court also sentenced him to one year for having weapons while under disability, to be served consecutively to the term for aggravated robbery, for a total of ten years in prison.

{¶23} Appellant appeals his conviction, asserting four assignments of error. Because his first and third assigned errors are related, they shall be considered together. For these assigned errors, he alleges:

{¶24} "[1.] The state failed to produce evidence that was legally sufficient to sustain the jury's verdict that appellant was complicit to aggravated robbery.

{¶25} "[3.] The jury's verdict that appellant was complicit to aggravated robbery was against the manifest weight of the evidence."

{¶26} A challenge to the sufficiency of the evidence invokes an inquiry into due process and examines whether the state introduced adequate evidence to support the verdict as a matter of law. *State v. Schlee*, 11th Dist. No. 93-L-082, 1994 Ohio App. LEXIS 5862, *13 (Dec. 23, 1994). Generally speaking, a "sufficiency" argument raises a question of law as to whether the prosecution offered some evidence concerning each

element of the charged offense. *State v. Windle*, 11th Dist. No. 2010-L-0033, 2011-Ohio-4171, ¶25. The proper inquiry is, after viewing the evidence most favorably to the prosecution, whether the jury could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Troisi*, 179 Ohio App.3d 326, 329, 2008-Ohio-6062, (11th Dist.), citing *State v. Jenks*, 61 Ohio St.3d 259, 273 (1991).

{¶27} Alternatively, a manifest weight challenge concerns:

{¶28} "[T]he inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the [finder of fact] that the party having the burden of proof will be entitled to [its] verdict, if, on weighing the evidence in [its] mind[], [it] shall find the *greater amount of credible* evidence sustains the issue which is to be established before [it]. Weight is not a question of mathematics, but depends on its *effect in inducing belief*." (Emphasis sic.) *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997), citing Black's Law Dictionary (6th Ed. 1990).

{¶29} In determining whether the judgment is against the manifest weight of the evidence, the court, reviewing the entire record, weighs the evidence and all reasonable inferences, and considers the credibility of the witnesses. *Thompkins*, *supra*. The court determines whether, in resolving conflicts in the evidence and deciding witness credibility, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *Id*. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *Id*.

{¶30} Witness credibility rests solely with the finder of fact, and an appellate court is not permitted to substitute its judgment for that of the jury. *State v. Awan*, 22 Ohio St.3d 120, 123 (1986). "The jury is entitled to believe all, part, or none of the testimony of any witness." *State v. Archibald*, 11th Dist. Nos. 2006-L-047 and 2006-L-207, 2007-Ohio-4966, ¶61, discretionary appeal not allowed at 116 Ohio St.3d 1508, 2008-Ohio-381.

{¶31} Further, it is well-settled that "[c]ircumstantial evidence and direct evidence inherently possess the same probative value. * * *." *State v. Jenks*, *supra*, at paragraph one of the syllabus. Circumstantial evidence is defined as "testimony not grounded on actual personal knowledge or observation of the facts in controversy, but from other facts from which inferences are drawn, showing indirectly the facts sought to be established." *Windle*, *supra*, at ¶34. An inference is "a conclusion which, by means of data founded upon common experience, natural reason draws from facts which are proven." *State v. Nevius*, 147 Ohio St. 263 (1947). It therefore follows that "when circumstantial evidence forms the basis of a conviction, that evidence must prove collateral facts and circumstances, from which the existence of a primary fact may be rationally inferred according to common experience." *Windle*, *supra*.

{¶32} Appellant does not dispute that the evidence was sufficient to prove his accomplices committed an aggravated robbery against Nick and Eric; rather, he argues the state failed to meet its burden of proving he participated in the commission of the crime. In particular, appellant argues that his conviction was based upon insufficient evidence because there was no evidence he was at the crime scene. Alternatively, he argues that even if the state proved he was driving the van in Walmart's parking lot, that

fact alone is insufficient to prove complicity without evidence he assisted in the commission of the robbery. However, appellant's view of the evidence is unduly myopic as it ignores the abundant circumstantial evidence of his participation.

{¶33} R.C. 2911.01(A)(1) provides that no person, in attempting or committing a theft offense, or in fleeing immediately after the attempt or offense, shall have a deadly weapon on or about his person or under his control and either display it, brandish it, or use it. Further, R.C. 2923.03 provides that no person, acting with the kind of culpability required for the commission of an offense, shall aid or abet another in committing the offense.

{¶34} A defendant "aids or abets" when he assists or facilitates the commission of a crime or promotes its accomplishment. *State v. Lane*, 11th Dist. No. 2004-L-211, 2006-Ohio-1269, ¶18. The mere presence of a defendant at the scene of a crime is insufficient to demonstrate he aided or abetted the principal; "[r]ather, the state must establish that the offender 'took some affirmative action to assist, encourage, or participate in the crime by some act, deed, word, or gesture.'" (Citations omitted.) *State v. Sims*, 11th Dist. No. 2001-L-081, 2003-Ohio-324, ¶44, quoting *State v. Mootispaw*, 110 Ohio App.3d 566, 570 (4th Dist.1996). "Aiding and abetting may be proven by both direct or circumstantial evidence and an individual's 'participation may be inferred from presence, companionship, and conduct before and after the offense is committed,' and also 'by overt acts of assistance such as driving a getaway car * * *.'" *State v. Hill*, 11th Dist. No. 2005-A-0010, 2006-Ohio-1166, ¶26, quoting *State v. Lett*, 160 Ohio App.3d 46, 2005-Ohio-1308, ¶29 (8th Dist.).

{¶35} In *State v. Tate*, 11th Dist. No. 2003-T-0094, 2004-Ohio-6689, this court held the jury could infer that the defendant was the getaway driver in a bank robbery where he was stopped by police in the vehicle 25 minutes after the robbery. This court held the jury could infer the defendant was the getaway driver because he was present in the bank shortly before the robbery with his accomplices. *Id*. at ¶4. The inference was also supported by the fact that the arresting officer found the vehicle's license plates next to the gas pedal of the getaway car, while stolen plates were on the vehicle, allowing the inference that the defendant was aware of an attempt to disguise the identity of the getaway vehicle and of the robbery itself. *Id*. at ¶31.

{¶36} A brief summary of the evidence in the instant case demonstrates the jury's verdict was supported by sufficient evidence. With respect to appellant's identification, the same individual drove the van from Harding High School until it exited the Walmart parking lot after the robbery. Then, less than eight minutes after the robbery, appellant was seen by Officer Manes driving the getaway car and exiting the Route 82 bypass using the Mahoning Avenue westbound exit. Appellant then returned to the bypass using the Mahoning Avenue eastbound entrance ramp, apparently continuing his getaway efforts, and then left the bypass again at the next exit, which was the Larchmont Avenue exit. Further, no evidence was presented that anyone other than appellant drove the van before, during, or after the robbery. From these facts, the jury was entitled to infer that appellant was driving the van at the time of the robbery.

{¶37} With respect to appellant's participation, he drove his accomplices to the crime scene. He slowly approached Nick and Eric as they were walking from their car to the Walmart entrance, and then stopped so that his accomplice could talk to them.

Appellant was in a position to see his accomplices purportedly attempt to sell drugs to the victims; jump out of the van while armed with guns; demand Eric's car keys; go through the victims' pockets; and take Nick's baseball cap. Such evidence allowed the inference that appellant was aware his accomplices were committing an aggravated robbery while armed with firearms. Further, while the robbery was in progress, appellant drove the van to the back of the parking lot near the exit with the driver's side door wide open. He turned the van around so he could watch the robbery and wait for his cohorts to return. Then, after the robbery was committed, appellant pulled up to his accomplices, picked them up, and drove them out of the parking lot and onto the Route 82 bypass. When Officer Manes stopped the van, he found two firearms within appellant's reach. The foregoing evidence allowed the inference that appellant was aware of his role in the robbery; that he prepared to make a quick escape; and that he acted as the getaway driver. A rational jury could find from appellant's conduct before, during, and after the crime, that he was not only aware of but directly participated in the offense.

{¶38} Next, appellant argues the jury's verdict was against the manifest weight of the evidence because, he claims, Eric told 911 there were six suspects in the van, while Officer Manes testified there were four suspects in the van when he stopped it. As a result, appellant argues that some intervening stop must have occurred during which the occupancy of the van changed. However, appellant mischaracterizes the evidence. Nick also testified he saw *four* suspects in the van. He had a better opportunity than Eric to see the occupants because he came close to the front passenger door to talk to that passenger while Eric did not. Further, Eric testified that

when he told 911 that there were six males in the van, that was just a "guess" because he saw two males jump out of the van, and he could tell some other black males were in the van. As the trier of fact, the jury was entitled to believe all, part, or none of the witnesses' testimony. *Archibald*, *supra*. The jury was therefore entitled to find Nick's testimony regarding the number of suspects in the van more credible than Eric's admitted guess. Moreover, there is no evidence that, after the robbery, the van ever stopped or that its driver ever changed. Appellant's contention that this must have happened is therefore nothing more than mere conjecture and speculation.

{¶39} We therefore hold that the jury did not lose its way in finding appellant guilty of aggravated robbery or create such a manifest miscarriage of justice that he was entitled to a new trial.

{¶40} Appellant's first and third assignments of error are overruled.

{¶41} Appellant's second and fourth assigned errors are also related and shall be considered together. For these assignments of error, appellant contends:

{¶42} "[2.] The state failed to produce evidence that was legally sufficient to sustain the jury's verdict that appellant knowingly had a firearm.

{¶43} "[4.] The jury's verdict that appellant had a firearm was against the manifest weight of the evidence."

{¶44} Appellant was also convicted of carrying a concealed weapon, improperly handling firearms in a motor vehicle, and having weapons while under disability.

{¶45} R.C. 2923.12, carrying a concealed weapon, prohibits any person from knowingly having a loaded handgun concealed on his person or concealed ready at

hand. Pursuant to R.C. 2923.12(F)(1), if the weapon involved is a loaded firearm, carrying a concealed weapon is a felony of the fourth degree.

{¶46} Further, R.C. 2923.16, improperly handling firearms in a motor vehicle, prohibits any person from knowingly transporting or having 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.

{¶47} Moreover, R.C. 2923.13, having weapons while under disability, prohibits any person from knowingly having any firearm if he has been convicted of any offense involving the illegal possession of or trafficking in any drug of abuse.

{¶48} Appellant does not dispute that the firearms at issue were concealed; that they were accessible to him or a passenger in a motor vehicle without leaving the vehicle; or that at the time of his arrest, he was under a disability as a result of his prior conviction of drug abuse. The only issue he raises on appeal is whether he had a firearm at the time of his arrest, which is an element of each of the foregoing weapons offenses. He concedes that in order to "have" a firearm within the meaning of these offenses, it is sufficient for the offender to either actually or constructively possess it. We hold that sufficient evidence was presented to establish that appellant constructively possessed a loaded firearm.

{¶49} The following statement of this court in *State v. Burgess*, 11th Dist. No. 2002-L-019, 2004-Ohio-3338, in which the defendant was convicted of carrying a concealed weapon and having weapons while under disability, is pertinent:

> **{¶50}** In order to "have" a weapon, one must either actually or constructively possess it. There was no evidence that appellant

actually possessed the firearms at the time of the arrest. As such, the state was required to prove that appellant exercised constructive possession over the firearms. "Constructive possession exists when an individual exercises dominion and control over an object, even though the object may not be within his immediate physical possession." *State v. Wolery*, 46 Ohio St.2d 316, 329 (1976).

{¶51} In the current matter, the state offered evidence that the vehicle in which the firearms were found was being operated by [appellant] at the time of the stop. The state offered testimony * * * that the firearms were "ready at hand" or within appellant's access. It has been held that *mere access to a weapon can establish guilt*. Under these circumstances, a rational trier of fact could conclude that appellant had constructive possession of the firearms, i.e., *he was able to exercise dominion and control over them*. We conclude that the state presented sufficient evidence to support the conviction for having weapons under disability. (Emphasis added.) *Burgess*, *supra*, at ¶40-41.

{¶52} Thus, where the state presents evidence that the defendant was operating a motor vehicle in which firearms were found and those firearms were ready at hand or within the defendant's access, a rational jury may infer constructive possession, i.e., that the defendant was able to exercise dominion and control over them.

{¶53} Applying these principles to the instant case, after appellant witnessed the robbery, his accomplices ran back to the van while still armed with their guns, and he drove them away from Walmart's parking lot. Further, less than eight minutes later, the van was stopped by Officer Manes coming off the highway. At that time there were two loaded handguns in the van within appellant's reach, one of which was right next to him. Moreover, *appellant concedes on appeal that both firearms were within his reach at the time of his arrest*. From these facts, the jury could reasonably infer that appellant was aware of the presence of both guns in the van and that he was able to exercise dominion and control over them, i.e., that he had constructive possession of them.

{¶54} Appellant's argument that the evidence was insufficient because he was not the sole occupant of the van and his accomplices also had access to them is unavailing. First, he fails to reference any authority in support of this proposition, in violation of App.R. 16(A)(7). For this reason alone, the argument lacks merit. In any event, even if the firearms were also accessible to his accomplices, that does not mean they were not accessible to appellant. This court has held that an accomplice, who was a passenger in a getaway car following an aggravated burglary, was equally liable with his principal for the burglary and a firearm specification *where the principal alone used the firearm in the commission of the burglary*. *State v. Russell*, 11th Dist. No. 2006-T-0020, 2006-Ohio-6879, ¶18.

{¶55} In support of his manifest weight argument, appellant contends that Nick and Eric testified the two assailants had exclusive dominion over the firearms. However, the victims did not so testify. They simply testified the two assailants were

armed with guns at the time of the robbery. They did not testify regarding appellant's access to the guns in the van.

{¶56} Next, appellant argues the lack of evidence of furtive movements on his part after he was stopped resulted in a verdict that was against the manifest weight of the evidence. However, appellant again fails to reference any authority for this proposition, in violation of App.R. 16(A)(7). In any event, while the existence of furtive movements may be evidence of guilt, because such evidence is not essential to support a conviction, its absence does not compel a finding that the verdict was against the manifest weight of the evidence. If such were the case, criminal defendants could avoid conviction by simply keeping still after their arrest. Further, contrary to appellant's argument, the lack of forensic evidence that appellant touched either gun is not dispositive since the state was only required to prove appellant had access to the firearms.

{¶57} Next, contrary to appellant's argument, the state does not rely on any presumption of illegal possession from the mere presence of a firearm in a motor vehicle. To the contrary, the state correctly contends there is no presumption of constructive possession in Ohio; rather, the state acknowledges it was required to prove that appellant had the ability to exercise dominion and control over the firearms and that he was aware they were in the van. Here, appellant's guilt was based, not on any presumption of illegal possession, but rather on his access to the firearms and his ability to exercise dominion and control over them. Despite appellant's argument, this was not a case where the passengers simply "dropped" the guns as they bailed from the van;

rather, the guns were strategically placed in the van so that appellant and his accomplices had access to them as needed.

{¶58} We therefore hold the jury did not lose its way in finding appellant guilty of carrying a concealed weapon, improperly handling firearms in a motor vehicle, and having weapons while under disability or create such a manifest miscarriage of justice that he was entitled to a reversal.

{¶59} Appellant's second and fourth assignments of error are overruled.

{¶60} For the reasons stated in this opinion, appellant's assignments of error lack merit. It is the judgment and order of this court that the judgment of the Trumbull County Court of Common Pleas is affirmed.

DIANE V. GRENDELL, J.,

THOMAS R. WRIGHT, J.,

concur.