[Cite as *State v. Dominguez*, 2012-Ohio-4542.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

PREBLE COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-09-010
	:	OPINION 10/1/2012
- vs -		
	:	
MARIBEL DOMINGUEZ,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM PREBLE COUNTY COURT OF COMMON PLEAS
Case No. 10-CR-10569

Martin P. Votel, Preble County Prosecuting Attorney, Eric E. Marit, Courthouse, 1st Floor, 101 East Main Street, Eaton, Ohio 45320, for plaintiff-appellee

Deal & Hooks, LLC, Shawn P. Hooks, 131 North Ludlow Street, Suite 630, Dayton, Ohio 45402, for defendant-appellant

RINGLAND, J.

{¶ 1} Defendant-appellant, Maribel Dominguez, appeals her conviction and sentence in the Preble County Court of Common Pleas for possession of a controlled substance in excess of 1,000 grams, a felony of the first degree, in violation of R.C. 2925.11.

{¶ 2} On October 16, 2010, Ohio State Highway Patrol Trooper Shawn Smart, accompanied by Deputy Bob Forbes of Haywood County, North Carolina, was seated in his

cruiser along Interstate 70 in Monroe Township, Preble County, Ohio. Also in the cruiser was Trooper Smart's drug detection canine, Rita. Trooper Smart, a highway patrol trooper for approximately 20 years, observed a 2007 Dodge Caliber slowdown from the posted speed limit of 65 m.p.h. to approximately 60 m.p.h. as it passed by his cruiser. The driver of the vehicle appeared rigid and, according to Trooper Smart, appeared to be "hiding" from the trooper's view. Due to this "change in driving behavior," Trooper Smart pulled out and followed the vehicle.

{¶ 3} As he caught up to the vehicle, Trooper Smart observed the Caliber make a lane change without signaling and with only one quarter of a car length between vehicles. Trooper Smart then drove alongside the Caliber and noticed that the driver and passenger, a man and woman, were sitting in a rigid manner, making "absolutely no movement" and "staring straight ahead." Due to the lane change infraction, Trooper Smart stopped the Caliber to speak with the driver.

{¶ 4} Trooper Smart had the driver exit the Caliber and approach the trooper along the roadside. The driver identified himself as Jose Louis Rivera of La Puente, California, but did not speak English. Therefore, Trooper Smart approached the passenger side of the Caliber and made contact with appellant, who identified herself as Maribel Dominguez, the wife of Rivera. Trooper Smart later came to understand that the couple is not married but have lived together for 24 years and have four children together. When Trooper Smart initiated contact with appellant he described her demeanor as poor, as her hands were shaking, she failed to make eye contact, and she had tears in her eyes.

{¶ 5} From his initial interaction with Rivera and appellant, Trooper Smart learned that both had valid licenses, were in the country legally, and that the vehicle was registered to appellant. Trooper Smart also observed the interior of the Caliber and noticed that a rosary and air freshener were hanging from the rearview mirror and that a strong odor of air

freshener was emanating from the vehicle; too strong to be radiating from the single visible air freshener. A large jar containing a candle covered with aluminum foil and a prayer were located on the Caliber's center console, but the candle was not lit. At trial, Trooper Smart testified that he knew from his training and experience that air freshener was often used to "mask the odor of illegal narcotics."

{¶ 6} Trooper Smart and, later, Deputy Forbes, asked appellant where the couple was going. Initially, appellant stated that she did not know, but later stated that they were traveling to New Jersey to visit Rivera's relatives, whom she had never met and could not identify. Appellant admitted at trial that she knew Rivera did not have relatives in New Jersey.

{¶ 7} After explaining to appellant and Rivera why they had been pulled over, Trooper Smart returned to his cruiser and commenced a license and wants/warrants check on both Rivera and appellant. Around this same time, Trooper Smart initiated a canine sweep of the outside of the Caliber with his drug detection canine. Rita alerted to the rear area of the Caliber, at which time Trooper Smart placed Rivera and appellant in his cruiser and began conducting a search of the Caliber.

{¶ 8} In the hatchback area of the Caliber, Trooper Smart and Deputy Forbes discovered a small suitcase, a small cooler, and a bag. Underneath these items was a plastic cover which, once removed, revealed a spare tire well. The spare tire well, and the spare tire inside, was dusted with powdered soap. Trooper Smart testified at trial that, based upon his experience and training, he knew that drug couriers often used powdered soap to hide the odor of drugs.

{¶ 9} Trooper Smart removed the spare tire from the well, bounced the tire on the ground, and concluded that something was inside the tire. The rim of the tire was later removed to reveal two large packages of a white-powder substance. Trooper Smart

performed a "chemical narcotics identification kit test" on the white-powder substance and the test showed a positive indication for cocaine.

{¶ 10} A thorough search of the remainder of the Caliber also revealed a small bottle of air freshener, a clear bottle containing oils, MapQuest directions to New Jersey without a specific ending address, and a written note on how to bless the vehicle. The written note specifically mentioned blessing the "tire," "in and out." Trooper Smart questioned appellant about these items, as well as the small suitcase he had found in the hatchback area of the Caliber.

{¶ 11} Appellant stated that she used the clear bottle of oils to clean the Caliber and that she blessed the vehicle and the "tire" because she had had a blowout on the highway a year and a half earlier and was scared it would happen again. Appellant also stated to Trooper Smart that she had only packed a small suitcase of clothes for the trip to New Jersey because Rivera stated he would buy more clothing once the couple arrived at their destination.

{¶ 12} Trooper Smart testified at trial that appellant appeared visibly nervous during this conversation, especially when asked about the blessing. Her eyes were watering and her legs were shaking. Deputy Forbes corroborated this testimony. Trooper Smart also testified that, in his experience, the use of MapQuest directions without a specific city or address is "a standard tactic for drug couriers" to prevent law enforcement from learning where the drugs are being shipped.

{¶ 13} Rivera and appellant were both indicted for possession of cocaine. Rivera eventually pled guilty and appellant proceeded to trial. A jury found appellant guilty of possession of cocaine exceeding 1,000 grams and appellant was subsequently sentenced to serve 10 years in prison and pay a $10,000 fine. From her conviction and sentence, appellant appeals, raising four assignments of error. For ease of discussion, appellant's first

and second assignments shall be addressed together.

{¶ 14} Assignment of Error No. 1:

{¶ 15} APPELLANT WAS DEPRIVED HER RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL PRIOR TO THE TRIAL WHEN HER ATTORNEY WITHDREW HER MOTION TO SUPPRESS WITHOUT A HEARING.

{¶ 16} Assignment of Error No. 2:

{¶ 17} APPELLANT WAS DEPRIVED OF HER RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL DURING THE TRIAL WHEN HER COUNSEL FAILED TO PROPERLY OBJECT TO NUMEROUS EXHIBITS AND TO EXTENSIVE TESTIMONY.

{¶ 18} Appellant argues that she was deprived her right to effective assistance of counsel because defense counsel (1) withdrew a motion to suppress prior to a hearing, (2) failed to object to Trooper Smart's improper opinion testimony, and (3) failed to object to the introduction of an unauthenticated photograph of the Caliber's registration.

{¶ 19} "To establish a claim of ineffective assistance of counsel, a defendant must show that his or her counsels' actions were outside the wide range of professionally competent assistance, and that prejudice resulted by reason of counsels' actions." *State v. Ullman*, 12th Dist. No. CA2002-10-110, 2003-Ohio-4003, ¶ 43, citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984). Counsel's performance will not be deemed ineffective unless the appellant demonstrates that "counsel's representation fell below an objective standard of reasonableness and that there exists a reasonable probability that, were it not for counsel's errors, the result of the proceeding would have been different." (Internal quotation omitted.) *Id.*; *Strickland* at 688; *State v. Bradley*, 42 Ohio St.3d 136, 143 (1989). "A reasonable probability is 'a probability sufficient to undermine confidence in the outcome of the proceeding.'" *State v. Fields*, 102 Ohio App.3d 284 (12th Dist.1995), quoting *Strickland* at 694. "A defendant bears the burden of demonstrating ineffective assistance of

counsel." *State v. Bishop*, 12th Dist. No. CA97-07-081, unreported, 1998 WL 102994, * 1 (Mar. 9, 1998), citing *State v. Hamblin*, 37 Ohio St.3d 153, 155-156 (1988).

Motion to Suppress

{¶ 20} We shall first address appellant's argument that defense counsel was ineffective in withdrawing a motion to suppress. "Our analysis of this issue begins by noting that the 'failure to file a suppression motion does not constitute per se ineffective assistance of counsel.'" *State v. Brown*, 12th Dist. No. CA2002-03-026, 2002-Ohio-5455, ¶ 11, quoting *State v. Madrigal*, 87 Ohio St.3d 378, 389, 2000-Ohio-448. In the same sense, the decision to withdraw a motion to suppress does not constitute per se ineffective assistance of counsel. Moreover, the decision to withdraw a motion to suppress "constitutes ineffective assistance of counsel only when the record establishes that the motion would have been successful[.]" *Id.*, citing *State v. Robinson*, 108 Ohio App.3d 428, 433 (3d Dist.1996). Indeed, "even when some evidence in the record supports a motion to suppress," an appellate court presumes that defense counsel was effective if defense counsel could reasonably have decided that the motion to suppress would have been futile. *Brown* at ¶ 11.

{¶ 21} "A motion to suppress evidence seeks to challenge a search or seizure as being in violation of the Fourth Amendment of the United States Constitution." *Id.* at ¶ 12. Here, appellant concedes that the initial traffic stop for failing to signal a lane change was appropriate. However, appellant contends that Trooper Smart had no reasonable suspicion based upon specific and articulable facts to extend the traffic stop to allow his drug detection canine to investigate the vehicle.

{¶ 22} "When conducting the stop of a motor vehicle for a traffic violation, an officer may detain the vehicle for a time sufficient to investigate the reasonable, articulable suspicion for which the vehicle was initially stopped." *State v. Beltran*, 12th Dist. No. CA2004-11-015, 2005-Ohio-4194, ¶ 16, citing *State v. Bolden*, 12th Dist. No. CA2003-03-007, 2004-Ohio-184,

¶ 15. "In addition, a lawfully detained vehicle may be subjected to a canine sniff of the vehicle's exterior even without the presence of a reasonable suspicion of drug-related activity." *Bolden* at ¶ 18; *United States v. Place*, 462 U.S. 696, 103 S.Ct. 2637 (1983). Thus, "a canine sniff of a vehicle may be conducted during the time period necessary to effectuate the original purpose of the stop." *Bolden* at ¶ 18. "Moreover, if a trained narcotics dog 'alerts to the odor of drugs from a lawfully detained vehicle, an officer has probable cause to search the vehicle for contraband.'" *Id*, quoting *State v. Cahill*, 3d Dist. No. 17-01-19, 2002-Ohio-4459, at ¶ 22.

{¶ 23} In this case, appellant concedes that the initial traffic stop was legal and, therefore, Trooper Smart had the right to detain Rivera and appellant for the time sufficient to investigate the initial failure to signal a lane change. Just after performing a check on the couple's licenses, Trooper Smart used his canine, which was already at the scene, to sniff the exterior of the Caliber for drugs. Once the canine alerted to the odor of drugs, Trooper Smart had probable cause to search the Caliber for contraband and extend the length of the traffic stop.

{¶ 24} Based upon the foregoing, the motion to suppress would not have been successful and, therefore, defense counsels' decision to withdraw the motion to suppress was not deficient and did not fall outside the wide range of professionally competent assistance.

Objection to Testimony and Exhibits

{¶ 25} Appellant also argues that defense counsel was ineffective in failing to object to (1) statements made by Trooper Smart which were not rationally based on his own perceptions, (2) a photograph of the Caliber's registration which was not properly authenticated, and (3) testimony relating to appellant's alleged ownership of the Caliber.

{¶ 26} The failure to object at trial waives all but plain error. *State v. Hartman*, 93 Ohio

St.3d 274, 281 (2001). "To constitute plain error, the error must be obvious on the record, palpable, and fundamental, so that it should have been apparent to the trial court without objection." *State v. Black*, 8th Dist. No. 92806, 2010-Ohio-660, ¶ 29. Plain error does not exist unless the appellant can establish that the outcome of the trial would have been different but for the trial court's allegedly improper action. *Id.*; *State v. Waddell*, 75 Ohio St.3d 163, 166, 1996-Ohio-100. "Notice of plain error * * * is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus; *State v. Phillips*, 74 Ohio St.3d 72, 83, 1995-Ohio-171.

{¶ 27} In the case at hand, appellant first contends that defense counsel was deficient in failing to object to the testimony of Trooper Smart. Specifically, appellant asserts that Trooper Smart gave numerous impermissible opinions about the powdered soap used on the spare tire, the MapQuest directions found in the Caliber, the significance of the written blessing, the candle, and a religious tattoo on Rivera's arm, the street value of 1,120 grams of cocaine, the cost and duration of Rivera and appellant's trip, the veracity of Rivera and appellant's story about traveling to New Jersey, and the testing of the white substance found in the spare tire.

{¶ 28} Evid.R. 701 provides, "If a witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue." *See State v. Kehoe*, 133 Ohio App.3d 591, 603 (12th Dist.1999).

{¶ 29} Trooper Smart testified that he was trained in drug interdiction, attended national level conferences on drug interdiction, has 20 years of experience in drug-related searches, has personally trained over 15,000 officers in the United States and eight foreign

countries on the subject of drug interdiction, and has learned a great deal about the methods used to transport drugs across the United States through his completion of over 600 "significant cases."

{¶ 30} Trooper Smart proffered that the use of powdered soap around the cocaine, the MapQuest directions, and the use of the candle and the written note to bless the Caliber were common among drug couriers. Trooper Smart stated that he learned the significance of these items through his training and his 20 years of experience involving drug interdiction, drug couriers, and drug trafficking.

{¶ 31} Further, Trooper Smart testified about the tattoo Rivera had on his arm depicting *Santisima Muerte*. Trooper Smart testified that *Santisima Muerte* is the patron saint of "money couriers and also a protector of drug couriers," although he admitted the saint also has innocent associations. Trooper Smart's stated on cross-examination that he drew a conclusion that the tattoo was related to drug trafficking based upon his 20 years of experience in drug interdiction.

{¶ 32} Trooper Smart went on to testify that, "in [his] opinion," appellant's story that she and Rivera were traveling from California to New Jersey to meet Rivera's relatives was "an unbelievable story." Trooper Smart also stated that, in his experience, one would pack a great deal more luggage than a small suitcase with three to four changes of clothes per person for such a long trip. Thus, Trooper Smart surmised that the size of the luggage indicated a "possible rapid turnaround," and that appellant was not being honest about the couple's trip. This aroused Trooper Smart's suspicions that drug activity may be involved.

{¶ 33} Trooper Smart also testified that he conducted a "chemical narcotics identification kit test" on the white-powder substance found in the spare tire. He explained that he took a small sample of the white-powder substance and mixed it with chemicals from the kit. As the mixture turned blue, this indicated to Trooper Smart that the substance was

cocaine. Trooper Smart explained that this was a presumptive test and Brandon Werry, director of the Ohio State Highway Patrol Crime Lab, later testified that the substance was tested at the Crime Lab and determined to be cocaine. Finally, Trooper Smart testified that the street value of 1,120 grams of cocaine would be approximately $150,000.

{¶ 34} Trooper Smart demonstrated personal knowledge of his stated opinions in this case. He also stated a rational basis for his conclusions by providing details of both his perception of the events occurring at the traffic stop coupled with his experience with drug trafficking and drug couriers. *See generally Kehoe*, 133 Ohio App.3d at 604. When testifying as to his opinions, Trooper Smart merely described the evidence he observed and how he interpreted that evidence as a lay witness with significant experience. Thus, as the admission of this testimony was not plain error, appellant has failed to demonstrate that defense counsel's conduct fell below the range of professional assistance necessary to warrant a reversal of her conviction.

{¶ 35} Appellant additionally argues that defense counsel should have objected to Trooper Smart's defining of the term "probable cause" during his testimony. Specifically, appellant contends that this was a legal conclusion that Trooper Smart was not qualified to make. However, the jury did not rely on this definition to determine any element of the crime alleged and, therefore, any harm that resulted from Trooper Smart's definition of "probable cause" was harmless.

{¶ 36} Finally, appellant contends that defense counsel was deficient in failing to object to the introduction and admission of a photograph of the Caliber's registration and testimony relating to appellant's ownership of the Caliber.[1] As the state relied on the photograph and Trooper Smart's testimony regarding appellant's ownership of the Caliber to

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1. The issue of whether the actual registration should have been submitted at trial is not before this court.

prove that appellant must have known the cocaine was in the spare tire, appellant contends that defense counsel's failure to object to this evidence prejudiced appellant.

{¶ 37} In regard to the proper authentication of a photograph, the Ohio Rules of Evidence provide that "the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Evid.R. 901(A); *State v. Penwell*, 12th Dist. No. CA2010-08-019, 2011-Ohio-2011, ¶ 60. "To properly authenticate photographs, the proponent need only produce testimony from someone with knowledge to state that the photograph represents a fair and accurate depiction of the actual item at the time the picture was taken." *Penwell* at ¶ 60, citing *State v. Bettis*, 12th Dist. No. CA2004-02-034, 2005-Ohio-2917, ¶ 27.

{¶ 38} In this case, Trooper Smart testified that he took the photograph of the Caliber's registration and that the photograph fairly and accurately depicted the registration of the vehicle. Thus, pursuant to Evid.R. 901(A), the photograph was properly authenticated and defense counsel was not ineffective in failing to object to its admission. Consequently, any testimony at trial relating to the photograph was admissible as well. Finally, it should be noted that any error in testimony relating to appellant's ownership of the automobile is harmless error due to the fact that Rivera and appellant testified that the Caliber belonged to appellant. Appellant specifically stated that she purchased the Caliber, it was registered to her, and that she had insurance on the vehicle.

{¶ 39} Based upon the foregoing, we cannot say that defense counsel's representation at trial fell below an objective standard of reasonableness and prejudiced appellant.

{¶ 40} Accordingly, appellant's first and second assignments of error are overruled.

{¶ 41} Assignment of Error No. 3:

{¶ 42} THE CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE

EVIDENCE AND THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE CONVICTION BECAUSE THERE WAS NO EVIDENCE THAT APPELLANT KNOWINGLY POSSESSED THE COCAINE IN THE VEHICLE.

{¶ 43} In her third assignment of error, appellant contends that her conviction was against the manifest weight of the evidence and not supported by sufficient evidence. Specifically, appellant contends that insufficient evidence was presented at trial to prove that she had knowledge the cocaine was in the spare tire of the Caliber and that the greater amount of the evidence indicated that appellant had no knowledge that the cocaine was in the spare tire.

{¶ 44} When reviewing the sufficiency of the evidence underlying a criminal conviction, the function of an appellate court 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." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. "The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact would have found the essential elements of the crime proven beyond a reasonable doubt." *Id.*

{¶ 45} "While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenge concerns the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other." *State v. Wilson*, 12th Dist. No. CA2006-01-007, 2007-Ohio-2298, ¶ 34. In determining whether the conviction is against the manifest weight of the evidence, an appellate court "must weigh the evidence and all reasonable inferences from it, consider the credibility of the witnesses and determine whether in resolving conflicts, the jury 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. Coldiron,* 12th Dist. Nos. CA2003-09-078,

CA2003-09-079, 2004-Ohio-5651, ¶ 24; *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. "This discretionary power should be exercised only in the exceptional case where the evidence weighs heavily against conviction." *Id.*

{¶ 46} "Because sufficiency is required to take a case to the jury, a finding that a conviction is supported by the weight of the evidence must necessarily include a finding of sufficiency." (Internal quotations omitted.) *Wilson* at ¶ 35. "Thus, a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." *Id.*

{¶ 47} Appellant was convicted of possession of a controlled substance, cocaine, in violation of R.C. 2925.11. This statute provides that "[n]o person shall knowingly obtain, possess, or use a controlled substance." Possession may be actual or constructive. *State v. Wolery*, 46 Ohio St.2d 316, 329 (1976). "Constructive possession exists when an individual exercises dominion and control over an object, even though that object may not be within his immediate physical possession." *Id.* In addition, R.C. 2901.22(B) states that a person acts knowingly, "regardless of his or her purpose, when that person is aware that his or her conduct will probably cause a certain result or will probably be of a certain nature."

{¶ 48} The testimony at trial revealed that appellant stated she and Rivera were going to visit Rivera's relatives in New Jersey but that appellant could not identify, nor provide a specific address for, these relatives. Appellant admitted at trial that she knew Rivera had no relatives in New Jersey. Furthermore, Rivera testified that they were not traveling to New Jersey to visit relatives, but to Columbus, Ohio to visit a friend Rivera knew from work. Testimony also revealed that the MapQuest directions found in the vehicle listed no specific address, and Trooper Smart testified that this was common among drug couriers. Moreover, the couple was traveling from California to New Jersey, but had only packed a small suitcase.

{¶ 49} The jury also heard Trooper Smart testify that appellant was unnaturally

nervous during the traffic stop and that appellant's behavior was indicative of a drug courier. Appellant argued at trial that she had been experiencing a diabetic episode which would explain her behavior, but appellant never informed Trooper Smart that she was having a problem with her diabetes. In addition, the jury heard testimony from appellant that she owned the Caliber, that it was registered in her name, and that she had blessed the Caliber using the written note found by Trooper Smart during his search of the vehicle. The blessing specifically addressed the "tire," the location of where the cocaine was eventually found.

{¶ 50} In reviewing the record, we are mindful that the jury was in the best position to judge the credibility of the witnesses and the weight to be given the evidence. *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. Furthermore, a miscarriage of justice does not occur "simply because the jury believed the prosecution testimony." *State v. Bates*, 12th Dist. No. CA2009-06-174, 2010-Ohio-1723, ¶ 11. Based upon the facts of this case, we cannot say that the jury clearly lost its way and created such a manifest miscarriage of justice to warrant a reversal of appellant's conviction.

{¶ 51} Accordingly, appellant's third assignment of error is overruled.

{¶ 52} Assignment of Error No. 4:

{¶ 53} THE CUMULATIVE ERRORS THAT TOOK PLACE THROUGHOUT THE TRIAL DEPRIVED APPELLANT OF HER CONSTITUTIONAL RIGHT TO A FAIR TRIAL.

{¶ 54} In her final assignment of error, appellant argues that, due to the numerous errors that occurred throughout the trial, appellant was denied her right to a fair trial and, consequently, her conviction should be reversed.

{¶ 55} "According to the cumulative error doctrine, 'a conviction will be reversed where the cumulative effect of errors in a trial deprives a defendant of the constitutional right to a fair trial even though each of the numerous instances of trial court error does not individually constitute a cause for reversal.'" *State v. McClurkin*, 12th Dist. No. CA2007-03-071, 2010-

Ohio-1938, ¶ 105, quoting *State v. Garner,* 74 Ohio St.3d 49, 64, 1995-Ohio-168. However, appellant has failed to demonstrate that errors occurred during her trial. Consequently, "we fail to see how the absence of prejudicial error can rise to the level of cumulative error." *State v. McGuire*, 12th Dist. No. CA95-01-001, unreported, 1996 WL 174609, *14 (Apr. 15, 1996); *McClurkin* at ¶ 106.

{¶ 56} Accordingly, appellant's fourth and final assignment of error is overruled.

{¶ 57} Judgment affirmed.

HENDRICKSON, P.J., and PIPER, J., concur.