[Cite as *State v. Saunders*, 2024-Ohio-4580.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 113207
v.	:	
JAMES SAUNDERS,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART, VACATED IN PART, AND REMANDED
RELEASED AND JOURNALIZED: September 19, 2024

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-23-680375-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Andrew Rogalski and Brandon A. Piteo, Assistant Prosecuting Attorneys, *for appellee*.

Joseph V. Pagano, *for appellant*.

LISA B. FORBES, P.J.:

{¶ 1} James Saunders ("Saunders") appeals his convictions for two counts of election fraud and his accompanying 36-month prison sentence. After reviewing the facts of the case and pertinent law, we affirm Saunders's convictions, vacate his

prison sentence, and remand this case to the trial court for the limited purpose of resentencing Saunders to community-control sanctions.

I. Facts and Procedural History

{¶ 2} Saunders has been registered to vote in Ohio since 1988, and his current "Voter Information Report" lists his residence as 16210 Shaker Blvd., in Shaker Heights, Ohio ("Shaker Address"). On October 21, 2020, Saunders cast an early in-person vote in the November 3, 2020 general election at the Cuyahoga County Board of Elections ("Cuyahoga BOE"). Two years later, Saunders voted in person on the day of the general election, November 8, 2022, at his polling location in Shaker Heights.

{¶ 3} Saunders is also a registered voter in Florida and has been since 2009. His Voter Registration Receipt lists his residence as 405 N. Ocean Blvd., PH 23, in Pompano Beach, Florida ("Pompano Address"), which is in Broward County. Saunders's mailing address on his Florida Voter Registration Receipt is listed as his Shaker Address. On the day of the general election in 2020, which was held on November 3, Saunders voted in person at his polling place in Broward County, Florida. Two years later, Saunders voted by mail in the November 2022 general election in Broward County, Florida.

{¶ 4} On April 19, 2023, Saunders was indicted for two counts of election fraud in violation of R.C. 3599.12(A)(2), which are fourth-degree felonies. This case was tried to the bench on July 12, 2023, and on August 22, 2023, the court found Saunders guilty as indicted. On August 25, 2023, Saunders filed three motions: a

motion for a new trial under Crim.R. 33(A)(4); a motion for reconsideration of the guilty verdicts under Crim.R. 29(C); and a motion for directed acquittal under Crim.R. 29(C). All three of these motions contain the same argument, namely, that "the November 2020 election in Ohio was not . . . the 'same election' as the November 2020 election in Florida. Similarly, the November 2022 election in Ohio was not the 'same' election as the November 2022 election in Florida." The trial court denied these motions.

{¶ 5} On August 28, 2023, the court sentenced Saunders to two terms of 18 months in prison and ran these sentences consecutively, for an aggregate sentence of 36 months in prison. Saunders now appeals raising five assignments of error for our review:

> I. The trial court erred when it denied appellant's motion for acquittal under Crim.R. 29 because the state failed to establish subject matter jurisdiction in Ohio and failed to present sufficient evidence to establish beyond a reasonable doubt the elements necessary to support the convictions.
>
> II. Appellant's convictions are against the manifest weight of the evidence.
>
> III. The trial court erred by denying appellant's post-judgment motions for reconsideration and/or for a new trial and/or for acquittal pursuant to Crim.R. 29(C).
>
> IV. Appellant's sentence is contrary to law because the record does not support the imposition of maximum consecutive sentences for fourth degree felony convictions and the court erred by denying the defense request for a presentence investigation report.
>
> V. Appellant received ineffective assistance of counsel in violation of his rights pursuant to the Sixth Amendment to the United States Constitution and Art. I, Sec. 10 of the Ohio Constitution.

II. Trial Testimony

{¶ 6} At Saunders's trial, the State presented the following testimony and evidence.

A. Anthony Kaloger

{¶ 7} Anthony Kaloger ("Kaloger") testified that he is the deputy director at the Cuyahoga BOE. Kaloger "help[s] oversee the execution of elections," and he has "about 10 managers that work directly under" him and the director at the Cuyahoga BOE. Kaloger has been employed at the Cuyahoga BOE for 15 years, and he has been the deputy director for two and-a-half years.

{¶ 8} Kaloger testified that he is familiar with the elections laws that applied in Cuyahoga County in 2020 and 2022. According to Kaloger, a person can validly vote in three ways: on election day at their polling location; early in-person voting at the Cuyahoga BOE; or by mail.

{¶ 9} Kaloger explained that to vote by mail, an individual must first submit a timely vote-by-mail application. The Cuyahoga BOE verifies that the information received, including the voter's signature, matches the information in the voter registration database. If it does, the BOE sends a vote-by-mail ballot to the voter. Next, the individual fills out their ballot and returns it to the Cuyahoga BOE. The Cuyahoga BOE then verifies the information again before approving the ballot. Kaloger further explained that the ballots are the same for all three voting methods, but how the information is tracked and documented differs.

{¶ 10} According to Kaloger, the Cuyahoga BOE provided documents to law enforcement pursuant to a public-records request in relation to the case at hand. Kaloger is familiar with these documents, which were introduced into evidence at Saunders's trial. The information available for each voter includes name, residence, phone number, signature, party affiliation if any, a registration date, precinct, voting location, and "status." Kaloger explained that there are various statuses, including "active," "inactive," and "cancelled."

{¶ 11} Kaloger testified about the "mechanisms" and "policies" in place to ensure that a voter's identity can be verified at the Cuyahoga BOE and polling locations. Kaloger testified that Saunders is a registered voter in Cuyahoga County, and he has a voter ID number, which is a "unique number for each registered voter." The address listed for Saunders with the Cuyahoga BOE is the Shaker Address. Saunders's Cuyahoga BOE voter registration card from 1988 and a printout of Saunders's provisional ballot application from 2011 included Saunders's signature.

{¶ 12} Saunders voted early in person at the Cuyahoga BOE on October 21, 2020, for the November 3, 2020 general election. A "live election worker" compared Saunders's signature on that day with the signature the Cuyahoga BOE had on file for Saunders. According to Kaloger, the full name of "James Dalton Saunders" was signed in cursive on the documents, and the signatures matched. Kaloger further testified that the Cuyahoga BOE would have requested Saunders's identification before allowing him to cast a vote in person.

{¶ 13} Saunders voted in person at Woodbury Elementary School in Shaker Heights on November 8, 2022, which was the general election day. According to Kaloger, an elections worker confirmed Saunders's identification via a bank statement prior to providing him a ballot. The election worker additionally compared Saunders's signature that day to Saunders's signature on file with the Cuyahoga BOE.

{¶ 14} Kaloger testified that a sign or notice is prominently posted in each polling location in Cuyahoga County on election days. This notice states that "Ohio law prohibits any person from voting or attempting to vote contrary to law more than once at the same election. Violators are guilty of a felony of the fourth degree and shall be imprisoned and additionally may be fined in accordance with the law."

{¶ 15} Kaloger testified that the Cuyahoga BOE was not able to determine from the ballot each voter cast the issue or candidate for which each person voted. According to Kaloger, a voter could turn in a ballot "as-is" meaning that they left it "completely blank," and this would still be considered as "casting a ballot."

{¶ 16} On cross-examination, Kaloger testified as follows about the word "residence":

> Ohio law defines residence as the place — as what the voter considers to be their permanent residence, not temporary, and where they intend to return. So for example a snow bird who might be going to Arizona or something for several months a year but they still maintain a home that — in Ohio that they consider to be their registered address.

{¶ 17} Asked if people can "have more than one residence [i]n a voting sense," Kaloger answered, "No." Asked about the phrase "at the same election,"

which is part of the notice that the Cuyahoga BOE posts at each polling location, Kaloger explained that the "same location . . . wouldn't be at a May election and a November election . . . ." Defense counsel next asked Kaloger if the notice referenced "voting in other states," to which Kaloger replied, "No. Other than same election I guess."

{¶ 18} Kaloger testified that in October 2020, when Saunders voted early in person for the November 3, 2020 general election, Saunders "would not be breaking the law."

B. Tiffany Washington

{¶ 19} Tiffany Washington ("Washington") testified via Zoom that she is the Voters Services Manager for the Broward County Board of Elections in Florida ("Broward BOE"). Washington, who has held this position "for about three or four years," manages the "day-to-day operations . . . to make sure that elections are ran [sic] smoothly." Washington is responsible for "[p]rimary elections, general elections, special elections, [and] municipal elections." Washington further testified that there are standard times during which elections take place nationwide.

> Q: So are there times that your county is holding an election and every other Florida county is offering residents there the ability to vote in that same election?
>
> A: Yes.
>
> Q: To your knowledge, are there similar times during which other counties in other states are allowing ballots to be cast in those same elections at the same time or on the same day?
>
> A: Yes.

{¶ 20} Washington testified about the three manners in which a person can vote in Florida, which are substantially similar to the three manners in which a person can vote in Ohio: "[o]n election day at their assigned voting place"; "[a]bsentee ballot, which is Vote-by-Mail"; and early voting. According to Washington, there are safeguards in place to ensure the identity of voters, such as a valid Florida ID or driver's license. Washington testified that to vote in Broward County, one would have to be a Florida resident. "If they own a property or a residence here in Florida, then, yes, they are considered a Florida resident." The prosecutor asked Washington about a scenario in which "a person, say, owned a home in Florida but also owned a home in Ohio? Would they have to designate which house was the house that they spent the majority of their time in or intended to return to?" Washington answered, "Yes. They should." However, Washington explained that she typically does not have knowledge of whether "somebody is voting where they vacation" because "[t]hey don't convey that to us."

{¶ 21} Similar to the Cuyahoga BOE, the Broward BOE keeps records of whether a voter voted in "any election" but does not keep records of actual ballots. "We can't associate a specific ballot with a specific voter."

{¶ 22} Washington testified about several documents that the Broward BOE provided to the Cuyahoga County Prosecutor's Office in this case. The first is a Voter Registration Receipt for Saunders, which was generated by the Broward BOE on February 3, 2023. It lists Saunders's residence as the Pompano Address. Saunders's mailing address is listed as the Shaker Address, his "voter status" is listed as "active,"

and he has been registered to vote in Florida since July 8, 2009. The next document about which Washington testified listed the same information for Saunders and included his signature. Washington then testified about Saunders signature that he provided to the Department of Motor Vehicles for Florida to obtain a Florida driver's license. Washington testified as follows about why the Broward BOE retained copies of voters' signatures:

> Basically what we do when we retain signatures is because we need to match them up, like in case where we need to make sure that this is the voter. Let's just say there's a voter certificate from voting via mail, like the absentee ballot. We need to match the signature with what the voter — how the voter signed on the ballots. We match it with what we have on our files.

{¶ 23} On October 24, 2020, Saunders requested that a vote-by-mail ballot from the Broward BOE be sent to 42 6th Street, Northeast, Pulaski, Virginia, 24301. Washington testified that the Broward BOE sent Saunders a ballot in Virginia on October 26, 2020. However, the Broward BOE's records do not show that Saunders cast the 2020 vote-by-mail ballot. Washington testified that on November 3, 2020, Saunders signed a "voting pass" indicating that he voted in person that day in Broward County in the "2020 General Election." Saunders's address is listed as the Pompano Address on this document.

{¶ 24} Washington next testified about an "address confirmation final notice," which was mailed to Saunders at his Pompano Address. Saunders signed this notice on July 22, 2021, in which he confirmed that his Pompano Address was current and correct.

{¶ 25} Washington testified that on October 20, 2022, Saunders requested that a vote-by-mail ballot from the Broward BOE be sent to his Shaker Address. According to Washington, the Broward BOE sent a ballot to the Shaker Address on October 21, 2022. Washington testified that on November 1, 2022, Saunders signed a "voter certificate" indicating that he voted by mail in the November 8, 2022 general election. This certificate includes the following affirmation:

> I, James Dalton Saunders, do solemnly swear or affirm that I am a qualified and registered voter of Broward County, Florida and that I have not and will not vote more than one ballot in this election. I understand that if I commit or attempt to commit any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I can be convicted of a felony of the third degree and fined up to $5,000 and/or imprisoned for up to 5 years. I also understand that failure to sign this certificate will invalidate my ballot.

{¶ 26} On cross-examination, Washington testified that the Broward BOE had no information indicating whether Saunders voted in Ohio in the 2020 general election and the 2022 general election.

C. Special Agent David Lehrke

{¶ 27} David Lehrke ("Special Agent Lehrke") testified that he is a Special Agent with the Ohio Bureau of Criminal Investigation, which falls under the umbrella of the Ohio Attorney General's Office. Special Agent Lehrke was assigned to investigate Saunders as part of the Ohio Secretary of State's request regarding voter fraud cases. According to Special Agent Lehrke, when he received the Saunders assignment, it specifically dealt only with the 2020 general election.

{¶ 28} Special Agent Lehrke first attempted to contact Saunders at his Shaker Address. This was unsuccessful, but he contacted "a female and a male who

were staying at the residence at that time." Special Agent Lehrke next attempted to contact Saunders via a 216 area code phone number that was documented as part of Saunders's file. This attempt was also unsuccessful as the "phone went to voice mail, and the voice mail was not set up so I couldn't leave a message." Special Agent Lehrke next attempted to contact Saunders with the assistance of the Broward County Sheriff's Office in Florida.

{¶ 29} Ultimately, Special Agent Lehrke interviewed Saunders "[o]utside in the driveway" at the Shaker Address in January 2023. According to Special Agent Lehrke, "Saunders stated that he occasionally resided in the Pompano Beach area. In regard to his voter registration, he was a current Florida resident and voter." Saunders further stated that "he drove from Washington D.C. on the evening of November 2, 2020, down to Pompano Beach to cast an in-person ballot for the 2020 election." Special Agent Lehrke testified that Saunders "initially stated that he was unsure if he cast a vote in Ohio during the 2020 general election. He stated that he frequently travels from Ohio to DC and Florida and was unaware, but at the end I believe that he accidentally might have casted [sic] a ballot for the 2020 general election in Ohio." Special Agent Lehrke clarified that "accidentally" is the word that Saunders used.

{¶ 30} Special Agent Lehrke showed Saunders the "initial documents that were received from Ohio and Florida" with Saunders's signature on them. Saunders did not contest that he signed these documents. As part of the investigation, Special Agent Lehrke learned that Saunders was an attorney "in Ohio and Florida." Special

Agent Lehrke also learned that Saunders voted in Ohio and Florida in 2022 in addition to 2020. Records for Saunders's 216 cell phone number were obtained from AT&T for October and November of 2020 and 2022. Special Agent Lehrke testified that Saunders's "cell phone would show detailed locations where he would be at on certain times, certain dates so that's what we were looking to establish." Saunders's cell-phone records established that this cell phone was "in the states in the locations where either the votes were cast or the absentee ballots were requested."

{¶ 31} Special Agent Lehrke agreed that the documents showed "for the 2020 presidential general election . . . Saunders voted early in person in October 2020 at the Cuyahoga" BOE. Special Agent Lehrke also agreed that the documents showed "for the day of the presidential general election in November of 2020, [Saunders cast] an in-person vote at a church in Pompano Beach in Broward County, Florida."

{¶ 32} Asked "[w]ith respect to the 2022 election, based on the information that you had, was it a vote that was cast at an elementary school at the appropriate polling place for . . . Saunders on Election Day in November of 2022," Special Agent Lehrke answered, "Yes." Special Agent Lehrke then agreed that "for the November, 2022 general election in Florida the records showed that there was an absentee ballot that was mailed to the Shaker Heights address where you met with . . . Saunders some time in October of 2022."

{¶ 33} On cross-examination, Special Agent Lehrke testified that he did not speak with Saunders about anything that happened in 2022, because he was investigating only 2020 at that time. Special Agent Lehrke again testified that Saunders said he "accidentally" voted in Ohio in 2020. Saunders then requested not to speak further with Special Agent Lehrke. According to Saunders's defense counsel, Saunders "does some things he says is an accident, whatever he says, and then he wants to lawyer up." Special Agent Lehrke replied, "Correct."

{¶ 34} According to Special Agent Lehrke, Saunders did not commit a crime on October 21, 2020 when he voted early in person, but he broke Ohio law when he voted in Florida.

{¶ 35} In the 2022 general election, Saunders cast his vote "first" in Florida by sending in an absentee ballot on November 2, 2022. Saunders next voted in person in Ohio on November 8, 2022, which, according to Special Agent Lehrke, is "contrary" to Ohio law. Saunders's defense counsel asked Special Agent Lehrke about investigating "an act that takes place outside of the jurisdiction of Ohio [that] is a crime that is punished in Ohio." Special Agent Lehrke said he has investigated "[v]ehicle thefts outside of the state recovered inside Ohio."

{¶ 36} Special Agent Lehrke testified that his investigation revealed that Saunders was "an eligible voter" in Ohio and Florida at the time these crimes took place. According to Special Agent Lehrke, Saunders "was eligible in both states," but he "can't do it in the same election." Asked if he saw a difference between voting "at"

the same election and "in" the same election, Special Agent Saunders said, "I do not see any difference between those words."

III. Law and Analysis

{¶ 37} One of the basic tenets of democracy is that each person has one vote. *See generally* "*Dissertation on the First Principles of Government*," Paine, Thomas, Life 5:221-25 (1795) ("The true and only true basis of representative government is equality of rights. Every [person] has a right to one vote, and no more in the choice of representatives."); *Rucho v. Common Cause*, 588 U.S. 684, 686 (2019) ("This Court's one-person, one-vote cases recognize that each person is entitled to an equal say in the election of representatives."). In *Bush v. Gore*, 531 U.S. 98, 104 (2000), the United States Supreme Court recognized that the right to vote for President has been granted to the people and that right is a fundamental right, and that "one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter."

{¶ 38} The issue presented in this case, which questions what it means "to vote more than once at the same election," appears to be one of first impression in Ohio. The undisputed facts here are relatively simple. Saunders voted "at" the 2020 and 2022 general elections in both Ohio and Florida. Today we determine whether this conduct violated R.C. 3599.12(A)(2).

A. R.C. 3599.12 — Illegal Voting

{¶ 39} Pursuant to R.C. 3599.12(A)(2), "No person shall . . . [v]ote or attempt to vote more than once at the same election by any means, including voting or

attempting to vote both by absent voter's ballots . . . and by regular ballot at the polls at the same election . . . ." Pursuant to R.C. 3599.12(B), illegal voting is a fourth-degree felony.

B. Sufficiency of the Evidence

{¶ 40} "[A]n appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of defendant's guilt beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259, 273 (1991). The relevant inquiry is, "after viewing the evidence in the light most favorable to the prosecution, whether any reasonable trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *Id.* "In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law." *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997).

{¶ 41} In Saunders's first assignment of error, he argues that his convictions for two counts of election fraud are not supported by sufficient evidence in the record. Specifically, Saunders's argument has three parts: First, Saunders argues that "Ohio lacked jurisdiction to prosecute him on count one . . . [b]ecause it is undisputed that . . . Saunders had not voted anywhere else before he voted on October 21, 2020 in Ohio . . . ." Second, Saunders argues that the State presented insufficient evidence that he voted "more than once at the same election." And third, Saunders argues that the State presented insufficient evidence of mens rea.

1. Jurisdiction

{¶ 42} R.C. 2901.11(A)(1) states that a "person is subject to criminal prosecution and punishment in this state if . . . [t]he person commits an offense under the laws of this state, any element of which takes place in this state."

{¶ 43} Saunders's first argument concerns the 2020 general election, at which he first voted in Ohio via early in-person voting at the Cuyahoga BOE on October 21, 2020, and voted for a second time in person at the Broward BOE on election day on November 3, 2020. Saunders argues that if any criminal activity took place, it was in Florida when he voted for the second time, and Ohio has no jurisdiction to prosecute alleged crimes that took place in Florida.

{¶ 44} Our plain reading of R.C. 2901.11(A)(1) shows that Saunders's argument is without merit. In *State v. Froman*, 2020-Ohio-4523, ¶ 36, the Ohio Supreme Court reasoned that Ohio had jurisdiction over the defendant for aggravated murder "and its accompanying course-of-conduct specifications" when the defendant murdered one victim in Ohio and another victim in Kentucky. "The fact that the course-of-conduct specification included the murder of [one of the victims], which occurred in Kentucky, did not divest Ohio of jurisdiction over the offense of [the other victim's] murder." *Id.*

{¶ 45} In the case hand, Saunders was convicted of violating R.C. 3599.12(A)(2), which makes it a crime to vote more than once in the same election. An element of this offense is "to vote more than once," which necessarily starts with voting once. And Saunders did just that in the 2020 general election in

Ohio. Therefore, he committed one element of illegal voting in violation of R.C. 3599.12(A)(2) in Ohio, and jurisdiction here is proper.

2. The Same Election

{¶ 46} On appeal, Saunders argues that the law does "not establish a national election . . ." and each "each state conducts its own elections." Therefore, according to Saunders, the 2020 and 2022 general elections in Ohio are not the "same elections" as the 2020 and 2022 general elections in Florida. We disagree.

{¶ 47} To support his argument, Saunders cites *State v. Hannah*, 238 Ariz. 5 (2015), in which an Arizona appellate court found that the State presented insufficient evidence to prove that the defendant "cast more than one vote in a single election." The facts of *Hannah* are substantially similar to the facts of the case at hand. In *Hannah*, the defendant voted by mail on October 18, 2010 "in the general election held in Colorado on November 2, 2010" and voted in person on election day "in the general election held in Arizona on November 2, 2010."

{¶ 48} The Arizona statute at issue in *Hannah*, subsection (2) of A.R.S. § 16-1016, provides that a "person is guilty of a class 5 felony who . . . [k]nowingly votes more than once at any election." The *Hannah* Court found, despite the fact that "elections held on the first Tuesday following the first Monday of November in every even-numbered year are sometimes referred to as 'national elections' . . ., these state elections are held on the same day as a matter of administrative and practical convenience . . . ." *Id.* at ¶ 7. The *Hannah* Court further found that

> the elections held in Arizona and Colorado on November 2, 2010, although occurring on the same day, were separate and discrete

> elections, held in two different states. While the evidence is sufficient to permit a finding that Hannah cast a ballot in both Arizona and Colorado on November 2, 2010, the evidence is insufficient to show Hannah voted "more than once in any election," such that her vote received more weight than that of any other citizen, where there is no evidence that any candidate appeared on both ballots and 2010 was not a presidential election year.

Id. at ¶ 8. We respectfully decline to follow the line of reasoning set forth in the *Hannah* opinion.

{¶ 49} Instead, we find more persuasive federal law from the 6th Circuit when addressing this issue. In *Millsaps v. Thompson*, 259 F.3d 535 (6th Cir. 2001), the court held as follows:

> [T]he legislative history suggests that Congress established a uniform federal election day to fulfill multiple objectives. Specifically, Congress sought to prevent early elections in one State from influencing those in States voting later, to remove the burden of voting in multiple elections in a single year, and to minimize the opportunity for voters to cast ballots in elections held in more than one State . . . At most Congress has demonstrated concern for fraud only in the narrowest sense, that of voting in federal elections held in more than one State.

{¶ 50} Regarding the election of the President of the United States, the United States Constitution, Art. II, § 1, Cl. 4 states that "Congress may determine the Time of chusing [sic] the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States." Congress established that "the electors of President and Vice President shall be appointed, in each State, on election day, in accordance with the laws of the State enacted prior to election day." 3 U.S.C. 1.

{¶ 51} Regarding the election of Senators and Representatives, the United States Constitution provides, "The Times, Places and Manner of holding Elections

for Senators and Representatives, shall be prescribed in each state by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . . ." Art. I, § 4, Cl.1. Consistent with that provision, 2 U.S.C. 7 provides, "The Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress . . . ."

{¶ 52} In R.C. 3501.01(A), the Ohio General Assembly defined "general election" as "the election held on the first Tuesday after the first Monday in each November." Similarly, Fla.Stat. 100.031 provides, "A general election shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year . . . ."

{¶ 53} In light of the foregoing, we reject Saunders's argument that he did not vote twice at the "same election." In compliance with federal and state law, the 2020 general election was held on November 3, 2020, with voting occurring in Ohio and Florida. Likewise, the 2022 general election was held on November 8, 2022, with polling locations in Ohio and Florida. In each of the elections in 2020 and 2022 at issue in this case, voters in Florida and Ohio determined the makeup of the United States Congress. In addition, in 2020 voters in both Florida and Ohio selected the President. That the administration and regulation of elections is decentralized does not change the fact that the general election that occurred on the Tuesday after the first Monday in November in 2020 and 2022 in Ohio was the "same election" as in Florida.

{¶ 54} The evidence demonstrated that Saunders voted in the general election in both Ohio and Florida in 2020 and 2022. Accordingly, there is sufficient evidence in the record that Saunders voted more than once at the same general election in 2020 and the same general election in 2022.

3. Mens Rea

{¶ 55} Saunders argues on appeal that "the culpable mental state for R.C. 3599.12(A)(2) is recklessness . . . ." To support this argument, Saunders cites R.C. 2901.21(C)(1), which states as follows: "When language defining an element of an offense that is related to knowledge or intent or to which mens rea could fairly be applied neither specifies culpability nor plainly indicates a purpose to impose strict liability, the element of the offense is established only if a person acts recklessly." We disagree that R.C. 3599.12(A)(2) requires a showing of recklessness.

{¶ 56} A "person is not guilty of an offense unless . . . [t]he person has the requisite degree of culpability for each element as to which a culpable mental state is specified by the language defining the offense." R.C. 2901.21(A)(2).

{¶ 57} R.C. 2901.21(B) governs strict-liability offenses, and it states as follows:

> When the language defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct described in the section, then culpability is not required for a person to be guilty of the offense. The fact that one division of a section plainly indicates a purpose to impose strict liability for an offense defined in that division does not by itself plainly indicate a purpose to impose strict criminal liability for an offense defined in other divisions of the section that do not specify a degree of culpability.

{¶ 58} Ohio courts have held that R.C. 3599.12 is a strict-liability statute. *State v. Arent*, 2012-Ohio-5263, ¶ 11 (6th Dist.); *State v. Worrell*, 2007-Ohio-7058, ¶ 13 (9th Dist.); *State v. Hull*, 133 Ohio App.3d 401, 408 (12th Dist. 1999) ("R.C. 3599.12 is an example of a statute which properly imposes strict liability to protect the general welfare."); *State v. Workman*, 126 Ohio App.3d 422, 426 (5th Dist. 1998).

{¶ 59} In *Arent* at ¶ 11, the Sixth District Court of Appeals analyzed the difference between the mens rea in two Ohio voting statutes.

> Here, one offense of illegal voting defined under the statute has a culpable mental state, while the one at issue does not. Furthermore, the General Assembly made a distinction between the false registration statute, R.C. 3599.11(A), which includes a "knowingly" mens rea element, and the illegal voting statute, R.C. 3599.12(A)(2), which does not contain a culpable mental state. Clearly, the absence of a culpable mental state is a plain indication the General Assembly wanted to make a distinction between the two offenses and intended for R.C. 3599.12(A)(2) to be a strict liability offense.

{¶ 60} We agree with the reasoning of *Arent* and the conclusion of our sister courts that R.C. 3599.12(A)(2) is a strict-liability offense.

{¶ 61} In summary, after reviewing the testimony and evidence presented at Saunders's trial, we conclude that there was sufficient evidence that the trial court had jurisdiction to hear this case and that Saunders voted more than once at the same election in 2020 and 2022. Because R.C. 3599.12(A)(2) is a strict-liability offense, no evidence of a culpable mental state needed to be introduced at trial.

{¶ 62} Accordingly, Saunders's first assignment of error is overruled.

C. Manifest Weight of the Evidence

{¶ 63} A manifest-weight-of-the-evidence challenge "addresses the evidence's effect of inducing belief. . . . . In other words, a reviewing court asks whose evidence is more persuasive — the state's or the defendant's?" *State v. Wilson*, 2007-Ohio-2202, ¶ 25. "When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as the 'thirteenth juror' and disagrees with the factfinder's resolution of the conflicting testimony." *Thompkins*, 78 Ohio St.3d at 387. Reversing a conviction under a manifest-weight theory "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *State v. Martin,* 20 Ohio App.3d 172, 175 (1st Dist.1983).

{¶ 64} In Saunders's second assignment of error, he argues that his convictions are against the manifest weight of the evidence for "all of the reasons presented" under his first assignment of error. Upon review of the record in this case, we conclude that Saunders's convictions are supported by the weight of the evidence for all of the reasons that they are based on sufficient evidence. This is not the exceptional case where the evidence weighs against the conviction.

{¶ 65} Accordingly, Saunders's second assignment of error is overruled.

D. Motions for Acquittal, Reconsideration, and New Trial

{¶ 66} In his third assignment of error, Saunders argues that the court erred by denying the three motions he filed on August 25, 2023. As stated earlier in this opinion, all three of these motions contain the same argument, which is entitled

"Consolidated Memorandum of Law." In these motions, Saunders argues that there is insufficient evidence to support his convictions under Crim.R. 29(C) and his convictions are "contrary to law, this requiring a new trial under Crim.R. 33(A)(4)."

{¶ 67} Crim.R. 29(C) states in part that "[i]f a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal." This court applies "the same standard to postjudgment motions for acquittal made pursuant to Crim.R. 29(C) as to prejudgment motions for acquittal made pursuant to Crim.R. 29(A)." *State v. Allen*, 2005-Ohio-5686, ¶ 15 (8th Dist.). Furthermore, a "Crim.R. 29 motion challenges the sufficiency of the evidence." *State v. Hill*, 2013-Ohio-578, ¶ 13.

{¶ 68} To the extent that this assignment of error relates to a Crim.R. 29(C) motion for acquittal or a Crim.R. 29(C) motion for reconsideration, we find that these arguments test the sufficiency of the evidence presented by the State at Saunders's trial. We have thoroughly reviewed and rejected Saunders's arguments regarding the sufficiency of the evidence against him in his first assignment of error. The same reasoning applies to overrule the portion of Saunders's third assignment of error that challenges the sufficiency of the evidence.

{¶ 69} We now turn to Saunders's argument that the court erred by denying his motion for a new trial under Crim.R. 33(A), which states in part pertinent to this appeal that a "new trial may be granted on motion of the defendant for any of the following causes affecting materially the defendant's substantial rights: . . . (4) That the verdict is contrary to law . . . ." Appellate courts "review the denial of a

Crim.R. 33 motion for abuse of discretion." *State v. Fortson*, 2003-Ohio-5387, ¶ 10 (8th Dist.).

{¶ 70} In Saunders's appellate brief, he explains his argument that "the verdict is contrary to law" as follows: "The court abused its discretion in denying [his] motion for new trial pursuant to Crim.R. 33(A)(4) because it erred in concluding the Ohio elections and the Florida elections were the 'same election' for purposes of establishing a violation of R.C. 3599.12(A)(2)." Again, this argument has been reviewed and rejected previously in this opinion.

{¶ 71} Accordingly, Saunders's third assignment of error is overruled.

E. Felony Sentencing

{¶ 72} In Saunders's fourth assignment of error, he argues that the imposition of maximum, consecutive prison sentences, rather than community-control sanctions, for his convictions was "improper." We agree.

1. Standard of Review

{¶ 73} Pertinent to this appeal, R.C. 2953.08(G)(2) provides, in part, that when reviewing felony sentences, the appellate court's standard is not whether the sentencing court abused its discretion; rather, if this court "clearly and convincingly" finds that (1) "the record does not support the sentencing court's findings under (B) . . . of section 2929.13 . . ." or (2) "the sentence is otherwise contrary to law," then we may conclude that the court erred in sentencing. *See also State v. Marcum*, 2016-Ohio-1002.

{¶ 74} A sentence is not clearly and convincingly contrary to law "where the trial court considers the purposes and principles of sentencing under R.C. 2929.11 as well as the seriousness and recidivism factors listed in R.C. 2929.12, properly applies post-release control, and sentences a defendant within the permissible statutory range." *State v. A.H.*, 2013-Ohio-2525, ¶ 10 (8th Dist.).

{¶ 75} Pursuant to R.C. 2929.11(A), the three overriding purposes of felony sentencing are "to protect the public from future crime by the offender and others," "to punish the offender," and "to promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden of state or local government resources." Additionally, the sentence imposed shall be "commensurate with and not demeaning to the seriousness of the offender's conduct and its impact on the victim, and consistent with sentences imposed for similar crimes committed by similar offenders." R.C. 2929.11(B).

{¶ 76} Furthermore, in imposing a felony sentence, "the court shall consider the factors set forth in [R.C. 2929.12(B) and (C)] relating to the seriousness of the conduct [and] the factors provided in [R.C. 2929.12(D) and (E)] relating to the likelihood of the offender's recidivism . . . ." R.C. 2929.12. However, this court has held that "[a]lthough the trial court must consider the principles and purposes of sentencing as well as the mitigating factors, the court is not required to use particular language or make specific findings on the record regarding its consideration of those factors." *State v. Carter*, 2016-Ohio-2725, ¶ 15 (8th Dist.).

{¶ 77} As noted earlier in this opinion, an illegal-voting conviction is a fourth-degree felony. Pursuant to R.C. 2929.14(A)(4), a prison term for a fourth-degree felony conviction is "a definite term of six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months." Under R.C. 2929.13(B)(1)(a), courts shall sentence offenders convicted of fourth- or fifth-degree felonies to community-control sanctions, rather than prison, if the offender has no previous felony convictions, the most serious charge against the offender is a fourth- or fifth-degree felony, and the offender has no misdemeanor convictions within the previous two years.

{¶ 78} However, under R.C. 2929.13(B)(1)(b), courts have discretion to impose a prison term on an offender who is convicted of a fourth- or fifth-degree felony under certain circumstances, including, as pertinent to this appeal: "(vii) The offender held a public office or position of trust, and the offense related to that office or position; the offender's position obliged the offender to prevent the offense or to bring those committing it to justice; or the offender's professional reputation or position facilitated the offense or was likely to influence the future conduct of others."

2. Analysis

a. Sentencing Hearing

{¶ 79} At the August 28, 2023 sentencing hearing, the State argued that Saunders "is an active licensed attorney in the State of Ohio . . . where he takes an oath to uphold the Constitution and uphold the laws of the State of Ohio and that

his voting as an attorney is, in other words, an aggravating factor for this Court to consider." The State additionally noted that the certified records introduced at trial in this case showed that Saunders voted twice in 2014 and 2016. Although Saunders was not indicted for this activity because the State "believed that it was time-barred," the prosecutor argued this "double voting with impunity for almost a decade" could be considered when imposing sentence.

{¶ 80} In imposing a prison sentence rather than community-control sanctions for Saunders's fourth-degree felony convictions, the court stated the following:

> [The] Court finds that there's an exception in this case to a mandatory community control sanction, that the offender, Mr. Saunders, held a public office or position of trust and the offense related to that office or position, the offender's position obliged the offender to prevent the offense or to bring those committing it to justice, or the offender's professional reputation or position facilitated the offense, or is likely to influence future conduct of others.
>
> Mr. Saunders, you are an attorney. You should be held to a higher standard than an ordinary unsophisticated citizen. You know what the laws are. You know exactly what you can and cannot do.
>
> Furthermore, you're a former federal employee. You engaged in this cavalier conduct and perpetuated a fraud and crime on every voting citizen, every citizen in this country. Your conduct dating back to 2014 of purposeful, intentional double voting warrants and deserves a prison sentence.

{¶ 81} The court imposed a prison sentence of 18 months on each count and ran these sentences consecutively for an aggregate term of 36 months in prison. Upon review, we find that, by clear and convincing evidence, the record in the case at hand does not support the trial court's findings under R.C. 2929.13(B)(1)(b)(vii).

b. Prison Rather than Community-Control Sanctions

{¶ 82} In his fourth assignment of error, Saunders first argues that "[a]ll the statutory factors that require a community control sentence apply in this case." Specifically, Saunders argues that "[t]here is no indication that being an attorney was at all related to the commission of the alleged offenses or any way influenced the future conduct of others." To support this argument, Saunders cites *State v. Slagle*, 2011-Ohio-1463 (4th Dist.). Our review of *Slagle* shows that, although the defendant was sentenced to prison for several fifth-degree felony convictions, the appeal and the opinion have nothing to do with R.C. 2929.13(B)(1) and sentencing an offender to prison rather than community-control sanctions.

{¶ 83} In the case at hand, the court found that R.C. 2929.13(B)(1)(b)(vii) applied to Saunders, in that it read the statute verbatim into the record. Under R.C. 2953.08(G)(2) we must review the court's findings regarding R.C. 2929.13(B)(1) to see if, by clear and convincing evidence, the record does not support these findings. If it does not, we are compelled to modify or vacate the sentence. *See Marcum*, 2016-Ohio-1002, at ¶ 22.

{¶ 84} The court found that Saunders was an attorney, and that as an attorney, he "should be held to a higher standard than an ordinary unsophisticated citizen." The court further found that Saunders knew "what the laws are. You know exactly what you can and cannot do." The court further found that Saunders used to work for the federal government and that the crimes he committed impacted

"every voting citizen, every citizen in this country. Your conduct dating back to 2014 of purposeful, intentional double voting warrants and deserves a prison sentence."

{¶ 85} On appeal, Saunders cites to four cases in which the defendants were convicted of violating R.C. 3599.12 and sentenced to community-control sanctions rather than prison. *See State v. Urbanek*, 2023-Ohio-2249 (6th Dist.), *State v. Arent*, 2012-Ohio-5263 (6th Dist.), *State v. Hull*, 133 Ohio App. 401 (12th Dist. 1999), and *State v. Workman*, 126 Ohio App.3d 422 (5th Dist. 1998). Our review of all four of these cases shows that none of the defendants appealed their sentences; therefore, the courts of appeals offered no analysis of R.C. 2929.13(B)'s preference for imposing community-control sanctions for fourth-degree felony convictions.

{¶ 86} Upon review, we find that the record in the case at hand does not support the trial court's findings under R.C. 2929.13(B)(1)(b)(vii). First, we find that, under R.C. 2929.13(B)(1)(a), Saunders was entitled to the preference of being sentenced to community-control sanctions for his convictions. *See State v. Massien*, 2010-Ohio-1864, ¶ 8, quoting *State v. Foster*, 2006-Ohio-856, ¶ 43 ("'R.C. 2929.13(B) creates a preference for (but not a presumption in favor of) community control . . . for lower-level felonies.'"). According to the record, Saunders had no previous felony convictions, the most serious charge against him was a fourth-degree felony, and he had no misdemeanor convictions within the previous two years. Next, we turn to whether the trial court properly exercised its discretion under R.C. 2929.13(B)(1)(b)(vii) to overcome the preference of community-control sanctions and impose a prison term.

{¶ 87} In *State v. Hamann*, 90 Ohio App.3d 654, 611 (8th Dist. 1993), this court reviewed a prison sentence imposed on the defendant, who was an attorney. The defendant in *Hamann* pled guilty to 38 counts of theft, forgery, and uttering "involving more than $2,470,000 against various trusts, estates, guardianships and financial institutions in the course of administering probate accounts over a seven-year period while a practicing attorney." *Hamann* at 657. The court sentenced Hamann to 84-120 years in prison and reduced the minimum prison term to 15 years. *Id.* at 667.

{¶ 88} This court affirmed[1] the defendant's prison sentence as not being "excessive." *Id.* at 673. *Hamann* does not involve the imposition of a prison term rather than community-control sanctions, but the defendant in *Hamann* was an attorney and part of the analysis focused on aggravating sentencing factors the court must consider "in favor of imposing a longer term of imprisonment" under former R.C. 2929.13(B)(1)-(3). That former statute is similar to R.C. 2929.13(B)(1)(b)(viii), and it stated as follows:

> (B) The following do not control the court's sentencing decision, but shall be considered in favor of imposing a longer term of imprisonment when determining the term of imprisonment for a felony of the third or fourth degree for which a definite term of imprisonment is imposed:
>
> (1) The defendant, by the duties of his office or by his position, was obliged to prevent the particular offense committed or to bring the offenders committing it to justice;

---

[1] The *Hamann* Court modified the minimum length of the defendant's prison term from 84 years to 83 years and 6 months for reasons not pertinent to the analysis at hand. This court then affirmed Hamann's modified prison sentence. *Hamann* at 667-668.

(2) The defendant held public office at the time of the offense, and the offense related to the conduct of that office;

(3) The defendant utilized his professional reputation or position in the community to commit the offense, or to afford him an easier means of committing it, in circumstances where his example probably would influence the conduct of others.

{¶ 89} In applying these aggravating factors to Hamann's conduct, the court stated the following:

The trial court specifically recognized the principal factor favoring lengthy prison terms was the fact that defendant misused his professional reputation and position in the community as an attorney to enable him to commit the offenses.

. . .

Moreover, defendant's misuse of his knowledge of the probate system, and role of trust as an attorney and professor of law enabled him to conceal his offenses from the victims so that he could continue to enrich himself at their expense and to acquire new clients whom he could victimize.

. . .

The record demonstrates the trial court discounted the mitigating factors presented by defendant concerning his prior law-abiding character and lack of criminal history since defendant committed and concealed his looting of the accounts trusted to him and other crimes over a period of more than seven years.

. . .

The record demonstrates that defendant perverted the justice system for his own private gain by committing thirty separate and distinct acts of theft against dozens of different victims during his administration of probate assets over a period spanning more than seven years. Defendant compounded this wrongdoing by forging the names of a probate court judge and other public officials in an effort to conceal his scheme and to provide him a continued opportunity to enrich himself.

. . .

> However, as noted above, the trial court stated the principal reason accounting for the incarceration imposed in the cases sub judice was that defendant's looting of millions of dollars in probate assets entrusted to him by dozens of victims violated his position of trust and confidence and subverted the administration of justice. The trial court commented as follows concerning defendant's predatory conduct against his clients:
>
> "It is clear to this Court that but for your position as a probate lawyer, these crimes either would not have been committed or would have been detected earlier prior to the grave devastation and loss suffered by the many victims present here today."
>
> Defendant's abuse of his position as an attorney and officer of the court corrupted the administration of justice and disgraced the entire legal profession. The record demonstrates defendant compounded his crimes by forging the names of public officials to conceal his widespread wrongdoing and further enrich himself so that he and his family could continue to indulge the extravagantly luxurious lifestyle to which they had become accustomed at the expense of his clients.

Hamann at 664-666; 672.

{¶ 90} Upon review, we find the facts in *Hamann*, where the defendant's position as an attorney facilitated his offenses, are inapposite to the case at hand. Hamann was convicted of 38 offenses over a seven-year span involving over $2 million in client funds. Additionally, Hamann's position as an attorney afforded him the opportunity to commit his crimes. Saunders was convicted of two offenses over a two-year period. Saunders's convictions did not involve any money, let alone client funds. Saunders's offenses involved the act of voting, something every citizen who is registered to vote is eligible to do. In other words, unlike *Hamann*, nothing in the record of the instant case suggests that Saunders's position as an attorney facilitated or related to his voting fraud. *See also State v. Martin-Williams*, 2015-Ohio-780, ¶ 30 (5th Dist.) (affirming the defendant's 102-month prison sentence and finding

that "the position Williams held as an attorney was a position of trust. Individuals sought her services to assist them in their time of need. Williams abused their trust and victimized multiple people to maintain her gambling habit."); *State v. Rudolph*, 2023-Ohio-1040, ¶ 38 (8th Dist.) (upholding a prison sentence, rather than community-control sanctions, when "[t]he crimes for which Rudolph was convicted related directly to Rudolph's position as a purported financial investor, broker or advisor and were facilitated by Rudolph's position as a purported financial investor, broker or advisor").

{¶ 91} In turning to the other sentencing factors under R.C. 2929.13(B)(1)(b)(vii), no evidence was presented regarding whether Saunders, as an attorney, was obligated "to prevent the offense or to bring those committing it to justice" or whether his "professional reputation . . . was likely to influence the future conduct of others."

{¶ 92} The court found that Saunders "know[s] what the laws are." However, R.C. 3599.12(A)(2) is a strict liability offense, and knowledge of the law is irrelevant to the trial court's decision of whether to impose community-control sanctions or a prison term. Furthermore, the trial court's findings regarding whether Saunders was a federal employee, engaged in "cavalier conduct," or acted intentionally are not factors that meet any criteria found in R.C. 2929.13(B)(1)(b).

{¶ 93} The trial court's remaining finding was that Saunders, as an attorney, "should be held to a higher standard than an ordinary unsophisticated citizen." This also is not a factor identified in R.C. 2929.13(B)(1)(b)(vii) to support an enhanced

felony sentence. The trial court cited no law to support this broad proposition, and the State, on appeal, cites to no law to support it either. As noted previously, Ohio courts have used a defendant's position as an attorney to enhance a felony sentence when the position as an attorney related to or facilitated the offenses of which the defendant was convicted. *See Hamann*, 90 Ohio App.3d 654 (8th Dist. 1993), and *Martin-Williams*, 2015-Ohio-780 (5th Dist.). We find no Ohio law standing for the proposition that attorneys are held to a "higher standard" when it comes to imposing a sentence than an "ordinary unsophisticated citizen." While we find Saunders's conduct to be egregious, the trial court was constrained by the plain words of the statute.

{¶ 94} Accordingly, Saunders's fourth assignment of error is sustained, and his 36-month prison sentence is vacated.

F. Ineffective Assistance of Counsel

{¶ 95} In Saunders's fifth assignment of error, he argues that his trial counsel was ineffective for failing to file a motion to suppress the statements he made to Special Agent Lehrke, because he was not read his *Miranda* rights prior to being subject to interrogation.

{¶ 96} To succeed on a claim of ineffective assistance of counsel, a defendant must establish that his or her attorney's performance was deficient and that the defendant was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668 (1984). However, "a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant

as a result of the alleged deficiencies. The object of an ineffectiveness claim is not to grade counsel's performance." *Id*. at 697. *See also State v. Bradley*, 42 Ohio St.3d 136 (1989). "To show prejudice, the defendant must show a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *State v. Conway*, 2006-Ohio-2815, ¶ 95.

1. Waiver of *Miranda* Rights

{¶ 97} "A suspect in police custody 'must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of any attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.'" *State v. Lather*, 110 Ohio St.3d 270, ¶ 6, quoting *Miranda v. Arizona*, 384 U.S. 436, 479 (1966).

{¶ 98} The United States Supreme Court has explained that *Miranda* rights can be waived, and a valid waiver has two aspects:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.

(Citation omitted.) *Moran v. Burbine*, 475 U.S. 412, 421 (1986). The Ohio Supreme Court has further explained that a "suspect's decision to waive his Fifth Amendment privilege against compulsory self-incrimination is made voluntarily absent evidence

that his will was overborne and his capacity for self-determination was critically impaired because of coercive police conduct." *State v. Dailey*, 53 Ohio St.3d 88, 91 (1990).

{¶ 99} The Ohio Supreme Court has held that the "[p]olice are not required to administer *Miranda* warnings to everyone whom they question. . . Only *custodial* interrogation triggers the need for *Miranda* warnings." (Emphasis in original.) *State v. Biros*, 78 Ohio St.3d 426, 440 (1997). "The determination whether a custodial interrogation has occurred requires an inquiry into 'how a reasonable man in the suspect's position would have understood his situation.'" *Id.*, quoting *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984).

{¶ 100} In the case at hand, the following evidence was presented concerning whether Saunders was subject to a custodial interrogation: Special Agent Lehrke testified that he interviewed Saunders in the driveway of Saunders's Shaker Address in January 2023. There is no evidence in the record about how long this interview lasted. The two spoke about Saunders voting in Ohio and Florida in 2020. Special Agent Lehrke showed Saunders some of the documents that were introduced into evidence at trial. After telling Special Agent Lehrke that he "accidentally" voted in Ohio in 2020, Saunders ended the conversation.

{¶ 101} Upon review, we find that Saunders failed to establish that his *Miranda* rights were violated, because the evidence did not show he was subject to a custodial interrogation. *See Miranda*, 384 U.S. at 444 (A custodial interrogation is "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."). Therefore, we cannot say that Saunders's trial counsel was ineffective for not filing a motion to suppress the statements he made to the authorities. Accordingly, Saunders's fifth and final assignment of error is overruled.

{¶ 102} Judgment affirmed in part and vacated in part. Saunders's convictions are affirmed. Saunders's prison sentence is vacated. Case remanded to the trial court for the limited purpose of resentencing Saunders to community-control sanctions in accordance with the law.

It is ordered that appellee and appellant share 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 common pleas court to carry this judgment into execution. The defendant's convictions having been affirmed, any bail pending appeal is terminated.

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

LISA B. FORBES, PRESIDING JUDGE

EMANUELLA D. GROVES, J., and
MICHAEL JOHN RYAN, J., CONCUR