[Cite as *State v. Myers*, 2025-Ohio-1169.]

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

STATE OF OHIO, Plaintiff-Appellee, v. JOSE MIGUEL MYERS, Defendant-Appellant.	:	Case No. 23CA7 DECISION AND JUDGMENT ENTRY **RELEASED: 03/26/2025**

APPEARANCES:

Joseph C. Patituce and Megan M. Patituce, Patituce & Associates, LLC, Strongsville, Ohio, for appellant.

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

Wilkin, J.

{¶1} This is an appeal from a Gallia County Court of Common Pleas judgment entry wherein the trial court denied appellant Jose Myers' ("Myers") motion to suppress. Myers also appeals the jury's verdict convicting him of possession of a fentanyl-related compound, a second-degree felony, in violation of R.C. 2925.11(A) and R.C. 2925.11(C)(11)(d), and trafficking in a fentanyl-related compound, a second-degree felony, in violation of R.C. 2925.03(A)(2) and R.C. 2925.03(C)(9)(e). First, Myers claims the trial court erred in denying his motion to suppress, because the traffic stop was impermissibly extended. He also claims his statements were not knowingly, voluntarily, and intelligently made. Second, Myers argues that sufficient evidence does not support his conviction for trafficking and that both his convictions are against the manifest

weight. After reviewing the parties' arguments, the record, and the applicable law, we find his assignments of error to be without merit and affirm the trial court's decision regarding the motion to suppress and the judgment of conviction.

BACKGROUND

{¶2} On September 15, 2021, a Gallia County grand jury returned an indictment alleging certain offenses arising out of a March 3, 2021 traffic stop of a vehicle in which Myers was a passenger. The indictment set forth four counts: Count One, possession of fentanyl-related compound, a second-degree felony in violation of R.C. 2925.11(A) and R.C. 2925.11(C)(11)(d); Count Two, aggravated possession of drugs, a third-degree felony in violation of R.C. 2925.11(A) and R.C. 2925.11(C)(1)(b); Count Three, trafficking in a fentanyl-related compound, a second-degree felony in violation of R.C. 2925.03(A)(2) and R.C. 2925.03(C)(9)(e); and Court Four, aggravated trafficking in drugs, a third-degree felony, in violation of R.C. 2925.03(A)(2) and R.C. 2925.03(C)(1)(c).

{¶3} Myers filed a motion to suppress the evidence on February 4, 2022, and followed with an amended motion to suppress on March 29, 2022. The motions involved four branches, two of which are germane to this appeal. The first issue involves the extension of the traffic stop and the second is the voluntariness of Myers' various statements. The trial court held the motion to suppress hearing on April 26, 2022. The trial court heard testimony and reviewed videos from the two state troopers involved in the traffic stop, Ohio State Highway Patrol Trooper Matthew Atwood ("Atwood"), who initiated the stop, and his back-up, Ohio State Highway Patrol Trooper, Adam Williams ("Williams").

{¶4} At the motion to suppress hearing, Atwood, an eight-year veteran of the patrol, testified he had stationed his patrol car on U.S. 35 in Gallia County that March night. At about 8:58 p.m. Atwood saw a white Chrysler minivan following a semi-truck too close. He also noticed the van travel out of its lane three separate times over the right white fog line. He therefore initiated a traffic stop for the violations.

{¶5} After stopping the vehicle, Atwood saw three persons in the vehicle later determined to be the driver, Ashley Johnson ("Johnson"), front-seat passenger Jose Myers ("Myers"), and back-seat passenger Faatir Lawson ("Lawson"). Atwood walked up to the passenger side and asked Johnson for her license. Johnson had squinted eyes, a sleepy appearance, and slurred speech. Lawson, who appeared to be sleeping because his eyes were shut, were breathing unusually heavy. Atwood also noticed an odor coming from the vehicle which he knew from his training and experience as raw marijuana.

{¶6} Because of his concerns that Johnson may be impaired, Atwood had her exit the vehicle, performed horizontal gaze nystagmus, and requested additional information, including her reason for the trip and the identity of the other people in the vehicle. While asking these questions, Atwood noticed Johnson was breathing heavily and had a rapid heart rate. At some point, Johnson said she and the occupants of the vehicle had "smoked weed."

{¶7} Essentially Johnson and Myers told Atwood conflicting stories about the trio's travels. According to Johnson, she had gone from Charleston, West Virginia to Akron because her grandfather had died. She also said Myers was her brother and Lawson was her cousin. Johnson led Atwood to believe the deceased was the

grandfather of all three vehicle occupants. She said after going to Akron, the trio went to Columbus to take care of their grandfather's living will and now they were on their way back. Myers claimed, however, that Johnson and Lawson were just friends, and not related. When Atwood asked Myers where they had traveled to, Myers said they had gone to Columbus because of a sick uncle and that they were on their way back to Charleston.

{¶8} Trooper Atwood determined the minivan was a rented vehicle, but nobody had the rental agreement. Myers claimed his girlfriend had rented the vehicle, but she was not present, and Johnson did not know the name of her "brother's" purported "girlfriend." Atwood knew the vehicle registration was not expired, but he had no information regarding the actual rental information of the vehicle itself. Atwood knew from his training and experience that rental vehicles are frequently used in narcotics trafficking.

{¶9} Based on the odor of marijuana coming from the van, Atwood decided he had probable cause to search the vehicle, and he radioed for backup. Atwood had to wait for Williams to arrive because his vehicle was a K-9 unit and the animal's cage took up half of the backseat. He had to have a secure area to place the occupants in order to search the minivan. About 20 minutes later, Williams arrived. He asked Myers and Lawson to exit the van and sit in his cruiser. While Atwood *Mirandized* Johnson, Williams gave *Miranda* warnings to Myers and Lawson. Myers and Lawson acknowledged their rights and did not have any questions. Neither asked for an attorney, asked for Williams or Atwood to stop asking questions, nor invoked their right

to remain silent. Both Myers and Lawson had cell phones with them in the back of Williams' cruiser.

{¶10} Atwood then patted Johnson down before putting her in his patrol car. Atwood told Johnson he suspected she may be concealing something on her body based on his training and experience. Afterward, Johnson told Atwood she had an unknown substance in her vaginal area. Johnson said everything was "cool" up until Atwood pulled up behind them on U.S. 35. Then, Myers panicked and threw the package at Johnson. After making this statement, Johnson then removed the package by reaching down her pants, pulling the item out, and dropping it into an evidence bag. At some point during the traffic stop, Atwood also found a small amount of suspected marijuana in a baggie in Johnson's possession, but the quantity was not enough to test at the lab.

{¶11} Atwood continued to talk with Johnson. He told her that the other two men would probably not own up to anything and she would take the fall. He explained that there was not enough evidence to show Myers possessed the drugs and that he had to "go with the evidence." He further explained to Johnson that he was not going to take her to jail that night, that he would let her "go down the road," but that she was looking at "multiple years" in prison, and offered to let her sit in the car with Myers and "talk about it," to see what Myers would say. In his talks with Johnson, Atwood said, "this isn't a promise," and he had not made a deal with Johnson or relayed any deal through the state, though he did say he assumed the prosecutor would go lighter on her if they had more evidence on Myers. Further, Atwood did not direct the specific course of the conversation Johnson should have with Myers. Instead, he told Johnson she could say

whatever she wanted to Myers. Atwood said he was going to let her sit in the car with Myers and "talk about it."

{¶12} Before putting Johnson in the patrol car, Myers had answered Atwood's questions and denied any knowledge. Immediately before Johnson was placed in the car, Atwood told him that he was "not going to jail tonight," and Myers said, "I don't know what she had." During the traffic stop, Myers neither asked for a lawyer, nor said he did not want to speak to the troopers.

{¶13} Atwood got Lawson out of Williams' patrol car, walked Lawson up to his patrol car so Johnson could sit in the car with Myers. A video review shows that Johnson was placed in the car, and essentially said things to Myers, like, "you let them wand me," "you told them that was my shit." To which Myers responded, "no, I didn't. You going to get out." Johnson then said, "How? They keep thinking it's mine." Myers responded, "Shhh you're talking too much. Don't talk to the police." "I call my people they say they have money if all three of us get locked up, we gettin' bonded out" and "they could be listening to this. I don't trust the police."

{¶14} After hearing the evidence, the trial court granted the parties time to file post-hearing briefs, and responses. On September 30, 2022, the trial court overruled all branches of the motion to suppress.

{¶15} The case proceeded to jury trial on February 28, 2023. At the inception of the trial, the State moved to dismiss counts two and four of the indictment, involving aggravated possession and aggravated trafficking, and moved to rename count two from count three to prevent any confusion with the jury. The court granted the motion

and dismissed the two original counts two and four, and then renumbered count three to count two.

{¶16} At the jury trial, the State presented three witnesses: Johnson, Atwood, and the criminalist who weighed and analyzed the substance determining it to be 3-Choloro PCP, a scheduled II substance (a compound structurally similar to PCP), and fentanyl, a scheduled II substance with a weight of 17.7302 grams. In addition, the State presented portions of both Atwood's cruiser cam video and Williams' in-car camera video.

{¶17} Johnson testified that she knew Myers approximately two months before the traffic stop, and the two became friends. On March 3, 2021, in West Virginia, Myers and Lawson picked up Johnson in a white minivan. The trio traveled through Gallia County on their way to Easton Mall in Columbus to shop and get something to eat. They stopped at a gas station to get some cigars for marijuana. Myers drove to a house near Columbus to get marijuana; Lawson was in the front passenger seat, and she was in the back. When they got to the house, Myers and Lawson got out of the car, met with a man, and went inside the house for about 30 minutes; Johnson did not get out of the car at any time. After meeting with the man, Myers and Lawson switched positions – Lawson got into the driver's seat and Myers got into the passenger seat.

{¶18} The trio then went to a hotel close to Easton in Columbus, about a 15-minute-drive from the house. Myers got the room, Lawson and Johnson waited in the car. Myers pulled out the marijuana "blunts," and they smoked them. Lawson slept on the couch; Myers and Johnson slept on the bed. They got up in the morning, had breakfast, and went to the Easton Mall. At the Easton Mall, Myers and Johnson were

walking with Lawson. Lawson fell back away from the other two and began to tie his shoe. Then a "white boy" approached Lawson and greeted him as if they knew one another, which Johnson found to be very odd. After that, Johnson, Myers, and Lawson left the mall and stopped at Walmart to fix Johnson's phone. Upon leaving Walmart, Johnson started to drive; they did not make any other stops until the traffic stop in Gallia County.

{¶19} At trial, Johnson testified to what occurred at the traffic stop. When Trooper Atwood got behind the minivan, Myers reached into his pants and gave a package to Johnson, putting it in her lap. Myers was threatening her and saying, "don't talk to the police," "I swear I'm going to have my sister beat you up." Johnson "panicked" and shoved the package in her vaginal cavity, causing her to swerve while driving. She knew it was something illegal. According to Johnson, Atwood told everyone to get out of the car because he "smelled marijuana." They had smoked marijuana in the car the night before.

{¶20} After the traffic stop, Atwood allowed the three to go home; they were told they would be indicted but were not taken to jail. Johnson drove away because she was the only one who had a valid license. When she drove away from the area of the stop, Lawson told her to pull over to an emergency room close to the stop, where a car was waiting for Lawson. Both Lawson and Myers were angry with her. *Id.* Lawson got out of the minivan and then Myers began to drive.

{¶21} At trial, Atwood testified to the same facts as he did at the suppression hearing. Atwood pointed out that at some point during the traffic stop that night, Myers and Lawson sat in Williams' patrol car for a lengthy time without talking to each other

which is unusual, and not innocent behavior. Instead, which can be observed from Williams' in-car camera footage, Myers and Lawson appear to be using their cell phones to communicate with each other. At some point, Myers was talking to an unknown person on his cell phone and said, something about the "motherfucking police and I'm going to need to say, you to say a prayer for me."

{¶22} Atwood also described to the jury several indicators that Myers' behavior involved trafficking. For example, Atwood testified that a several-hour, multi-state trip to pick up drugs is not consistent with personal use. Further, Atwood testified that 17.7 grams is a lot of fentanyl because personal use constitutes less than one-tenth of a gram. Thus, the amount of fentanyl recovered represented between 170-8,000 doses, depending on how the drug was cut and the person. In addition, Atwood pointed out that Myers' statements on the video that he "got people" who would get them help and his response to Johnson when confronted in the cruiser show that he engaged in trafficking and knew about the drugs. Atwood also testified that at some point, during Johnson's conversation with Myers, Johnson says, "this ain't my bullshit," or something to that effect, and Myers answered, "duh."

{¶23} After hearing the evidence, the jury found Myers guilty of both counts.

{¶24} The trial court sentenced Myers on March 22, 2023. The parties agreed that the counts were allied offenses of similar import and merged. The State then elected to sentence on count two (count three in the indictment) for which the trial court imposed a seven to ten-and-a-half-year prison term.

{¶25} Myers filed a timely appeal alleging four errors – two related to the motion to suppress, and two related to the jury verdict.

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT ERRED IN DENYING MR. MYERS'S MOTION TO SUPPRESS THE IMPERMISSIBLY EXTENDED TRAFFIC STOP.

II. THE TRIAL COURT ERRED IN DENYING MR. MYERS'S MOTION TO SUPPRESS HIS STATEMENTS, WHICH WERE UNKNOWING, INVOLUNTARY AND UNINTELLIGENTY GIVEN.

III. THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE TO PROVE MR. MYERS'S GUILT AS TO COUNT 2 BEYOND A REASONABLE DOUBT.

IV. MR. MYERS'S CONVICTIONS WERE AGAINST THE MAINFEST WEIGHT OF THE EVIDENCE.

1. First Assignment of Error

{¶26} In his first assignment of error, Myers claims the trial court erred when denying the motion to suppress because Atwood impermissibly extended the traffic stop in this case. Myers concedes Atwood had reasonable suspicion for stopping the vehicle involved in the traffic stop. Instead, he claims Atwood lacked reasonable, articulable facts to justify an extension of the detention beyond its original purpose of the traffic violation. The State responds that Atwood, who has training and experience in the detection and smell of marijuana, had probable cause to search the minivan because he smelled raw marijuana coming from the vehicle at the inception of the traffic stop.

A. Law

{¶27} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Williams*, 2024-Ohio-2146, ¶ 15 (4th Dist.), citing *State v. Burnside*, 2003-Ohio-5372, ¶ 8. The trial court acts as the trier of fact at a suppression hearing and is in the best position to resolve factual questions and evaluate witness credibility. *State v. Sheets*, 2023-Ohio-2591, ¶ 45, (4th Dist.), citing *State v. Leonard*, 2017-Ohio-

1541, ¶ 15 (4th Dist.), citing *Burnside* at ¶ 8. As a result, appellate courts defer to the trial court's findings of fact if they are supported by competent, credible evidence. *Sheets* at ¶ 45, citing *State v. Gurley*, 2015-Ohio-5361, ¶ 16 (4th Dist.). Accepting the trial court's findings of fact as true, appellate courts then "independently determine whether the trial court reached the correct legal conclusion in analyzing the facts of the case." *Sheets* at ¶ 45, citing *Gurley* at ¶ 16, citing *State v. Roberts*, 2006-Ohio-3665, ¶ 100.

{¶28} The Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution provide that persons have a right to be free from unreasonable searches and seizures and that probable cause is necessary for searches. A traffic stop is a type of seizure and constitutionally valid only if an officer has reasonable and articulable suspicion that a motorist has committed, is committing, or is about to commit a crime. *Williams* at ¶ 17, citing *State v. Mays,* 2008-Ohio-4539, ¶ 7 and *Delaware v. Prouse,* 440 U.S. 648, 663 (1979). In addition, a police officer may stop a motorist if he observes even a de minimis violation of a traffic law. *Williams* at ¶ 19, *citing State v. Guseman,* 2009-Ohio-952, ¶ 20 (4th Dist.). "It is well-established that the scope and duration of a routine traffic stop 'must be carefully tailored to its underlying justification * * * and last no longer than is necessary to effectuate the purpose of the stop.' " *State v. Jones,* 2022-Ohio-561, ¶ 21 (4th Dist.), quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983). Therefore, generally, "[w]hen a law enforcement officer stops a vehicle for a traffic violation, the officer may detain the motorist for a period of time sufficient to issue the motorist a citation and to perform routine

procedures such as a computer check on the motorist's driver's license, registration and vehicle plates." *Id.* at ¶ 22, citing *State v. Aguirre*, 2003-Ohio-4909, ¶ 36 (4th Dist.).

{¶29} On the other hand, "[a]n officer may expand the scope of the stop and may continue to detain the vehicle without running afoul of the Fourth Amendment if the officer discovers further facts which give rise to a reasonable suspicion that additional criminal activity is afoot." *State v. Dunbar,* 2024-Oho-1460, ¶ 29, (4th Dist.), quoting *State v. Rose,* 2006-Ohio-5292, ¶ 17, (4th Dist.), *citing State v. Robinette,* 80 Ohio St. 3d 234, 240 (1997). A reviewing court looks to the totality of the circumstances to determine whether reasonable articulable suspicion exists when a traffic stop is extended. *State v. Batchili,* 2007-Ohio-2204, ¶ 17, citing *United States v. Arvizu,* 534 U.S. 266, 274 (2002). Courts view the totality of the circumstances " ' "through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold." ' " *State v. Weaver,* 2024-Ohio-5028, ¶ 36, (2d Dist.) quoting *State v. Gladman*, 2014-Ohio-2554, ¶ 14 (2d Dist.), quoting *State v. Heard*, 2003-Ohio-1047, ¶ 14 (2d Dist.), citing *State v. Andrews,* 57 Ohio St.3d 86, 88 (1991). Additionally, "[a] court reviewing the officer's actions must give due weight to his experience and training and view the evidence as it would be understood by those in law enforcement." *Weaver* at ¶ 36, citing *Andrews,* 57 Ohio St.3d at 88, (1991), citing *United States v. Cortez*, 449 U.S. 411, 418 (1981).

B. Analysis

{¶30} In the case sub judice, Atwood pulled the minivan over for following too close and marked lanes violations. The parties do not dispute that Atwood had probable cause to stop the minivan. Once Atwood pulled the vehicle over, he

approached the passenger side, and asked Johnson, who was driving the van, for her license. Johnson had squinted eyes, a sleepy appearance, and slurred speech. Atwood also immediately noticed the odor of raw marijuana coming from inside the vehicle. Atwood was concerned Johnson might be impaired, so, shortly after stopping the vehicle, Atwood asked Johnson to exit the vehicle and performed horizontal gaze nystagmus, a test to determine impairment.

{¶31} First, if an officer lawfully stops a driver, he may order the driver to exit the vehicle without additional justification. *Dunbar* at ¶ 28, citing *State v. Kilbarger*, 2012-Ohio-1521, ¶ 16 (4th Dist.), citing *State v. Huffman,* 2011-Ohio-4668, ¶ 8 (2d Dist.). Second, if an officer believes the driver may be impaired, he may ask her to participate in field sobriety tests if he can point to specific factors indicating impairment. *State v. Greene*, 2019-Ohio-3155, ¶ 13 (4th Dist.), citing *State v. Jarrell*, 2017-Ohio-520, ¶ 41 (4th Dist.) This Court has set forth several facts that may point to impairment, and the following are present here (1) driving over the fog line three separate times; (2) the condition of Johnson's eyes; and (3) slurred speech. *See, e.g., Greene* at ¶ 13, quoting *Jarrell* at ¶ 41, quoting *State v. Evans*, 127 Ohio App. 3d 56, fn. 2. Atwood, therefore, was justified in extending the stop to conduct the horizontal gaze nystagmus test.

{¶32} Third, and most importantly, right after Atwood stopped the vehicle, and approached on the passenger side, he smelled the odor of raw marijuana coming from the minivan. The automobile exception to the warrant requirement allows officers to search a vehicle without a warrant when they have probable cause to believe the vehicle contains evidence of illegal activity. *State v. Etherson-Tabb,* 2024-Ohio-550, ¶ 25 (4th Dist.), citing *State v. Jackson,* 2022-Ohio-4365, ¶ 28. The odor of raw

marijuana constitutes probable cause to search the minivan. *Jones* at ¶ 29, citing *State v. Moore*, 90 Ohio St. 3d 47 (2000), syllabus, *State v. Brown,* 2017-Ohio-2880, ¶ 9 (2d Dist.). Atwood explained he had to wait for backup for officer's safety reasons before he could search the vehicle thoroughly.

{¶33} Fourth, as Atwood investigated these various issues, and awaited his backup, Atwood noticed that Johnson and Myers had told conflicting stories; that all persons in the car were extremely nervous and were breathing heavily. Johnson was also driving a rental vehicle, and the rental contract was not produced. Once Atwood asked Johnson a few questions, she produced a package of suspected drugs.

{¶34} Myers contends that the odor of marijuana could not have given Atwood probable cause to search the vehicle because the amount of marijuana found in a plastic bag was so small that the lab could not weigh and analyze it. However, as the State points out, "[i]n determining whether probable cause exists, courts may not look to events that occurred after the search or to the subjective intent of the officers; instead, [courts] look to the objective facts known to the officers *at the time* of the search." *State v. Maddox,* 2021-Ohio-586, ¶ 16 (10th Dist.), citing *Smith v. Thornburg,* 136 F.3d 1070, 1075 (6th Cir. 1998), citing *United States v. Ferguson*, 8 F.3d 385, 391-92 (6th Cir. 1993) (en banc) [emphasis added]. Immediately upon approaching the vehicle, Atwood smelled the marijuana, both before the search was conducted, and before the traffic citation or warning was given. Atwood had probable cause to search the vehicle and the time to extend the stop was appropriate to search it. As a result, we find no merit to Myers' first assignment and hereby overrule it.

II. Second Assignment of Error

{¶35} In his second assignment of error Myers claims the trial court erred in overruling his motion to suppress because the statements he made to Johnson violated the federal and state constitutions. Although he acknowledges that the troopers provided the requisite *Miranda* warnings, he claims law enforcement coerced him into making statements and that he did not knowingly, voluntarily, and intelligently waive his Fifth Amendment rights. The State responds that the totality of the circumstances shows the statements were voluntary and that Myers at no time unambiguously invoked his right to counsel or right to remain silent.

A. Law

{¶36} The Fifth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution guarantee that no person in any criminal case shall be compelled to be a witness against himself. The Fifth Amendment, as well as the Due Process Clause of the Fourteenth Amendment, protects against the concern that coerced confessions are inherently untrustworthy. *State v. Sheets,* 2023-Ohio-2591, ¶ 46, citing *Dickerson v. United States*, 530 U.S. 428, 433 (2000). "A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt * * * but a confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape * * * that no credit ought to be given to it." *Leonard*, 2017-Ohio-1541, at ¶ 17, quoting *Dickerson Id.*

{¶37} To safeguard a suspect's Fifth Amendment privilege against self-incrimination, law enforcement officers seeking to perform a custodial interrogation must warn the suspect of certain constitutional rights, called *Miranda* warnings. *State v.*

Hambrick, 2016-Ohio-3395, ¶ 13 (4th Dist.). But *Miranda* warnings are not required unless the conduct of police encompasses a custodial interrogation. *Id.* at ¶ 14. "*Miranda* defines 'custodial interrogation' as 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.' " *Id*. at ¶ 15 quoting *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Courts have expanded this definition to explain that " ' "interrogation" includes express questioning as well as "any words or action on the part of the police (other than those attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." ' " *State v. Reindel*, 2017-Ohio-28, ¶ 18 (2d Dist.), quoting *State v. Strozier*, 2007-Ohio-4575, ¶ 20 (2d Dist.), quoting *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980). In addition, to necessitate *Miranda* warnings, the interrogator must be a law enforcement officer, or some type of agent of law enforcement. *State v. Kessler*, 2007-Ohio-1225, ¶ 18 (12th Dist.), citing *State v. Evans,* 144 Ohio App.3d 539, 553 (1st Dist.), *see also State v. Phillips,* 2011-Ohio-6773, ¶ 1, 14 (4th Dist.) (where court held that children's services workers were not acting at the direction, control or behest of law enforcement, even though they had a statutory duty to report, and therefore were not required to give *Miranda* warnings.).

{¶38} If *Miranda* warnings are required, Ohio courts examine whether those rights have been knowingly, voluntarily, and intelligently waived by employing a totality of the circumstance analysis. *State v. Clark*, 38 Ohio St.3d 252, 261 (1988). Voluntariness "is determined by 'the totality of the circumstances, including the age, mentality, and prior criminal experience of the accused; the length, intensity, and

frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement.' " *State v. Garrett*, 2022-Ohio-4218, ¶ 101, quoting *State v. Edwards*, 49 Ohio St.2d 31 (1976), paragraph two of the syllabus, *vacated in part on other grounds, Edwards v. Ohio*, 438 U.S. 911 (1978).

{¶39} It is true that voluntariness of a confession, including waiver of *Miranda*, is determined by applying a "totality of the circumstance" analysis. *State v. Treesh,* 90 Ohio St.3d 460, 472 (2001), citing *Clark* at 261. "However, the use of an inherently coercive tactic by the police is a prerequisite to a finding of involuntariness." *Id.* citing *Colorado v. Connelly*, 479 U.S. 157, 167 (1986).

> To support a determination that a confession was coerced, the evidence must establish that (1) the police activity was objectively coercive; (2) the coercion in question was sufficient to overbear defendant's will; and (3) defendant's will was, in fact, overborne as a result of the coercive police activity.

Leonard, 2017-Ohio-1541 at ¶ 19, quoting *State v. Humphrey*, 2010-Ohio-5950, ¶ 18 (4th Dist.), *vacated on other grounds*, 2011-Ohio-1426, quoting *United States v. Rigsby*, 943 F.2d 631, 635 (6th Cir. 1991). Thus, this court and others have held that if law enforcement do not "engage in coercive tactics," then there is no need to conduct a "totality of the circumstance" analysis. *Id.* at ¶ 22, citing *State v. Elliott,* 2011-Ohio-1746, ¶ 45 (4 Dist.); citing *State v. Perez,* 2009 Ohio 6179, ¶ 71; *see also Colorado v. Connelly*, 479 U.S. 157, 166 (1986) ("We hold that coercive police activity is a necessary predicate to the finding that a confession is not "voluntary" within the meaning of the Due Process Clause of the Fourteenth Amendment.").

B. Analysis

{¶40} In the instant case, Myers does not dispute that *Miranda* warnings were given to him. He asserts that even though he received these warnings, he did not knowingly, voluntarily and intelligently waive them. It is important to note from the record it appears that the troopers did at times question Myers. Although Myers claims he opted not to speak with law enforcement, that is not, in fact, what the record shows. Instead, it shows Myers answering questions of both troopers, freely denying knowledge of the situation. In addition, there is nothing in the record showing that he implicitly or expressly asserted his rights to remain silent according to *Miranda*. While appellant limits his argument to purported statements he gave to Johnson, the fact that he spoke so freely to the troopers and did not exert his rights cuts toward a finding of voluntariness regarding the entire stop.

{¶41} In any event, even if the troopers had not given warnings at all, regarding the statements or conversations that Myers had with Johnson only, such warnings were not necessary because *Miranda* is only required during the custodial interrogation performed by law enforcement.

{¶42} The conversation between Myers and Johnson did not constitute "custodial interrogation." First, Johnson was not an agent of law enforcement because Atwood did not supervise the conversation. It is well established that

> "the duty of giving 'Miranda warnings'" is limited to employees of governmental agencies whose function is to enforce law, or to those acting for such law enforcement agencies by direction of the agencies; that it does not include private citizens not directed or controlled by a law enforcement agency, even though their efforts might aid in law enforcement."

In re L.G., 2017-Ohio-2781, ¶ 20 (2d Dist.), quoting *State v. Bolan*, 27 Ohio St.2d 15, 18 (1971). In similar instances, including ones in which the state has used undercover agents or suspects to elicit incriminating statements, courts have held that such conversations do not "implicate the concerns underlying Miranda." *Illinois v. Perkins*, 496 U.S. 292, 297 (1990). This is because the essential ingredients of a "police-dominated atmosphere" and compulsion are not present. *See Id.* (where United States Supreme Court upheld police use of undercover agents speaking with incarcerated suspects when the suspect believes the undercover agent is a fellow inmate). "[W]hen a suspect does not know that his questioner is a police agent, such questioning does not amount to 'interrogation' in an 'inherently coercive' environment so as to require the application of *Miranda.*" *Id.* at 299 (J. Brennan, concurring). In addition, the Supreme Court of Ohio has held that agents of law enforcement are " ' "those acting for * * * law enforcement agencies by direction of the agencies" and do "not include private citizens not directed or controlled by a law enforcement agency, even though their efforts might aid in law enforcement." ' " *In re M.H.,* 2020-Ohio-5485, ¶ 19, quoting *State v. Jackson*, 2018-Ohio-2169, ¶ 15, quoting, *State v. Bolan,* 27 Ohio St.2d 15, 18 (1971).

{¶43} The conversation that Johnson had with Myers was not an "interrogation." At the heart of the inquiry as to whether a suspect has been interrogated "focuses on police coercion, and whether the suspect has been compelled to speak by that coercion." *State v. Guysinger*, 2012-Ohio-4169, ¶15 (4th Dist.), quoting *State v. Tucker*, 81 Ohio St. 3d 431, 436 (1998). " 'Officers do not interrogate a suspect simply by hoping that he will incriminate himself.' " *Id.* quoting *Arizona v. Mauro*, 481 U.S. 520, 529 (1987). The crux of the analysis therefore does not hinge on whether Myers waived

his rights. Instead, the more salient inquiry is whether (1) the police activity was objectively coercive; (2) the coercion in question was sufficient to overbear defendant's will; and (3) defendant's will was, in fact, overborne as a result of the coercive police activity. *Leonard* 2017-Ohio-1541 at ¶ 19. The actions of the troopers of facilitating a conversation between two suspects were not inherently coercive. Atwood did not make any promises to Johnson (other than she would be released that night), and she was not working under the direction of the state at the time. Atwood did not tell Johnson what to say. While Atwood had an interest in Myers admitting his involvement, Johnson was primarily acting to further her own self-interest. Therefore, even though the conversation was Atwood's idea, and he facilitated the conversation, he did not grant authority to Johnson that equates to state action.

{¶44} Myers was leery that the conversation could be overheard, but he did not know Johnson had discussed the conversation with Atwood. Johnson did not in any way force Myers to talk, and much of the conversation were statements about her own behavior, not questions posited to Myers.

> Miranda forbids coercion, not mere strategic deception by taking advantage of a suspect's misplaced trust in one he supposes to be a fellow prisoner. * * * Ploys to mislead a suspect or lull him into a false sense of security that do not rise to the level of compulsion or coercion to speak are not within *Miranda*'s concerns.

Illinois v. Perkins, 496 U.S. 292, 297 (1990) (discussing the police practice of a cellmate eliciting a confession from a suspect while incarcerated). Further, "[t]he most outrageous behavior by a private party seeking to secure evidence against a defendant does not make that evidence inadmissible under the Due Process Clause." *Colorado v. Connelly,* 479 U.S. 157, 166 (1986).

{¶45} Nothing in Johnson's conversation with Myers showed the "coercion" in question was sufficient to overbear defendant's will. Any comments he made to Johnson were voluntary, and his will does not appear to be overborne, especially when he told Johnson to "stop talking," because he knew conversations in the cruiser could be heard or recorded. We therefore overrule Myers' second assignment of error.

III. Third Assignment of Error

{¶46} In his third assignment of error, Myers asserts the State failed to present sufficient evidence to prove his guilt beyond a reasonable doubt as to Count Two, the trafficking in a fentanyl-related substance. Myers claims there was no evidence that he knowingly took any of actions to further an intent to sell the fentanyl and maintains that the State presented no evidence establishing that the inherent nature, or the packaging of the drugs recovered implied that the drugs were for sale or resale. In so doing, Myers claims that the crux of the evidence was that Johnson was found to have concealed the fentanyl while driving through Ohio.

{¶47} The State responds that the record consists of multiple pages of Atwood's testimony which shows ample circumstantial evidence to find all the essential elements of trafficking in fentanyl. Therefore, the State argues we should overrule this assignment of error.

A. Law

{¶48} "When reviewing a case to determine if the record contains sufficient evidence to support a criminal conviction, we must ' "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. Knowlton*, 2012-Ohio-

2350, ¶ 10 (4th Dist.), quoting *State v. Smith,* 2007-Ohio-502, ¶ 33 (4th Dist.), quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. Thus, " ' "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." ' " *Id*., quoting *Smith* at ¶ 33, quoting *Jenks* at paragraph two of the syllabus. Consequently, a reviewing court "will not overturn a conviction for insufficiency of the evidence unless [it] find[s] that reasonable minds could not reach the conclusion reached by the trier of fact." *State v. Tibbetts*, 92 Ohio St.3d 146, 162 (2001), citing *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001).

{¶49} The evidence we evaluate may be direct or circumstantial. " '[D]irect evidence is defined as " '[e]vidence, which if believed, proves existence of a fact in issue without inference or presumption[.]' " ' " (Brackets original) *State v. Jarrells,* 2024-Ohio-2816, ¶ 32 (4th Dist.), quoting *State v. Smith,* 2010-Ohio-4507, ¶ 43 (4th Dist.), quoting *Reeves v. Vitt,* 2009-Ohio-2436, ¶ 41 (11th Dist.), quoting *Black's Law Dictionary* (6th Ed. 1990). In contrast, " ' "[c]ircumstantial evidence is defined as '[t]estimony not based on actual personal knowledge or observation of the facts in controversy, but of other facts from which deductions are drawn, showing indirectly the facts sought to be proved.' " ' " *Id.* quoting *State v. Meddock*, 2017-Ohio-4414, ¶ 54 (4th Dist.), quoting *State v. Nicely,* 39 Ohio St. 3d 147, 150 (1988), quoting *Black's Law Dictionary* (5th Ed. 1979). In addition, " '[c]ircumstantial evidence and direct evidence inherently possess the same probative value and therefore should be subjected to the same standard of proof.' " *State v. Collins,* 2024-Ohio-794, ¶ 27 (4th Dist.), quoting *Jenks*, 61 Ohio St.3d 259, paragraph one of the syllabus.

{¶50} Myers argues that his conviction for aggravated trafficking in a fentanyl-related compound is not supported by sufficient evidence. R.C. 2925.03 provides, in pertinent part:

> (A) No person shall knowingly
>
> . . .
>
> (2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person.
>
> . . .
>
> (C) Whoever violates division (A) of this section is guilty of one of the following:
>
> . . .
>
> (9) If the drug involved in the violation is a fentanyl-related compound or a compound, mixture, preparation, or substance containing a fentanyl-related compound and division (C)(10)(a) of this section does not apply to the drug involved, whoever violates division (A) of this section is guilty of trafficking in a fentanyl-related compound. The penalty for the offense shall be determined as follows:
>
> . . .
>
> (e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one hundred unit doses but is less than two hundred unit doses or equals or exceeds ten grams but is less than twenty grams, trafficking in a fentanyl-related compound is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

{¶51} In his third assignment of error, Myers does not challenge the sufficiency of evidence for the possession conviction, count one of the indictment. Even so, the issue of trafficking and possession "are interrelated because to sustain an R.C. 2925.03(A)(2) trafficking conviction as a principal offender, the state must also prove the

defendant had control over, i.e., possessed, the illegal substance." *State v. Foster,* 2023-Ohio-746, ¶ 22 (4th Dist.), citing *State v. Cabrales*, 2008-Ohio-1625, ¶ 30, quoting R.C. 2925.01(K); *State v. Floyd,* 2019-Ohio-4878, ¶ 21 (7th Dist.). Therefore, we set forth the elements of possession here.

{¶52} Myers was convicted of R.C. 2925.11, which provides, in pertinent part:

> (A) No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog."
>
> . . .
>
> (C) Whoever violates division (A) of this section is guilty of one of the following:
>
> . . .
>
> (11) If the drug involved in the violation is a fentanyl-related compound and neither division (C)(9)(a) nor division (C)(10)(a) of this section applies to the drug involved, or is a compound, mixture, preparation, or substance that contains a fentanyl-related compound or is a combination of a fentanyl-related compound and any other controlled substance and neither division (C)(9)(a) nor division (C)(10)(a) of this section applies to the drug involved, whoever violates division (A) of this section is guilty of possession of a fentanyl-related compound. The penalty for the offense shall be determined as follows:
>
> . . .
>
> (d) If the amount of the drug involved equals or exceeds one hundred unit doses but is less than two hundred unit doses or equals or exceeds ten grams but is less than twenty grams, possession of a fentanyl-related compound is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

"Possession" is generally defined as "having control over a thing or substance but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found." R.C. 2925.01(K); *State v. Bennett,* 2024-Ohio-4557, ¶ 35 (4th Dist.). "Possession may be

actual or constructive." *Bennett* at ¶ 35 citing *State v. Gavin*, 2015-Ohio-2996, ¶ 35 (4th Dist.), quoting *State v. Moon*, 2009-Ohio-4830, ¶ 19 (4th Dist.). "Actual possession exists when circumstances indicate that an individual has or had an item within his immediate physical possession[.]" *Id.* citing *State v. Kingsland*, 2008-Ohio-4148, ¶ 13 (4th Dist.). Constructive possession, on the other hand, "exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within his immediate physical possession." *Id.* citing *Gavin* at ¶ 35.

{¶53} In addition, R.C. 2901.22(B) provides:

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

State v. Crumpton, 2024-Ohio-5064, ¶ 28 (4th Dist.).

B. Analysis

{¶53} First, Johnson's testimony, if believed, was ample to prove that at some point Myers possessed the drugs and was the primary offender in this case. According to Johnson, Myers was the one who initially had the drugs and threatened her to hide the substance in a surreptitious place so law enforcement could possibly not find it. Myers initiated the trip in West Virginia and procured the rental car. Johnson was the one driving at the time of the offense, because she, and not Myers, had a valid license. Johnson's testimony that Myers had possessed and also had knowledge of the drugs was corroborated by other evidence – Atwood's testimony regarding Myers' nervous behavior, and the video exhibit of the statements Myers made on his cell phone while in

the cruiser to someone that they needed to "say a prayer," as well as the video evidence of Myers' comments to Johnson while they were in the cruiser together.

{¶54} Second, there is also sufficient evidence that Myers had "reasonable cause to believe" that the drugs were intended for resale. As noted above, the State can rely on circumstantial evidence to prove its case. " 'Absent an admission by a defendant, the state must rely on circumstantial evidence to satisfy the reasonable cause to believe element.' " *State v. Hill,* 2018-Ohio-67, ¶ 32 (4th Dist.), quoting *State v. Woodruff*, 2008-Ohio-967, ¶ 9 (4th Dist.). In the instant case Myers used a rental car (and could not explain who rented it nor provide a rental receipt) to travel across state lines from Charleston, West Virginia to Columbus, Ohio then back again. As Atwood testified, if the drugs were intended for personal use, Myers would not have traveled so far with them, because personal users usually buy the drugs close to where they live. In addition, Johnson testified to the strange encounters the trio had on the trip with various persons including a trip to a specific mall in Columbus where Lawson, who started the trip in West Virginia, met up with someone he seemed to know at that mall in a random fashion.

{¶55} Finally, though not acknowledged by Myers, Atwood's testimony about the quantity and type of drug at the trial showed circumstantial evidence of Myer's guilt. For example, Atwood testified that the amount of fentanyl was large for that type of drug (17.7 grams) because the substance is so powerful that one-tenth of a gram would be sufficient for a dose, so it could be between 170 and 8,000 doses, depending on the cut of the drug. Johnson's description of the trip and Myers' actions, coupled with Atwood's explanation of drug trafficking and ultimately the analyst's testimony regarding the

identity and weight of the drugs show that the evidence regarding Count Two was sufficient such that we therefore overrule this assignment of error.

IV. Fourth Assignment of Error

{¶56} In his fourth assignment of error, Myers contends that the jury's verdict is against the manifest weight of evidence regarding both counts, possession of a fentanyl related compound and trafficking in a fentanyl related compound. He claims the only evidence presented at trial was that Johnson possessed the drugs. He also avers that the State did not present any evidence that he even knew the drugs were there other than Johnson's "self-serving" testimony. He also denies he trafficked the drugs.

{¶57} The State again explains the record consists of multiple pages of Atwood's testimony which shows ample circumstantial evidence to find all the essential elements of trafficking in fentanyl, which also applies to the possession count. In addition, the State points to Johnson's testimony, and further notes that as to her credibility, the jury was given an instruction that stated, "[t]estimony of a person who you find to be an accomplice should be viewed with grave suspicion and weighed with great caution." As a result, the State argues we should overrule this assignment of error.

A. Law

{¶58} The manifest weight of the evidence analysis requires this court to " 'review the entire record, weigh the evidence and all reasonable inferences, [and] consider the credibility of witnesses[.]' " (Brackets original) *State v. Ratliff,* 2024-Ohio-61, ¶ 48 (4th Dist.), quoting *State v. Evans*, 2023-Ohio-1879, ¶ 26 (4th Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, (1997). However, this court " 'generally must defer to the fact-finder's credibility determinations.' " *Id.* quoting *State v.*

McNichols, 2020-Ohio-2705, ¶ 10 (4th Dist.), citing *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 21. "Because the trier of fact sees and hears the witnesses, an appellate court will afford substantial deference to a trier of fact's credibility determinations." *State v. Gay*, 2024-Ohio-1673, ¶ 45 (4th Dist.), citing *State v. Schroeder*, 2019-Ohio-4136, ¶ 62 (4th Dist.). "The jury has the benefit of seeing witnesses testify, observing facial expressions and body language, hearing voice inflections, and discerning qualities such as hesitancy, equivocation, and candor." *Id.*, citing *State v. Fell*, 2012-Ohio-616, ¶ 14 (6th Dist.). The court then resolves conflicts in the evidence by examining whether " 'the trier of fact clearly lost its way and created such a manifest miscarriage of justice that reversal of the conviction is necessary.' " *Ratliff* at ¶ 48, quoting *Evans* at ¶ 26.

{¶59} Myers claims that both his convictions are against the manifest weight of the evidence. As to the trafficking, he reiterates his arguments regarding sufficiency. He further contends his conviction for possession is against the manifest weight of the evidence because he neither had knowledge of the drugs nor possessed them. Myers does not dispute the identity, weight or classification of the drug found during the traffic stop. Rather, he contends the manifest weight of the evidence shows he did not engage in trafficking the drugs because no evidence was presented except Johnson's testimony which he deems suspect. He further claims the State only presented evidence that Johnson possessed the drugs.

{¶60} For the reasons set forth above, we hold that the jury did not clearly lose its way. The circumstantial evidence and Myers' behavior at the traffic stop corroborate Johnson's testimony. In addition, as explained above, the jury is in the best position to determine credibility. This is especially true because the jury was given an instruction to

view Johnson's testimony with "grave suspicion" and weigh it with "great caution." The record clearly shows the jury was well aware of Johnson's convictions and subsequent plea deal to testify. We would note "the fact that the testimony of a co-defendant constituted the primary evidence against appellant does not, standing alone, render appellant's convictions against the manifest weight of the evidence." *State v. Johnson,* 2024-Ohio-2058, ¶ 20 (4th Dist.).

{¶61} We therefore overrule Myers' fourth assignment of error.

CONCLUSION

{¶62} Having overruled all of Myers' assignments of error, we affirm the trial court's judgment entry of conviction.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and appellant shall pay the costs.

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 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 the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. and Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, 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.