[Cite as *State v. Anderson*, 2024-Ohio-37.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF MEDINA	)	

STATE OF OHIO Appellee v. LEVANDER ANDERSON Appellant	C.A. No. 22CA0031-M APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO CASE No. 21CR0251

DECISION AND JOURNAL ENTRY

Dated: January 8, 2024

FLAGG LANZINGER, Judge.

{¶1} Defendant-Appellant Levander Anderson appeals from the judgment of the Medina County Court of Common Pleas. This Court affirms.

I.

{¶2} Following a March 12, 2021, traffic stop, an indictment was filed charging Anderson with one count of having weapons while under disability in violation of R.C. 2923.13(A)(3), (B). The count included a forfeiture specification pursuant to R.C. 2941.1417(A).

{¶3} Anderson filed a motion to suppress challenging the basis of the stop and the search of the luggage in the trunk. The day after the suppression hearing, the State filed a brief in opposition to Anderson's motion to suppress. Anderson filed a brief in response. The trial court denied Anderson's motion to suppress in August 2021, concluding that the officer possessed reasonable suspicion to stop the vehicle Anderson was a passenger in and that the search of the passenger compartment, trunk, and containers in the trunk was supported by probable cause.

{¶4} In September 2021, a supplemental indictment was filed adding an additional count of having weapons while under disability, a violation of R.C. 2923.13(A)(2), (B). The matter proceeded to a jury trial. The jury found Anderson guilty of the counts and the weapon subject to forfeiture. Thereafter, the trial court sentenced Anderson. However, the trial court's sentencing entry incorrectly reflects that the matter was tried to the bench. Upon remand, the trial court can correct this clerical error via a nunc pro tunc entry.

{¶5} Anderson has appealed, raising four assignments of error for our review. This Court will address some of the assignments of error out of sequence to facilitate our analysis.

II.

ASSIGNMENT OF ERROR I

> THE TRIAL COURT ERRED IN DENYING APPELLANT LEVANDER ANDERSON'S MOTION TO SUPPRESS THEREBY ALLOWING INTRODUCTION OF EVIDENCE CONCERNING THE CASE AT BAR.

{¶6} Anderson argues in his first assignment of error that the trial court erred in denying his motion to suppress. This Court disagrees.

{¶7} A motion to suppress evidence presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. "When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses." *Id.*, citing *State v. Mills*, 62 Ohio St.3d 357, 366 (1992). Thus, a reviewing court "must accept the trial court's findings of fact if they are supported by competent, credible evidence." *Burnside* at ¶ 8. "Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." *Id.*, citing *State v. McNamara*, 124 Ohio App.3d 706 (4th Dist.1997).

Background

{¶8} In the motion to suppress, Anderson asserted that both the stop and search of the luggage in the trunk were unconstitutional. The trial court made factual findings in its judgment entry, which are supported by competent credible evidence to the extent they are relevant to this appeal.

{¶9} At the suppression hearing, the only witness to testify was Deputy Bryan Barton of the Medina County Sheriff's Office. On March 21, 2021, while on patrol, Deputy Barton observed a vehicle travelling at a high rate of speed while flashing its high beams. Deputy Barton estimated the vehicle speed to be 80 m.p.h. and confirmed the speed to be 84 m.p.h. via radar. The speed limit in the area was 65 m.p.h.

{¶10} Deputy Barton thereafter conducted a traffic stop of the vehicle. Deputy Barton made a passenger approach and spoke to the driver. The driver identified the vehicle as a rental and produced her identification and the rental paperwork. In addition to the driver, the vehicle contained a front-seat passenger and a backseat passenger. Deputy Barton asked the passengers to produce identification, and they complied. The backseat passenger was identified as Anderson.

{¶11} Deputy Barton asked the driver to exit the vehicle and began talking to her near the front of the patrol car. Deputy Barton noticed Anderson moving around a lot in the back of the vehicle. Deputy Barton shined a flashlight towards the back of the vehicle to see what Anderson was doing. Deputy Barton noticed a brown liquor bottle underneath Anderson's feet. Deputy Barton was unsure if the bottle was open and so asked the driver if Anderson was drinking, and the driver answered affirmatively. Deputy Barton then did a warrant check on the three individuals. When he finished, he approached Anderson. Deputy Barton asked Anderson to exit the vehicle and Anderson was hesitant to do so. Deputy Barton then noticed marijuana shake on

Anderson's lap while he was sitting in the vehicle. When Anderson exited the vehicle, Deputy Barton patted Anderson down and had Anderson sit on the guardrail. Deputy Barton and other officers–including Officer Adam Houck with the Seville Police Department–then conducted a search of the vehicle.

{¶12} Officer Houck searched the trunk of the vehicle. Deputy Barton confirmed at the suppression hearing that, at the time Officer Houck searched the trunk, Officer Houck was aware that Deputy Barton had observed marijuana shake on Anderson's lap, and that the bottle of alcohol was confirmed to be open. Deputy Barton also found a plastic cup containing marijuana in the passenger compartment of the rental vehicle after Officer Houck began searching the trunk. During his search of the trunk, Officer Houck found a handgun inside a blue hard suitcase.

Discussion

{¶13} On appeal, Anderson appears to challenge the basis for the stop and the search of the luggage in the trunk.

{¶14} "The Fourth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, and Article I, Section 14 of the Ohio Constitution protect individuals from unreasonable searches and seizures." *State v. Bearer*, 9th Dist. Wayne No. 21AP0035, 2022-Ohio-4554, ¶ 13. "To justify an investigative stop, an officer must point to 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" (Internal quotations and citations omitted.) *Id.*, quoting *State v. Kordich*, 9th Dist. Medina No. 15CA0058-M, 2017-Ohio-234, ¶ 7. "[W]here an officer has an articulable reasonable suspicion or probable cause to stop a motorist for any criminal violation, including a minor traffic violation, the stop is constitutionally valid * * *." *Bearer* at ¶ 13, quoting *Dayton v. Erickson*, 76 Ohio St.3d 3, 11-12 (1996).

{¶15} Here, Deputy Barton observed the vehicle Anderson was in speeding; an observation he confirmed via radar. Accordingly, we cannot say that Anderson has demonstrated that the stop was unconstitutional.

{¶16} Anderson next argues that the officers lacked probable cause to search the trunk and the luggage in the trunk. In so doing, Anderson maintains that *State v. Farris*, 109 Ohio St.3d 519, 2006-Ohio-3255, controls the outcome.

{¶17} "Searches conducted without a warrant are presumptively unreasonable, unless an exception to the warrant requirement applies." *State v. Jones*, 9th Dist. Lorain No. 12CA010270, 2013-Ohio-2375, ¶ 8. "The automobile exception is one exception to the warrant requirement." *Id.* at ¶ 9. "Under the automobile exception, where an officer has probable cause to believe there is contraband in a car that has been stopped, a search may extend to the entire car, including the trunk." (Internal quotations and citation omitted.) *State v. Carmichael*, 9th Dist. Lorain No. 11CA010086, 2012-Ohio-5923, ¶ 9; *State v. Dingle*, 9th Dist. Summit No. 13055, 1987 WL 19469, *2 (Oct. 28, 1987) (holding same). "The evidence simply must be such that there is a fair probability that contraband or evidence of a crime will be found in [the trunk]." (Internal quotations and citation omitted.) *Carmichael* at ¶ 9; *see also Jones* at ¶ 18, quoting *Carmichael* at ¶ 9 ("The test is whether in light of the totality of the circumstances, 'there is a fair probability that contraband * * * will be found in the trunk.'"). "Once such probable cause exists, the police are free to search the trunk and its contents, including all movable containers and packages, that may logically conceal the object of the search." *Id.*, quoting *State v. Welch*, 18 Ohio St.3d 88 (1985), syllabus.

{¶18} This Court has previously found that facts similar to those in this case were sufficient to support probable cause. In *Jones*, the officer smelled the odor of raw marijuana

coming from the vehicle. *Jones* at ¶ 2. While the officers were searching the passenger compartment, marijuana shake was discovered therein. *Id.* at ¶ 3. The officers then searched the trunk and found additional drugs. *Id.* This Court determined that there was sufficient probable cause to search the trunk based upon the marijuana shake found in the passenger compartment. *See id.* at ¶ 17. In so doing, we noted that *Farris* was distinguishable. *See id.* "In *Farris*, the Court was faced with the question of whether an officer may search the trunk of a car without finding any physical contraband in the passenger compartment." *Id.*; *see also Farris* at ¶ 5. Thus, *Farris* did not involve the automobile exception to the warrant requirement. *Carmichael* at ¶ 12; *Farris* at ¶ 52. Like in *Jones*, here, physical contraband[1] was found in the passenger compartment of the vehicle. *See Jones* at ¶ 17. Therefore, we cannot say that Anderson has demonstrated that the trial court erred in finding the officers possessed probable cause to search the trunk and luggage in the trunk.

{¶19} Anderson's first assignment of error is overruled.

ASSIGNMENT OF ERROR III

> THE TRIAL COURT ERRED IN DENYING APPELLANT, LEVANDER ANDERSON['S], CRIM.R. 29 MOTION AS THE STATE FAILED TO MEET THE BURDEN OF PRODUCTION FOR THE TWO COUNTS OF HAVING WEAPONS WHILE UNDER DISABILITY.

{¶20} Anderson asserts in his third assignment of error that the trial court erred in denying his Crim.R. 29 motion as the State presented insufficient evidence that Anderson had access to or possessed the weapon at issue.

{¶21} Crim.R. 29(A) provides, in relevant part:

> The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is

[1] At the time of the offense, recreational use of marijuana remained illegal in Ohio.

> insufficient to sustain a conviction of such offense or offenses. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the state's case.

{¶22} When reviewing the sufficiency of the evidence, this Court must review the evidence in a light most favorable to the prosecution to determine whether the evidence before the trial court was sufficient to sustain a conviction. *State v. Jenks*, 61 Ohio St.3d 259, 279 (1991).

> 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.

Id. at paragraph two of the syllabus.

{¶23} Anderson was found guilty of violating R.C. 2923.13(A)(3), (B) and 2923.13(A)(2), (B). The weapon at issue was also ordered forfeited but Anderson does not appear to challenge that finding.

{¶24} R.C. 2923.13 provides in relevant part:

> (A) Unless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:
>
> * * *
>
> (2) The person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence.
>
> (3) The person is under indictment for or has been convicted of any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse.
>
> * * *

> (B) Whoever violates this section is guilty of having weapons while under disability, a felony of the third degree.

{¶25} "To 'have' a weapon under disability requires either actual or constructive possession." *State v. Cross*, 9th Dist. Lorain No. 18CA011426, 2019-Ohio-3133, ¶ 7, quoting *State v. Hardy*, 60 Ohio App.2d 325, 327 (8th Dist.1978). "In this context, [c]onstructive possession has been defined as knowingly [exercising] dominion and control over an object, even though that object may not be within [the defendant's] immediate physical possession." (Internal quotations omitted.) *Id.*, quoting *State v. Blue*, 9th Dist. Lorain No. 10CA009765, 2011-Ohio-511, ¶ 17, quoting *State v. Hankerson*, 70 Ohio St.2d 87 (1982), syllabus. "Ownership does not need to be proven, and constructive possession may be established by circumstantial evidence." *Cross* at ¶ 7.

{¶26} R.C. 2901.22(B) provides that:

> A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

R.C. 2901.22(B).

{¶27} As discussed above, the rental vehicle that Anderson was a backseat passenger in was stopped by police on March 12, 2021, for speeding. Both the driver of the vehicle and the front-seat passenger testified at trial. Additionally, Deputy Barton with the Medina County Sheriff's Department and Officer Adam Houck with the Seville Police Department, who both participated in the traffic stop, testified.

{¶28} The driver and the front-seat passenger were engaged at the time of trial. Anderson and the front-seat passenger are cousins, but they are close "like brothers." The driver explained

that her mother had rented the vehicle for her and that she, the front-seat passenger, and Anderson were ultimately heading to Atlanta, Georgia in the rental vehicle to celebrate her birthday. They were going to be gone for the weekend.

{¶29} According to the front-seat passenger, before they left on their trip, the front-seat passenger went to Anderson's home to pick him up in the rental vehicle. The front-seat passenger beeped the horn and Anderson came outside. According to the front-seat passenger, Anderson did not "have any bags yet * * *." The two hugged and chatted for a bit. The front-seat passenger then popped the trunk and got back in the vehicle to wait for Anderson. The front-seat passenger did not see whether Anderson put any luggage in the vehicle but testified that he popped the trunk because he expected him to have luggage. The two then went back to the driver's and front-seat passenger's home.

{¶30} When they got there, the driver came outside and the front-seat passenger popped the trunk so the driver could put her luggage in. The front-seat passenger testified that he put one of the driver's duffel bags in the car. The three then proceeded on their way until they were stopped by police. Neither the driver nor the front-seat passenger knew whether Anderson brought luggage, nor did they see him load it into the vehicle. During the traffic stop, the driver talked to her mother on the phone since her mother rented the vehicle.

{¶31} Deputy Barton was the initial officer to stop the vehicle and then additional officers assisted. The vehicle was described as an SUV that allowed access to the trunk from the passenger compartment.

{¶32} Ultimately, the police ended up searching the vehicle. Officer Houck was responsible for searching the trunk and some of the luggage contained within it. Within a blue hard-shell suitcase, Officer Houck discovered a loaded firearm. Officer Houck indicated that the

suitcase also contained male clothing items. Officer Houck immediately informed Deputy Barton. The firearm was not tested for DNA or fingerprints. However, Deputy Barton explained that given the nature of the crime, the lab would not test it. Deputy Barton did later successfully test fire the weapon.

{¶33} After the gun was found, Deputy Barton told the driver that it was found in a blue suitcase. The driver then identified her luggage as a different suitcase. The front-seat passenger also identified his luggage. He brought two bookbags. The driver indicated that she did not know the front-seat passenger to use a suitcase like the one that contained the gun. She also testified that she did not know if the bag that contained the gun was already in the car since it was a rental that her mother had rented. However, the driver admitted that she did not know her mother to have any guns and did not have any reason to believe it belonged to her mother. Both the driver and the front-seat passenger indicated that they were surprised that a gun was found in the car. The front-seat passenger testified that if they knew there was a gun in the car, they would have informed officers when they were initially pulled over. The driver had never seen the gun before and had never seen Anderson with a gun.

{¶34} At that point, the police had accounted for all of the luggage, aside from the blue hard-shell suitcase. Anderson declined to answer questions raised by police about the luggage. At trial, the driver denied that she told officers at the scene that the blue hard-shell suitcase belonged to Anderson. However, Deputy Barton testified that the driver made a comment that that suitcase was "the back[seat] passenger's suitcase."

{¶35} The driver testified that all of the bags were then put back in the car. When the front-seat passenger was discussing this point, he initially stated that, "[a]fter they arrested [Anderson,] * * * they put *his suitcase* back in the car." (Emphasis added.) The front-seat

passenger then corrected himself and indicated that the officers put "the suitcase" back in the car. The driver and front-seat passenger continued on their way. The driver never touched the blue hard-shell suitcase that had contained the gun and she did not see the front-seat passenger get anything out of that suitcase. The front-seat passenger also testified that he did not touch the blue hard-shell suitcase either.

{¶36} During his testimony, Deputy Barton acknowledged that his report misstated the front-seat passenger's name and that he did not realize the error until the prosecutor brought it to his attention shortly before trial. Deputy Barton also testified as to two judgment entries evidencing prior convictions of Anderson. Those entries were admitted into evidence as exhibits.

{¶37} Considering the evidence presented in a light most favorable to the State, we cannot say that Anderson has demonstrated that insufficient evidence was presented concerning possession of the firearm. There was evidence presented that the trio was going on a weekend trip to Georgia. Both the driver and the front-seat passenger testified about the luggage they brought. The front-seat passenger also indicated that he popped the trunk for Anderson in expectation of him having luggage. Both the driver and the front-seat passenger indicated they were surprised there was a gun in the vehicle and disclaimed ownership of it. After the driver and front-seat passenger described their luggage, there was only one bag unaccounted for. That bag contained the weapon at issue and also contained male clothes. And while the driver disputed that she informed officers of whose suitcase had the gun, Deputy Barton testified that the driver had commented that it belonged to the backseat passenger. Additionally, the statements made by the front-seat passenger at trial could also lead one to conclude that the suitcase containing the gun, and therefore the gun itself, was Anderson's. The front-seat passenger at one point referred to the suitcase as Anderson's and at another point indicated that Anderson did not "have any bags yet *

* *." While the front-seat passenger quickly corrected the former statement, it was still evidence that would tend to support that the suitcase and gun inside it belonged to Anderson. Even though the vast majority of the evidence presented was circumstantial, "it is well established that '[c]ircumstantial evidence and direct evidence inherently possess the same probative value.'" *State v. Yatson*, 9th Dist. Lorain No. 20CA011658, 2022-Ohio-2621, ¶ 62, quoting *Jenks*, 61 Ohio St.3d 259 at paragraph one of the syllabus. Further, as pointed out above, "constructive possession may be established by circumstantial evidence." *Cross*, 2019-Ohio-3133, at ¶ 7. Anderson has not demonstrated that insufficient evidence was presented to establish that Anderson possessed the weapon.

{¶38} Anderson's third assignment of error is overruled.

ASSIGNMENT OF ERROR II

> THE TRIAL COURT'S FINDING OF GUILT OF HAVING WEAPONS WHILE UNDER DISABILITY (R.C. 2923.13(A)(3)(B)) WITH SPECIFICATION FOR FORFEITURE OF A WEAPON (2941.147[1(A)]) AND HAVING WEAPONS WHILE UNDER DISABILITY (R.C. 2923.13(A)(2)(B)) IS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE.

{¶39} Anderson asserts in his second assignment of error that his convictions for having a weapon while under disability are not supported by sufficient evidence and are against the manifest weight of the evidence. However, Anderson has not made any specific argument with respect to sufficiency. Accordingly, it will not be further addressed here. We note that it was previously addressed above in Anderson's third assignment of error.

> In determining whether a criminal conviction is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses 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. Otten, 33 Ohio App.3d 339, 340 (9th Dist.1986).

{¶40} "When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a 'thirteenth juror' and disagrees with the fact[-]finder's resolution of the conflicting testimony." *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997), quoting *Tibbs v. Florida*, 457 U.S. 31, 42 (1982). An appellate court should exercise the power to reverse a judgment as against the manifest weight of the evidence only in exceptional cases. *Otten* at 340. "[W]e are mindful that the [trier of fact] is free to believe all, part, or none of the testimony of each witness." (Internal quotations and citations omitted.) *State v. Gannon*, 9th Dist. Medina No. 19CA0053-M, 2020-Ohio-3075, ¶ 20. "This Court will not overturn a conviction on a manifest weight challenge only because the [trier of fact] found the testimony of certain witnesses to be credible." *Id*.

{¶41} Anderson's manifest weight argument is difficult to discern. It seems he might be asserting that the weight of the evidence does not support that Anderson possessed the firearm. While it is true that the driver and the front-seat passenger testified that they did not know whether Anderson brought luggage nor did they see him put it in the car, the jury could have reasonably questioned the credibility of their testimony. Anderson and the front-seat passenger were very close, and the front seat-passenger was engaged to marry the driver. Moreover, there was evidence that the suitcase that contained the firearm also contained male clothes and was the only piece of luggage not claimed by either the driver or the front-seat passenger. In addition, there was evidence that the front-seat passenger expected Anderson to bring luggage given the nature of the trip. Given the evidence, and the argument made by Anderson, he has not demonstrated that it was unreasonable for the jury to conclude that Anderson possessed the gun. Overall, after a thorough and independent review of the record, we cannot say that Anderson has demonstrated

that the jury lost its way in finding him guilty of the two counts of having a weapon while under disability.

{¶42} Anderson's second assignment of error is overruled.

ASSIGNMENT OF ERROR IV

> APPELLANT, LEVANDER ANDERSON, WAS DENIED HIS RIGHT TO DUE PROCESS AND OF ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTIONS 10 AND 16 OF THE OHIO CONSTITUTION BECAUSE HIS TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE.

{¶43} Anderson argues in his fourth assignment of error that his trial counsel provided ineffective assistance. This Court disagrees.

{¶44} In order to prevail on a claim of ineffective assistance of counsel, Anderson must show that "counsel's performance fell below an objective standard of reasonableness and that prejudice arose from counsel's performance." *State v. Reynolds*, 80 Ohio St.3d 670, 674 (1998), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland* at 686. Thus, a two-prong test is necessary to examine such claims. First, Anderson must show that counsel's performance was objectively deficient by producing evidence that counsel acted unreasonably. *State v. Keith*, 79 Ohio St.3d 514, 534 (1997), citing *Strickland* at 687. Second, Anderson must demonstrate that but for counsel's errors, there is a reasonable probability that the result of the proceeding would have been different. *Strickland* at 694. This Court need not address both prongs of the *Strickland* test if the appellant fails to satisfy either prong. *State v. Ray*, 9th Dist. Summit No. 22459, 2005-Ohio-4941, ¶ 10.

{¶45} Anderson argues that the record evidences that he was dissatisfied with trial counsel. He asserts that trial counsel refused to object to certain pieces of evidence and refused to question witnesses about discrepancies in the testimony. Anderson maintains that he argued with counsel over jury selection and whether a juror should have been kept on the jury who fell asleep during trial.[2] He also argues that counsel failed to file proper motions to dismiss.

{¶46} However, Anderson fails to point this Court to any specific instances in the record supporting these allegations. *See* App.R. 16(A)(7). Anderson has not articulated what specifically trial counsel should have objected to, the questions that trial counsel should have asked, or the nature of the motion to dismiss. More importantly, the issues that Anderson raises deal largely with areas of trial strategy. "Debatable trial strategy * * * does not constitute ineffective assistance of counsel." *State v. Burnette*, 9th Dist. Wayne No. 20AP0036, 2022-Ohio-1103, ¶ 22. This Court has noted that "[d]ecisions regarding cross-examination are within trial counsel's discretion, and cannot form the basis for a claim of ineffective assistance of counsel." *State v. Smith*, 9th Dist. Wayne No. 12CA0060, 2013-Ohio-3868, ¶ 23, quoting *State v. Diaz*, 9th Dist. Lorain No. 04CA008573, 2005-Ohio-3108, ¶ 26. Additionally, we have held that "trial counsel's failure to make objections is within the realm of trial tactics and does not establish ineffective assistance of counsel." *Smith* at ¶ 24, quoting *State v. Guenther*, 9th Dist. Lorain No. 05CA008663, 2006-Ohio-767, ¶ 74. Moreover, "jury selection is a standard part of trial strategy." *State v. Murphy*, 7th Dist. Belmont No. 21 BE 0042, 2022-Ohio-4555, ¶ 47, citing *State v. Mundt*, 115 Ohio St.3d 22, 2007-Ohio-4836, ¶ 63. In summary, Anderson has not met his burden to demonstrate that trial counsel was ineffective.

{¶47} Anderson's fourth assignment of error is overruled.

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[2] The juror was dismissed and an alternate seated.

III.

{¶48} Anderson's assignments of error are overruled. The judgment of the Medina County Court of Common Pleas is affirmed; however, this matter is remanded to the trial court so that it can issue a nunc pro tunc entry reflecting that this matter was tried to a jury as opposed to the bench.

Judgment affirmed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JILL FLAGG LANZINGER
FOR THE COURT

SUTTON, P. J.
CONCURS.

CARR, J.
DISSENTING.

{¶49} I respectfully dissent from the judgment of the majority as I would conclude the trial court erred in denying Anderson's motion to suppress.

{¶50} Here, unlike many other cases this Court has confronted in the past, prior to the search of the trunk, officers had not discovered any odor of marijuana, *see State v. Jones*, 9th Dist. Lorain No. 12CA010270, 2013-Ohio-2375, ¶ 10, had not had a drug dog alert on the vehicle, *see State v. Reid*, 9th Dist. Lorain No. 12CA010265, 2013-Ohio-4274, ¶ 21, and had not discovered significant amounts of drugs. *See State v. Dingle*, 9th Dist. Summit No. 13055, 1987 WL 19469, *1 (Oct. 28, 1987); *State v. Carmichael*, 9th Dist. Lorain No. 11CA010086, 2012-Ohio-5923, ¶ 2. At the time of the search of the trunk, the officers only suspected that there was an open container of alcohol in the vehicle and had found only marijuana shake. Taken together, and considering the totality of the circumstances, probable cause did not exist to justify a search of the trunk. In other words, the limited evidence found by the officers would not lead to a belief that there was a fair probability that contraband or evidence of a crime would be found in the trunk. *See State v. Grant*, 9th Dist. Medina No. 06CA0019-M, 2007-Ohio-680, ¶ 13.

APPEARANCES:

KIMBERLY STOUT-SHERRER, Attorney at Law, for Appellant.

S. FORREST THOMPSON, Prosecuting Attorney, and VINCENT V. VIGLUICCI, Assistant Prosecuting Attorney, for Appellee.