[Cite as *State v. Rose*, 2025-Ohio-143.]

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

STATE OF OHIO,	:	
	:	Case No. 22CA28
Plaintiff-Appellee,	:	
	:	
v.	:	DECISION AND JUDGMENT
	:	ENTRY
DANIELLE V. ROSE,	:	
	:	
Defendant-Appellant.	:	**RELEASED: 01/09/2025**

APPEARANCES:

Chris Brigdon, Thornville, Ohio, for appellant.

Judy C. Wolford, Pickaway County Prosecuting Attorney, and Jayme Hartley Fountain, Assistant Pickaway County Prosecuting Attorney, Circleville, Ohio, for appellee.

Wilkin, J.

{¶1} This is an appeal from a Pickaway County Court of Common Pleas judgment of conviction in which appellant, Danielle V. Rose, pleaded guilty to trafficking in a fentanyl-related compound and received an 11-year prison sentence. On appeal, Rose asserts that the trial court erred in denying her motion to suppress evidence because the K-9 search of her vehicle was illegal in violation of her Fourth Amendment right. Therefore, she alleges that the evidence seized during the traffic stop should be excluded and her guilty plea reversed.

{¶2} We find that by pleading guilty to trafficking in drugs, Rose waived her ability to challenge her pre-trial motion to suppress the evidence on appeal. Moreover, even if she had not waived her right to appeal the trial court's denial of

her motion to suppress, we agree with the trial court's conclusion that the duration of the traffic stop was not unreasonable. Therefore, we overrule Rose's sole assignment of error and affirm her trafficking conviction.

FACTS AND PROCEDURAL BACKGROUND

{¶3} Based on drugs recovered from Rose's vehicle during a traffic stop, a grand jury indicted Rose for (1) trafficking in a fentanyl-related compound in violation of R.C. 2925.03(A)(2) and (C)(9)(g), a first-degree felony; (2) possession of a fentanyl-related compound in violation of R.C. 2925.11(A) and (C)(11)(f), a first-degree felony; (3) possession of a fentanyl-related compound in violation of R.C. 2925.11(A) and (C)(11)(b), a fourth-degree felony; and (4) aggravated possession of drugs in violation of R.C. 2925.11(A) and (C)(1)(a), a fifth-degree felony. Rose pleaded not guilty.

{¶4} On February 9, 2021, Rose filed a motion to suppress the evidence (a fentanyl-related compound) recovered during the traffic stop. Rose argued that there was no probable cause to make the stop. She also maintained that the stop was unlawfully extended to permit the warrantless search of her vehicle.

{¶5} Rose claimed that there was no constitutionally permissible reason to stop the vehicle or search the vehicle. She asserted that "there was no tag violation." Rose also claimed that courts have "upheld suppression of evidence seized in cases where windshield violations have been alleged."

{¶6} The State filed a memorandum contra. The State claimed that the cracked windshield was substantial, which was a violation of traffic laws. Therefore, it was sufficient probable cause to justify the traffic stop.

{¶7} The State also argued the trooper received indications that justified an extension of the stop to secure a K-9 on the scene. The State claimed that Rose refused to make eye contact with Ohio State Patrol Trooper Eric Holbrook, and Rhea, the passenger in the vehicle, appeared to be drug impaired. The State asserted that these observations resulted in Trooper Holbrook suspecting further criminal activity. Therefore, the stop was lawfully extended while waiting for the K-9 unit.

{¶8} On March 26, 2020, the court held a hearing on both Rose's and Rhea's motions to suppress evidence recovered during the traffic stop. The following facts were elicited from a transcript of testimony recorded during the suppression hearing, an accident report authored by Trooper Holbrook, and video from the dash-camera of his cruiser.

{¶9} The video showed the traffic stop from its inception to the search of Rose's vehicle and discovery of the drugs. Trooper Holbrook through his testimony elaborated on much of what was seen on the video. He explained that on the morning of Wednesday, May 27, 2020, he was sitting in his cruiser at a crossover between the north and southbound lanes on U.S. Rt. 23 between mileposts nine and ten. At approximately 11:00 a.m., he observed a small black sedan traveling southbound with a female driver, a passenger, and a child's car seat in the rear. Trooper Holbrook noticed a sizable crack in the windshield that started on the passenger side and crossed toward the driver's side. He stated that it appeared that the driver "kind of tried to hide by the pillar, and kind of looked away when she passed [his] location." Trooper Holbrook decided to

follow the sedan to check the license plate and to get a better view of the crack in the windshield. As he was following the sedan, Trooper Holbrook "ran" the license plate and learned that it had expired in April 2020. After learning of the expired license plates and getting a better view of the crack, Trooper Holbrook executed a traffic stop, which occurred at approximately 11:04 a.m.

{¶10} As Trooper Holbrook approached the vehicle's passenger side to speak to the occupants, he claimed that the passenger appeared impaired. Her eyes were bloodshot, pupils were dilated, and "she had very slurred thick speech, she also had – she was moving around quite a bit." There was also a two-year-old child in the back seat. He informed the driver that he stopped the car because of the crack in the windshield, and also informed her that the license plates were expired.

{¶11} The prosecutor then asked the trooper, "what steps did you take at that point?" Trooper Holbrook testified that he "immediately called for a K-9 officer to assist." When the prosecutor asked Trooper Holbrook why, he stated: "Based on the conversation I had with them, based off what I seen, the passenger, the further on the conversation went with both individuals I realized they were both nervous, they were both moving around, they both failed to make eye contact with me most of the time I was there." The log indicated Trooper Holbrook requested a K-9 officer at 11:08 a.m. Corporal Steve Harger of the Pickaway County Sheriff's Office was the K-9 officer dispatched to assist Trooper Holbrook.

{¶12} After requesting the K-9 officer backup, Trooper Holbrook retrieved the driver's and passenger's licenses to verify their identities, as well as the vehicle's registration and proof of insurance. The driver was determined to be Danielle Rose and the passenger was McKenzie Rhea. Trooper Holbrook also requested a criminal background check for both Rose and Rhea. He testified that if he "suspect[s] drugs" it is "normal practice" to request a criminal background of all the occupants in a vehicle.

{¶13} Trooper Holbrook testified that he received Rose's criminal background information at 11:21 a.m. It revealed that she had no outstanding warrants. However, she had been charged with possession of drugs, a fifth-degree felony, but the report did not mention the conviction date.

{¶14} Trooper Holbrook testified that he received Rhea's criminal history at 11:24 a.m. She also had no outstanding warrants. However, she had been charged with possession of heroin but pleaded guilty to a lesser offense.

{¶15} Approximately "30 to 40 seconds later" Corporal Harger arrived with his K-9, which was estimated to be 11:25 a.m. Before deploying the K-9 to conduct a walk around the vehicle, both occupants were removed from the vehicle for the officers' safety. As Rhea exited the vehicle, Corporal Harger discovered marijuana in the waistband of her pants. Corporal Harger testified that both occupants "seemed to be extremely nervous and the passenger did seem to be under the influence." Corporal Harger deployed his K-9 that shortly thereafter indicated that the car contained drugs. A search of the vehicle resulted in the discovery of fentanyl.

{¶16} After the hearing, Rose filed a supplemental memorandum in support of her motion to suppress. Rose maintained that the State could not prove that the crack in the windshield obstructed her view. She also argued that she was detained for a substantial period after her license and registration were verified with no articulable suspicion to extend the stop.

{¶17} The trial court issued a decision and entry that addressed Rose's motion to suppress the evidence. The court determined that the sticker on the license plate had not been updated, but, the day before the stop, Rose had renewed her tags. Additionally, because a law had extended the renewal date for license plates due to COVID, the trial court found that the expired sticker on Rose's license plate was not a valid reason to stop the car.

{¶18} The court did find, however, that Trooper Holbrook had reasonable suspicion in making the traffic stop based on the cracked windshield. The court noted that the trooper testified that there was "a large sizable crack in the windshield."

{¶19} Next, the court considered whether the duration of the traffic stop was reasonable. The court found that Trooper Holbrook was a drug-recognition expert and opined that he believed that Rhea was under the influence of drugs. The court found that Rhea and Rose's nervousness and failure to look the trooper in the eye further "aroused his suspicion of drug activity." The court also noted that through their criminal background Trooper Holbrook learned that both Rose and Rhea had prior drug-related charges. The court found that Trooper

Holbrook's "special [drug recognition] training allowed him to recognize a possibility of illicit drug use and the need to investigate further."

{¶20} The court found that within minutes of receiving the criminal histories of Rose and Rhea, the K-9 officer arrived with his dog to "conduct a walk around." Trooper Holbrook then asked Rose and Rhea to step out of the vehicle, which the law permitted him to do. As they were exiting the car, Rhea was observed attempting to conceal in her waistband what she admitted was marijuana. The discovery of the marijuana gave Trooper Holbrook probable cause to search the car.

{¶21} Under these circumstances, the court found that the traffic stop and subsequent search of the vehicle complied with the Fourth Amendment. Therefore, the court denied Rose's motion to suppress the evidence (drugs) that were discovered in her vehicle.

{¶22} On September 9, 2021, Rose signed a plea agreement pleading guilty to trafficking in a fentanyl-related compound understanding that she could be subject to a maximum sentence of 11 years in prison and mandatory post-release control. After a sentencing hearing, the trial court issued an entry sentencing Rose to a mandatory minimum prison term of 8 years to a maximum period of 12 years.

{¶23} Rose appeals the denial of her motion to suppress the evidence and in turn prays this court overturn her guilty plea.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN DENYING THE MOTION TO SUPPRESS EVIDENCE WHERE THE K-9 SEARCH OF THE

VEHICLE WAS AN ILLEGAL SEARCH IN VIOLATION OF THE APPELLANT'S FOURTH CONSTITUTIONAL RIGHT AGAINST ILLEGAL SEARCHES.

{¶24} Rose maintains that during a traffic stop for a cracked windshield, and despite no indicia of drugs or driver intoxication, Trooper Holbrook called for a K-9 and began reviewing the occupant's criminal history. Passenger intoxication and nervousness are not sufficient to create probable cause to search Rose's car. Rose claims that Trooper Holbrook had only a hunch that Rose's vehicle contained contraband. She contends that a mere hunch that criminal activity is occurring, which is less than the required reasonable suspicion, is not enough to support a search under the Fourth Amendment.

{¶25} Further, Rose argues that there was an absence of articulable facts that gave rise to a suspicion that she committed any illegal act. Therefore, Rose claims that Trooper Holbrook's "continued detention [of her] constituted an illegal seizure[ ]" under the Fourth Amendment. Therefore, the K-9's sniff of the vehicle was unconstitutional. Consequently, the drugs discovered because of the K-9's alert should be excluded from the evidence.

{¶26} In response, the State argues that the trial court did not abuse its discretion in overruling Rose's motion to suppress. To justify stopping a vehicle for a cracked windshield, the State maintains that the crack must be "substantial or impairs the driver's vision[,]" relying on *State v. Emerick*, 2017-Ohio-4398, ¶ 15 (4th Dist.). The State claims that this determination does not require "scientific certainty." The State notes that Trooper Holbrook testified that he observed "a large, sizable cracked windshield." He further testified that the "entire windshield

was compromised because of the crack." Therefore, the State claims that Trooper Holbrook had probable cause to stop Rose's vehicle.

{¶27} Next, the State alleges that "[o]nce stopped, Sergeant Holbrook received indicators that justified an extension of the traffic stop to secure a K-9 on the scene." The State claims that a law enforcement officer may continue to detain lawfully stopped individuals if the officer discovers information that additional criminal activity may be occurring. The State argues that Rose avoided eye contact and Rhea was "exhibiting indicators of being under the influence of a drug of abuse." Based on these facts as well as his drug-recognition training, Trooper Holbrook suspected criminal activity and consequently requested a K-9 unit. The State maintains that Trooper Holbrook lawfully extended the stop while waiting for the K-9 unit. During this delay Trooper Holbrook was verifying Rose and Rhea's identities and obtaining their criminal records. These were permissible delays for a traffic stop. The State asserts that the K-9 unit arrived within 22 minutes of the inception of the traffic stop, and Corporal Harger assisted Trooper Holbrook in removing Rose, Rhea, and the child from their vehicle, so the K-9 could be deployed. The State claims that additional probable cause extended the stop when, as Rhea exited the vehicle in preparation for the K-9's sniff of the car, Corporal Harger discovered marijuana in a container in the waistband of her pants.

{¶28} Moreover, the K-9 alerting to possible drugs in the car provided additional probable cause to extend the stop. The search of the vehicle resulted in the discovery of fentanyl 55 minutes into the stop. Thus, the State argues the

stop was justifiably extended so the trial court did not abuse its discretion in denying Rose's motion to suppress the evidence.

A. Waiver

{¶29} Before this court can consider Rose's assignment of error, we must first address whether she waived her right to appeal the trial court's denial of her pre-trial motion to suppress the evidence by pleading guilty to trafficking in drugs.

{¶30} A "plea of guilty is a complete admission of the defendant's guilt." Crim.R. 11(B)(1). A defendant who "voluntarily, knowingly, and intelligently enters a guilty plea with the assistance of counsel 'may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.' " *State v. Fitzpatrick*, 2004-Ohio-3167, ¶ 79, quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). "Thus, by entering a guilty plea, a defendant waives the right to raise on appeal the propriety of a trial court's suppression ruling." *State v. McQueeney,* 2002-Ohio-3731, ¶ 13 (12th Dist.).

{¶31} Rose pleaded guilty to trafficking in a fentanyl-related compound and was sentenced to prison. Therefore, she waived her right to appeal non-jurisdictional issues that arose at prior stages of her case. This included the trial court's denial of her pretrial motion to suppress the drugs that were recovered during the traffic stop. Thus, we find that Rose has waived her ability to appeal the trial court's judgment that denied her motion to suppress the evidence.

B. The Traffic Stop

{¶32} Even assuming Rose had not waived her appellate review of the trial court's denial of her motion to suppress, her appeal would have still been unsuccessful. This is because the traffic stop was reasonable under the Fourth Amendment, which means that the evidence acquired during the stop is not suppressed.

{¶33} "A traffic stop initiated by a law enforcement officer constitutes a seizure within the meaning of the Fourth Amendment." *State v. Netter*, 2024-Ohio-1068, ¶ 14 (4th Dist.), citing *Whren v. United States*, 517 U.S. 806, 809-810 (1996). " ' "The Fourth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 14, prohibit unreasonable searches and seizures." ' " *State v. Shrewsbury*, 2014-Ohio-716, ¶ 14 (4th Dist.), quoting *State v. Emerson*, 2012-Ohio-5047, ¶ 15. "This constitutional guarantee is protected by the exclusionary rule, which mandates the exclusion of the evidence obtained from the unreasonable search and seizure at trial." *Id.*, citing *Emerson* at ¶ 15.

{¶34} "An officer's decision to stop a vehicle is reasonable when the officer has probable cause or reasonable suspicion to believe that a traffic violation has occurred." *Netter* at ¶ 14, citing *Whren* at 810. "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[.]" *Dayton v. Erickson*, 1996-Ohio-431, paragraph one of the syllabus.

{¶35} A police officer may stop the driver of a vehicle after observing a de minimis violation of traffic laws. *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,* 517 U.S. 806 (1996). Numerous Ohio appellate districts, including this Court, have concluded that a cracked windshield provides reasonable suspicion to justify a traffic stop if the crack renders the vehicle "unsafe," pursuant to R.C. 4513.02(A). *See State v. Emerick*, 2007-Ohio-4398, ¶ 19 (4th Dist.); *In re M.M.*, 2015-Ohio-3485, ¶ 9 (1st Dist.); *State v. Latham*, 2004-Ohio-2314, ¶ 19 (2d Dist.); *State v. McWhorter*, 2011-Ohio-1074, ¶ 17 (8th Dist.); and *State v. Carey*, 2018-Ohio-831, ¶ 16 (11th Dist.).

{¶36} "[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission"—to address the traffic violation that warranted the stop and attend to related safety concerns." (Brackets sic.) *State v. Farrow*, 2023-Ohio-682, ¶ 14 (4th Dist.), quoting *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). " 'Because addressing the infraction is the purpose of the stop, it may "last no longer than is necessary to effectuate th[at] purpose." Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.' " (Brackets sic.) *Id*., quoting *Rodriguez* at 354. The "tasks tied to traffic infractions include: (1) determining whether to issue a traffic ticket, (2) checking the driver's license, (3) determining the existence of outstanding warrants, (4) inspecting the vehicle's registration, and (5) examining proof of insurance." *Id.*, citing *Rodriguez* at 355.

{¶37} The traffic stop's mission also includes "attend[ing] to related safety concerns [of a traffic stop]." *Farrow* at ¶ 14, quoting *Rodriguez* at 354. Numerous federal appellate circuits have

> concluded, post-*Rodriguez*, that an officer may conduct a criminal-history check as part and parcel of the mission of a traffic stop. *See, e.g.*, *United States v. Dion*, 859 F.3d 114, 127 n.11 (1st Cir. 2017) ("[T]he Supreme Court has characterized a criminal-record check as a 'negligibly burdensome precaution' that may be necessary in order to complete the mission of the traffic stop safely.") (quoting *Rodriguez*, 575 U.S. at 356, 135 S.Ct. 1609); *United States v. Palmer*, 820 F.3d 640, 651 (4th Cir. 2016) ("A police officer is entitled to inquire into a motorist's criminal record after initiating a traffic stop."); *United States v. Sanford*, 806 F.3d 954, 956 (7th Cir. 2015) ("The trooper checked the occupants' criminal history on the computer in his car—a procedure permissible even without reasonable suspicion."); *United States v. Frierson*, 611 F. App'x 82, 85 (3d Cir. 2015) (unpublished) ("Upon initially detaining the men, [the officer] reasonably addressed the traffic violation that warranted the stop and attended to safety concerns. For example, any preliminary delay in checking [the driver's] license, registration, and criminal history was justified as part of the stop.").

United States v. Mayville, 955 F.3d 825, 830, fn. 1 (10th Cir. 2020).

We agree with this jurisprudence and hold that during a traffic stop a law enforcement officer running a criminal background check on "an occupant of a vehicle after initiating a traffic stop is justifiable as a 'negligibly burdensome precaution' consistent with the important governmental interest in officer safety." *Id*. at 830. However, "even ordinary inquiries incident to a traffic stop and permissible safety precautions[,like criminal background checks,] must be completed within a reasonable amount of time." *Id*., citing *Rodriguez* at 357.

{¶38} "In determining if an officer completed these tasks within a reasonable length of time, the court must evaluate the duration of the stop in light of the totality of the circumstances and consider whether the officer diligently conducted the investigation." *State v. Aguirre*, 2003-Ohio-4909, ¶ 36 (4th Dist.), citing *State v. Carlson*, 102 Ohio App.3d 585, 598-599 (9th Dist. 1995).

{¶39} " '[D]etention of a stopped driver may continue beyond [the normal] time frame when additional facts are encountered that give rise to a reasonable, articulable suspicion of criminal activity beyond that which prompted the initial stop.' " *Kincaid*, 2024-Ohio-2668, at ¶ 19 (4th Dist.) (Hess, J. Dissenting), quoting *State v. Batchili*, 2007-Ohio-2204, ¶ 15, citing *State v. Myers*, 63 Ohio App.3d 765, 771 (2d Dist.1990). "Reasonable suspicion exists when an officer can identify specific facts that, when taken together with rational inferences from those facts, would warrant a person of reasonable caution in the belief that an individual being stopped is committing a crime." *State v. Price*, 2000 WL 1357801, *1 (10th Dist. Sept. 21, 2000), citing *Florida v. J.L.,* 529 U.S. 266, 270 (2000).

> In reviewing the propriety of an officer's conduct, courts do not have available empirical studies dealing with inferences drawn from suspicious behavior, and we cannot reasonably demand scientific certainty from judges or law enforcement officers where none exists. Thus, the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior.

State v. Jordan, 2004-Ohio-6085, ¶ 47.

{¶40} In determining whether a law enforcement officer had reasonable and articulable suspicion of criminal activity courts again look to the totality-of-

the-circumstances. *Batchili*, at ¶ 17, citing *United States v. Arvizu*, 534 U.S. 266, 274 (2002). "The totality of the circumstances approach 'allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that "might well elude an untrained person." ' " *State v. Harper*, 2022-Ohio-4357, ¶ 34 (4th Dist.), quoting *Arvizu* at 273, quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981). Under the totality-of-the-circumstances approach, a courts must 'accord appropriate deference to the ability of a trained law enforcement officer to distinguish between innocent and suspicious actions.' " *United States v. Ar*chuleta, 619 Fed. Appx. 683, 688 (10th Cir. 2015), quoting *United States v. Alverez*, 68 F.3d 142, 144 (10th Cir. 1995).

{¶41} A motorist's past criminal history "is a factor that may be considered in the analysis of the totality of the circumstances." *State v. Stevens*, 2016-Ohio-5017, ¶ 36 (4th Dist.) (Harsha J., concurring). And "[w]hile '[some] degree of nervousness during interactions with police officers is not uncommon, * * * nervousness can be a factor to weigh in determining reasonable suspicion.' " (Second brackets and all ellipses sic.) *State v. Alexander-Lindsey*, 2016-Ohio-3033, ¶ 23 (4th Dist.), quoting *State v. Simmons,* 2013-Ohio-5088, ¶ 17 (12th Dist.), quoting *State v. Jennings,* 2013-Ohio-2736, ¶ 13 (10th Dist.). Finally, "[a] defendant's movements, such as furtive gestures, can be considered in analyzing whether a police officer had reasonable suspicion." *Id*. at ¶ 24, citing *Simmons* at ¶ 17*,* citing *State v. Bobo,* 37 Ohio St.3d 177, 179 (1988).

{¶42} "The officer may detain the vehicle for a period of time reasonably necessary to confirm or dispel his suspicions of criminal activity." *State v. Williams,* 2010-Ohio-1523, ¶ 18 (12th Dist.).

{¶43} Trooper Holbrook testified that in part he stopped Rose because her windshield had a "large sizable" crack running across it. The law provides that a cracked windshield is sufficient probable cause to initiate a traffic stop. *See Carey*, 2018-Ohio-831, at ¶ 16 (11th Dist.); *In re M.M.*, 2015-Ohio-3485, at ¶ 9 (1st Dist.), *State v. McWhorter*, 2011-Ohio-1074, ¶ 17 (8th Dist.). Rose, however, does not challenge the validity of the trooper's decision to make the traffic stop in her appeal. Therefore, we leave the trial court's decision finding that the trooper had probable cause to stop Rose undisturbed. Rather she challenges whether the stop exceeded the time necessary to resolve the traffic stop.

{¶44} Trooper Holbrook stopped Rose's car at approximately 11:04 a.m. After calling for a K-9 unit at 11:08 a.m., and collecting the necessary information (driver's licenses, registration, etc.), Trooper Holbrook returned to his cruiser and began the process of checking and verifying information necessary to complete the traffic stop. Approximately 17 minutes into the stop, at 11:21 a.m., Trooper Holbrook testified he received Rose's criminal background history. Three minutes later at 11:24 a.m., he received Rhea's criminal background history. Approximately one minute later at 11:25 a.m., the K-9 arrived. Upon learning of Rose and Rhea's criminal histories, we find that Trooper Holbrook had collected

sufficient information to develop a reasonable articulable suspicion that there was criminal drug activity a foot as we discuss infra.

{¶45} Trooper Holbrook testified that the first thing he noticed was that "[Rhea had] glassy bloodshot eyes, her pupils were dilated, she had very slurred thick speech. She also had – she was moving around quite a bit." Trooper Holbrook testified that he received classroom and field certification training to become a drug recognition expert, which taught him to use visual and non-verbal keys to identify individuals who are using drugs. Based on this expertise, Trooper Holbrook opined that Rhea was under the influence of drugs. We believe Trooper Holbrook's assessment in this regard is credible.

{¶46} Trooper Holbrook's suspicion of drug activity was further aroused by his observations that both Rose and Rhea were unusually nervous throughout the entire stop. He testified that people are usually nervous when they are pulled over but they typically calm down after the trooper first approaches. Trooper Holbrook further indicated that Rose and Rhea were moving around and he seen a "lot of hand waving and motioning from [his] dash cam[era]." The video from his dash camera corroborates the trooper's testimony that Rose and Rhea periodically gestured with their arms. Additionally, Trooper Holbrook testified that both Rose and Rhea failed to make eye contact with him during the stop.

{¶47} Finally, because Trooper Holbrook suspected the presence of drugs based on his observations of Rose and Rhea, he requested criminal background checks for both of them. Trooper Holbrook testified that requesting a criminal background check was "normal practice" when drugs are suspected. We find the

criminal background checks were permissible pursuant to the safety precaution component of a traffic stop as recognized by federal circuit courts of appeals. *See Mayville*, 955 F.3d 825, 830 fn. 1 (10th Cir. 2020). Pursuant to these background checks, Trooper Holbrook learned that *both* Rose and Rhea had criminal histories involving *drug* offenses.

{¶48} Under the totality of these circumstances (Rhea appeared to be under the influence of drugs, both Rose and Rhea were unusually nervous and moving around quite a bit, and both Rose and Rhea had drug offense histories), we find that Trooper Holbrook had reasonable articulable suspicion that criminal drug activity was afoot, which justified extending the stop beyond the receipt of the last criminal background information at 11:24 a.m., until the K-9 unit arrived and drugs were discovered.

{¶49} Once the K-9 unit arrived and Rose and Rhea were exiting the vehicle in preparation of the K-9's sniff, it was discovered that Rhea had marijuana in her possession, which further bolstered Trooper Holbrook's suspicion that there were drugs in the vehicle. Consequently, the continued extension of the traffic stop until the K-9 walked around the vehicle, which ultimately led to the discovery of marijuana and a fentanyl compound, was permissible under the Fourth Amendment because Trooper Holbrook had reasonable articulable suspicion that there were drugs in Rose's vehicle.

{¶50} Our case has similarities with *United States v. Miller*, 188 Fed.Appx. 287 (5th Cir. 2006). In *Miller*, the circuit court of appeals affirmed the district court's conclusion that defendant's inconsistent statements, prior drug conviction,

and nervous behavior were sufficient to support a reasonable articulable suspicion that criminal activity was afoot justifying an extension of a traffic stop for a drug-detecting K-9 to arrive. *Id*. at 288-289. In our case, there are no inconsistent statements, but, similar to *Miller, both* Rose and Rhea were abnormally nervous and both had prior criminal histories involving drug offenses. Moreover, in our case Rhea appeared to be under the influence of drugs at the time of the stop. We believe *Miller* supports our conclusion that in the instant case the totality-of-the-circumstances supports that there was reasonable articulable suspicion that criminal drug activity was afoot.

CONCLUSION

{¶51} Accordingly, we overrule Rose's sole assignment of error and affirm the trial court's judgment that denied her motion to suppress the evidence.

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 PICKAWAY COUNTY COURT OF COMMON PLEAS 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.

Abele, 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.