[Cite as *State v. Walker*, 2024-Ohio-4469.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. 23CA13
v.	:	
MICHAEL WALKER,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Christopher Pagan, Middletown, Ohio, for appellant[1].

Jason Holdren, Gallia County Prosecuting Attorney, and Isaac Beller, Assistant Prosecuting Attorney, Gallipolis, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:9-2-24
ABELE, J.

{¶1} This is an appeal from a Gallia County Common Pleas Court judgment of conviction and sentence for aggravated possession of drugs, trafficking in drugs, and having a weapon while under disability.

{¶2} Michael Walker, defendant below and appellant herein, assigns three errors for review:

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[1] Different counsel represented appellant during the trial court proceedings.

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED BY APPLYING THE WRONG LEGAL STANDARD TO THE RACIAL-ANIMUS CLAIM."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED BY IMPOSING SUPERVISION COSTS."

THIRD ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED BY ORDERING AN ENFORCEABLE CIVIL JUDGMENT FOR SUPERVISION AND CONFINEMENT COSTS."

{¶3} In September 2021, a Gallia County Grand Jury returned an indictment that charged appellant with (1) one count of aggravated possession of drugs in violation of R.C. 2925.11(A), a second-degree felony, (2) one count of trafficking in drugs in violation of R.C. 2925.03(A)(2), a second-degree felony, and (3) one count of having weapons while under disability in violation of R.C. 2923.13(A)(2), a third-degree felony. Appellant entered not guilty pleas.

{¶4} Subsequently, appellant filed a motion to suppress the evidence uncovered during a traffic stop. At the suppression hearing, Ohio State Highway Patrol Sergeant Drew Kuehne testified that on March 12, 2021, during the daylight hours, he observed a silver Nissan on U.S. 35 that appeared to rapidly decrease speed to 54 miles per hour in a 70-mile-per-hour zone. When Kuehne began to

follow the Nissan, he noticed another vehicle traveling in the same direction, also at a very slow speed. The second vehicle's driver "was very rigid and focused on the vehicle directly in front of it." As Kuehne caught up to the Nissan, he observed it "cross over the white fog line on the right side of the roadway approaching milepost 4 * * * and then as I got closer to it I observed it cross over the dotted centerline * * * near milepost 5." Kuehne then backed off to monitor the second vehicle because he believed they might be together. When Kuehne could not complete a registration LEADS search, he initiated a traffic stop of the Nissan near milepost 7.

{¶5} At the suppression hearing, the State played Sergeant Kuehne's dash camera video. Kuehne asked appellant to exit the vehicle and told him about the marked lane violation at mileposts 5 and 6 (Kuehne acknowledged that the violations actually occurred around milepost 4 and 5 and that he misspoke in the video). Kuehne asked appellant if he "was distracted," and appellant said he had been focused on his radio. Kuehne learned that appellant traveled from Dayton to Meigs County with no valid driver's license and could not explain who "actually owned the car" or "who actually had given him permission to drive the car." Kuehne testified that he did not issue a traffic violation because "a felony violation

occurred." Kuehne also acknowledged that the traffic violations occurred before he activated his cruiser lights, which activated the dash camera.

{¶6} Appellant testified that he has prior felony convictions and is currently in prison for a post-release control violation. Appellant stated that he set his cruise control on the day in question and drove slowly because the speed limit had changed from 50 mph to 70 mph. Appellant disputed that he crossed the fog line or the center line and alleged that the reason Sergeant Kuehne stopped him was "because of my skin color. When I passed him we made eye contact and no sooner he's, we made eye contact he pulled out there and got behind me and hit his lights and all of that."

{¶7} On cross-examination, appellant acknowledged that he did not necessarily make eye contact, "but we did like give a breezed look to where I knew who he was and he knew who I was." Appellant also conceded that he did not know if Sergeant Kuehne looked at him or his car. Appellant also stated that, even though he had never met Kuehne prior to the incident, he believed the stop occurred because of his race "because I done been down here in Gallia County jail for about six months now and every black person that has a case is because of him."

{¶8} Appellant also conceded that he has 23 prior driver's

license suspensions and acknowledged prior felony convictions, including aggravated burglary against "my baby mother. We was going through a break up and she called the police and they had threatened her to take our child if she didn't come down and press charges against me." Appellant further conceded that he has a prior felony weapon under disability conviction because he "was recently around a friend of mine and gun was found in her car and I did take the blame for it because she had my daughter and her daughter and it, we was out that night and it was a gun in her car and she asked me if she wanted to take the charge and I told her no, I will." At the conclusion of the hearing, the trial court overruled appellant's motion to suppress evidence. The court also issued a detailed decision and entry.

{¶9} At the change-of-plea hearing, appellant acknowledged that he dropped out of school after grade 11, did not obtain a GED, but can read and write. The state read the plea agreement, which appellant acknowledged that he read. Appellant added that his counsel had also read it to him, and he understood its terms. The State noted that, after appellant had been advised of his *Miranda* rights, he admitted that he possessed and intended to resell methamphetamine in Meigs County for $1,800. The State further noted that, at the time of his arrest, appellant possessed a

firearm and had not been relieved of his prior weapons disability. The trial court advised appellant regarding indefinite sentencing, possible maximum penalties, mandatory post-release control, and fines. Specifically, the court advised appellant that he:

> could face up to $15,000.00 as a maximum fine. By statute you are facing a mandatory minimum one half of that, so $7,500.00 fine. The only way to avoid that is if you establish that you're an indigent person unable to pay that mandatory fine and if I find that you are indigent then I would not have to impose a fine, although I still could if I, if I felt uh, I wanted to.

The trial court further advised appellant that:

> You're agreeing to pay the costs, so I want to make sure you understand that I can order you to pay Court and prosecution costs, pay supervisory fees and make restitution if appropriate. * * * If you fail to pay a judgment for costs or fees or fail to timely make payments toward the judgment under a payment plan approved by the Court, the Court may order you to perform community service in an amount deemed appropriate by the Court until the judgment's paid or until the Court's satisfied you're in compliance with an approved payment plan. If I have to order you to perform community service because you've not been paying you'll receive credit on the judgment at an hourly credit rate set by the Court which will not be less than the Federal minimum wage per hour of community service performed will reduce the judgment by that amount.

Appellant had no questions regarding his possible sentence, including costs, fees, and community service. The trial court further advised appellant of his constitutional rights and ensured that appellant understood his jury trial waiver and his plea. After appellant acknowledged his satisfaction with counsel,

indicated that he had explored all possible defenses, and acknowledged that he understood the terms of the plea agreement, he entered a no contest plea to the indictment as charged.

{¶10} At the July 6, 2023 sentencing hearing, the trial court stated:

> You are also right now facing a mandatory fine of one half of the maximum possible on a felony two. So the maximum would be $15,000.00 um, right now you're facing $7,500.00 because there's mandatory fine on that. Uh, however I do note that you have filed an affidavit of indigency. Because this is a drug charge if I choose to do so I could suspend your driver's license uh, for up to five years. * * * you could also face a fine of up to $10,000.00 on that felony of the third degree [weapons while under disability charge].

Appellant further acknowledged that he understood the maximum fine and possible license suspension. The trial court stated:

> I have reviewed the affidavit [of indigency], find that Mr. Walker is an indigent person unable to pay the mandatory fine um, so I'm not going to impose fines today. * * * There's an agreement to pay costs. I do find a future ability to pay. * * * When I talked with Mr. Walker he had told me about working for the rental company and some landscaping uh, I'm glad to hear that he also has a barber's license. * * * You're also ordered to reimburse the State of Ohio and Gallia County for the cost of supervision, confinement and prosecution as authorized by law, including any fees permitted pursuant to law. These orders of reimbursement and restitution um, are judgments enforceable pursuant to law by the parties in whose favor they are entered.

The court further added:

> I am requesting the Parole Board to monitor you for drug usage until drug free on a regular basis for at least six

> months after release from prison and to provide drug treatment, if appropriate. You're also ordered to pay all unpaid fines, restitution and court costs and previously imposed reimbursement fees before any post-release control is terminated in less than the maximum time allowed by law.

{¶11} After the trial court accepted appellant's plea, the court found him guilty, merged Counts One and Two as allied offenses of similar import, and noted that the State elected to proceed to sentencing on Count Two. The court sentenced appellant to (1) serve a 7-year minimum to a 10 ½ year maximum prison term for Count Two, (2) serve a 36-month prison term for Count Three, (3) serve the sentences concurrently with each other, (4) serve a mandatory 18-month to 3-year post-release control term, and (5) pay all costs of prosecution. The financial sanctions and costs portion of the sentencing entry states:

> It is Ordered that the Defendant has agreed to and shall pay all costs of prosecution for which judgment is rendered and execution may issue.
>
> After discussion with the Defendant, the Court finds the Defendant has prior employment at a rental business and in landscaping. Therefore, the Court finds the Defendant possesses the future ability to pay the financial sanctions.
>
> Prior to the sentencing hearing, Defendant filed an Affidavit alleging that Defendant is indigent and unable to pay the statutorily mandated fine. The Court has reviewed the Affidavit and finds that the Defendant is an indigent person who is unable to pay the mandatory minimum fine. Accordingly, no fine shall be imposed.
>
> Further, Defendant is Ordered to reimburse the State of

> Ohio and Gallia County for costs of supervision, confinement and prosecution as authorized by law. These orders of reimbursement and restitution are judgments enforceable pursuant to law by the parties in whose favor they are entered.
>
> Pursuant to Ohio Revised Code Section 2947.23, the Defendant was advised that failure to pay the judgment of costs, supervisory fees or the like or failure to timely make payments toward that judgment under a payment scheduled approve [sic.] by the Court, may result in the Court ordering the Defendant to perform community service in an amount deemed appropriate by the Court until the judgment is paid or until the Court is satisfied that Defendant is in compliance with the approved payment schedule. Further, Defendant was advised that if ordered to perform the community service, credit will be received upon the judgment at an hourly credit rate set by the Court which shall not be less than the Federal minimum wage per hour of community service performed and each hour of community service performed will reduce the judgment by that amount.

This appeal followed.

I.

{¶12} In his first assignment of error, appellant asserts that the trial court erred when it did not apply the correct legal standard to evaluate appellant's racial animus claim. In particular, appellant contends that "the trial court declined to decide the facts around the Trooper's racial animus * * * and instead decided that racial animus was irrelevant under the 4th Amendment for an officer with reasonable suspicion of a traffic violation." Appellant argues that his racial animus claim

implicates the Fourteenth Amendment's Equal Protection Clause, not the Fourth Amendment.

{¶13} In general, appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Codeluppi*, 2014-Ohio-1574, ¶ 7; *State v. Gurley*, 2015-Ohio-5361, ¶ 16 (4th Dist.), citing *State v. Roberts*, 2006-Ohio-3665, ¶ 100. The trial court is best positioned to evaluate witness credibility at a suppression hearing. *State v. Dunlap*, 73 Ohio St.3d 308, 314 (1995), *State v. Flanders*, 2007-Ohio-503, ¶ 11 (4th Dist.). Therefore, we must uphold the trial court's findings of fact if competent, credible evidence in the record supports them. *Dunlap, supra*. However, we conduct a de novo review of the trial court's application of the law to the facts. *Roberts* at ¶ 100, *Burnside* at ¶ 8, *State v. Anderson*, 100 Ohio App.3d 688, 691 (4th Dist. 1995).

{¶14} In the case sub judice, the trial court's opinion focused on the Fourth Amendment issues raised in appellant's suppression motion. The Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands * * *." *United States v. Leon*, 468 U.S. 897, 906, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). Instead, the exclusionary rule is "a judicially created remedy designed to safeguard Fourth

Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." *United States v. Calandra*, 414 U.S. 338, 348 (1974). *See also State v. Hoffman*, 2014-Ohio-4795, ¶ 24; *State v. Castagnola*, 2015-Ohio-1565, ¶ 92.

{¶15} In the case at bar, the trial court cited *State v. Dukes*, 2017-Ohio-7204 (4th Dist.), in which an officer stopped the defendant for a traffic violation, and ultimately discovered drugs in the rented vehicle's door panel. As in the present case, Dukes argued that the traffic stop was racially motivated. *Id*. at ¶ 12. This court observed, "A police officer may stop the driver of a vehicle after observing a de minimis violation of traffic laws." *Dukes* at ¶ 16, citing *State v. Debrossard*, 2015-Ohio-1054, ¶ 13 (4th Dist.); citing *State v. Guseman*, 2009-Ohio-952, ¶ 20 (4th Dist.); citing *State v. Bowie*, 2002-Ohio-3553, ¶ 8, 12, and 16 (4th Dist.); citing *Whren v. United States*, 517 U.S. 806 (1996)(subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis). We further observed in *Dukes* that the Supreme Court of Ohio has stated: "Where a police officer stops a vehicle based on probable cause that a traffic violation has occurred or was occurring, the stop is not unreasonable under the Fourth Amendment to the United States Constitution even if the

officer had some ulterior motive for making the stop[.]" *Dukes* at ¶ 16, citing *Dayton v. Erickson*, 76 Ohio St.3d 3 (1996), syllabus. *See also State v. Hansard*, 2020-Ohio-5528, ¶ 28 (4th Dist.).

{¶16} With regard to racial profiling, we further held in *Hansard*, 2020-Ohio-5528:

> Courts have also generally rejected racial profiling as a basis for evidence suppression when the evidence supports the reasonableness of the investigatory stop. *Dukes* at ¶ 17, citing *State v. Coleman*, 3rd Dist. Hancock No. 5-13-15, 2014-Ohio-1483, ¶ 18 (rejecting argument that officer stopped defendant because of his race and rejecting racial profiling as legal basis for evidence suppression); citing *State v. Chambers*, 3rd Dist. Hancock No. 5-10-29, 2011-Ohio-1305, ¶ 22 (even if officer initiated traffic stop based upon defendant's race, the fact does not affect the reasonableness of the stop for Fourth Amendment purposes); see also *United States v. Cousin*, 448 Fed.Appx. 593, 594 (6th Cir. 2012) (explaining that *United States v. Nichols*, 512 F.3d 789, 794-795 (6th Cir. 2008) precludes the application of the exclusionary rule for alleged racial profiling.); *City of Cleveland v. Oko*, 2016-Ohio-7774, 73 N.E.3d 1122, ¶ 20 (8th Dist.)("[a]ll challenges to the validity of a traffic stop are subject to the same Terry standard of review, even where the defendant raises allegations of pretext."); *State v. Gartrell*, 2014-Ohio-5203, 24 N.E.3d 680, ¶ 68 (3rd Dist.)("[a]ny ulterior motives for the traffic stop are irrelevant to the determination of whether the officers possessed a reasonable, articulable suspicion justifying the stop."). Thus, in *Dukes* this court concluded that, in light of the fact that a de minimis traffic violation provides a proper justification for a traffic stop, the stop was not unreasonable under the Fourth Amendment, even if the officer could have had some ulterior motive for the stop. *Id.* at 19.
>
> In the case sub judice, the trial court determined that appellant's race was not a factor because proper justification existed for the investigatory stop.

> Moreover, appellant did not challenge the propriety of the initial stop. Additionally, even if this court were to assume, for purposes of argument, that Trooper Kuehne considered appellant's race when he initiated the traffic stop, that fact does not affect the reasonableness of the stop for Fourth Amendment purposes. *Dayton v. Erikson*, *supra*, syllabus. However, to be sure, this court will, as should all courts, condemn any law enforcement officer's stop or action based solely upon a suspect's race or ethnic heritage. Obviously, the United States Constitution does not permit such action. However, we again point out that in the case sub judice, Trooper Kuehne had sufficient justification for appellant's stop and subsequent search and did not violate the requirements of the Fourth Amendment. Thus, we conclude that the trial court did not err in refusing to consider race as a factor in deciding appellant's motion to suppress.

Hansard at ¶ 29-30.

{¶17} In the case sub judice, the trial court determined that "Sgt. Kuehne possessed reasonable, articulable suspicion and probable cause that appellant committed a traffic violation." Specifically, Kuehne observed "appellant's tires cross over the fog line with one half of the rear tire traveling outside the fog line." Once again, in *Hansard* we stated, "to be sure, this court will, as should all courts, condemn any law enforcement officer's stop or action based solely upon a suspect's race or ethnic heritage * * *." *Id.* at ¶ 30. However, we agree with the trial court's determination that Sergeant Kuehne had sufficient justification for appellant's stop and subsequent search and did not violate the requirements of the Fourth Amendment.

{¶18} Thus, appellant's unsupported assertion, that police may have had some ulterior motive, does not prevent the stop from being valid for Fourth Amendment purposes. However, appellant contends that apart from the Fourth Amendment, Sergeant Kuehne violated his Fourteenth Amendment Equal Protection rights because appellant argues that the officer selectively enforced traffic laws based on appellant's race. The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

McCrone v. Bank One Corp., 2005-Ohio-6505, ¶ 6. "Simply stated, the Equal Protection Clauses require that individuals be treated in a manner similar to others in like circumstances." *Id.* at ¶ 6. Consequently, the Equal Protection Clause of the Fourteenth Amendment provides citizens a degree of protection independent of the Fourth Amendment protection against unreasonable searches and seizures. *United States v. Avery*, 137 F.3d 343, 353 (6th Cir. 1997).

{¶19} Appellant asserts that even if the State did not violate appellant's Fourth Amendment rights, the State nevertheless violated his right to equal protection under the law when the

officer allegedly selectively enforced the marked lanes statute with a discriminatory purpose. Further, appellant argues that if established, the remedy for selective enforcement is dismissal - not suppression. *State v. Norris*, 147 Ohio App.3d 224 (1st Dist. 2002). Therefore, appellant contends that the trial court committed legal error when it truncated appellant's claim and omitted an analysis of the potential racial bias. In particular, appellant argues that "an inference of racial bias arises from the video's failure to show any traffic violations, the Trooper's refusal to stop a companion car, Walker's race, Walker's testimony on selective enforcement based on race, and cases from this district where unrelated defendants made the same racial-animus claims against this trooper," citing *Hansard,* 2020-Ohio-5528 (4th Dist.), ¶ 28-31. We disagree.

{¶20} As appellant points out, in the case sub judice the trial court did not explicitly address any racial animus allegation in its decision to overrule the motion to suppress evidence. However, our review of appellant's suppression motion reveals that, although appellant challenged the evidence in question under the Fourth *and* Fourteenth Amendment, appellant focused almost exclusively on the perceived Fourth Amendment violation and only mentioned the Fourteenth Amendment in a conclusory sentence at the end of his motion and provided no support or analysis.

{¶21} Crim.R. 47 states that a motion to suppress evidence "shall state with particularity the grounds upon which it is made." The State's burden of proof in a suppression hearing is limited to those contentions that are asserted with sufficient particularity to place the prosecutor and court on notice of the issues to be decided. *State v. Neuhoff*, 119 Ohio App.3d 501, 506 (5th Dist. 1997)(relying on *State v. Shindler*, 70 Ohio St.3d 54 (1994)). Therefore, a defendant's failure to adequately raise the basis of his challenge constitutes a waiver of that issue on appeal. *State v. Grove,* 2002-Ohio-3677, ¶ 36 (5th Dist.), citing *City of Xenia v. Wallace*, 37 Ohio St.3d 216, 218–219 (1988). Thus, we conclude that appellant's unsupported motion to suppress did not state with sufficient particularity and support his allegation that his traffic stop violated Equal Protection.

{¶22} Although appellant in the case at bar made racial profiling allegations at the suppression motion hearing, he presented no evidence apart from his own testimony. Thus, although appellant obliquely raised the issue orally at his hearing, he failed to sufficiently raise and advance an equal protection analysis or argument. Further, the parties submitted their closing arguments in writing. Appellant argued that his testimony at the hearing showed that

> he believed that he was stopped because of his African American race, as had happened to him on several prior occasions. On cross-examination, the State attempted to impeach the Defendant with his prior felony conviction and also reviewed past traffic convictions relating to the Defendant's claims of being a past target of race-based traffic stops. None of the driving convictions raised in the State's cross-examination were offenses that could be observed by a police officer prior to stopping a vehicle, such as speeding or marked lane violations.

{¶23} Once again, however, in the analysis portion appellant exclusively discussed the alleged racial bias as it related to the Fourth Amendment. Therefore, we conclude that a random assertion in appellant's motion to suppress evidence is insufficient to put the prosecutor and trial court on notice as to the particular issue of whether the trooper's decision to stop appellant violated his equal protection rights. Thus, because appellant failed to adduce particularized evidence, or even discuss the issue in depth at the suppression hearing, appellant's actions placed the trial court and the State in a situation that Crim.R. 47 is designed to prevent. *See Grove*, 2002-Ohio-3677, at ¶ 36. Consequently, we believe that appellant waived his ability to challenge the equal protection issue on appeal.

{¶24} Furthermore, even if we assume arguendo that appellant properly raised the equal protection issue in the trial court, he failed to support it. Appellant committed a marked lanes

violation. While appellant argued at trial that the officer pulled him over because of his race, appellant later acknowledged on cross-examination that he only observed the officer look in his general direction as he drove by and had no prior dealings with the officer. Further, while appellant argued that "every black person that has a case [in the county jail] is because of [Trooper Kuehne]," he presented no evidence to support this bare allegation. Thus, we conclude that the trial court did not err in its analysis of appellant's suppression motion.

{¶25} Accordingly, based upon the foregoing reasons, we overrule appellant's first assignment of error.

II.

{¶26} In his second assignment of error, appellant asserts that the trial court erred when it imposed supervision costs. Appellant contends there are four categories of costs: court costs, confinement costs, supervision costs, and appointed-counsel costs. While appellant acknowledges that court costs are mandatory, he contends that supervision, confinement, and appointed-counsel costs are discretionary, and the trial court may not impose them unless the court "affirmatively finds that the defendant has, or reasonably may be expected to have, the ability to pay," citing *State v. Potter*, 2021-Ohio-3502, ¶ 32 (6th Dist.). Appellant

contends that the trial court in the case at bar found that appellant had no present ability to pay and waived his mandatory fee but found a future ability to pay and, thus, ordered supervision and confinement costs.

{¶27} An appellate court reviews an imposed felony sentence according to R.C. 2953.08(G)(2). *State v. Jones*, 2020-Ohio-6729, ¶ 27. R.C. 2953.08(G)(2) provides that an appellate court can modify or vacate a sentence only if the appellate court finds by clear and convincing evidence that the record does not support the trial court's findings under certain statutes, which are not at issue in this appeal, or that the sentence is otherwise contrary to law. A sentence is not clearly and convincingly contrary to law where the trial court "considers the principles and purposes of R.C. 2929.11, as well as the factors listed in R.C. 2929.12, properly imposes postrelease control, and sentences the defendant within the permissible statutory range." *State v. Ahlers*, 2016-Ohio-2890, ¶ 8 (12th Dist.).

{¶28} "By statute, the imposition of court costs on all convicted defendants is mandatory." *State v. Taylor*, 2020-Ohio-3514, ¶ 6. R.C. 2947.23(A)(1)(a) provides: "In all criminal cases, * * * the judge * * * shall include in the sentence the costs of prosecution * * * and render a judgment against the defendant for

such costs." However, R.C. 2947.23(C) states that "[t]he court retains jurisdiction to waive, suspend, or modify the payment of the costs of prosecution * * * at the time of sentencing or at any time thereafter." *See also State v. Stevens*, 2024-Ohio-198, ¶ 35 (3d Dist.).

{¶29} We recently considered whether supervision costs are limited to community-control supervision in *State v. McHargue*, 2024-Ohio-924, (4th Dist.). We held that supervision costs are not limited to community control and that trial courts may impose supervision costs for costs associated with post-release control. *Id.* at ¶ 30. We observed other similar cases:

> *See State v. Patterson*, 12th Dist. Butler No. CA2021-01-004, 2021-Ohio-3959, ¶ 15 ("Upon review, we agree that supervision costs are authorized in conjunction with postrelease control"); *State v. Murphy*, 12th Dist. Butler No. CA2021-05-048, 2021-Ohio-4541, ¶ 44 ("For the reasons expressed in *Patterson*, we find that the trial court did not err in imposing supervision costs."); *State v. Ross*, 12th Dist. Butler No. CA2022-1-110, 2023-Ohio-1421, ¶ 12 (relying on the doctrine of stare decisis to again reject the argument that supervision costs associated with post-release control are not authorized by R.C. 2929.18(A)(5)(a)).

Id.

{¶30} Further, in *McHargue*, we quoted *Patterson*, where the court reasoned:

> Under R.C. 2929.18(A), the court imposing sentence upon a felony offender may sentence the offender to 'any financial

> sanction or combination of financial sanctions authorized under this section * * *." Included among those authorized financial sanctions is "any or all of the costs of sanctions incurred by the government." (Emphasis added.) R.C. 2929.18(A)(5)(a). The statute goes on to list some examples of such sanctions, including the costs of implementing any community control sanction, including a supervision fee, the costs of confinement, and the costs related to an immobilizing device. R.C. 2929.18(A)(5)(a)(i),(ii), and (iii). However, as stated, these are examples. The language in the statute does not preclude a court from imposing other costs of sanctions incurred by the government. Supervision fees related to postrelease control are within the ambit of "any or all of the costs of sanctions incurred by the government." R.C. 2929.18(A). Accordingly, we conclude that the court did not err in imposing supervision costs.

Id. at ¶ 31, quoting *Patterson*, 2021-Ohio-3959, at ¶ 15.

{¶31} R.C. 2929.18(A) provides that the court imposing sentence upon a felony offender may sentence the offender to "any financial sanction or combination of financial sanctions authorized under this section * * *." Among those authorized financial sanctions is "*any or all* of the costs of sanctions incurred by the government." (Emphasis added.) The statute provides a list of examples of sanctions, including the costs of implementing any community control sanction, including a supervision fee, the costs of confinement, and the costs related to an immobilizing device. R.C. 2929.18(A)(5)(a)(i),(ii), and (iii). However, this list is not exhaustive, and the statute does not preclude a court from imposing other costs of sanctions incurred by the government. Supervision fees related to postrelease control are within the ambit of "any or

all of the costs of sanctions incurred by the government." *Patterson* at ¶ 15, citing R.C. 2929.18(A).

{¶32} As appellee notes, although the Sixth District Court of Appeals concluded that a trial court erred when it failed to find that the defendant could pay the costs of appointed counsel at the sentencing hearing, *Potter,* 2021-Ohio-3502, at ¶ 35, the case does not apply to the case at bar. Moreover, other districts, such as the Twelfth District, allow supervision costs when a trial court imposes a prison sentence. *See Patterson, supra.*

{¶33} Therefore, we reaffirm that trial courts may impose supervision costs associated with post-release control. *See also State v. Bridges*, Gallia, 23CA8. Accordingly, we overrule appellant's second assignment of error.

III.

{¶34} In his third assignment of error, appellant asserts that the trial court erred when it ordered an enforceable civil judgment for supervision and confinement costs. Again, appellant contends that R.C. 2947.23(A)(1)(a) does not permit a judgment for supervision or confinement costs. Appellant argues that because no statute, rule or case provides the trial court with continuing jurisdiction over supervision and confinement costs, a defendant lacks due process to contest supervision or confinement costs

before a final judgment.

{¶35} Appellee argues that R.C. 2929.18(A) permits "any financial sanction or combination of financial sanctions authorized under this section." Appellee argues that unlike prosecution costs, which are mandatory under R.C. 2947.23(A)(1)(a), the costs of supervision and confinement are discretionary. R.C. 2929.18(A)(5)(a). *State v. Velesquez*, 2023-Ohio-1100, ¶ 8 (6th Dist.).

{¶36} Appellee contends that the court did not order the defendant to pay fines in the present case because the court found "no present ability to pay," but found a "future ability to pay" because appellant "work[ed] for the rental company and has some landscaping * * * and a barber's license." Appellee further argues that "[b]eing 'indigent' and being 'unable to pay' are not the same. Indigency concerns a defendant's current financial situation, whereas an inability to pay encompasses his future financial situation as well." *State v. Lykins*, 2017-Ohio-9390, ¶ 17 (4th Dist.), citing *State v. Plemons*, 2015-Ohio-2879, ¶ 7 (2d Dist.). *See also State v. Lewis*, 2012-Ohio-4858, ¶ 16 (2d Dist.) (finding of indigence for purposes of appointed counsel does not shield defendant from paying fine), *State v. Kelly*, 145 Ohio App.3d 277, 284 (12th Dist.2001) (ability to pay fine over time is not

equivalent to ability to pay legal counsel retainer fee at outset of criminal proceedings), *State v. Black*, 2017-Ohio-8063, ¶ 51 (8th Dist.) (finding of indigency for purposes of appointed counsel does not necessarily show inability to pay financial sanction), *State v. Waddell*, 2011-Ohio-4629, fn.2 (4th Dist.) ("Indigency for purposes of affording counsel, and for purposes of paying fines, are separate and distinct issues").

{¶37} We agree that a distinction exists between the present ability to pay and the future ability to pay, as well as between a defendant's indigency and a defendant's inability to pay. However, we note that in *State v. Taylor*, 2020-Ohio-6786, the Supreme Court of Ohio held that, although a trial court may assess court-appointed counsel fees without making an ability-to-pay finding, those fees should not be included as part of a sentence for a criminal conviction and, instead, should be listed separately as a civil matter and in a separate entry. It appears that *Taylor* may be applicable in the case at bar and the trial court and the parties should have an opportunity to re-visit this issue. *See State v. Brooks*, 2024-Ohio-420, ¶ 35 (4th Dist.).

{¶38} Thus, based upon the foregoing reasons, we sustain appellant's third assignment of error.

{¶39} Accordingly, we hereby affirm the trial court's judgment in part, reverse the judgment in part, and remand the matter for further consideration of the imposition of court costs.

JUDGMENT AFFIRMED IN PART,
REVERSED IN PART AND REMANDED
FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. Appellant and appellee shall split the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Gallia County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted by the trial court or this court, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of the proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Wilkin, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal

commences from the date of filing with the clerk.