[Cite as *State v. Lucas*, 2025-Ohio-1918.]

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

STATE OF OHIO,	:	
	:	Case No. 23CA4018
Plaintiff-Appellee,	:	
	:	
v.	:	DECISION AND JUDGMENT ENTRY
	:	
ANGEL MARIE LUCAS,	:	
	:	
Defendant-Appellant.	:	**RELEASED: 05/20/2025**
	:	

APPEARANCES:

Steven H. Eckstein, Washington Court House, Ohio, for appellant.

Shane A. Tieman, Scioto County Prosecuting Attorney, and Jay S. Willis, Assistant Scioto County Prosecutor, Portsmouth, Ohio, for appellee.

Wilkin, J.

{¶1} This is an appeal from a Scioto County Court of Common Pleas judgment entry that convicted Appellant Angel Marie Lucas ("Lucas") of trafficking in cocaine, a first-degree felony, and possession of criminal tools, a fifth-degree felony. Lucas, who filed a motion to proceed pro se and formally waived counsel in writing and in open court, maintains on appeal that she was denied effective hybrid representation and/or standby counsel, which she claims is guaranteed under the Ohio Constitution, Article 1, Section 10. She also claims the trial court erred in denying her motion to suppress. After reviewing the parties' arguments, the record, and the applicable law, we find her claims to be without merit. Therefore, we affirm the trial court's judgment of convictions.

FACTUAL AND PROCEDURAL BACKGROUND

{¶2} On December 5, 2022 a grand jury returned an indictment charging Lucas with four counts arising out of an October 23, 2022 traffic stop: Count 1, trafficking in cocaine, a first-degree felony in violation of R.C. 2925.03(A)(2) and 2925.03(C)(4)(f); Count 2, possession of cocaine, a first-degree felony in violation of R.C. 2925.11(A) and 2925.11(C)(4)(e); Count 3, possession of marijuana, a minor misdemeanor in violation of R.C. 2925.11(A) and 2925.11(C)(3)(a); and Count 4, possession of criminal tools, a rental car, a fifth-degree felony in violation of R.C. 2923.24(A) and 2923.24(C).

{¶3} On December 6, 2022, the court appointed counsel for Lucas. That same day, an affidavit of indigency, signed by Lucas, was filed with the court. Despite the court appointing defense counsel, on December 9, 2022, Lucas filed a motion asking to proceed pro se, at least until she could find other attorneys to help with her defense. Her motion stated, in pertinent part:

> I do not feel comfortable with this jurisdictions counsel(s) for my defense. I will not be using [the court-appointed attorney] for counsel. I will be coming pro se in your court for now. I also will be reaching out to other attorney(s) to help with my defense. For now I will need a copy of your court rules, guidelines, and procedures.

(Brackets added.)

{¶4} The court held a pretrial on December 12, 2022. After extensive discussions with the court, Lucas made clear her desire to proceed pro se and the court ensured she had certain accommodations for proceeding pro se (like providing her with access to discovery, copies of statutes and rules). In addition, the court also provided some guidance as to how and where to file certain requests.

{¶5} Based on Lucas' motion and clarification that she wished to proceed pro se, the court held a separate lengthy hearing regarding her motion to proceed pro se on December 16, 2022. At that time, the court explained in depth to Lucas the courtroom procedures and the nature of the charges, including the statutory offenses, the range of allowable punishments, as well as the possible defenses and mitigation. In addition, the court ensured Lucas received discovery, and was provided copies of the relevant statutes, rules of criminal procedure, and rules of evidence. The court also determined that she voluntarily gave up her right to the assistance of counsel. The court asked Lucas whether she understood by representing herself, she would be giving up the right to later claim she did not have effective assistance of counsel. Further, the trial court specifically asked Lucas, "do you understand that you'll give up the right to say that your lawyer did not do a good job since you'll be representing yourself and acting as your own lawyer?" Lucas responded in the affirmative. In addition to the trial court conducting the hearing regarding whether Lucas had waived counsel according to Crim.R. 44, Lucas also later signed a formal waiver of counsel on January 11, 2023, which was file-stamped January 13, 2023.

{¶6} In addition to the comprehensive hearing on Lucas' motion to proceed pro se, on February 2, 2023 the trial court again inquired if Lucas wished to proceed pro se: "Ms. Lucas, are you still inclined to represent yourself at the trial?" To which Lucas responded, "Surely am." Then again, right before commencing voir dire on the first day of trial, the trial court asked Lucas about her wishes regarding counsel, and she confirmed that she wanted to proceed pro se.

{¶7} The record reveals that the court appointed standby counsel for Lucas, who appeared every time Lucas was in court. The court also explained to Lucas that the standby counsel would not represent her, and could not give her legal advice; however, he would be able to look up certain issues regarding the law at her request but would not suggest what she should look up.

{¶8} Throughout the course of proceedings, Lucas filed motions and requests with the court, including numerous discovery requests, subpoena requests, a jury demand, a motion for bond reduction, motions for transcripts, and so forth. On December 19, 2022, Lucas also filed a memorandum in support of constitutions of 1787, which the court deemed to be a motion to suppress. In the document, Lucas claimed that the trooper from the traffic stop had racially profiled her and illegally followed her vehicle for more than five miles with his high beams on, among other things.

{¶9} The court held a hearing on Lucas' motion regarding suppression issues on January 3, 2023. At the hearing, the State called the two troopers from the Ohio State Highway Patrol who were involved in that stop to testify. In addition, the State introduced the cruiser cam video and both troopers' body cams.

{¶10} Trooper Nick Lewis ("Lewis") testified that on October 23, 2022 at approximately 10:20 p.m., he had been sitting stationary on U.S. Route 23 near milepost 12, just north of the Portsmouth Bypass in Scioto County. At the time, there was not a lot of traffic. At some point he noticed a rental car with Virginia plates pass and travel onto Lucasville-Minford Road, a road travelers often take when they miss the bypass. Lewis noticed that the vehicle had out-of-state plates and appeared to be a

rental car. He then began to follow it. Lewis observed the rental car appeared to exceed the speed limit, so he paced the rental car. Lewis paced the rental car by following the vehicle at the same distance, then using his speedometer and radar to determine the speed he was traveling. By using this technique, Lewis was able to determine the rental car's speed was 52-53 m.p.h., which exceeded the 45-m.p.h. speed limit in that area.

{¶11} Further along on Lucasville-Minford Road, past Cook Road, a vehicle was stopped on the right side of the road at the edge of a driveway. When passing that vehicle, the rental car crossed the double-yellow line by a half tire-width, driving into the other lane. Lewis had no trouble himself proceeding up the road without traveling over the line and into the other lane. The rental car again crossed the double-yellow line by a whole tire-width close to Candy Run.

{¶12} Although the driver of the rental car had committed these three traffic violations, Lucas did not initiate a traffic stop on Lucas-Minford Road because there was no place to safely pull the car over without blocking one lane of traffic. Lewis had planned to stop the rental car on the pull-off right at State Route 823, but the rental car turned onto Glendale Road. At that time, Lewis received from dispatch the make, model and year of the vehicle and confirmed that the car was a rental.

{¶13} When the rental car approached the stop sign at Glendale Road, the driver failed to activate a turn signal to turn right or left onto State Route 139. At that point, Lewis activated his overhead lights and pulled the rental car over. The driver, later determined to be Lucas, pulled over approximately thirty seconds after Lewis activated the cruiser's overhead lights.

{¶14} When Lucas rolled down the window, Lewis, who is trained and has experience in the detection and smell of marijuana, could smell raw marijuana coming from the vehicle. Lucas indicated she was lost. Lewis told Lucas he had seen her "swerve" a couple of times. He asked Lucas for a driver's license and the rental agreement. Lucas said she had a Florida driver's license, but she had trouble finding it, and when Lewis saw her going through her cards, he noticed a Michigan driver's license. Despite this information, Lucas said she was coming from Columbus to her home in West Virginia.

{¶15} At this point, Lucas said she had a Florida driver's license, did not produce it, but instead gave Lewis a Michigan's driver's license, and said she was coming from Columbus. After noting these inconsistencies, Lewis asked Lucas to exit the vehicle.

{¶16} Once Lucas stepped out of the vehicle, Lewis could smell the odor of marijuana on her person. Lewis asked Lucas whether she was smoking marijuana or had someone around her been smoking. Lucas said she was around people who were smoking and that it was probably coming off her jacket. Lewis conducted a pat-down of Lucas for officer safety purposes. Lucas complied with his instructions.

{¶17} Trooper Matt Lloyd ("Lloyd"), who was close by when Lewis initiated the stop, arrived at the scene to assist. Lloyd, who is also trained and has experience in the detection of marijuana, approached the rental vehicle and noticed the "pretty strong" smell of raw marijuana.

{¶18} Lewis decided to search the rental vehicle because of the smell of raw marijuana coming from the vehicle as well as on Lucas' person. Lewis searched the passenger side, and Lloyd searched the driver's side. Lewis exclaimed, "Oh, there it is"

when he saw a bag containing approximately two ounces of suspected cocaine in the console of the vehicle. Alongside the suspected cocaine in the console, Lewis also saw a "Kookie card," which is a brand of marijuana that comes out of Detroit, and a pair of scissors used to cut up the marijuana. In addition, on the floor and the seat the troopers found marijuana residue, or "shake." Lloyd found receipts with Lucas' name on them for stores in Huntington, West Virginia and Dearborn, Michigan. Lewis read Lucas her *Miranda* rights. In addition, Lewis photographed the bag of suspected cocaine in the center console. Lewis transported Lucas to the Scioto County Jail where she was incarcerated. Lucas told Lewis at the jail that the cocaine was for "personal use."

{¶19} Later, the suspected cocaine was sent to the Ohio State Highway Patrol Laboratory and determined to be 56.2096 grams of cocaine.

{¶20} The court issued findings of fact after hearing the evidence, both on the record in open court and by judgment entry on January 24, 2023. The trial court held the evidence was uncontroverted that (1) Lewis observed several traffic violations, including Lucas traveling left of center on two occasions and her vehicle being paced at between 52-53 in a 45-m.p.h. zone. (The trial court noted that these initial violations were not on the video because of the way in which the video recording system works; however, the trial court observed the speed from the video and noted that the video shows Lewis mentioning the lane infractions when Lucas was pulled over); (2) Lewis smelled the odor of raw marijuana coming from both the vehicle and person, photos showed raw marijuana on the passenger's side floorboard and Lucas found a Kookie card for marijuana and scissors in the center console; (3) after locating contraband, Lewis *Mirandized* Lucas and Lucas indicated she understood her rights; and (4) no

evidence of racial profiling was presented at the hearing. The trial court ruled that a reasonable suspicion existed to pull over Lucas, the odor and presence of marijuana gave Lewis probable cause to search the car, and any statements Lucas made were voluntary.

{¶21} The case came on for two-day trial on February 13-14, 2023. Before trial, upon the State's motion, the court dismissed Count 3, the marijuana possession count. The jury found Lucas guilty of the remaining three counts. On February 14, 2023, the court merged Counts 1 and 2. The court sentenced Lucas to 11 to 16½ years on Count 1, trafficking in cocaine, and 12 months on Count 4, possession of criminal tools. The court ordered Count 4 to run consecutively to Count 1, for an aggregate sentence of 12 to 17½ years. The court also assessed a mandatory fine of $20,000 on Count 1 and ordered Lucas to pay costs.

ASSIGNMENTS OF ERROR

I. DEFENDANT-APPELLANT WAS DENIED HER CONSTITUTIONALLY GUARANTEED RIGHT TO EFFECTIVE HYBRID REPRESENTATION UNDER OHIO CONSTITUTION, ARTICLE I, SECTION 10.

II. THE DEFENDANT-APPELLANT WAS DENIED HER CONSTITUTIONALLY GUARANTEED RIGHT TO EFFECTIVE STANDBY COUNSEL UNDER OHIO CONSTITUTION, ARTICLE I, SECTION 10.

III. THE TRIAL COURT ERRED IN DENYING DEFENDANT-APPELLANT'S MOTION TO SUPPRESS EVIDENCE IN VIOLATION OF THE FIFTH, (sic) SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 14 OF THE OHIO CONSTITUTION.

IV. THE TRIAL COURT ERRED BY IMPOSING A MANDATORY FINE UPON DEFENDANT-APPELLANT WHERE SHE WAS NOT BEING EFFECTIVELY ASSISTED BY STANDBY COUNSEL IN VIOLATION OF ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION.

I. First, Second, Third and Fourth Assignments of Error Involving Counsel.

{¶22} Lucas' first, second and fourth assignments of error and a portion of her third assignment of error involve her decision to proceed pro se in the trial court below and discuss the concepts of hybrid representation, standby counsel, and effective assistance of counsel related thereto. Because the issues are so intertwined in our analysis, we will discuss all the issues regarding hybrid and standby counsel in those assignments together.

{¶23} In her first assignment of error, Lucas claims that the Ohio Constitution supports a right to hybrid representation and that the trial court denied her that right. Lucas reasons on appeal that the plain language of Ohio Constitution, Article I, Section 10 stating "The party accused shall be allowed to appear and defend in person *and* with counsel (emphasis added)," affords her hybrid representation because the second "and" is conjunctive and the word "or" is not present in that sentence. Finally, Lucas asserts that because Ohio Constitution, Article I, Section 10 affords that hybrid representation, then the hybrid representation must be "effective" representation.

{¶24} The State responds that it is well-settled that both the Sixth Amendment to the United States Constitution .and Ohio Constitution, Article 1, Section 10, afford an accused an independent constitutional right of self-representation as long as she waives counsel in accordance with Crim.R. 44. In doing so, the State cites Supreme Court of Ohio precedent that affirms neither state nor federal constitutions mandates hybrid representation. *State v. Martin,* 2004-Ohio-5471, ¶ 31.

{¶25} In her second assignment of error, Lucas claims that she was denied her constitutionally guaranteed right to effective standby counsel under Ohio Constitution,

Article I, Section 10. According to Lucas, the trial court erred when appointing standby counsel because it limited standby counsel's role from appointment through sentencing to that of a fill-in should she have given up her self-representation. Similar to her contentions in the first assignment of error, Lucas claims that the plain language of the Ohio Constitution, Article I, Section 10, affords her not only standby counsel, but the effective assistance of that counsel.

{¶26} The State responds that both the United States and Ohio Constitutions do not set forth a right to standby counsel. Therefore, because there is no right to standby counsel in the first place, the trial court does not err by limiting the role of standby counsel should it opt to appoint one.

{¶27} In her third and fourth assignments of error, Lucas once again claims that she was not effectively assisted by standby counsel because (1) her standby counsel did not assist her during the motion to suppress hearing resulting in a denial of her motion and (2) her standby counsel did not assist her at sentencing resulting in the trial court imposing a mandatory fine. She asserts that this lack of effective assistance of standby counsel at these critical stages of the proceeding results in the type of mistake for which she does not need to demonstrate prejudice, as set forth in the United States Supreme Court case, *U.S. v. Cronic*, 466 U.S. 648 (1984).

{¶28} The State asserts that the court properly denied Lucas' motion to suppress and also sentenced Lucas in accordance with the applicable law such that these assignments of error should also be overruled. The State asserts that standby counsel did not file an affidavit regarding Lucas' income claiming her to be indigent for

the purposes of imposing a mandatory fine, but there was no obligation for standby counsel to do so.

{¶29} Notably, Lucas does not turn to the federal constitution to support her arguments regarding counsel. She acknowledges that the federal constitution does not grant her rights to hybrid representation or standby counsel. Instead, she urges us to recognize that the Ohio Constitution, Article I, Section 10 affords her the right to both hybrid representation and standby counsel. She goes on to reason that this lack of hybrid representation or standby counsel results in ineffective assistance of counsel. For the reasons set forth below, we reject her claims and find no reason to depart from well-reasoned precedent of both state and federal courts.

A. Self-Representation.

{¶30} The Sixth and Fourteenth Amendments of the United States Constitution guarantee that a person brought to trial in any state court must be afforded the right to assistance of counsel before she can be convicted and punished by imprisonment. *Faretta v. California,* 422 U.S. 806, 807 (1975). The Ohio Constitution, Article 1, Section 10, similarly provides that "[i]n any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel."

{¶31} The United States Supreme Court has addressed the issue of whether a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so. As the United States Supreme Court put in plain words, a state may not constitutionally "hale a person into its criminal courts and there force a lawyer upon him, even when he insists that he wants to conduct his own defense." *Id.* The Supreme Court of Ohio also acknowledged this

independent right of self-representation. *State v. Gibson,* 45 Ohio St. 2d 366 (1976), paragraph one of the syllabus ("The Sixth Amendment, as made applicable to the states by the Fourteenth Amendment, guarantees that a defendant in a state criminal trial has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he voluntarily, and knowingly and intelligently elects to do so."). As the Supreme Court of Ohio underscored, ["t]his right is thwarted when counsel is forced upon an unwilling defendant, who alone bears the risk of a potential conviction." *State v. Obermiller,* 2016-Ohio-1594, ¶ 26, citing *Faretta,* 422 U.S. at 819-20. The procedure for a defendant proceeding without counsel is set out in Crim.R. 44(A) and (C), which requires courts to appoint counsel in a serious offense if a defendant is unable to obtain counsel, unless the defendant, in open court and in writing, knowingly, intelligently and voluntarily waives her right to counsel.

{¶32} Although a defendant has a right to counsel, or a right to proceed pro se, questions arise as to whether these rights extend to a right to hybrid representation or a right to have standby counsel when one elects to defend oneself. Hybrid representation results when a defendant represents herself while she also has a lawyer fully representing her, and the two work together as co-counsel. Standby counsel's involvement is defined by the trial court. Thus, hybrid representation differs from standby representation in that hybrid representation results in the defendant and counsel acting as co-counsel, sharing responsibilities in preparing and conducting trial. *State v. Martin,* 2004-Ohio-5471, ¶ 29.

B. Hybrid Representation

{¶33} Some proponents of hybrid representation of criminal defendant and defense counsel argue that hybrid representation both preserves the reliability of the judicial process and protects the defendant's dignity. *See State v. Thompson*, 33 Ohio St. 3d 1, 7 (1987) (wherein appellant asserted this argument). Thus, some scholars and litigants have urged courts to recognize a right to both hybrid and standby representation under the Ohio Constitution. *See, e.g., State v. Hackett*, 2020-Ohio-6699, ¶ 22-46 (Fischer, J., concurring). However, as the Supreme Court of Ohio has observed, "[n]either the United States Constitution, the Ohio Constitution nor case law mandates such a hybrid representation." *Thompson* at 6-7. "Although appellant has the right to either appear *pro se* or to have counsel, he has no corresponding right to act as co-counsel on his own behalf." *Id.* This explanation was underscored again by the Supreme Court of Ohio in *State v. Martin,* 2004-Ohio-5471, ¶ 31-32. There, the Supreme Court of Ohio reaffirmed "in Ohio, a criminal defendant has the right to representation by counsel or to proceed pro se with the assistance of standby counsel." *Martin* at 32. *Martin* further explained that those two rights are "independent of each other and may not be asserted simultaneously." *Id.* citing *Parren v. State,* 309 Md. 260, 269 (1987).

{¶34} As the Ohio Supreme Court recognized in *Martin*, hybrid representation results in several troubling issues. *Martin* at ¶ 33.

> First, situations may arise in a hybrid representation environment where the accused and his "co-counsel" disagree on strategy, which witnesses to call, and other key trial issues. Who is the ultimate decision maker? Hybrid representation poses difficult ethical issues for counsel and management issues for the trial judge when the defendant and his counsel disagree as to how the trial should proceed.

> Even more troubling is the issue of waiver. * * * Neither the court, nor the defendant, nor counsel, nor the prosecutor would know until the record of the trial was examined who was actually responsible for the conduct of the defense and in control of deciding questions and resolving problems as they arose.

Martin at ¶ 33-34. Further, we have repeatedly held that both the federal and state constitutions do not afford a defendant a right to hybrid representation and we see no need to depart from this precedent. *See State v. Green,* 2025-Ohio-611, ¶ 6, fn. 1 (4th Dist.); *State v. Rexroad,* 2023-Ohio-356, ¶ 39 (4th Dist.); *State v. Myers,* 2022-Ohio-4615, ¶ 24 (4th Dist.); *State v. Lamb,* 2018-Ohio-1405, ¶ 57 (4th Dist.); *State v. James,* 2014-Ohio-1702, ¶ 12 (4th Dist.); *State v. Landrum*, 1989 WL 4244, *21 (4th Dist. Jan. 12, 1989).

{¶35} In the instant case, while it is clear from the beginning that Lucas wanted to proceed pro se, it is murky at first as to whether Lucas wanted co-counsel to assist her in the trial court. She stated in her motion that she did not want the assistance of the court-appointed counsel she had received. Her motion states that she would possibly hire or procure her own counsel to help her at a later date. However, as the case progressed, she never procured her own counsel. At the December 12 hearing regarding her motion to proceed pro se (held before the motion to suppress hearing and trial) it became clear she wanted to proceed pro se, without co-counsel. That waiver was later memorialized in writing. She also made clear her wishes to represent herself at a February 2, 2023 hearing, and the inception of trial on February 13, 2023. Despite this waiver, she claims on appeal that she was requesting some sort of hybrid representation, which is afforded, she claims, by the Ohio Constitution.

{¶36} Recently, a similar argument was raised in the Twelfth District. *State v. Francis*, 2024-Ohio-5547, ¶ 4-10. There, the appellant cited a Supreme Court of Ohio concurring opinion to argue the conjunctive language of Article 1, Section 10 suggests the Ohio Constitution guarantees the right to hybrid representation. *State v. Francis,* 2024-Ohio-5547, ¶ 6, citing *State v. Hackett,* 2020-Ohio-6699, ¶ 34 (Fischer, J. concurring). The Twelfth District underscored the fact that, "the Ohio Supreme Court has expressly acknowledged the difference in the text found in the Ohio and federal constitutional provisions and has already determined Ohio's Article 1, Section 10 does not create a hybrid representation." *Francis* at ¶ 10, citing *Martin*, 2004-Ohio-5471 at ¶ 22, 31.

{¶37} We agree with the Twelfth District and other courts and reiterate that there is no right to hybrid representation. *See, e.g., State v. Bender-Adams,* 2024-Ohio-4897, ¶ 62 (8th Dist.); *State v. Dinger,* 2022-Ohio-608, ¶ 18 (5th Dist.); *State v. Terell,* 2022-Ohio-4312, ¶ 34 (6th Dist.); *State v. Wilson,* 2020-Ohio-2962, ¶ 56 (2d Dist.); *State v. Keenan,* 81 Ohio St.3d 133, 138 (1998). Further, as explained above, the record does not support the contention that Lucas even requested hybrid representation after waiving counsel.

C. Standby Representation

{¶38} As the Supreme Court of Ohio has explained, "[o]nce the right to counsel is properly waived, trial courts are permitted to appoint standby counsel to assist the otherwise pro se defendant." *State v. Martin*, 2004-Ohio-5471, ¶ 28. The United States Supreme Court also clarified " 'a State may – even over objection by the accused – appoint a 'standby counsel' to aid the accused if and when the accused requests help,

and to be available to represent the accused in the event that the termination of the defendant's self-representation is necessary.' " *Id.*, quoting *Faretta v. California,* 422 U.S. 806, 834, fn. 46. However, like hybrid representation, "[t]here is no Sixth Amendment right to any assistance from standby counsel." *State v. Hackett,* 2020-Ohio-6699, ¶ 8. Thus, limiting the role of standby counsel cannot violate the Sixth Amendment. *Id.* The trial court's decision to appoint standby counsel and the extent that standby counsel may assist, is permissive, not mandatory. *Id.* at ¶ 14.

{¶39} Unlike Lucas, whose challenge involves the state constitution, the Supreme Court of Ohio in *State v. Hackett* specifically limited its discussion to the narrow question of whether the Sixth Amendment of the United States Constitution afforded him a right to standby counsel. 2020-Ohio-6699. However, it would follow from the reasoning in *Hackett* that Article I, Section 10 of the Ohio Constitution also does not guarantee the provision of standby counsel. As *Hackett* explained, a right to a certain level of involvement from standby counsel would result in a particular conundrum – "if standby counsel is allowed to do too much, then that risks a violation of the defendant's right to self-representation, and if standby counsel is allowed to do too little, then a court might violate the constitutional right to counsel." *Hackett* at ¶ 16. In addition, if standby counsel does too much, then the result may be hybrid representation, or an attorney being co-counsel to a pro se defendant, both of which are clearly not permitted by either constitution, and violate *Faretta's* explained Sixth Amendment right to represent oneself. *See McKaskle v. Wiggins,* 465 U.S. 168, 183 (1984) (wherein the United States Supreme Court discusses the permissible extent of standby counsel involvement and its necessary limitations).

{¶40} Therefore, if the trial court opts to provide standby counsel, then it has the discretion to determine the extent of standby counsel's involvement. As *Hackett* encourages, it is important for trial courts to "explicitly define the role of standby counsel * * * to ensure the defendant understands this role." *Hackett* at ¶ 20; *State v. Colquitt*, 2022-Ohio-4448, ¶43 (12th Dist.). Even so, the involvement of standby counsel must not reach the level of " 'unsolicited and excessively intrusive participation' that is at odds with a criminal defendant's right to self-representation." *Id.*

{¶41} In the instant case, once the trial court determined Lucas had waived her right to counsel pursuant to Crim.R. 44, it provided standby counsel to her and clarified what role that counsel would have. The record shows that standby counsel helped ensure Lucas received discovery from the State, provided materials to her such as the applicable statutes, criminal rules and evidence rules, and at times, explained courtroom procedure to Lucas. The trial court explained:

> The Court: Well, if I let you represent yourself I'm going to appoint standby counsel to represent you, and even though they can't give you legal advice, they will be able to look up certain issues regarding the law for you, but they won't suggest to you what you should look up.

Further in the hearing, after ensuring Lucas wanted to proceed pro se, the court emphasized:

> [D]o you understand that [court-appointed standby counsel] is standby counsel? Until such time as you tell him and advise the Court that you want him to represent you, he is not allowed to assist you in preparing this case for trial. * * * his job is to be there and be ready in case you feel like you're not up to the task to represent yourself at some point between now and the trial or you get cold feet and you want him to step in, but it's not his job to work with you in preparing a defense.

To which Lucas responded affirmatively.

{¶42} At times, standby counsel attempted to assist Lucas with courtroom procedure. This is well within the permissible bounds of standby counsel, as set forth in other cases. *See*, *e.g., State v. Wilson*, 2020-Ohio-2962, ¶ 58 (2d Dist.) (standby counsel is permitted to answer a defendant's questions regarding courtroom procedure). In addition, in the instant case, the trial court made clear to Lucas that standby counsel was only there to step in if Lucas decided she no longer wanted to represent herself. This is a permissible limitation set by the trial court and mirrors the limitation that the trial court set in *Hackett*. *See Hackett,* 2020-Ohio-6699, ¶ 3-5 (when Hackett asked the court for the definition of standby counsel, the trial court responded, "[i]f you decide now or during the trial that you are in over your head and ask me to have [standby counsel] step in, then he would come in as your attorney. It is nothing more or less than that."); *see also, Wilson* at ¶ 52-57 (when the defendant asked whether he could have the assistance of standby counsel, the trial court said if he decided at some point he was in over his head, then the standby counsel would step in, but if he decided to represent himself, then defense counsel would not assist him). Therefore, the record in the instant case shows that the trial court followed the instructions in *Hackett* of explaining and limiting the role of standby counsel.

{¶43} Lucas, however, still claims error because she asserts the Ohio Constitution affords her rights to hybrid and standby counsel, which must therefore require that she receive *effective* assistance of that counsel. However, as the Supreme Court of Ohio explained in *Hackett*, "[w]hen a criminal defendant validly exercises his right to self-representation, that comes with a cost; he can no longer raise a Sixth Amendment claim that trial counsel—standby or otherwise—did not do enough in his

defense." *Hackett* at ¶ 21. A defendant who waives counsel and chooses to proceed pro se cannot complain that she failed to receive effective assistance of counsel because there is no corresponding right to act as co-counsel on her own behalf. *See State v. Thompson*, 33 Ohio St.3d 1, 6-7 (1987); *see also*, *State v. Bender-Adams*, 2024-Ohio-4897, ¶ 62 (8th Dist.) (underscoring that once someone waives their right to counsel and they are provided standby counsel, nothing requires that counsel to provide any level of assistance); *State v. Dinger*, 2022-Ohio-608, ¶ 18 (5th Dist.) ("appellant cannot raise a claim of ineffective assistance of counsel because there is no right to hybrid counsel and appellant cannot assert his own ineffectiveness of counsel"); *State v. Hillman*, 2014-Ohio-5760, ¶ 58 (10th Dist.) (where Tenth District acknowledged Supreme Court of Ohio precedent forecloses a ineffective assistance claim when a pro se defendant elects to proceed pro se); *State v. Turner*, 2007-Ohio-5732, ¶ 40 (8th Dist.) ("Appellant waived his right to counsel and therefore waived any right to claim ineffective assistance of counsel.").

{¶44} In the instant case, Lucas alleges two specific errors in the standby counsel's representation. First, in her third assignment of error, Lucas speculates that her motion to suppress would have been granted if her standby counsel had participated in a more significant role during the hearing. But she does not point to what specifically the standby counsel should have, or could have, done to effect a different result. Further, in her fourth assignment of error, Lucas asserts that "the trial court erred in imposing a mandatory fine upon [her] while she was not being effectively assisted by standby counsel." She further argues that this effective assistance of counsel springs forth from the Ohio Constitution, Article I, Section 10. In so doing, she claims that

standby counsel's inaction resulted in the complete failure to subject her case to adversarial testing resulting in a mistake pursuant to *U.S. v. Cronic*, 466 U.S. 648 (1984) (where prejudice to the defendant is presumed without the need for a specific showing of how counsel's errors affected the outcome of the trial because purportedly there is a complete denial of counsel at a critical stage of the proceeding or the case was not subjected to meaningful adversarial testing).

{¶45} Lucas completely fails to address the December 12, 2022 hearing and the January 13, 2023 waiver of counsel in which she gave up her right to counsel. As set forth above, waiver of counsel precludes this argument and the trial court's decision to appoint standby counsel does not equivocate a right to *effective* assistance of that counsel. Once she waived counsel she had to proceed at her own risk. As noted above, Ohio and federal precedent have long followed that principle, at least regarding the federal constitution. We are not persuaded that the Ohio Constitution, Article I, Section 10 requires more. To do so, would veer in the direction of converting standby counsel into hybrid, or co-counsel, to the pro se defendant. In essence, to rule as Lucas now suggests would trample hers and others' right to proceed pro se as explained in *Faretta.* The core of the *Faretta* right is for a defendant to "preserve actual control over the case he chooses to present to the jury." *See McKaskle v. Wiggins,* 465 U.S. 168, 178 (1984). In addition, standby counsel "should not be allowed to destroy the jury's perception that the defendant is representing himself." *See Id.* In the instant case, the trial court complied with Crim.R. 44 and properly explained the role of standby counsel. We therefore find all Lucas' arguments regarding hybrid counsel, standby

counsel, and claims of ineffective assistance of standby counsel to be without merit and hereby overrule the same.

II. Third Assignment of Error – Motion to Suppress

{¶46} In addition to the assertions regarding ineffective assistance of standby counsel that were previously discussed, in her third assignment of error, Lucas asserts that the trial court erred in denying her motion to suppress evidence in violation of the United States and Ohio Constitutions. Lucas argues that the time the trooper first saw her car and followed her on U.S. Route 23 constituted a "seizure," and that the trooper claimed his only reason for following Lucas' vehicle was the fact that it was a rental vehicle with out-of-state plates.

{¶47} In response, the State asserts that the traffic stop in the instant case was valid such that Lucas' constitutional rights were not violated. For the following reasons, we agree with the State.

A. Law

{¶48} Appellate "review of a trial court's denial of a motion to suppress presents a 'mixed question of law and fact.' " *State v. Adams,* 2024-Ohio-376, ¶ 21 (4th Dist.), quoting *State v. Pine*, 2023-Ohio-2191, ¶ 23 (4th Dist.), quoting *State v. Burnside*, 2003-Ohio-5372, ¶ 8. The trial court acts as the trier of fact at a suppression hearing and is in the best position to resolve factual questions and evaluate witness credibility. *Id.* citing *State v. Sheets*, 2023-Ohio-2591, ¶ 45 (4th Dist.), citing *State v. Leonard*, 2017-Ohio-1541, ¶ 15 (4th Dist.). " ' Accordingly, we defer to the trial court's findings of fact if they are supported by competent, credible evidence.' " *Id.* quoting *State v. Jones*, 2012-Ohio-1523, ¶ 6 (4th Dist.), citing *State v. Landrum*, 137 Ohio App.3d 718, 722, (4th Dist.

2000). Accepting the trial court's findings of fact as true, we must then " 'independently determine whether the trial court reached the correct legal conclusion in analyzing the facts of the case.' " *Sheets* at ¶ 45 quoting *State v. Gurley*, 2015-Ohio-5361, ¶ 16 (4th Dist.), citing *State v. Roberts,* 2006-Ohio-3665, ¶ 100.

{¶49} " ' The Fourth Amendment to the United States Constitution and the Ohio Constitution, Article 1, Section 14, prohibit unreasonable searches and seizures.' " *State v. Bennett,* 2021-Ohio-937, ¶ 10 (4th Dist.), quoting *State v. Emerson,* 2012-Ohio-5047, ¶ 15. " 'This constitutional guarantee is protected by the exclusionary rule, which mandates the exclusion at trial of the evidence obtained from the unreasonable search and seizure.' " *Id.* quoting *State v. Petty,* 2019-Ohio-4241, ¶ 11 (4th Dist.), citing *Emerson* at ¶ 15.

{¶50} "[N]ot every police-citizen encounter constitutes a 'seizure' subject to Fourth Amendment scrutiny." *State v. Blankenship,* 2014-Ohio-3600, ¶ 10 (4th Dist.), citing *U.S. v. Mendenhall,* 446 U.S. 544, 553 (1980) and *Terry v. Ohio*, 392 U.S. 1, 19, fn. 16 (1968). "Rather, Fourth Amendment concerns arise '[o]nly when the officer, by means of a physical force or show of authority, has in some way restrained the liberty of a citizen.' " *Id.,* quoting *Mendenhall* at 553; *Florida v. Bostick*, 501 U.S. 429, 434 (1991). Courts therefore have clearly defined what constitutes a "seizure."

{¶51} "A 'seizure' in the context of the Fourth Amendment occurs when there is some application of physical force, even if extremely slight, or a show of authority to which the individual yields." *State v. Bennett,* 2000 WL 821616, *4 (4th Dist. June 21, 2000), citing *California v. Hodari D.* 499 U.S. 621, 623 (1991). As the United States Supreme Court stated in *Hodari D.*: "To constitute a seizure of the person, just as to

constitute an arrest--the quintessential 'seizure of the person' under the Fourth Amendment jurisprudence--there must be either the application of physical force, however slight, or where that is absent, submission to an officer's 'show of authority' to restrain the subject's liberty." *Id.* Thus, while it is clear that stopping and detaining a motorist constitutes a seizure within the meaning of the Fourth Amendment, an officer only "stops" a motorist within the meaning of the Fourth Amendment when, "by means of physical force or show of authority, [he] has in some way restrained the individual's liberty." *Terry v. Ohio,* 392 U.S. 1, 19, fn. 16 (1968).

{¶52} Therefore, "a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed he was not free to leave." *Bennett* at *4, citing *U.S. v. Mendenhall*, 446 U.S. 544, 554 (1980); *see also, Michigan v. Chesternut,* 486 U.S. 567, 573 (1988) (where the United States Supreme Court did not find a "seizure" occurred at the time police in a cruiser began following someone running on foot for some distance); *see also, U.S. v. Herrin,* 468 Fed.Appx. 444, 446 (6th Cir. 2012) (wherein the Sixth Circuit found that a seizure did not occur at the time that officers in a cruiser executed a 180-degree turn and followed defendant for some distance because officers did not activate sirens or lights, command defendant to halt, display their weapons, or position their vehicle to block the defendant). The court therefore examines the totality of the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' request or otherwise terminate the encounter. *Id.* citing *State v. Bird*, 1992 WL 396844, *3 (4th Dist. Dec. 31, 1992). "The

reasonable person standard is objective and permits police to determine in advance whether conduct that they contemplate will implicate Fourth Amendment guarantees." *Id.* citing *Chesternut*, 486 U.S. at 574.

{¶53} In contrast to merely following someone, "[a] traffic stop initiated by a law enforcement officer constitutes a seizure within the meaning of the Fourth Amendment." *See State v. Woods,* 2024-Ohio-5301, ¶ 44 (4th Dist.), quoting *State v. Farrow*, 2023-Ohio-682, ¶ 13 (4th Dist.). Thus, " 'a traffic stop must comply with the Fourth Amendment's general reasonableness requirement. An officer's decision to stop a vehicle is reasonable when the officer has probable cause or reasonable suspicion to believe that the driver has committed, or is committing a crime, including a minor traffic violation.' " *Id.,* quoting *Farrow* at ¶ 13, citing *Whren v. United States*, 517 U.S. 806, 809-810 (1996). "Where a police officer stops a vehicle based on probable cause that a traffic violation has occurred or was occurring, the stop is not unreasonable under the Fourth Amendment to the United States Constitution even if the officer had some ulterior motive for making the stop[.]" *Dayton v. Erickson*, 1996-Ohio-431, paragraph one of the syllabus. Additionally, "it is well-established that a police officer may stop the driver of a vehicle after observing even a de minimus violation of traffic laws. *State v. Moore*, 2023-Ohio-494, ¶ 22 (4th Dist.); *State v. Meadows,* 2022-Ohio-287, ¶ 17 (4th Dist.); *State v. Williams,* 2014-Ohio-4897, ¶ 9 (4th Dist.).

B. Analysis

{¶54} In the instant case, Lucas claims in her motion filed in the trial court, and on appeal, that Lewis followed her for "five miles." That is not clear from the record. It is clear that Lewis paced the vehicle for some time by maintaining the same distance

from the vehicle as he followed it, while using his speedometer and radar to determine the speed he was traveling, as well as the speed of Lucas' vehicle. Ohio courts have determined "pacing" to be an acceptable manner for determining a vehicle's speed, and that a speeding motorist gives an officer reasonable suspicion to initiate a traffic stop in violation of R.C. 4511.21. *See State v. Tatum,* 2023-Ohio-629, ¶ 33 (5th Dist.); *State v. Pullin,* 2020-Ohio-787, ¶ 17-20 (5th Dist.); *State v. Ratliff,* 2020-Ohio-3315, ¶ 20-22 (12th Dist.); *State v. Lewis,* 2020-Ohio-4633, ¶36 (11th Dist.); *State v. Lumbus,* 2016-Ohio-380, ¶ 19-20 (8th Dist.). In addition, Lewis also observed two lane violations, before pulling Lucas over. A motorist crossing over the double-yellow center line (left of center violation), provides an officer with reasonable suspicion to initiate a traffic stop as a violation of R.C. 4511.25. *See State v. Martorana,* 2023-Ohio-662, ¶ 22 (6th Dist.); *State v. Wilds,* 2021-Ohio-2554, ¶ 18 (4th Dist.); *State v. Carano,* 2013-Ohio-1633, ¶ 14 (9th Dist.); *State v. Guseman,* 2009-Ohio-952, ¶ 24 (4th Dist.); *State v. Stevens,* 2000 WL 1253526, *6 (4th Dist. Aug. 30, 2000).

{¶55} Lucas claims a "seizure" occurred at the moment that Lewis began to follow her. We find Lucas' argument that a seizure occurred the moment Lewis decided to follow her is unpersuasive, because there is no evidence to support an inference that Lewis restrained Lucas' liberty by any show of authority. Until those 30 seconds before Lewis pulled Lucas over, Lewis had not activated sirens or lights, told Lucas to halt, displayed a weapon, or positioned his cruiser in a way to block the rental vehicle. Assuming arguendo that Lewis did follow Lucas for some time, which could perhaps be a credibility issue regarding what traffic violations he observed, Lewis explained at the hearing that he did not pull Lucas over when he first observed an infraction because

pulling the vehicle over on that particular roadway would have resulted in the need to block an entire lane of the roadway.

{¶56} In addition, questions of fact, as noted above, are for the trial court. There is competent, credible evidence in the transcript and the video exhibit the State presented at the motion to suppress hearing that Lewis observed the lane and speed violations. Because the issue is the reasonable suspicion to *stop* the vehicle, the reason Lucas may have given as to why he decided to *follow* the vehicle is but a factor in the totality of the circumstances. The time when an officer decides to follow a vehicle is not determinative of the issue of the reasonableness of the stop. Thus, the time Lewis decided to follow Lucas was not the time in which he had to articulate reasonable suspicion or probable cause that criminal activity was afoot.

{¶57} We find Lucas' arguments to be unpersuasive and therefore overrule Lucas' third assignment of error both for the reasons discussed above regarding hybrid or standby counsel, as well as for the reason that the stop in the within case was reasonable and did not violate the state or federal constitutions.

CONCLUSION

{¶58} Neither the United States Constitution nor the Ohio Constitution, Article 1, Section 10 permits hybrid representation for an accused. As to standby representation, it is the in the trial court's discretion whether to appoint standby counsel, and to define the extent of the participation of that counsel. Further, when a defendant waives the assistance of counsel according to Crim.R. 44 and opts to proceed pro se, she waives all assistance of counsel, as well as any claims she may have to ineffective assistance of counsel, either in the trial court, or on appeal.

{¶59} As to the motion to suppress, a law enforcement officer's decision to follow someone is not a seizure until the officer, by means of a physical force or show of authority, has in some way restrained the liberty of a citizen and that citizen in turn yields to the authority. Thus, merely following someone is not a "seizure" as contemplated by the Fourth Amendment to the United States Constitution or the Ohio Constitution, Article 1, Section 14.

{¶60} We therefore overrule all of Lucas' assignments of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

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

The Court finds there were reasonable grounds for this appeal.

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

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

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

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.