CLIFTON JACKSON AFFIDAVIT AND APPENDIX OF EXHIBTS ARE NUMBERED [first two cover pages of affidavit unnumbered, iii-lxiii] IN ROMAN NUMERAL. EXHIBIT PAGES ARE CROSS REFERENCED AS APPENDIX [Appendix Pages are numbered1-655] PAGES. AFFIDAVIT AND EXHIBITS ARE IN SUPPORT OF 26B MOTION TO REOPEN STATE OF OHIO v. CLIFTON JACKSON, CASE NO. 11CR083104, NINTH DISTRICT COURT OF APPEALS CASE NO. 14CA010555, Not Limited Too.

EXHIBIT

AAP

EXHIBITS A-AAAE IN SUPPORT OF CLIFTON JACKSON ENCLOSED AFFIDAVIT AND APPENDIX PREPARED MARCH OF 2016 OF A DETAILED TIME LINE OF FACTUAL EVENTS BETWEEN JUNE 14th, 2011 AND OCTOBER OF 2015 TO THE BEST OF MY LAYMEN LEGAL ABILITIES.
THIS EXHIBIT "AAP" IS REFERENCED IN ¶ 132 not limited too.

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT
LORAIN COUNTY, OHIO

STATE OF OHIO	:	**CASE NO. 14CA010555**
	:	
Appellee,	:	**APPEAL FROM LORAIN**
	:	**COUNTY COURT OF**
vs.	:	**COMMON PLEAS CASE**
	:	**NUMBER 11CR083104**
CLIFTON JACKSON	:	
	:	
Appellant	:	

BRIEF OF APPELLEE
ORAL ARGUMENT REQUESTED

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III. DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN THE COURT OVERRULED HIS MOTION TO DISMISS BASED ON THE VIOLATION OF THE SPEEDY TRIAL STATUTE.

IV. DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL. (TR. 97-98, 155, 172, 178-79, 188, 212, 213) (TR. 17; 6/14/12)

V. DEFENDANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO PRESENT A DEFENSE WHEN THE COURT WOULD NOT EITHER RE-OPEN THE EVIDENCE TO ALLOW RECALL OF WITNESSES OR HAVE WITNESSES RECALLED WHO TESTIFIED DURING DEFENDANT'S ABSENCE. (TR. 82, 97, 178-79, 190-92, 211-12, 213-14, 216)

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VIII. DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN HE WAS SENTENCED FOR A VELONY VERSION OF POSSESSION OF CRIMINAL TOOLS AND THE VERDICT DID NOT SUPPORT A FELONY VERSION. (TR. 264)

IX. THE COURT ERRED IN ORDERING DEFENDANT TO REPAY ATTORNEY FEES. (TR. 274, 277-78)

X. DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN THE COURT OVERRULED HIS MOTION FOR JUDGMENT OF ACQUITTAL. (TR. 106, 119, 154, 161, 208-09, 263)

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. A traffic stop is valid so long as an officer has reasonable suspicion that the defendant committed a traffic violation. Trooper Beyer observed and video taped Jackson following too closely behind another vehicle on the Ohio Turnpike. Did the trial court err in denying Jackson's motion to suppress?
2. The State may not offer evidence of a defendant's exercise of his constitutional rights as substantive evidence of guilt. The prosecutor did not specifically elicit or comment upon Det. Taliano's isolated remark that Jackson exercised his right to remain silent. Did the State offer substantive evidence of Jackson's silence?
3. Once an accused has executed an express, written waiver of unlimited duration, he is not entitled to a discharge for delay in bringing him to trial unless he files a formal written objection and demand for trial, following which the state must bring him to trial within a reasonable time. Jackson waived his speedy trial rights and he never withdrew the waiver. Did the trial court err in denying Jackson's motion to dismiss on speedy trial grounds?
4. For a defendant to prevail on a claim of ineffective assistance of counsel, he must demonstrate that counsel's performance fell below an objective standard of reasonable representation and that he was prejudiced by counsel's errors. Jackson failed to establish that trial counsel's performance was unreasonable or that he was prejudiced by counsel's performance. Was Jackson's trial counsel ineffective?
5. Any error that was not raised in the trial cannot be raised for the first time on appeal. Jackson did not assert at trial that he was prevented from offering a defense by the trial court's refusal to allow him to recall witnesses. Is Jackson precluded from raising this issue for the first time on appeal?
6. After trial has commenced, the trial may continue in the defendant's voluntary absence. Jackson did not appear on the second morning of trial and the trial court had no indication of the reason for Jackson's absence. Did the trial court err in continuing the trial in Jackson's voluntary absence?
7. Under the invited error doctrine, a party may not benefit from an error that he himself caused or induced the trial court to make. In front of the jury Jackson volunteered that he was wearing an ankle monitor. May Jackson raise this alleged error that he caused?
8. A verdict form must contain the degree of an offense or a specific finding of an aggravating element to justify a conviction of a greater degree of a criminal offense. Jackson's verdict form for Possession of Criminal Tools included the designation that the offense was a fifth degree felony. Was Jackson properly convicted of a felony five offense of Possession of Criminal Tools?
9. The trial court erred by failing to make a finding that Jackson had the ability to repay court appointed attorney fees.
10. In reviewing a conviction on the sufficiency of the evidence, 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. The State presented evidence that Jackson possessed the cocaine found in his duffel bag in the trunk of the rental car Jackson was driving. Are Jackson's convictions supported by sufficient evidence?

STATEMENT OF THE CASE

Clifton Jackson was indicted on August 11, 2011 on three counts. Counts one and two were trafficking in drugs and possession of drugs, both first degree felonies with a specification. Count three charged possession of criminal tools, a felony in the fifth degree.

Jackson filed a motion to suppress on November 4, 2011. The court held a hearing on the motion on June 5, 2012. The court denied the motion on September 28, 2012. Jackson filed a motion for reconsideration on December 7, 2012. The court denied that motion December 11, 2012.

The court set a trial date for January 28, 2014 and eventually rescheduled for February 11, 2014. Jackson filed motions to dismiss and to preclude on February 7, 2014. The court denied both motions on February 10, 2014.

The trial began on February 11, 2014. The jury returned a verdict of guilty on all counts. On the first count, the jury found that Jackson possessed greater than 1000 grams of cocaine and classified Jackson as a major drug offender in accordance with the first two specifications on counts one and two.

The State elected to have Jackson sentenced on count one. Jackson elected to be sentenced under the new sentencing statute. The court sentenced Jackson to 11 months on count three to be served concurrently with his sentence for count one. The court further revoked Defendant's driver's license for two years and ordered he pay a $10,000 fine. The trial court ordered Jackson to pay for the costs of prosecution and his court-appointed attorney fees. On February 21, 2014, Jackson's court-appointed attorney filed a motion for extraordinary fees. The trial court granted this motion on February

Jackson filed notice of appeal on March 7, 2014. He filed his appellate brief on July 29, 2014. The State of Ohio hereby responds.

STATEMENT OF FACTS

On June 14, 2012, in Lorain County, Ohio, State Trooper Christopher Beyer witnessed a silver Toyota Camry following too closely behind a large truck hauling a motor home. Supp. Tr. 4; Tr. 90. Trooper Beyer indicated that two to three car lengths is an extremely close distance and a safety hazard, which Beyer believed to be well outside the stopping distance a reasonably prudent person would allow. Supp. Tr. 4-5; Tr. 90-91. Trooper Beyer explained that at sixty to sixty-five miles per hour, you need one hundred forty-three feet to stop. Supp. Tr. 5. Trooper Beyer testified that two to three car lengths is only approximately forty-five to fifty feet. Supp. Tr. 5. According to Trooper Beyer, at a speed of sixty to sixty-five, a vehicle requires a stopping distance of one hundred forty-three feet, more than two times the distance Jackson maintained from the vehicle in front of him. Supp. Tr. 5.

After it was safe, Trooper Beyer pulled out of the cross-over and caught up to the Camry at approximately mile post 135. Tr. 91. Trooper Beyer testified that the dash camera in his vehicle is set to turn on when the overhead lights are activated. Tr. 92. Trooper Beyer manually switched on his video camera after he caught up with the Camry. Tr. 93-94. Trooper Beyer testified that the Camry was only two dotted lines away from the vehicle it was following. Tr. 91. The dotted lines are ten feet long and 30 feet apart, demonstrating that the Camry was almost exactly sixty feet behind the other vehicle. Tr. 91. State's Exhibit 1 at 8:39. Beyer followed the Camry long enough to capture the violation on video. Supp. Tr. 6; Tr. 92-93.

When it was safe, Beyer initiated a traffic stop. Supp. Tr. 6; Tr. 91. This occurred over the course of four miles, all within Lorain County. Supp. Tr. 6; Tr. 90, 96.

Beyer approached the Camry and asked Jackson, the driver, for his license, registration and insurance Supp. Tr. 6. The Camry had Pennsylvania plates and the driver had a New York driver's license. Supp. Tr. 6-7; Tr. 112. Jackson said he was coming from Beloit, Michigan where he visited his sick mother. Supp. Tr. 7; Tr. 98, 126.

Jackson stated that his cousin rented the car. Supp. Tr. 7-8; Tr. 98. Jackson gave Trooper Beyer a rental agreement for the car. Supp. Tr. 8; Tr. 99. The agreement did not list Jackson as an authorized driver. Supp. Tr. 7; Tr. 98. Instead, it listed Latrice Thomas as the renter. Supp. Tr. 7; Tr. 99. Beyer then asked Jackson when Ms. Thomas acquired the vehicle. Supp. Tr. 8. Jackson said, "Yesterday, actually." *Id.* He then changed his story, stating that she had had the vehicle for a while and then gave it to him. *Id.* Jackson then said Latrice Thomas was his girlfriend, even though he previously called her his cousin. *Id*, Tr. 98. Further, Jackson could not immediately tell Trooper Beyer where he was heading. Supp. Tr. 8-9; Tr. 98. After some stammering, Jackson told Trooper Beyer that he was going to a place near Stoney Brook or Stoney Point. *Id.* Trooper Beyer, having lived in the area for his entire life, had never heard of such a place in the Cleveland area. *Id.*

Jackson claimed he was visiting his sick mother in the Detroit area. Tr. 98. Trooper Beyer testified that it is common in narcotics investigations for suspects to claim they are visiting sick relatives. Tr. 98. Trooper Beyer found Jackson's claim suspicious because it was 8:44 am and for Jackson to get to Lorain County from the Detroit area he would have to leave awfully early in the morning. Tr. 98. Trooper Beyer questioned how much time Jackson could have spent with his sick mother given his short visit and very early departure. Tr. 98.

Trooper Beyer questioned whether Jackson had a right to drive the car because he was not the owner, nor a listed authorized party on the rental agreement. Supp. Tr. 8-9; Tr. 98.

Trooper Beyer believed based on his training and experience that there was something more going on than a mere traffic violation. Supp. Tr. 9-10; Tr. 97-98. Trooper Beyer decided the situation warranted further investigation due to Jackson's odd behavior, his contradictory stories, and the lack of trustworthiness of his explanation for his travels. *Id.*

Beyer called K-9 officer Trooper Trader to the scene. Supp. Tr. 10; Tr. 99. Beyer and Trader were working together as a team. Tr. 121. Trooper Trader and his dog Argo arrived on the scene within 5 or 6 minutes of the initial traffic stop. Supp. Tr. 10-11; Tr. 100. Trooper Trader and Argo are highly trained and certified to do K-9 sniffs of vehicles to detect drugs. Supp. Tr. 35-36; Tr. 148-153. Jackson was removed from the car prior to the search for safety reasons. Supp. Tr. 12; Tr. 100. Jackson was not under arrest at this time. Supp. Tr. 13; Tr. 105. Beyer asked Jackson if everything in the car was his. Tr. 105. Jackson first said no and that there were no drugs in the car. *Id.* Then Jackson quickly changed his answer and admitted everything in the car was his. *Id.*

Jackson was very slow in leaving his vehicle and locked the car prior to going to the cruiser. Supp. Tr. 13. Jackson took two cell phones with him into the cruiser. *Id.* Jackson sat in the back of the cruiser for safety while Trooper Trader deployed Argo for a free air sniff. Supp. Tr. 13; Tr. 100. Argo gave a positive alert for the presence of narcotics. Supp. Tr. 16; Tr. 154. Trooper Beyer then gave Jackson his Miranda rights and placed him back in the cruiser with his cell phones. Supp. Tr. 13; Tr. 105. Upon searching the car, the troopers discovered 2 kilograms of cocaine in an orange duffle bag in the trunk 191-192.

Before and during the time of the search, while Jackson was in the back of the car, he made a cell phone call on speakerphone. Supp. Tr. 15; Tr. 83. In the cruiser, in plain sight of Jackson, was a red sign indicating that there was audio and video recording within the cruiser.

Tr. 101. The recording equipment recorded Jackson stating to a female "They just found it in my luggage." Tr. 106. The cocaine was in fact found in Jackson's luggage. Supp. Tr. 16; Tr. 106.

Trooper Beyer attempted to arrest Jackson, but Jackson did not immediately comply with Trooper Beyer's orders. Supp. Tr. 16; Tr. 106. Jackson continued his phone conversation as Trooper Beyer placed him under arrest and ordered him to put his hands behind his back. Supp. Tr. 16; Tr. 106-107. Jackson also continued to talk on his cell phone, on speaker, after Beyer put Jackson back into the cruiser. Supp. Tr. 16; Tr. 106-107.

Trooper Beyer contacted Detective Taliano, who is a member of the Drug Enforcement Administration. Tr.

On the second day of trial Jackson was voluntarily absent for the first twenty-five minutes of his trial. Tr. 168, 192. Upon his arrival, Jackson admitted that he did not plan for the possibility of car trouble in the cold weather and that he did not attempt to leave for court until fifteen minutes before the start of trial. Tr. 212-213. The Court admonished Jackson that he should have made contingencies and planned more properly. Tr. 213-214. The Court waited an extra fifteen minutes to start the trial. *Id.* Jackson's trial counsel called Jackson three times. Tr. 168. When Jackson finally arrived, he advised the trial court he could not get his car started due to the cold weather. Tr. 209-210. At the time the trial court decided to go forward without Jackson, the trial court and defense counsel were unaware that Jackson had car trouble. Tr. 168.

LAW AND ARGUMENT

RESPONSE TO FIRST ASSIGNMENT OF ERROR

I. DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN THE COURT OVERRULED HIS MOTION TO SUPPRESS.

Jackson argues that the trial court erred in denying his motion to suppress because there was no basis for the traffic stop and the stop was impermissibly prolonged to allow a K9 to arrive. These arguments are without merit.

This Court has held that, "[a] traffic stop is constitutionally valid so long as an officer has reasonable suspicion to believe a motorist has violated a traffic law." *State v. Graham*, 9th Dist. Lorain No. 13CA010489, 2014-Ohio-3283, 2014 Ohio App. LEXIS 3200, at ¶ 20, citing *State v. Campbell* 2005-Ohio-4361, at ¶ 11, quoting *City of Dayton v. Erickson*, 76 Ohio St.3d at 11-12."

Jackson argues that there was no objective basis for Trooper Beyer to stop his car. Jackson points out that it was a clear day, with light traffic, there was no evidence of a collision or near collision, and the trooper did not immediately stop him after witnessing the violation. This argument is contrary to the record. Moreover, Jackson's reliance on this Court's decision in *State v. Harper*, 9th Dist. Medina No. 12-CA-0076-M, 2014-Ohio-347, 2014 Ohio App. LEXIS 346, is misplaced. *Harper* is distinguishable from the facts of the case at bar.

In *Harper*, this Court held that a traffic stop based on a violation of R.C. 4511.34(A) was not justified because the trooper's testimony describing the violation was directly contradicted by a video tape of the traffic stop. In this case, Trooper Beyer caught the violation on video tape, which was consistent with Beyer's testimony at the suppression hearing.

At least one other court has rejected this argument.

In *State v. Graham*, 11th Dist. Portage No. 2005-P-0096, 2006-Ohio-4184, 2006 Ohio App. LEXIS 4128, the defendant was driving thirty to thirty-five miles per hour and following another vehicle at a distance of ten to fifteen feet. The Eleventh District noted that an average persons' reaction time is three-quarters of a second and cars advance at 14.63 feet per second for each mile of velocity. Based on its calculations, the court in *Graham* concluded that the defendant would require more than thirty feet to stop. *Graham*, 11th Dist. 2005-Ohio-4184.

The analysis employed in *Graham*, when applied to the present case, establishes that at a speed of sixty to sixty-five miles per hour, Jackson required more than sixty feet to stop. *Id.* Trooper Beyer testified at the suppression hearing that he saw Jackson driving at approximately 60 to 65 miles per hour, following two to three car lengths behind a motor home. Supp. Tr. 4. Trooper Beyer indicated that two to three car lengths is an extremely close distance and a safety hazard, which Beyer believed to be well outside the stopping distance a reasonably prudent person would allow. Supp. Tr. 4-5. Trooper Beyer explained that at sixty to sixty-five miles per hour, you need one hundred forty-three feet to stop. Supp. Tr. 5. Trooper Beyer stated that two to three car lengths is approximately forty-five to fifty feet. Supp. Tr. 5. According to Trooper Beyer, at a speed of sixty to sixty-five miles per hour, a vehicle requires a stopping distance of one hundred forty-three feet, more than two times the distance Jackson maintained from the vehicle in front of him. Supp. Tr. 5. Based upon the evidence, the trial court correctly concluded that Trooper Beyer properly stopped Jackson for violating R.C. 4511.34(A). [1]

Jackson also argues that the traffic stop was impermissibly prolonged to allow a K9 to arrive and sniff his vehicle. This argument is contradicted by the record.

[1] The proper standard of review is reasonable suspicion. *Graham*, 9th Dist., 2014-Ohio-3283 at ¶ 20. Jackson was not prejudiced by the trial court's application of the higher standard of probable cause.

This Court has held that a traffic stop is not impermissibly prolonged where a narcotics dog hits on a vehicle prior to completion of permissible background checks. *State v. Delossantos*, 9th Dist. Lorain No. 11CA009951, 2012-Ohio-1383, 2012 Ohio App. LEXIS 1192. ¶ 9-10, quoting *State v. Batchili*, 113 Ohio St.3d 403, 2007-Ohio-2204, 865 N.E.2d 1282, paragraph one of the syllabus.

Jackson relies upon *State v. Davenport*, 9th Dist. Lorain No. 11CA010136, 2012-Ohio-4427, 2012 Ohio App. LEXIS 3890, and a companion case, *State v. Lewis*, 9th Dist. Lorain No. 12CA010146, 2012-Ohio-5114, 2012 Ohio App. LEXIS 4478.

As noted by this Court in *Davenport*, an officer may delay a motorist for the time it takes to issue a ticket or warning, including the time sufficient to run computer checks. *Davenport* at ¶ 6. However, *Davenport* and *Lewis* are distinguishable from the case at bar. In *Davenport* and *Lewis*, the trial court first determined that the initial traffic stop was extended beyond the time necessary to investigate the basis of the stop. *Id.* at ¶ 7. As noted by this Court, that finding was not challenged on appeal. *Id.* As such, this Court limited its analysis to the reasons the stop was prolonged.

In the case at bar, unlike *Davenport* and *Lewis*, the evidence demonstrates that the traffic stop was not prolonged for a K9 sniff of Jackson's car. After stopping Jackson for following to close, Trooper Beyer spoke with Jackson about the violation and his travels. Supp. Tr. 6-9. After obtaining information that Trooper Beyer felt was conflicting and suspicious, Beyer went back to his car to look over the rental document provided by Jackson. Supp. Tr. 10. When Beyer first got back to his patrol car he immediately called for Trooper Trader and his K9 to assist him. Id. Trooper Beyer testified that he initiated the traffic stop at 8:44 a.m. and that Trooper Trader

arrived at 8:50 a.m. Supp. Tr. 10. [2] Trooper Beyer testified that based upon the radio logs, it only took Trooper Trader and his K9 five to six minutes from the start of the traffic stop to arrive on scene. Supp. Tr. 11.

Trooper Beyer testified that while he was waiting on Trooper Trader, he tried to run a LEADS check on Jackson, but the LEADS system was down. Supp. Tr. 14. At approximately 8:59 or 9:00 a.m. dispatch advised all officers that LEADS was back in service, and by then K9 Argo had already hit on Jackson's car. Supp. Tr. 14. As the troopers had probable cause from the K9 alert before Trooper Beyer could conduct a LEADS check on Jackson, the stop was not impermissibly prolonged.

Jackson's first assignment of error is without merit and should be overruled.

RESPONSE TO SECOND ASSINGMENT OF ERROR

II. DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN THE PROSECUTOR OFFERED EVIDENCE OF DEFENDANT'S EXERCISE OF HIS CONSTITUTIONAL RIGHTS. (TR. 170, 171, 172, 178) (TR. 17; 6/4/12)

Jackson contends that the State offered evidence of his exercise of his constitutional right to remain silent as substantive evidence of guilt. This argument is without merit.

Jackson mischaracterizes Detective Geno Taliano's testimony regarding the course of the investigation as an attempt by the State to introduce substantive evidence of Jackson's silence. The full context of that line of questions demonstrates that the State did not offer evidence of Jackson's exercise of his constitutional rights as substantive evidence of guilt.

Det. Taliano, a narcotics officer with the Lorain County Drug Task Force and an investigator with the Drug Enforcement Administration, testified that the Ohio State Highway Patrol contacted the DEA for assistance in an investigation. Tr. 171. Det. Taliano and his partner

[2] Trooper Beyer indicated that he was having documented issues with the time stamp on his video. Supp. Tr. 11. Trooper Beyer testified that the times he testified to during the hearing were the correct times, and that the time stamp on the video was incorrect. Supp. Tr. 11.

met with Troopers Beyer and Trader, who advised him about the traffic stop of Jackson. Tr. 172. Det. Taliano's partner, attempted to interview Jackson. Det. Taliano testified for the State about his involvement in the investigation.

> Q. And what, if anything, did you do with that investigation; did you assist in the investigation at all?
>
> A. Special agent Szczepinksi attempted to interview Clifton Jackson, who was the suspect in the investigation, advised him of his Miranda rights, both verbally and written form. He signed the form, understood that, understood the rights, and opted not to speak with us, so there was no question.
>
> Q. Did you take any possession of any items?
>
> A. Yes I did.

Tr. 172. Det. Taliano took possession of the two brick-sized packages of cocaine, which were logged into evidence by the DEA and eventually shipped to Chicago for lab testing. Tr. 172.

Jackson's counsel did not object to this testimony. Jackson has not argued plain error, and as such, this court is not required to conduct plain error analysis. *State v. Raber*, 189 Ohio App.3d 396, 2010-Ohio-4066, ¶ 30, quoting *NSK Industries, Inc. v. Bayloff Stamped Prods. Kinsman, Inc.*, 9th Dist. No. 24777, 2010-Ohio-1171, 2010 Ohio App. LEXIS 1035, ¶20.

Even under plain error analysis, Jackson's second assignment of error is without merit. Pursuant to Crim. R. 52(B), plain error affecting a substantial right may be noticed despite the fact that it was not brought to the attention of the trial court. To succeed on a claim of plain error a defendant must first establish that an error occurred, second that the error is an obvious defect that was not objected to, and third that the outcome of trial would clearly have been different, but for the error. *State v. Taylor*, 3rd Dist. No. 13-03-37, 2003 Ohio 7117.

Evidence of a defendant's post-arrest, post-Miranda silence that is not used as substantive evidence of guilt does not violate the defendant's constitutional rights. *State v. Riggenbach*, 5th

Dist. Richland No. 05CA81, 2006-Ohio-2725, 2006 Ohio App. LEXIS 2594, ¶ 18. From the context Det. Taliano's testimony, it is clear that the State did not offer testimony of Jackson's post-arrest, post-Miranda silence as substantive evidence. The prosecutor did not question Det. Taliano in a manner designed to elicit the testimony about Jackson's invocation of his right to remain silent. The prosecutor asked Taliano how he assisted in the investigation. Tr. 172. Det. Taliano volunteered that Jackson had invoked his right to remain silent. Tr. 172. The prosecutor didn't ask any questions about this testimony and followed up with a question about whether Det. Taliano took possession of any items of evidence. Moreover, the prosecutor did not comment on this testimony in closing argument. Thus, this testimony was not error because the State did not offer the testimony as substantive evidence of guilt. *Id.* As there was no error, Jackson cannot establish plain error. *Id.*

Furthermore, even if there was an error, it was not an obvious defect. This was one isolated incident. The question asked by the prosecutor was not designed to elicit a comment on Jackson's silence. The prosecutor did not focus attention on the testimony, immediately asked a question about custody of physical evidence, and did not comment on it in the closing argument. *Taylor, Riggenbach* supra.

Finally, the testimony most certainly did not affect the outcome of the trial. There is no getting around that the Defendant was caught on videotape admitting that the police had located "it" in his luggage, which is where the cocaine was indeed found. Tr. 106. In *State v. Leach*, the Ohio Supreme Court noted that substantive evidence of the defendant's silence was prejudicial in part, because evidence of guilt was not overwhelming. *State v. Leach,* 102 Ohio St. 3d 135, 2004-Ohio-2147, at P29. In the instant case, evidence of Jackson's guilt was overwhelming.

Here, the state presented the two kilos of cocaine recovered from Jackson's luggage as well as audio of Jackson's incriminating statements while on the phone in the backseat of the cruiser. Tr. 92, 190. Jackson described the events as the K9 search was being conducted. Tr. 106. Jackson told the person on the phone, "They just found it in my luggage." Tr. 106, State's Exhibit 1 at 8:53:32. This statement was consistent with Trooper Trader's discovery of the cocaine in Jackson's duffel bag. Tr. 106. Unlike *Leach*, admission of evidence of Jackson's silence was not prejudicial as evidence of Jackson's guilt was overwhelming. Thus, Jackson failed to establish plain error. Jackson's second assignment of error is without merit and should be overruled.

RESPONSE TO THIRD ASSIGNMENT OF ERROR

III. DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN THE COURT OVERRULED HIS MOTION TO DISMISS BASED ON THE VIOLATION OF THE SPEEDY TRIAL STATUTE.

Jackson claims that his speedy trial rights were violated because he was indicted on August 11, 2011, and brought to trial on February 11, 2014. This argument is without merit.

Jackson fails to mention that he waived his right to speedy trial on at least four occasions and never properly revoked his time waiver. In *State v. Skorvanek*, this Honorable Court indicated that

> '[o]nce an accused has executed an express, written waiver of unlimited duration, [he] is not entitled to a discharge for delay in bringing him to trial unless [he] files a formal written objection and demand for trial, following which the state must bring the accused to trial within a reasonable time.' *State v. Bray*, 9th Dist. No. 03CA008241, 2004 Ohio 1067, at P8 (quoting *O'Brien*, 34 Ohio St. 3d 7, 516 N.E.2d 218, at paragraph two of the syllabus). Thus, once an accused revokes his unlimited waiver, the strict requirements of Sections 2945.71 et seq. of the Ohio Revised Code no longer apply. See *O'Brien*, 34 Ohio St. 3d 7, 516 N.E.2d 218, at paragraph two of the syllabus; *State v. Carr*, 2d Dist. No. 22603, 2009 Ohio 1942, at P31; *In re Fuller*, 9th Dist. No. 16824, 1994 Ohio App. LEXIS 5678, 1994 WL 700086 at *3 (Dec. 14, 1994).

State v. Skorvanek, 9th Dist. Lorain No. 08CA009399, 2008-Ohio-3924, 2008 Ohio App. LEXIS 3355, at ¶ 14.

On at least four occasions, Jackson waived his right to a speedy trial for an unlimited duration. *See* Journal Entries dated Sept. 19, 2011; Nov. 7, 2011; Sept. 10, 2012; Nov. 5, 2012. Jackson never filed a "written objection and demand for a trial." Thus, Jackson was not entitled to strict application of the requirements of R.C. 2945.71 et seq. *Id.*

Jackson stopped signing the speedy trial waiver forms on May 22, 2013. *See Journal Entry dated May 22, 2013.* This is not the same as filing a written objection to his previous waivers and demanding a trial

The Ohio Supreme Court has held that:

> "[f]ollowing an express, written waiver of unlimited duration by an accused of his right to a speedy trial, the accused is not entitled to a discharge for delay in bringing him to trial unless the accused files a formal written objection and demand for trial, following which the state must bring the accused to trial within a reasonable time."

State v. O'Brien, 34 Ohio St.3d 7, 516 N.E.2d 218, (1987), paragraph two of the syllabus. Jackson never revoked his written time waiver. Moreover, after Jackson stopped signing the speedy trial waivers, he never filed a written demand for a speedy trial. Therefore, the trial court properly denied Jackson's speedy trial motion to dismiss. *O'Brien* supra. Jackson's third assignment of error is without merit and should be overruled.

RESPONSE TO FOURTH ASSIGNMENT OF ERROR

IV. DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL. (TR. 97-98, 155, 172, 178-79, 188, 212, 213) (TR. 17; 6/14/12)

Jackson alleges that trial counsel was ineffective for allegedly: 1) failing to request a continuance or take other corrective action when Jackson was late the second day of trial; 2) failing to object to testimony that Jackson refused to give a post-Miranda statement; 3) failing to

fully cross-examine witnesses rather than seek their recall at the end of trial; and 4) failing to object to testimony of legal conclusions testified to by troopers.

In order for there to be a finding of ineffective assistance of counsel in violation of a defendant's Sixth Amendment right, the criminal defendant must show that 1) his counsel's performance fell outside the wide range of reasonable, professionally competent assistance and 2) the attorney's conduct gave rise to the reasonable probability that if the attorney had acted reasonably then the result would have been differently. *Strickland v. Washington*, 466 U.S. 668, 687-691 (1984).

Defendant claims that several of his counsel's actions fell within the realm of ineffective assistance. State argues that defense counsel acted well within the realm of reason throughout the trial. Even if Jackson's trial counsel did not act reasonably, there is no reasonable probability that any of the alleged errors changed the outcome of this case.

Jackson was pulled over on a legitimate traffic stop and behaved in a bizarre manner. A positive sniff indication gave the state troopers probable cause to search the vehicle. Supp. Tr. 16; Tr. 154. The Jackson spoke with another person on speaker phone in the back of the cruiser while being recorded and lamented that they were putting the dog on him and that they found "it" in his luggage. Tr. 106. The traffic stop and the discovery of the cocaine were all captured on tape and that tape was admitted as evidence. Tr. 92.

None of the alleged errors were outside the realm of reasonable, competent representation. Further, none of those supposed errors would have changed the outcome of the trial in any way, even when considered in the aggregate. There is far too much evidence against Jackson for any reasonable jury to find anything but a guilty verdict.

1. **Defense Counsel Was Deficient Concerning Not Requesting A Continuance Or Taking Other Corrective Action When Defendant Was Tardy At The Second Day of Trial Late [sic].**

Jackson asserts that it was outside the realm of reasonable, competent representation by for trial counsel to fail to take some corrective action when Jackson was tardy on the second day of trial. As argued above, a trial may continue when the defendant is voluntarily absent. Crim. R. 43(A). Defense counsel made repeated attempts to contact Jackson and told Jackson to get to the courthouse. Tr. 168, 215. Defense counsel notified the trial court of his unsuccessful attempts to contact Jackson. Tr. 168. Because the trial court properly ordered that the trial go forward in Jackson's voluntary absence, trial counsel's failure to object was not deficient under the first prong of the *Strickland* test. Tr. 168.

Jackson also failed to establish that there was a reasonable probability that, if trial counsel had objected, the outcome would have been the same. In Jackson's absence, trial counsel thoroughly cross-examined two witnesses. Tr. 176-183, 192-194. Further, as mentioned above, the weight of the evidence was heavily against Jackson. It is doubtful that had the trial been delayed twenty-five minutes for Jackson to arrive, that the result would have been different. As such, Jackson has failed to satisfy the second prong of the *Strickland* test.

2. **Defense Counsel Provided Ineffective Assistance of Counsel When Counsel Failed to Object to Testimony Concerning the Defendant's Refusal to Give a Statement After Being Advised of His *Miranda* Rights.**

Jackson also accuses defense counsel of ineffective assistance for failure to object to the mention of Jackson's invocation of his right to remain silent. Evidence of a defendant's post-arrest, post-Miranda silence that is not used as substantive evidence of guilt does not violate the defendant's constitutional rights. *State v. Riggenbach*, 5th Dist. Richland No. 05CA81, 2006-

Ohio-2725, 2006 Ohio App. LEXIS 2594, ¶ 18. As the State did not offer this evidence as substantive evidence of guilt, trial counsel was not ineffective for failing to object.

Jackson believes this was not a reasonable trial strategy and accuses defense counsel of being a lawyer who "at best, occupied a space next to his client." Appellant's Brief at p. 25. The record reflects that trial counsel was an active participant in all aspects of the trial, from voir dire to objections to cross-examination. In actuality, Jackson's defense counsel properly recognized the evidence in question was not offered as substantive evidence of guilt. Thus, trial counsel's representation did not fall below an objective standard of reasonableness. As Jackson has failed to satisfy the first prong of the *Strickland* test, his claim is without merit.

Further, even if trial counsel had objected, there is no reasonable probability that the outcome of trial would have been different as the weight of the evidence against Jackson was overwhelming.

3. Defense Counsel Was Deficient To Not Fully Cross-Examine Christopher Beyer Rather Than Seeking A Recall At The End of Trial.

Jackson argues that trial counsel was ineffective because counsel failed to fully cross-examine Trooper Beyer rather than seek a recall at the end of trial. Jackson concedes at page twenty-seven of his brief, that it was proper for trial counsel to seek a recall of Troopers Beyer and Trader. By Jackson's own admission, defense counsel acted properly. Thus, Jackson cannot satisfy the first prong of the *Strickland* test.

Notwithstanding Jackson's admission that trial counsel acted properly, Jackson claims that trial counsel could have cross-examined Beyer about the legality of the traffic stop and also about any discrepancies between Beyer's report and Det. Taliano's report regarding what Jackson said during the stop. Jackson has not alleged any prejudice as a result of counsel's conduct.

This Court has held that the legality of a traffic stop is not a material element of a charge of violating a traffic law. *State v. Roberts,* 9th Dist. Wayne No. 12CA0001, 2012-Ohio-5018, 2012 Ohio App. LEXIS 4393, at P8. In *Roberts,* this Court granted leave to the state to appeal the trial court's acquittal of the defendant based upon the legality of a traffic stop.

The legality of Jackson's traffic stop was not an issue for the jury to determine. *Roberts* supra. Thus, it would not have been proper for defense counsel to question Trooper Beyer about the legality of the stop because that was a legal conclusion that was already been decided by the trial court based upon Jackson's motion to suppress.

Second, Det.Taliano testified that his report was based upon Beyer's observations. The jury heard Beyer's testimony and then heard Det. Taliano's testimony. The jury was capable of comparing the testimony of the two law enforcement officers and determining the consistency of both testimonies. Moreover, trial counsel pointed out the inconsistencies between Beyer's testimony and the testimony of Det. Taliano during his closing argument. Tr. 239-240. Therefore, Jackson has failed to establish that trial counsel violated his duties under the first prong of the *Strickland* test. Jackson has also failed to establish that there is a reasonable probability that the result of the proceeding would have changed but for trial counsel's alleged errors. *Strickland* supra.

4. Defense Counsel Was Deficient in Not Objecting to Various Legal Conclusions

Jackson also contends that trial counsel's failure to object to the terms "reasonable articulable suspicion" and "probable cause" constitutes error rising to the level of ineffective assistance of counsel. Both of these terms came up in the context of discussing the validity of the search. This was not an issue for the jury to decide. *Roberts* supra. Thus, it was not error for Trooper Beyer to testify to the legal validity of the traffic stop. Therefore, trial counsel's failure

to object was not only reasonable, it was proper. Even if there was a proper objection to be made, the failure to do so does not rise to the level of ineffective assistance required by *Strickland.*

Although Jackson claims his trial counsel made several errors, Jackson failed to argue, let alone demonstrate, that he was prejudiced. The weight of the evidence is so heavily against Jackson that he cannot establish prejudice. Jackson's fourth assignment of error is without merit and should be overruled.

RESPONSE TO FIFTH ASSIGNMENT OF ERROR

V. DEFENDANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO PRESENT A DEFENSE WHEN THE COURT WOULD NOT EITHER RE-OPEN THE EVIDENCE TO ALLOW RECALL OF WITNESSES OR HAVE WITNESSES RECALLED WHO TESTIFIED DURING DEFENDANT'S ABSENCE. (TR. 82, 97, 178-79, 190-92, 211-12, 213-14, 216)

Jackson argues the trial court denied him the right to present a defense by beginning the second day of trial in Jackson's absence and then refusing to allow him to recall Troopers Beyer and Trader. This argument is without merit.

On the second day of trial Jackson failed to appear for the start of trial. Tr. 168, 192. The trial court waited fifteen minutes for Jackson and then started the trial without him. Tr. 168. Jackson missed the first twenty-five minutes of witness testimony. Tr. 192. During that time the State presented the testimony of DEA agents Det. Taliano and Special Agent James Goodwin. Tr. 168-170, 186, 192. Jackson arrived just as defense counsel began to cross-examine Goodwin. Tr. 192.

After the State rested, defense counsel advised the trial court that Jackson wanted to recall the troopers to the stand to address issues relevant to the traffic stop and Fourth Amendment issues. Tr. 226. The State objected on the basis that those issues were addressed over a year before trial and Jackson had the opportunity to cross-examine the troopers during

trial. Tr. 226. The trial court found that issues related to the traffic stop were outside the scope of the elements to be decided by the jury and were previously decided in a suppression hearing. Tr. 226-227. The trial court further noted that it had already granted Jackson leniency in allowing Jackson to cross-examine the troopers regarding issues related to the stop. Tr. 227. Thus, the record demonstrates that Jackson's request to recall Troopers Beyer and Trader had nothing to do with Jackson's absence during the trial.

This Honorable Court has held that issues not raised in the trial court cannot be raised for the first time on appeal. *State v. Jalwan*, 9th Dist. Medina No. 09CA0065-M, 2010-Ohio-3001, 2010 Ohio App. LEXIS 2496, ¶ 18. As Jackson did not assert in the trial court that he should have been allowed to recall Troopers Beyer and Trader because of his absence, he cannot raise this issue for the first time on appeal. *Id.*

Jackson makes the unsupported assertion that he should have been permitted to recall Beyer because Taliano testified after Beyer and Taliano testified to inconsistencies between his report and Trooper Beyer's testimony and report. Again, Jackson did not make this argument in the trial court when he sought to recall the troopers, and as such, he is not permitted to raise this argument for the first time on appeal. *Id.*

Jackson also argues that he should have been allowed to recall the troopers because Beyer testified about his "reasonable suspicion" and Trader testified that he was permitted to conduct a probable cause search. Jackson did not raise this argument at trial; therefore, this Court is not required to consider Jackson's argument for the first time on appeal. *Id.*

Finally, Jackson fails to offer any relevant authority to support his argument that he was entitled to recall witness due to his absence from trial. This Court is not required to root out case law in support of a defendant's assigned error. *State v. Raber*, 189 Ohio App.3d 396, 2010-Ohio-

4066, ¶ 30. Jackson fails to cite to any relevant legal authority to support his position that he had the right to recall witnesses after his defense counsel thoroughly cross-examined them before Jackson arrived to court. Thus, this Honorable Court is not obligated to scour the record or find law to support Jackson's argument for him. Jackson's fifth assignment of error is without merit and should be overruled.

RESPONSE TO SIXTH ASSIGNMENT OF ERROR

VI. DEFENDANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO BE PRESENT WHEN THE COURT COMMENCED TRIAL WHEN DEFENDANT BELATEDLY APPEARED ON THE SECOND DAY OF THE TRIAL. (TR. 168, 209, 210-11, 213-14)

Jackson argues that the trial court violated his rights by starting trial in his absence on the second day. Jackson contends that his absence was not willful. Jackson's arguments are without merit.

Crim. R. 43(A) provides as follows: "In all prosecutions, the defendant's voluntary absence after the trial has been commenced in the defendant's presence shall not prevent continuing the trial to and including the verdict." Jackson correctly points out that the defendant's absence must be voluntary and contends his absence was not. However, Jackson fails to cite to any relevant case law defining voluntary absence. Instead, Jackson cites several irrelevant cases from other districts regarding sentencing via teleconference. Again, *Raber* states that it is up to an appellant to cite to relevant legal authority and that a reviewing court has no duty to root out authority or citations to the record in support of an assigned error.

A trial court must determine that a defendant is voluntary absent before it can proceed to trial in the defendant's absence. *State v. Carr*, 104 Ohio App.3d 699, 703, 663 N.E.2d 341 (2nd Dist., 1995). Where defense counsel has no explanation for a defendant's absence, a trial court may conclude the absence is voluntary. *Id.* There is a presumption that a defendant knows of his

duty to attend trial, and when no explanation is given for the defendant's absence, that presumption is unrebutted. *Id.*

The record reflects that on the second day of trial Jackson failed to appear for the start of trial. Tr. 168, 192. The trial court waited fifteen minutes for Jackson. Tr. 168. At that time defense counsel had no idea where Jackson was or why he was absent. Tr. 168. Jackson's absence was unexplained at the time the trial court made the decision to go forward without Jackson. Tr. 168. It wasn't until Jackson did finally arrive that the trial court learned that Jackson had car trouble. Tr. 209-210. Jackson advised the trial court that he had car trouble due to the cold weather. Tr. 209-210. Thus, the trial court properly concluded that Jackson's absence was voluntary. *Carr* supra. Jackson's sixth assignment of error is without merit and should be overruled.

RESPONSE TO SEVENTH ASSIGNMENT OF ERROR

VII. DEFENDANT WAS DENIED A FAIR TRIAL WHEN THE JURORS WERE INFORMED THAT DEFENDANT WAS UNDER RESTRAINT.

Jackson contends his rights were violated when he made a voluntary statement in front of the jury regarding his ankle bracelet. Jackson claims that this prejudiced the jury against him. This argument is without merit.

Jackson argues that the trial court should have excused the jury when it questioned him about a beeping sound, or Jackson's trial counsel should have objected. Neither the trial court or defense counsel could have known that Jackson would volunteer that he was wearing an ankle monitor. The trial court simply asked Jackson if he had a cell phone, in response to the beeping noise. Likewise, defense counsel could not have known Jackson would make such a statement.

Under the invited error doctrine, a party may not benefit from an error that he himself caused or induced the trial court to make. *State v. Cruz*, 9th Dist. No. 10Ca009774, 2011 Ohio

2088 at ¶ 10. Jackson invited error, if any, by informing the jury himself that he was under restraint. Jackson may not benefit from this alleged error, which he caused. *Id.*

This Court has held that a defendant who asserts that his right to a fair trial has been violated due to being restrained in the presence of the jury bears the burden of affirmatively demonstrating prejudice. *State v. Jones,* 9th Dist. Wayne No. 2718, (Sept. 16, 1992). The Third District Court of Appeals has also held that "inadvertent exposure to jurors of a defendant wearing restraints is not so inherently prejudicial as to require a mistrial, and the defendant bears the burden of affirmatively demonstrating prejudice." *State v. Bonan,* 3rd Dist. Crawford No. 3-92-33, (Dec. 24, 1992). In fact, the Ohio Supreme Court has held that a defendant is not denied a fair trial simply because jurors may have inadvertently and momentarily observed the defendant in shackles. *State v. Kidder,* 32 Ohio St.3d 279, 285-286, 513 N.E.2d 311, (1987).

In the case at bar, Jackson has failed to satisfy his burden to demonstrate actual prejudice. The trial court asked an innocuous question about a cell phone beeping, and Jackson volunteered, in the presence of the jury, that he was wearing an ankle bracelet. The jury did not actually see Jackson in shackles or under restraint. Moreover, Jackson's own admission, which was fleeting and inadvertent, is far less egregious than incidents complained of in *Kidder* and its progeny.

The State did not offer any hint to the jury that Jackson was under restraint. Jackson himself did that. Further, because counsel did not object, Jackson's assigned error may only be reviewed for plain error. Crim. R. 52(B). Jackson has failed to argue, much less demonstrate plain error. Moreover, given the weight of the evidence against Jackson, the inadvertent indication of restraint was not prejudicial. Because the State did not offer any evidence of Jackson's restraint and any possible error did not rise to the level of plain error, this Honorable Court should deny Jackson's seventh assignment of error.

RESPONSE TO EIGHTH ASSIGNMENT OF ERROR

VIII. DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN HE WAS SENTENCED FOR A VELONY VERSION OF POSSESSION OF CRIMINAL TOOLS AND THE VERDICT DID NOT SUPPORT A FELONY VERSION. (TR. 264)

Jackson contends that he was improperly convicted of Possession of Criminal Tools as a felony because the verdict form did not include the degree of the offense and the jury did not make a specific finding of an aggravating element. This argument is without merit.

A verdict form must contain the degree of an offense or a specific finding of an aggravating element to justify a conviction of a greater degree of a criminal offense. *State v. Pelfry*, 112 Ohio St.3d 422 (2007). Jackson contends that the jury in this case failed to make a specific finding that the criminal tools were used in the commission of a felony. This is incorrect. Jackson was convicted of Possession of Criminal Tools in violation of R.C. 2923.24. The verdict form for this count included the degree of the offense as a felony. The verdict form indicated that the count charged was "§2923.24 – F5." *See* Journal Entry dated 2/13/14, Verdict Form Page 8.

Because the verdict form included the level of the offense, the verdict form was sufficient to find that Jackson was convicted of the felony five level of Possession of Criminal Tools. Therefore, Jackson's eighth assignment of error is without merit and State requests that this Honorable Court dismiss.

RESPONSE TO NINTH ASSIGNMENT OF ERROR

IX. THE COURT ERRED IN ORDERING DEFENDANT TO REPAY ATTORNEY FEES. (TR. 274, 277-78)

Jackson correctly asserts that the trial court erred in ordering him to repay court appointed attorney fees without making a determination of Jackson's ability to repay the fees. The State of Ohio respectfully requests that this Honorable Court remand this case to the trial

court for the limited purpose of entry of finding of Jackson's ability to repay court appointed counsel fees.

RESPONSE TO TENTH ASSIGNMENT OF ERROR

X. DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN THE COURT OVERRULED HIS MOTION FOR JUDGMENT OF ACQUITTAL. (TR. 106, 119, 154, 161, 208-09, 263)

Jackson argues that the trial court erred in denying his motion for acquittal. Jackson contends that the State failed to prove that he knowingly possessed the cocaine found in a duffel bag in the trunk of Jackson's car. This argument is without merit.

In reviewing a conviction on the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Williams*, 74 Ohio St.3d 569, 660 N.E.2d 724 (1996), quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), following *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.E.2d 560 (1979).

Jackson contends that the State failed to prove that he knowingly possessed the cocaine found in the trunk of his car because the car was a rental, rented by Latrice Thomas, and the rental agreement was not preserved as evidence. Jackson further contends that because the cocaine was found in the trunk in a duffel bag, there was insufficient evidence to permit a rational trier of fact to conclude that Jackson possessed cocaine. Jackson argues that this assertion is supported by the fact that no drugs were found on Jackson's person and the jury declined to order forfeiture of money found on Jackson. These arguments are without merit.

Jackson ignores evidence that he acknowledged to Trooper Beyer that all of the items in the rental car belonged to him. Tr. 105. Beyer asked Jackson if everything in the car was his, and

at first, Jackson said no, but quickly changed his answer and admitted everything in the car was his. Tr. 105. Jackson also ignores the evidence that while he was in the back of the patrol car, Jackson talked on his cell phone and stated to a female, "They just found it in my luggage." Tr. 106. The cocaine was, in fact, found in Jackson's luggage. Supp. Tr. 16; Tr. 106.

Viewing these facts in the light most favorable to the State, any rational trier of fact could have found that Jackson knowingly possessed the cocaine. *Williams* supra. In fact, the only conclusion to be drawn is that Jackson knowingly possessed the drugs found in his duffel bag in the trunk of his car. Based upon the evidence presented, a rational factfinder could find that Jackson was guilty of all counts charged. Therefore, Jackson's tenth assignment of error is without merit and should be overruled.

CONCLUSION

For all the foregoing reasons the State of Ohio respectfully requests that this Honorable Court overrule Jackson's assignments of errors and affirm his convictions and sentence.

Respectfully submitted,

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PROOF OF SERVICE

This is to certify that a true and accurate copy of the foregoing Brief of Appellee was served upon Paul Mancino, Jr., Attorney for Appellant, 75 Public Square, #1016, Cleveland, Ohio 44113-2098, by regular U.S. Mail this 8th day of September, 2014.

MARY R. SLANCZKA, #0066350
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APPENDIX