

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Appellee,	:	CASE NO. CA2022-10-067
	:	<u>OPINION</u>
- vs -	:	7/3/2023
	:	
DEREK MOTT, JR.,	:	
Appellant.	:	

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 22CR38886

David P. Fornshell, Warren County Prosecuting Attorney, and Kirsten A. Brandt, Assistant Prosecuting Attorney, for appellee.

James F. Maus, for appellant.

PIPER, J.

{¶ 1} Appellant, Derek Mott, appeals his convictions in the Warren County Court of Common Pleas on multiple counts of drug trafficking and drug possession. After the jury found Mott guilty, the trial court merged several counts, and sentenced Mott to a total mandatory prison term of 14 years to 19-and-one-half years.

Statement of Facts

{¶ 2} On January 4, 2022, Officer Austin Renner and Officer Josh Singleton stopped an individual who was in possession of a syringe and suspected fentanyl. The individual told the officers that he got the drugs from Room 211 at the nearby Red Roof Inn.

{¶ 3} Officers Renner and Singleton went to Room 211 to make contact with the occupants. When the occupants answered the door, they identified themselves as Derek Mott and Amanda Wright. The officers ran Mott and Wright's information and learned that both had outstanding warrants. As a result, Mott and Wright were arrested and Officer Renner briefly entered Room 211 to conduct a protective sweep of the room. During the protective sweep, Officer Renner observed white powder on the nightstand and drug paraphernalia. Mott and Wright were then escorted to police cruisers.

{¶ 4} Officer Singleton testified that he read Mott his *Miranda* rights while Mott was seated in the back of a police cruiser. Mott waived his rights and informed Officer Singleton that there was approximately 11 ounces of fentanyl and 11 grams of methamphetamine in the hotel room.

{¶ 5} Detectives with the Middletown Police Special Narcotics Division responded and began to prepare an application for a search warrant for Room 211. In an affidavit providing the factual basis for the search warrant Sergeant Wilcox averred:

On 01/04/2022 at approx. 2146 hrs. Uniformed Patrol Officers observed suspicious activity in the parking lot of the Red Roof Inn located at 3510 Commerce Drive Franklin Ohio 45005. Officers observed a vehicle to park [sic] in front of location and a subject to leave the vehicle in a hurried fashion. The vehicle then left the lot. Officers know that this location is a high crime/drug location. A [s]hort time later, the Officers observed the subject that left the vehicle walking at Commerce and SR 122. A consensual encounter with the subject resulted in a needle and a small amount of heroin being located on the subject. The subject stated that they had just purchased the heroin at room 211 at the Red Roof Inn.

Further investigation at room 211, two subjects were found and detained from Room 211. Derek Mott was detained and found to be wanted by the Ohio Adult Parole Authority. Derek Mott stated that there was 11 grams of methamphetamine and 11 ounces of heroin in the room. Mott described where the drugs could be located in the room and stated that he was "fronted" the drugs.

* * *

During a protective sweep of the room, a small mirror with residue was observed on the dresser of the room which the Officers identified as instruments and evidence of drug use.

{¶ 6} While waiting for the search warrant to be approved, Detective Mark Hoyle and Detective Jordan Wagers interviewed Mott at the Middletown Police Department. Detective Hoyle testified that he advised Mott of his *Miranda* rights, and that Mott waived those rights verbally and in writing.

{¶ 7} During the course of the interview, Mott made multiple incriminating statements. When Detective Hoyle asked Mott what was in Room 211, Mott responded that he had crack cocaine, cocaine, methamphetamine, heroin, and marijuana. Mott indicated that the drugs were in the drawer of the nightstand next to the bed and admitted that they were his. He informed the detectives that he had obtained the drugs about an hour before authorities arrived and that the drugs had been "fronted," meaning that he was provided the drugs up-front to sell and that he would have to pay for them "on the back end."

{¶ 8} After speaking with Mott for approximately 30 minutes, the detectives learned that a judge had authorized a search warrant for Room 211 and therefore they halted the interview to execute the warrant. When they searched the nightstand, the detectives found the drugs as described by Mott. Throughout the room, the detectives also found a digital scale, foil wrapping cut into one-inch squares, a blender, Narcan, suspected cutting agents, and additional baggies of white powder.

{¶ 9} After the search, the detectives returned to the Middletown Police Department

to resume the interview with Mott. Detective Wagers testified that he reminded Mott of his *Miranda* rights, and that Mott agreed to continue the interview. During the follow-up interview, Mott again admitted ownership of the items found during the search. He also told the detectives that the one-inch foil pieces were used to package small amounts of drugs for sale.

{¶ 10} The drugs found in Room 211 were transmitted to the Miami Valley Crime Laboratory for analysis. A forensic chemist, Todd Yoak, tested and identified the substances recovered during the search. Yoak produced a laboratory report identifying the substances and weight of each found in the room. The result included:

304.18 grams of a mixture containing fentanyl, heroin, and
MDMB-en-PINACA (a synthetic cannabinoid)

1.13 grams of cocaine

3.76 grams of cocaine noted as being "off-white chunky
material"

11.35 grams of methamphetamine

Indictment and Procedural History

{¶ 11} On February 7, 2022, Mott was indicted on eight felony counts:

Count 1: trafficking in a fentanyl-related compound, a felony of
the first degree;

Count 2: possession of a fentanyl-related compound, a felony of
the first degree;

Count 3: trafficking in heroin, a felony of the first degree;

Count 4: possession of heroin, a felony of the first degree;

Count 5: aggravated trafficking in drugs (MDMB-en-PINACA), a
felony of the second degree;

Count 6: aggravated possession of drugs (MDMB-en-PINACA),
a felony of the second degree;

Count 7: aggravated possession of drugs (methamphetamine), a

felony of the first degree;

Count 8: possession of cocaine, a felony of the fifth degree.

In addition, Counts 1, 3, and 5, included specifications that Mott was a major drug offender.

{¶ 12} On March 15, 2022, Mott filed a motion to suppress. During the suppression hearing, Officer Renner and Officer Singleton testified that Mott was orally advised of his *Miranda* rights, that he indicated that he understood those rights, and that he agreed to speak with them. Similarly, Detective Wagers testified that Mott was orally advised of his *Miranda* rights at the Middletown Police Department and that Mott agreed to speak with him and Detective Hoyle. Detective Wagers stated that Mott was also provided with a card listing his *Miranda* rights in writing and that Mott signed the card. The card stated that Mott had been "advised of all my rights as contained on this card and I understand all of them and I wish to talk to you without having a lawyer present." A copy of the signed card was admitted as Exhibit 3. Mott testified on his own behalf, denying that he was advised of his *Miranda* rights in Officer Renner's cruiser.¹ However, he admitted that Exhibit 3 contained his signature. Mott then stated that he had not slept or eaten prior to the interview at the Middletown Police Department. After the hearing, the trial court overruled Mott's motion to suppress.

{¶ 13} The case proceeded to a trial on September 27, 2022, during which the relevant facts were submitted to the jury. Following deliberations, the jury found Mott guilty as charged. Mott filed a timely appeal, raising five assignments of error for review.

{¶ 14} Assignment of Error No. 1:

{¶ 15} THE TRIAL COURT ERRED TO APPELLANT'S PREJUDICE BY GIVING A

1. We note that Mott denied being interviewed at the scene while in Officer Renner's cruiser at the scene. *In re: N.J.M.*, 12th Dist. Warren No. CA2010-03-026, 2010-Ohio-5526, ¶ 8 ("When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses").

JURY INSTRUCTION WHICH MISLED THE JURY IN A MATTER MATERIALLY AFFECTING APPELLANT'S SUBSTANTIAL RIGHTS.

{¶ 16} Mott's first assignment of error contends the trial court erred in its instruction to the jury concerning the weight of drugs. Mott did not object to the instructions at the time they were given by the trial court. A failure to object to jury instructions waives all but plain error review. Crim. R. 30(A); *State v. Taylor*, 78 Ohio St.3d 15, 26 (1997).

Plain Error Review

{¶ 17} To constitute plain error there must be a deviation from a legal rule. *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002). Second, the error must be fundamental, palpable, and obvious on the record such that it should have been apparent to the court without an objection. *State v. Barnette*, 12th Dist. Butler No. CA2012-05-099, 2013-Ohio-990, ¶ 30. Third, the error must have affected appellant's substantial rights, i.e., the error affected the outcome of the trial. *Barnes* at 27. An appellate court will take notice of plain error with "utmost caution, under exceptional circumstances, and only to prevent a manifest miscarriage of justice." *State v. Baldev*, 12th Dist. Butler No. CA2004-05-106, 2005-Ohio-2369, ¶ 12.

Jury Instructions

{¶ 18} Jury instructions are matters that are left to the sound discretion of the trial court. *State v. Brannon*, 12th Dist. Clinton No. CA2014-09-012, 2015-Ohio-1488, ¶ 20. However, although left to the trial court's sound discretion, the trial court must nevertheless "fully and completely give jury instructions which are relevant and necessary for the jury to weigh the evidence and discharge its duty as the fact-finder." *State v. Davis*, 12th Dist. Madison No. CA2015-05-015, 2016-Ohio-1166, ¶ 27, citing *State v. Comen*, 50 Ohio St.3d 206 (1990), paragraph two of the syllabus. "[T]his court may not reverse a conviction based upon faulty jury instructions unless it is clear that the jury instructions constituted prejudicial

error." *State v. Grimm*, 12th Dist. Clermont No. CA2018-10-071, 2019-Ohio-2961, ¶ 26. Therefore, when reviewing a trial court's jury instructions, this court must affirm a conviction if the trial court's jury instructions, when taken in their entirety, "fairly and correctly state the law applicable to the evidence presented at trial." *Davis* at ¶ 28.

Weight of Drugs

{¶ 19} As relevant here, the penalty sections of the drug trafficking and drug possession statutes establish a sentencing scheme where the degree of the offense is determined by the amount of the controlled substance. R.C. 2925.03; R.C. 2925.11. In *Gonzalez II*, the supreme court held that the *total weight* of the mixture of substances, including any applicable filler, controls the appropriate felony level. *State v. Gonzales* ("*Gonzales II*"), 150 Ohio St.3d 276, 2017-Ohio-777, ¶ 12. Accordingly, the state is not required to separate the controlled substance from the fillers, or other substances, and weigh only the pure drug. *State v. Pendleton*, 163 Ohio St.3d 114, 2020-Ohio-6833, ¶ 15, citing *Gonzales II* at ¶ 9; *State v. Tingler*, 5th Dist. Stark No. 2022 CA00084, 2023-Ohio-834, ¶ 19. Therefore, in a case where a mixture of both heroin and fentanyl are found in the approximate amount of 133 grams, a defendant may be *found guilty* of possessing both 133 grams of heroin and 133 grams of fentanyl. *Pendleton* at ¶ 3, 15-17; *State v. Stevens*, 3d Dist. Marion No. 9-20-39, 2021-Ohio-2297, ¶ 16.

{¶ 20} Whether Mott could be *sentenced* for both offenses based upon the weight of a singular quantity of drugs is a different matter entirely than whether the jury could find him guilty. *Pendleton* at ¶ 20; *Stevens* at ¶ 16.²

2. In sentencing Mott, the trial court merged the offenses for possession of fentanyl, heroin, and MDMB-en-PINACA. The state elected to have the trial court sentence Mott for the possession of fentanyl. The trial court also merged the trafficking offenses for those same drugs and the state elected Mott be sentenced for the trafficking of fentanyl. Mott does not appeal from the trial court's decision regarding the merger of offenses.

Instruction Given

{¶ 21} The trial court instructed the jury as to the weight of the controlled substance as follows:

* * * For all additional findings contained in these instructions if a substance that contains a drug also contains any filler, adulterants, or another drug, the weight of the drug is what you determine is the total weight of the entire substance. If the substance contains two or more drugs, what you determine is the total weight of the substance is applicable to each of the drugs individually.³

Mott's Argument and Analysis

{¶ 22} On appeal, Mott argues the trial court's instructions as to the weight of the controlled substances were incorrect and misleading. However, in so doing, Mott misstates the applicable rulings from the supreme court. In his brief, Mott cites the supreme court's decision in *Pendleton*, which involves the merger of drug sentences. In *Pendleton*, the supreme court determined that a criminal defendant's right against Double Jeopardy is violated through the imposition of two punishments for the same, singular quantity of drugs where each drug is calculated as filler for the other offense. *Pendleton*, 2020-Ohio-6833 at ¶ 7, 20. However, *Pendleton* does not state that the defendant could not be *charged* or *found guilty* of possessing multiple controlled substances contained in one mixture. Moreover, *Pendleton* does not overrule *Gonzales II* and, in fact, references the decision multiple times, favorably, and applies its "reasoning." *Id.* at ¶ 15-16.

{¶ 23} Without full appreciation for the supreme court's ruling in *Gonzales II*, Mott argues that the jury should have been instructed that it could consider that the forensic chemist only tested a portion of the drugs. He points out that Yoak "merely took one sample of the 277-gram compound from the edge, rather than taking more sample * * * from the

3. In this assignment of error, Mott cites two instructions, but the instructions are so similar as to be, in all important respects, identical.

middle or bottom of the powder." He further argues that some of the baggies "had negative results" and that "Yoak never testified that any of the seized items were, in fact, 'drugs,' or that the compound would have any affect [sic] on a person if ingested."⁴

{¶ 24} Following review, we find the trial court did not commit error, much less plain error, by instructing the jury on the weight of the drugs. As stated above, the amount of the controlled substance is determined by the total weight of the mixture which may include fillers or other drugs. *Gonzales II*, 2017-Ohio-777 at ¶ 9, 12. The trial court's decision fully and accurately conveys the applicable law, which clearly states that total weight includes filler, adulterants, or other drugs. It also states that the total weight of the substance is applicable to each drug individually. Thus, the jury was provided with a full and complete instruction that allowed the jury to weigh the evidence and discharge its duty as the factfinder. As a result, Mott fails to show there was a "deviation from a legal rule" for purposes of establishing plain error because the jury was provided with fair and correct statement of the law. *Barnes*, 94 Ohio St.3d at 27. Therefore, we overrule Mott's first assignment of error.

{¶ 25} Assignment of Error No. 2:

{¶ 26} APPELLANT-DEFENDANT'S CONVICTION WAS BASED ON INSUFFICIENT EVIDENCE AS A MATTER OF LAW.

{¶ 27} Mott's second assignment of error argues that his convictions for trafficking in drugs and possession of drugs were based upon insufficient evidence. Mott's argument mainly focuses on his claim that "[t]he government failed to prove beyond a reasonable doubt that Appellant-Defendant knowingly possessed distributed, trafficked, or sold any

4. As addressed in more detail in Mott's second assignment of error, the state provided more than sufficient evidence that Mott possessed and trafficked fentanyl, heroin, MDMB-en-PINACA, cocaine, and methamphetamine. Furthermore, it was also not necessary for the state to show what effect the controlled substance would have on a person if ingested.

'drugs.'

Sufficient Evidence Standard

{¶ 28} "Whether the evidence presented at trial is legally sufficient to sustain a verdict is a question of law." *State v. Grinstead*, 194 Ohio App.3d 755, 2011-Ohio-3018, ¶ 10 (12th Dist.). When reviewing the sufficiency of the evidence underlying a criminal conviction, an appellate court examines the evidence to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Thomin*, 12th Dist. Butler Nos. CA2019-11-188 and CA2019-12-199, 2020-Ohio-4625, ¶ 6. The relevant inquiry is "whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus.

Trafficking and Possession of Drugs

{¶ 29} The jury found Mott guilty of multiple counts of trafficking and possession of drugs in violation of R.C. 2925.03(A)(2) and 2925.11(A). To secure a guilty verdict against Mott for trafficking in drugs, the state was required to prove beyond a reasonable doubt that Mott knowingly prepared for shipment, shipped, transported, delivered, prepared for distribution, or distributed a *controlled substance* * * * when he knew or had reasonable cause to believe that the *controlled substance* * * * was intended for sale or resale by either himself or another person. R.C. 2925.03(A)(2). To secure a guilty verdict against Mott for possession of drugs, the state was required to prove beyond a reasonable doubt that Mott knowingly obtained, possessed, or used a *controlled substance* * * *. R.C. 2925.11(A).

{¶ 30} As noted above, the penalty sections of the drug trafficking and drug possession statutes establish a sentencing scheme where the degree of the offense is determined by the amount of the controlled substance. R.C. 2925.03; R.C. 2925.11; *State*

v. Taylor, 113 Ohio St.3d 297, 2007-Ohio-1950, ¶ 14. Therefore, R.C. 2925.03 and 2925.11 prescribes punishments depending on the type of "drug" and the amount of the "drug" being possessed or trafficked.

Analysis

{¶ 31} After reviewing the record, we find Mott's convictions are supported by sufficient evidence. The state presented testimony and evidence which the jury could have found all the essential elements of the offense proven beyond a reasonable doubt. Evidence established that Mott possessed multiple controlled substances that were found in his hotel room. Testimony from Todd Yoak identified the substances found as fentanyl, heroin, MDMB-en-PINACA, cocaine, and methamphetamine, and described the respective schedules for those substances. The lab report identifying the substances and their respective weights was admitted into the record.

{¶ 32} The state also produced evidence that Mott was trafficking in those controlled substances. The state presented evidence that Mott possessed instrumentalities of trafficking, such as the blender, a digital scale, suspected cutting agents. Mott himself admitted that the drugs were his and that he was "pushing them." Mott further indicated that the foil packets were "his thing" and that the drugs were "fronted" and would need to be paid for on "the back end."

{¶ 33} On appeal, Mott argues that the state was required to prove that the controlled substances were "drugs" as defined in R.C. 4729.01(E)(3), which states that a drug is "any article, other than food, intended to affect the structure or any function of the body of humans or animals." He suggests the state was required to prove that the drug had a concentration that "negates accidental contamination and was prepared with the intent to 'effect the structure or any function' of the human body." Mott further addresses other perceived deficiencies in the record and criticizes the manner in which the state proved its

case. For example, Mott emphasizes collateral points of little relevance such as there was no DNA or fingerprint evidence linking him to the seized items and that he "had no cash" and did not "rent" the room.

{¶ 34} However, Mott's arguments are without merit. The state was required to prove that Mott possessed and trafficked "controlled substances," which it did. The determination of whether a specific substance is a controlled substance is a question of law for the court, not a question of fact for the jury. *State v. Rollins*, 3d Dist. Paulding No. 11-05-08, 2006-Ohio-1879, ¶ 30; *State v. O'Conner*, 12th Dist. Fayette No. CA2007-01-005, 2008-Ohio-2415, ¶ 40. In this case, the state presented testimony from the forensic chemist, Yoak, who testified that the substances he tested were positive for heroin, fentanyl, MDMB-en-PINACA, cocaine, and methamphetamine. He further stated that fentanyl, cocaine, and methamphetamine are Schedule II substances and heroin and MDMB-en-PINACA are Schedule I substances. By law, those substances are controlled substances. *O'Conner* at ¶ 40. Furthermore, contrary to Mott's arguments otherwise, the state was not required to demonstrate the purity of the substance or the substance's impact on the function of the human body.

{¶ 35} In addition, the criticism of the manner in which the state presented its case goes more to the weight of the evidence rather than sufficiency. The state was not required to prove that Mott had "drugs, weapons, or other incriminating items" on his person. Nor was the state required to present DNA or fingerprint evidence.⁵ See *State v. Penwell*, 12th Dist. Warren No. CA2022-05-026, 2023-Ohio-120, ¶ 24 (stating that while certain evidence may be *probative*, it is not *necessary* in the prosecution of an offense). In this case, the

5. Mott raises a variety of other issues that have no bearing on whether his conviction is supported by sufficient evidence. For example, Mott argued that law enforcement did not obtain security footage and there was no attempt to determine whether another individual was seen fleeing the scene.

state presented overwhelming evidence of Mott's guilt. Mott himself admitted to possessing and trafficking in the controlled substances that were found in his hotel room. It was Mott who told the authorities where exactly the drugs would be found and that he was "pushing" them. The identity and amount of those substances were then confirmed through laboratory testing. The state presented more than sufficient evidence to support Mott's convictions. Accordingly, Mott's second assignment of error is overruled.

{¶ 36} Assignment of Error No. 3:

{¶ 37} THE TRIAL COURT ERRED TO THE DEFENDANT-APPELLANT'S PREJUDICE WHEN IT DENIED THE DEFENDANT-APPELLANT'S MOTION TO SUPPRESS.

{¶ 38} In his third assignment of error, Mott argues the trial court erred by denying his motion to suppress. He argues that the search warrant relied upon statements taken in violation of *Miranda* and the "nonconsensual search of Room 211." Mott maintains the drugs seized from Room 211 should have been suppressed as fruit from "unconstitutional statements." He also argues that the statements he made "in violation of *Miranda*" should have been suppressed.

Standard of Review

{¶ 39} Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Cochran*, 12th Dist. Preble No. CA2006-10-023, 2007-Ohio-3353, ¶ 12. "When considering a motion to suppress, the trial court, as the trier of fact, is in the best position to weigh the evidence in order to resolve factual questions and evaluate witness credibility." *State v. Harsh*, 12th Dist. Madison No. CA2013-07-025, 2014-Ohio-251, ¶ 9. Therefore, when reviewing the denial of a motion to suppress, a reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Oatis*, 12th Dist. Butler No. CA2005-03-074, 2005-Ohio-6038,

¶ 10. However, an appellate court "independently reviews the trial court's legal conclusions based on those facts and determines, without deference to the trial court's decision, whether as a matter of law, the facts satisfy the appropriate legal standard." *State v. Vunda*, 12th Dist. Butler Nos. CA2012-07-130 and CA2013-07-113, 2014-Ohio-3449, ¶ 14.

***Miranda* Warnings and Ability to Make a Statement**

{¶ 40} "When a suspect is questioned in a custodial setting, the Fifth Amendment requires that he receive *Miranda* warnings to protect against compelled self-incrimination." *State v. Wesson*, 137 Ohio St.3d 309, 2013-Ohio-4575, ¶ 34. "A suspect may then knowingly and intelligently waive these rights and agree to make a statement." *Id.* If a defendant later challenges a confession as involuntary, the state must prove a knowing, intelligent, and voluntary waiver by a preponderance of evidence. *Id.*

Mott's Argument

{¶ 41} On appeal, Mott claims that he was not provided with *Miranda* warnings and that the advisement of his *Miranda* rights should have been recorded. He states there is "no record of the *Miranda* warning because none was given in the first place." He also argues that he was not in "a proper mental state" when he was interrogated by the detectives at the Middletown Police Department because he was sleep deprived and had "not eaten in over 24 hours." He mentions that Officer Renner testified that he searched the hotel room "without any mention of consent," even though he does not address that the initial entry into the hotel room by Officer Renner was for a "protective sweep." Mott concludes by arguing that the evidence used to support the issuance of the search warrant was the product of the "fruit" of an "unconstitutional interview and protective sweep." He claims that drugs seized from Room 211 should have been suppressed "as a fruit of the unconstitutional statements" and "the statements obtained in violation of *Miranda* and the due process clause of the XIV Amendment should have been suppressed."

Analysis

{¶ 42} Following review, we find Mott was provided with his *Miranda* rights and the waiver of his *Miranda* rights was done knowingly, intelligently, and voluntarily. As an initial point, no Ohio law requires that *Miranda* waivers must be signed or recorded in order to be valid. *State v. Campbell*, 12th Dist. Butler Nos. CA2014-02-048, CA2014-02-051, 2014-Ohio-5315, ¶ 39. Officers Renner and Singleton both testified that Mott was provided with his *Miranda* rights and that Mott indicated that he understood his rights and agreed to speak with Officer Singleton. The conversation he had with Officer Singleton was brief. During that time, Mott stated that there was approximately 11 ounces of fentanyl and 11 grams of methamphetamine in the hotel room. Both officers testified that Mott was not promised anything nor threatened, and that Mott did not ask to stop the conversation or request an attorney.

{¶ 43} When Mott was taken to the Middletown Police Department, he was again advised of his *Miranda* rights both before the first portion of the interview and before the interview resumed following the execution of the search warrant. Mott was also provided with a card listing the *Miranda* rights in writing that he signed, and which stated that Mott had been "advised of all my rights as contained on this card and I understand all of them and I wish to talk to you without having a lawyer present." While Mott claims that he was sleep-deprived and hungry, the law enforcement officers and detectives who spoke with him did not notice Mott to be experiencing discomfort or exhaustion. At one point during the suppression hearing Mott answered affirmatively that he was "comfortable and aware of what was going on" while he was being interviewed at the Middletown Police Department.⁶ Upon review of the record, we find competent, credible evidence to support

6. Detective Wagers remembered hearing Mott's stomach make a noise but stated that Mott was provided with food and drink and was allowed to consume them. He also indicated that Mott would have been permitted

the trial court decision that Mott was advised of his *Miranda* rights and that he provided a valid waiver of those rights.

{¶ 44} Furthermore, Mott mentions, but does not address in detail, that Officer Renner searched his hotel room "without any mention of consent." He later claims that the search warrant relied upon the "nonconsensual search of Room 211." However, this argument ignores the fact that Officer Renner only conducted a protective sweep of Room 211 following Mott's arrest. A "protective sweep" is a quick and limited survey of premises conducted to protect the safety of police officers or protect destruction of evidence by unknown, potential occupants.⁷ It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding. *Maryland v. Buie*, 494 U.S. 325, 327, 110 S.Ct. 1093 (1990). During the suppression hearing, Mott did not contest the validity of the protective sweep and he now raises an issue with a "nonconsensual search of Room 211" for the first time on appeal. "It is well-settled that issues not raised in the trial court may not be raised for the first time on appeal." *State v. Guzman-Martinez*, 12th Dist. Warren No. CA2010-06-059, 2011-Ohio-1310, ¶ 9. As a result, not only is Mott's cursory argument with regard to "consent" lacking, because consent is not necessary for a brief protective sweep of premises, but it also is an argument that cannot now be raised for the first time in this appeal.

{¶ 45} Upon review of the record, we find the trial court did not err in denying Mott's motion to suppress. The trial court's decision was supported by competent, credible

a bathroom break if he had requested one. Mott acknowledged that he was provided with food and drink and stated during the suppression hearing that "[t]hey brought me a pop and some snacks, that's about it. But I didn't - I didn't eat anything." It is unclear what other accommodation Mott could have been requesting.

7. Exigent circumstances permit officers to act quickly to protect the destruction of evidence by unknown, potential occupants. *State v. Brewster*, 1st Dist. Hamilton Nos. C-030024 and C-030025, 2004-Ohio-2993, ¶ 27. In this case, after the protective sweep, another officer then stood guard outside the room so that no one could enter the premises and potentially destroy evidence before the search warrant could be issued.

evidence. The statement Mott made following his arrest was appropriately included in the application for the search warrant and all the statements and admissions he made were admissible at trial. Furthermore, Mott failed to challenge the validity of the protective sweep below and now only argues that it was without proper consent. Mott's third assignment of error is overruled.

{¶ 46} Assignment of Error No. 4:

{¶ 47} REPRESENTATION BY TRIAL COUNSEL WAS "INEFFECTIVE" UNDER *STRICKLAND V. WASHINGTON*.

{¶ 48} In his fourth assignment of error, Mott argues that he received ineffective assistance of counsel for failing to object to the jury instruction discussed in his first assignment of error regarding the total weight of a drug mixture. However, as discussed earlier, the trial court provided a complete and accurate statement of the law and appropriately instructed the jury in this regard. As stated by the supreme court, "[c]ounsel is certainly not deficient for failing to raise a meritless issue." *State v. Issa*, 93 Ohio St.3d 49, 68 (2001), citing *State v. Taylor*, 78 Ohio St.3d 15, 31 (1997).⁸ Accordingly, Mott failed to establish deficient performance by his trial counsel. Mott's fourth assignment of error is overruled.

{¶ 49} Assignment of Error No. 5:

{¶ 50} THE REAGAN TOKES ACT IS UNCONSTITUTIONAL.

{¶ 51} In his fifth assignment of error, Mott argues that the Reagan Tokes Law violates his right to a jury trial, right to due process, and the separation of powers doctrine.

8. To prevail on an ineffective assistance of counsel claim, an appellant must establish both deficient performance by his trial counsel and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984); *State v. Vore*, 12th Dist. Warren Nos. CA2012-06-049 and CA2012-10-106, 2013-Ohio-1490, ¶ 14. The failure to establish either of those prongs negates the need to consider the other. *Vunda*, 2014-Ohio-3449 at ¶ 54.

However, the arguments raised by Mott have been previously considered and rejected by this court. This court has already determined that the Reagan Tokes Law does not run afoul of an offender's due process rights as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 16 of the Ohio Constitution. *State v. Henderson*, 12th Dist. Warren No. CA2020-11-072, 2021-Ohio-3564, ¶ 13-16; *State v. Jackson*, 12th Dist. Butler No. CA2020-07-077, 2021-Ohio-778, ¶ 12-15; *State v. Guyton*, 12th Dist. Butler No. CA2019-12-203, 2020-Ohio-3837, ¶ 7-17. We have also determined that the Reagan Tokes Law does not violate the separation of powers doctrine. *State v. Suder*, 12th Dist. Clermont Nos. CA2020-06-034 and CA2020-06-035, 2021-Ohio-465, ¶ 25. Finally, we concluded that the Reagan Tokes Law does not impinge on an offender's constitutional right to a trial by jury. *State v. Rogers*, 12th Dist. Butler No. CA2021-02-010, 2021-Ohio-3282, ¶ 20.

{¶ 52} For the reasons previously expressed in *Henderson*, *Jackson*, *Guyton*, *Suder*, and *Rogers*, we find that the Reagan Tokes Law is not unconstitutional. Mott's fifth assignment of error is overruled.

{¶ 53} Judgment affirmed.

HENDRICKSON, P.J., and BYRNE, J., concur.