[Cite as *State v. Smith*, 2025-Ohio-5752.]

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

STATE OF OHIO, Plaintiff-Appellee, v. ROBERT TRAMMEL SMITH, AKA: T.J., Defendant-Appellant.	: : : : : : : : : : :	Case No. 23CA4036 DECISION AND JUDGMENT ENTRY **RELEASED: 12/09/2025**

APPEARANCES:

Karyn Justice, Portsmouth, Ohio, for appellant.

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

Wilkin, J.

{¶1} This is an appeal of a Scioto County Court of Common Pleas judgment entry in which Robert Trammel Smith ("Smith") was convicted of trafficking in a fentanyl-related compound, with major drug offender specification, with the weight of the drugs equal to or exceeding 100 grams; aggravated trafficking in drugs (methamphetamine), with the weight of the drugs equal to or exceeding five times the bulk amount but less than 50 times the bulk amount; and possessing criminal tools. On appeal Smith asserts the trial court committed reversible error when it admitted certain other-acts evidence. Smith further contends the trial court erred when denying his motion to suppress. Finally, Smith argues his convictions are not supported by sufficient evidence. After

reviewing the parties' arguments, the record, and the applicable law, we find no merit to his assignments of error and affirm the judgment of the trial court.

BACKGROUND

{¶2} On October 19, 2022, at approximately 6:00 p.m., Trooper Dewaine Norman of the Ohio State Highway Patrol, who also had experience with criminal interdiction and the drug task force, received information from the task force regarding an ongoing drug investigation involving Smith. Specifically, Norman learned that a Portsmouth taxi driven by Susan Carver ("Carver") was coming from Dayton southbound on State Route 104, and that a passenger in that taxi (Smith) had an active felony warrant. The information included the fact Smith often wore a black ski mask on his head. Further, Norman learned that the taxi could possibly contain illegal drugs.

{¶3} Upon receiving the information, Norman located the taxi at the Briar Patch convenience store, which is located on State Route 104, just north of State Route 348 in Lucasville. The vehicle had a sign on the top that said "taxi" and was actually a van which had sliding doors in the back. After the taxi pulled out from the Briar Patch, Norman saw three separate turn signal violations and signaled for backup. Deputy Donald Tackett-Dye showed up to the scene to assist.

{¶4} When Norman approached the taxi, he saw that the driver was eating fried food from Charlie Biggs that came from the Briar Patch. Norman smelled both fried chicken and raw marijuana odor coming from the taxi. Norman confirmed that Susan Carver was the driver and asked for her license.

However, even though the vehicle Carver was driving was a taxi, she did not provide her driver's license but instead provided a social security number. Smith was seated in the captain's chair directly behind Carver in the second row of seats. Seated to the right of Smith in the other captain's chair was Reginald Langford ("Langford"). The taxi also had an empty third-row bench seat.

{¶5} Norman noticed, shortly after approaching Carver, that she had constricted pupils, consistent with opiate use. She also appeared to be nervous. Carver referred to Smith as "T.J.", seeming to be familiar with the passenger, which Norman thought was odd. Carver explained that Smith was "one of my regulars," and also stated that "a taxi drive from Dayton to Portsmouth isn't cheap." While Norman spoke to Carver, she spoke of taking four Altrims[1] (she stated five another time), and later spoke about taking Neurontin, which was not prescribed to her. She also seemed familiar with what types of prescription pills could be bought on the street. Norman believed Carver was impaired, so he prepared to have Carver perform four different field sobriety tests.

{¶6} When Norman asked Smith for identification, Smith told Norman his name was "Terrell Allen." Smith also gave an incorrect social security number that belonged to an individual named Andrew Coffee. Norman asked Smith to exit the taxi both because Smith had a warrant and Smith had given a false name. Norman noticed that Smith had a cell phone in his hand. In addition, Norman saw an Apple iPhone with a white case at Smith's feet (lying on the floor

[1] The trial transcript refers to the prescription drugs as "Altrims," throughout, as have the parties. However, a review of the video appears that Carver is saying "Ultrams." "Ultram" and "Ultracet" are trade names for tramadol, listed as a Schedule IV narcotic under Adm.Code 4729:9-1-04(A)(3).

of the taxi behind the driver's seat, on the left side between the sliding door and Smith's seat).

{¶7} Norman performed a consent search of Smith, who had a bunch of little plastic baggies in his pockets. Norman found this significant because the baggies were similar to those used by drug traffickers to distribute drugs to individuals. Smith told Norman he was coming from either 522 or 922 Gay Street in Portsmouth, but Norman knew from the information provided by the task force that what Smith told him was false, and further, the taxi was headed to Portsmouth, not from it. Smith had a ski mask on his head and he smelled like marijuana. Smith was advised of his Miranda warnings and detained in Norman's cruiser. Eventually, Smith admitted he had a parole warrant.

{¶8} Tackett-Dye, who also noticed the odor of marijuana, spoke to Langford. Langford said he was coming from the same location as Smith; however, Langford said that he and Smith were not traveling together. Tackett-Dye placed Langford in the rear of the patrol car for officer's safety purposes while a search was conducted.

{¶9} At some point, Norman also spoke to Langford and explained that Carver could not drive the taxi because she was impaired. Carver was arrested for OVI. Norman also told Langford that he could smell marijuana. Langford admitted that he smoked weed earlier, before he got in the taxi. Because Carver was being arrested for the OVI, the taxi had to be towed. So, the troopers did an inventory search of the taxi, per policy.

{¶10} In the glovebox, Norman found drug paraphernalia, which he believed to be Carver's. Under the third-row bench seat, within the reach of Smith, Tackett-Dye found two boxes of chicken that came from the convenience store, sitting on the floorboard next to one another. Inside the boxes were several baggies of suspected drugs, including marijuana, fentanyl, cocaine, and methamphetamine. The chicken inside the boxes was still warm, so based on the fact it was a cool evening, it appeared that someone must have put the drugs in the box shortly after the chicken was purchased at the Briar Patch, and therefore shortly before Norman pulled the taxi over. The chicken boxes were within both passengers' reach. Even though both passengers in the van had access to the boxes where the drugs were found, Smith was the passenger who had sauce from the chicken on his pants.

{¶11} Additionally, four cell phones were collected. Each occupant claimed a cell phone, but no one claimed the Apple iPhone in the white case that had been lying by Smith's feet. A search warrant was obtained for the cell phone located on the floor and when the task force called the number used to make controlled purchases from Smith, the cellphone rang. The phone also contained photos of Smith and messages of drug activity.

{¶12} The bags containing the suspected drugs that had been found in the takeout boxes were submitted to BCI for analysis and the lab results showed 111.11 grams of methamphetamine, 6.96 grams of heroin/fentanyl, 3.7 grams of fentanyl, 5.09 grams of cocaine, 6.77 grams of a fentanyl mixture, 6.66 grams of a fentanyl mixture, 7.35 grams of a fentanyl mixture, and 76.13 grams of fentanyl.

{¶13} On November 22, 2022, as a result of the traffic stop, a Scioto County grand jury indicted Smith, Carver, and Langford with 22 felony counts. The indictment charged each defendant as follows:

> Count 1: trafficking in a fentanyl-related compound, with major drug offender specification, in violation of R.C. 2925.03(A)(2), R.C. 2925.03(C)(9)(h), a first-degree felony;
>
> Count 2: aggravated trafficking in drugs (methamphetamine), in violation of R.C. 2925.03(A)(2), R.C. 2925.03(C)(1)(d), a second-degree felony;
>
> Count 3: possession of a fentanyl-related compound, with major drug offender specification, in violation of R.C. 2925.11(A), R.C. 2925.11(C)(11)(g), a first-degree felony;
>
> Count 4: aggravated possession of drugs (methamphetamine), in violation of R.C. 2925.11(A), R.C. 2925.11(C)(1)(c), a second-degree felony;
>
> Count 5: trafficking in a fentanyl-related compound, in violation of R.C. 2925.03(A)(2), R.C. 2925.03(C)(9)(g), a first-degree felony;
>
> Counts 6, 7, 8, 9, 10, 11 and 12: trafficking in a fentanyl-related compound, in violation of R.C. 2925.03(A)(2), R.C. 2925.03(C)(9)(d), third-degree felonies;
>
> Count 13: possession of a fentanyl-related compound, in violation of R.C. 2925.11(A), R.C. 2925.11 (C)(11)(f), a first-degree felony;
>
> Count 14, 15, 16, 17, 18, 19 and 20: possession of a fentanyl-related compound, in violation of R.C. R.C. 2925.11(A), R.C. 2925.11(C)(11)(c), third-degree felonies;
>
> Count 21: possessing criminal tools, in violation of R.C. 2923.24(A), R.C. 2923.24(C), a fifth-degree felony, (Portsmouth Taxi and cell phones);
>
> Count 22: conspiracy to trafficking in a fentanyl-related compound, in violation of R.C. 2923.01(A)(2), R.C. 2923.01(J)(2), a second-degree felony, (traveling by Portsmouth Taxi to Montgomery County area to obtain controlled substances and transporting said substances into the Scioto County area).

{¶14} On April 17, 2023, Smith filed a motion to suppress and motion in limine. The State filed a memorandum opposing the motion to suppress on April 25, 2023, and hearing was held the same day. The court ruled on the motion to suppress from the bench and in an entry on May 19, 2023. On June 7, 2023, the State filed its notice of intent to use other acts evidence, and the defense filed a second motion in limine on June 8, 2023. The trial court addressed the motion in limine also on June 8.

{¶15} The jury trial in the case began on June 12, 2023, and lasted three days. At the outset of trial, the State dismissed Counts 7, 10, 15, and 18, and amended Counts 11 and 19 to reflect a lower weight amount (3.7 grams), resulting in fourth-degree felonies. In addition to Norman and Tackett-Dye, the State called to testify the forensic scientist/chemist from the BCI crime lab, members of the Southern Ohio Drug Task Force, witnesses who testified about Smith selling drugs, and/or taking a taxi to and from Portsmouth to Dayton on frequent occasions. Carver also testified for the State. The defense moved for a Rule 29 acquittal, which the trial court denied.

{¶16} For the defense, Smith called as witnesses his girlfriend who resides in Dayton, and Langford, who claimed ownership of the drugs. The State recalled Detective Kevin Metzler of the Southern Ohio Drug Task Force and Portsmouth Police Department to rebut the defense witnesses' testimony.

{¶17} The jury found Smith guilty on Counts 1, 2, 3, 4, 5, 6, 8, 9, 12, 13, 14, 16, 17, 20, 21, and 22, including the weight of amounts alleged by the indictment. The jury also found Smith guilty on Counts 11 and 19, including the

alleged amended weight of amounts. The jury further found Smith guilty of the major drug specifications as charged in Counts 1 and 3. Three counts remained after merger: Count 1, trafficking in a fentanyl-related compound, with a major drug offender specification, a first-degree felony, Count 2, aggravated trafficking in drugs (methamphetamine), a second-degree felony, and Count 21, possessing criminal tools, a fifth-degree felony. The trial court sentenced Smith to a total of 28 years to 33 years and 6 months, plus an additional 363 days to be served as a post-release control sanction. Smith later submitted this timely appeal.

ASSIGNMENTS OF ERROR

I. THE COURT COMMITTED REVERSIBLE ERROR WHEN IT ADMITTED EVIDENCE OF OTHER ACTS.

II. THE COURT ERRED WHEN IT DENIED MR. SMITH'S MOTION TO SUPPRESS.

III. MR. SMITH'S CONVICTIONS ARE NOT SUPPORTED BY SUFFICIENT EVIDENCE.

I. First Assignment of Error

{¶18} In his first assignment of error, Smith contends that the trial court improperly admitted other acts evidence, including cellphone messages and photos retrieved from the iPhone found at his feet, taxi records showing trips made to and from Dayton, testimony regarding other acts from witnesses Seymour and Howard on direct, and Jhonnae Smith on cross-examination all of which prejudiced him because the other acts evidence was of the type that was very similar to the charged offense. He posits whether the trial court erred when it admitted certain other acts evidence that he claims pertains to another pending criminal case.

{¶19} Smith disputes the trial court's holding that the evidence was submitted to show the "immediate background" or "same transaction" because the evidence was actually akin to proof that he has a propensity to commit that type of crime. Smith also argues the trial court failed to consider whether the State was able to present alternative evidence to prove the same facts through less prejudicial means and whether the other-acts evidence is probative of an essential element of the crime or an intermediate fact in the case. Further, Smith challenges on appeal the State's calling several witnesses that testified about his activities months before the stop occurred. He also avers that the State was allowed to cross-examine his witness about certain "corrupt activity" that was the subject of a different case.

{¶20} The State responds that the evidence was inextricably intertwined with the charges in the current indictment. The State also argues that the cell phone evidence would have clearly been admitted into evidence for a non-propensity purpose such as identity and a common scheme utilized by Smith in trafficking. Further, the State posits the cell phone contents were necessary to prove the conspiracy charge linking Smith's scheme to drug trafficking by taxi, bringing drugs from Dayton into Scioto County. Likewise, the State asserts the taxi company records show common scheme and modus operandi to show conspiracy, which was also charged in the indictment. As to the testimony garnered from the cross-examination of Jhonnae Smith, the State says not only did Smith not object to the State's cross-examination at trial, but also the defense opened the door, and the State only engaged in proper impeachment. As to

State witnesses Seymour and Howard, the State points out their testimony was more probative than prejudicial because it went to show Smith's modus operandi for the indicted offenses. Finally, the State argues that Smith has not shown prejudice, and if any evidence was improperly admitted, the error was harmless.

A. Law

{¶21} Evid.R. 404(B) provides, in pertinent part:

> (1) *Prohibited Uses.* Evidence of any other crime, wrong or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
>
> (2) *Permitted Uses; Notice.* This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Similarly, R.C. 2945.59 states:

> In any criminal case in which the defendant's motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing an act is material, any acts of the defendant which tend to show his motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing the act in question may be proved, whether they are contemporaneous with or prior or subsequent thereto, notwithstanding that such proof may show or tend to show the commission of another crime by the defendant.

Thus, while the admission of evidence of other crimes, wrongs, or acts offered to prove the character of an accused in order to show the accused acted in conformity therewith is prohibited, the evidence may be admissible for other purposes. *State v. Sims*, 2023-Ohio-1179, ¶ 95 (4th Dist.), citing *State v. Williams*, 2012-Ohio-5695, syllabus.

{¶22} We have used a three-step analysis to determine whether evidence of other crimes, wrongs or acts of an accused may be admissible, as have our sister courts. *State v. Stevens,* 2023-Ohio-3280, ¶ 125 (4th Dist.), citing *State v. Ludwick,* 2022-Ohio-2609, ¶ 17 (4th Dist.), citing *State v. Williams*, 2012-Ohio-5695, ¶ 19. *See, e.g., State v. Glaeser,* 2025-Ohio-2386, ¶ 26 (3d Dist.); *State v. Stevens,* 2025-Ohio-2121, ¶ 20 (5th Dist.); *State v. Covington,* 2025-Ohio-1720, ¶ 23 (1st Dist.); *State v. Griffin,* 2025-Ohio-1403, ¶ 13 (12th Dist.); *State v. Gibson,* 2025-Ohio-543 (8th Dist.); *State v. Ison,* 2025-Ohio-604, ¶ 33 (11th Dist.); *State v. Venable,* 2025-Ohio-335, ¶ 26 (7th Dist.).

> The first step is to consider whether the other[-]acts evidence is relevant to making any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Evid.R. 401. The next step is to consider whether evidence of the other crimes, wrongs, or acts is presented to prove the character of the accused in order to show activity in conformity therewith or whether the other[-][acts evidence is presented for a legitimate purpose, such as those stated in Evid.R. 404(B). The third step is to consider whether the probative value of the other acts evidence is substantially outweighed by the danger of unfair prejudice. See Evid.R. 403.

State v. Bennett, 2024-Ohio-4557, ¶ 54 (4th Dist.), *Williams* at ¶ 20. Because the first two steps of the test are questions of law that do not involve an exercise of discretion, we conduct a de novo review of those steps. *Id.,* citing *Stevens* at ¶ 126, quoting *State v. Hartman,* 2020-Ohio-4440, ¶ 22. However, the third step, involving Rule 403's balancing test, "constitutes a judgment call," so we apply an abuse-of-discretion review to that step. *Id.*, *Stevens* at ¶ 126, quoting *Hartman* at ¶ 30. "The key is that the evidence must prove something other than the defendant's disposition to commit certain acts." *Hartman* at ¶ 22. Further, "[t]o

properly apply the rule, . . . courts must scrutinize the proponent's logic to determine exactly how the evidence connects to a proper purpose without relying on any intermediate improper-character inferences." *Hartman* at ¶ 23.

{¶23} However, the Supreme Court of Ohio has recently addressed other acts evidence by applying a simpler two-step test, as follows, clarifying *Hartman*:

> In *Hartman*, we made clear that to be admissible, other-acts evidence (1) had to be relevant for an appropriate purpose other than showing the defendant's propensity to commit crime, and (2) that (like all evidence) it must satisfy the requirement of Evid.R. 403(A) that its probative value not be "substantially outweighed by the danger of unfair prejudice." 161 Ohio St.3d 214, 2020-Ohio-4440, 161 N.E.3d 651, at ¶ 20-26, 29.

State v. Echols, 2024-Ohio-5088, ¶ 28, citing *Hartman* at ¶ 20-26, 29. As noted above, determining whether other acts evidence is admissible is a question of law, so would the first step of this simpler analysis. *Hartman* at ¶ 22, citing Leonard, *The New Wigmore: Evidence of Other Misconduct and Similar Events,* § 4.10 (2d Ed. 2019) (because "[d]etermining whether the evidence is offered for an impermissible purpose does not involve the exercise of discretion * * *, an appellate court should scrutinize the [trial court's] finding under a *de novo* standard" of review). The *Echols* court does go on to apply an abuse-of-discretion review when applying the second step or applying Evid.R. 403(A).

B. Analysis

{¶24} On April 17, 2023, Smith filed a motion in limine asking that the State be precluded from entering evidence of his cell phone usage, locations that came through as a result of the task force's ping warrant, and any other history of drug use. Smith argued that this evidence was precluded by Evid. R. 403.

{¶25} On June 7, 2023, after pretrial hearings in the case, the State filed its notice of intent to use other act evidence, specifically purchases of narcotics from July 13, 2022 through October 3, 2022. The State informed the trial court and the defense it wished to use this evidence to show proof of Smith's motive and argued that the evidence was "inextricably intertwined" with the charged offenses. Further, the State claimed the jury was entitled to know the setting of the case. After the State filed its notice, Smith filed a second motion in limine, arguing that any social media messages from a "Bret Moore" from March 1, 2022 through December 12, 2022 should be excluded.

{¶26} The trial court held a formal hearing on the motion in limine. At the hearing, the State argued again, that the evidence was "so intertwined it goes to the elements of the offense," and that it was also admissible for identity, modus operandi, plan, preparation, and knowledge. The State specifically argued that it would use the cell phone contents that showed Facebook messages (from May 2022 through October 2022) and text messages from "T.J." and "Bret Moore," purported alias of Smith (from April 2022 through October 2022) that also referred to "cream" (meth) and "fire" (fentanyl and heroin) and photographic "selfies" that showed wads of cash. The State argued this related to the same drugs as the traffic stop, and it also was pertinent to show the element of sell or resell to the jury. The State said it would use evidence through witnesses to show that "Bret Moore" and "Shawn Bravo" was actually the identity of the defendant and showed consciousness of guilt (use of aliases). The State explained that the intention was not to go into detail about any prior drug buys.

In addition, the State said it would use certain taxi records from July 2022 through October 2022.

{¶27} The trial court determined it would allow the other-acts evidence from April 1, 2022 through the date of the traffic stop. It found the evidence was limited in time and scope. The trial court further held:

> It goes to prove motive, plan, opportunity [inaudible] engaged in drug trafficking, and specifically will go for inten[t] to resell – sell or resell of the narcotics found in the traffic—traffic stop. Also, going to find that it would go to identity – I—I also find it somewhat disturbing that the Defendant, as I saw in the suppression hearing, I think as argued by [the State], gave a fictitious name to the trooper at the time of the traffic stop, and then also has reported false identities used to engage in drug trafficking. That—that appears to be part of the plan or scheme, and as such, I'm going to allow that evidence in the trial of this case.

{¶28} The parties agreed that the "ping" data used by the task force would be limited, such that witnesses and exhibits could only refer to October 18, 2022 through October 19, 2022 – the day before through the evening of the traffic stop.

{¶29} On appeal the specific evidence to which Smith objects are (1) messages from the cell phone; (2) pictures from the cell phone; (3) taxi records; (4) testimony of witnesses Seymour and Howard; and the (5) State's cross-examination of Jhonnae Smith. The defense objections in the trial court were more general as to most of this evidence, but during the hearing on the motion in limine, the State pointed out the specific pieces of evidence it would use. On appeal, Smith challenges the admissibility of all the evidence the State used at trial that could be other-acts evidence, even though the defense did not object, or did not specifically object. For example, we note that Smith never objected at the

trial court level to the State's cross-examination of Jhonnae Smith, as he does on appeal. Jhonnae was not a State witness; the defense called her. Throughout direct and cross-examination, the defense did not object at all. We agree with the State that the defense opened the door to many of the State's questions at trial, because they cut to the heart of Jhonnae Smith's credibility, motive, and bias to testify the way she did.

{¶30} As to the remainder of the other-acts evidence, which was discussed during the motion in limine, we acknowledge that Smith was on trial for 18 counts, which primarily involved trafficking and possession, and the State dismissed some of the drug charges. But in addition to those charges, he was also charged with conspiracy (with the other indicted defendants) and possessing criminal tools (using the taxi, and cell phones).

{¶31} The first step is to consider whether the other-acts evidence is relevant to making any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Evid.R. 401. All of the other-acts evidence discussed at the motion in limine was relevant to the offense that occurred on or about October 19, 2022. The issue is whether it is relevant for a proper purpose, the second step of the analysis. It is important to note that under "permitted uses," Rule 404(B)(2) provides, as set forth above, "[t]his evidence may be admissible *for another purpose, such as* proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." (Emphasis added.) "Though Evid.R. 404(B) lists specific examples of permissible nonpropensity purposes for which other-acts evidence

may be admitted, its list is not exhaustive." *State v. Echols,* 2024-Ohio-5088, ¶ 31, citing *State v. Morris,* 2012-Ohio-2407, ¶ 18. For example, this court has specifically found that "evidence of other acts is admissible when the challenged evidence plays an integral part in explaining the sequence of events and is necessary to give a complete picture of the alleged crime." *State v. Sims,* 2023-Ohio-1179, ¶ 98, citing *State v. Thompson,* 66 Ohio St.2d 496, 498 (1981), *State v. Bennett*, 2024-Ohio-4557, ¶ 59.

{¶32} The evidence presented by the State was necessary to show certain elements of the offense that occurred on the day of the traffic stop and was not propensity evidence. As to the text messages and the Facebook messages gathered from the cell phone, those messages show identity of the defendant who attempted to use subterfuge by using various aliases in his activities. In fact, he tried to give a false name the day of the traffic stop. They show identity and a common plan. The texts and Facebook messages also show a common scheme or plan showing the intent to sell or resell, crucial in a trafficking case. The pictures from the cell phone were close in time to the offense and coupled with the task force's description of the value of the drugs, also show that Smith did not just possess the drugs but was engaged in selling the drugs. The cell phone texts, social media content, and pictures, conclusively show that Smith was using the cell phone as a criminal tool, and in fact, that the cell phone was Smith's, because he denied it was his at the scene. As to the taxi records, they show a common plan and scheme that explains to the jury how the defendant transported the drugs from one place or another, and also that the taxi

was being used as a vessel to transport the contraband. In fact, the taxi records taken along with Carver's testimony and other witnesses refuted the defense contention during its case that Smith was just traveling to Montgomery County to see his girlfriend. Finally, the testimony of witnesses Seymour and Howard shows the intent to resell, as well as his modus operandi.

{¶33} The third step is to consider whether the probative value of the other acts evidence is substantially outweighed by the danger of unfair prejudice. See Evid.R. 403. When weighing the probative value and the danger of unfair prejudice of other-acts evidence, the trial court's analysis should be "robust." *State v. Hartman*, 2020-Ohio-4440, ¶ 29. The trial court should look to the degree to which the fact is actually contested, and if not genuinely disputed or material to the case, then it has little probative value and the risk of prejudice is high. *Id.* at ¶ 31. Further, the trial should look to "whether the prosecution is able to present alternative evidence to prove the same fact through less prejudicial means and whether the other-acts evidence is probative of an essential element of the crime or an intermediate fact in the case." *Id.* at ¶ 32, citing 1 Imwinkelried, Giannelli, Gilligan, Lederer & Richter, *Courtroom Criminal Evidence*, § 908 (6th Ed. 2016).

{¶34} When applying Evid.R. 403, we must defer to the trial court in this step. We would note in the instant case that the trial court held a hearing on the matter and analyzed each particular piece of evidence, limiting the scope and timeframe. As the Supreme Court of Ohio observed, "[w]hen a court determines that other-acts evidence should be admitted, it must take steps to minimize the

danger of unfair prejudice inherent in the use of such evidence and to ensure that the evidence is considered only for a proper purpose." *Hartman*, 2020-Ohio-4440, ¶ 34. Thus, *Hartman* advises courts to look to whether the trial court explained the specific purpose for which the evidence may be considered, as well as putting its rationale on the record. *Id.* In the case sub judice, it is clear that the trial court did exactly that.

{¶35} Smith argues that the trial court failed to consider whether the State was able to present alternative evidence to prove the same facts through less prejudicial means. Smith claims on appeal that the evidence produced through Seymour and Howard's testimony could have been produced through Carver, who also testified. However, Carver was an accomplice and the defense said Carver had a motive to lie so that that State used testimony from other witnesses to buttress its case. Furthermore, Seymour and Howard's testimony was more specific than Carver's. Smith also argues the trial court failed to analyze whether the other-acts evidence is probative of an essential element of the crime or intermediate fact in the case. Here, we disagree. For example, the trial court specifically set forth that some of the evidence was essential in proving the trafficking element of intent to sell or resell.

{¶36} In addition, *Hartman* suggests that a jury instruction regarding the specific purpose for the evidence helps reduce the risk of confusion and unfair prejudice. In the instant case, the trial court provided the jury with an instruction regarding the limitations of the evidence and the purposes for its admission:

> [E]vidence was received about the commission of acts other than the offenses with which the Defendant is charged in this trial. That

> evidence was received only for a limited purpose. It was not received, and you may not consider it, to prove the character of the Defendant in order to show that he acted in conformity with that character. If you find the evidence of other acts is true and the Defendant committed them, then you may consider the evidence only for the purposes of deciding whether it proves[:] (A), the Defendant's motive, opportunity, intent or purpose, preparation or plan to commit the offense charged at trial; (B), knowledge of circumstances surrounding the offense charged in this trial; or (C), the identity of the person who committed the offenses at trial. That evidence cannot be considered for any other purpose.

{¶37} Even if we were to find that it was error for the trial court to have admitted some of the evidence, we would find the error harmless. "An appellate court may not reverse a judgment due to the trial court's error in admitting evidence at trial if the error was harmless." *State v. Stevenson,* 2023-Ohio-4853, ¶ 82 (6th Dist.). Harmless error is " 'any error, defect, irregularity, or variance which does not affect substantial rights.' " *Stevenson* at ¶82, citing *State v. Kamer*, 2022-Ohio-2070 ¶ 154, (6th Dist.), quoting Crim.R. 52(B). "When determining whether a trial court's improper admission of other-acts evidence affected the substantial rights of a defendant, an appellate court must (1) determine whether the error prejudiced the defendant (i.e., the error affected the verdict), (2) declare a belief that the error was not harmless beyond a reasonable doubt, and (3) excise the improper evidence from the record, look to the remaining evidence, and determine whether there is evidence beyond a reasonable doubt of defendant's guilt." *Stevenson* at ¶ 83, quoting *Kamer* at ¶ 155, citing *State v. Harris*, 2015-Ohio-166, ¶ 37. "In other words, 'an appellate court must consider both the impact of the offending evidence on the verdict and the strength of the remaining evidence.' " *Id*., quoting *State v. Morris*, 2014-Ohio-

5052, ¶ 33. " '[T]he real issue when Evid.R. 404(B) evidence is improperly admitted at trial is whether a defendant has suffered any prejudice as a result." *State v. Elkins*, 2019-Ohio-2427, ¶ 24 (4th Dist.), citing *Morris* at ¶ 25.

{¶38} We find that the strength of the evidence is such that even if some of the other-acts evidence had been admitted in error, was too remote, or cumulative, the strength of the other evidence submitted at trial outweighs any impact that any offending evidence may have had. Therefore, we find that Smith's first assignment of error lacks merit and hereby overrule it.

II. Second Assignment of Error

{¶39} In his second assignment of error, Smith states the trial court erred by overruling his motion to suppress. First, he contends the trial court erroneously found that Smith did not have standing to challenge the search and seizure arising from the October 19, 2022 traffic stop. Second, he avers that Norman did not have sufficient justification to stop the taxi and that evidence does not support the trial court's findings that Norman witnessed a turn signal violation. Smith goes on to say that the search of the taxi was illegal because although Norman smelled marijuana coming from the taxi, he did not smell marijuana on Smith until Smith exited the taxi. Further, Smith contends Norman's knowledge of Smith's prior criminal record did not give Norman probable cause to search.

{¶40} The State responds that the standing to challenge the traffic stop and the search of a passenger's person differs from standing to challenge an automobile search. The State concedes Smith had standing to challenge the

stop; however, the State disputes that Smith had standing to challenge the search of the taxi itself based upon a valid traffic stop. In so doing, the State argues the trial court's finding regarding standing is correct. The State asserts Norman had reasonable suspicion to stop the taxi based on the signal violations.

{¶41} The State also maintains Norman had probable cause to search the taxi--first because the taxi smelled like raw marijuana; second, because Norman confirmed Smith had parole warrants for his arrest, and Norman confirmed Smith's identity from an ODRC picture; and third, because Norman had probable cause to arrest Carver for an OVI offense such that law enforcement had to conduct an inventory of the taxi pursuant to policy, so the narcotics would have been found regardless. The State also claims that any error in granting the motion to suppress was harmless.

A. Law.

{¶42} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Williams*, 2024-Ohio-2146, ¶ 15 (4th Dist.), citing *State v. Burnside*, 2003-Ohio-5372, ¶ 8. The trial court acts as the trier of fact at a suppression hearing and is in the best position to resolve factual questions and evaluate witness credibility. *State v. Sheets*, 2023-Ohio-2591, ¶ 45 (4th Dist.), citing *State v. Leonard*, 2017-Ohio-1541, ¶ 15 (4th Dist.), citing *Burnside* at ¶ 8. This is because the trial court is able to "gauge the witnesses' demeanor, gestures, and voice inflections, and to use these observations to weigh their credibility." *State v. Meadows,* 2022-Ohio-287, ¶ 18 (4th Dist.), quoting *State v. Hammond*, 2019-Ohio-4253 ¶ 56 (4th Dist.). "The trier of fact is free to believe all,

part, or none of the testimony of any witness[.]" *Id.* As a result, appellate courts defer to the trial court's findings of fact if they are supported by competent, credible evidence. *Sheets* at ¶ 45, citing *State v. Gurley*, 2015-Ohio-5361, ¶ 16 (4th Dist.). Accepting the trial court's findings of fact as true, appellate courts then "independently determine whether the trial court reached the correct legal conclusion in analyzing the facts of the case." *Sheets* at ¶ 45, citing *Gurley* at ¶ 16, citing *State v. Roberts*, 2006-Ohio-3665, ¶ 100.

{¶43} The Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution provide that persons have a right to be free from unreasonable searches and seizures and that probable cause is necessary for searches. The exclusionary rule protects this constitutional guarantee and mandates the exclusion of evidence obtained from an unreasonable search and seizure. *State v. Shrewsbury,* 2014-Ohio-716, ¶ 14 (4th Dist.), citing *State v. Emerson,* 2012-Ohio-5047, ¶ 15.

B. Analysis

{¶44} In the instant case, the trial court found that Smith had no standing to challenge the search because he had no expectation of privacy for items left in the taxi. "Courts have routinely held that passengers who have no expectation of privacy or possessory interest in a stopped vehicle do not have standing to challenge the validity of a subsequent search of that vehicle on Fourth Amendment privacy grounds." *United States v. Bah,* 749 F.3d 617, 626 (6th Cir. 2015). "A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's

premises or property has not had any of his Fourth Amendment rights infringed." *United States v. McKenzie,* 2022 WL 1744500 (6th Cir.), quoting *Rakas v. Illinois*, 439 U.S. at 128, 134 (1978). Thus, Smith did not have standing to challenge the search itself.

{¶45} "However, even in cases where no reasonable expectation of privacy exists, a passenger [defendant] 'may still challenge the stop and detention and argue that the evidence should be suppressed as fruits of illegal activity.' " *State v. Torres-Ramos,* 536 F.3d 542, 549 (6th Cir. 2008), quoting *United States v. Ellis,* 497 F.3d 606, 612 (6th Cir.2007). Consequently, Smith still has standing to contest the legality of his seizure and, by extension, to suppress the fruits of any illegal seizure which may have been discovered during the search. Thus, Smith has standing to contest the constitutionality of the stop of the vehicle, and his continued detention and the fruits thereof. Here, the stop and continued detention pass constitutional muster, so whether law enforcement had probable cause to search the vehicle is irrelevant because Smith did not have an expectation of privacy in the items inside the taxi van.

{¶46} A traffic stop is a type of seizure and constitutionally valid only if an officer has reasonable and articulable suspicion that a motorist has committed, is committing, or is about to commit a crime. *Williams*, 2024-Ohio-2146 at ¶ 17, citing *State v. Mays*, 2008-Ohio-4539, ¶ 7 and *Delaware v. Prouse*, 440 U.S. 648, 663 (1979). In addition, a police officer may stop a motorist if he observes even a de minimis violation of a traffic law. *Williams* at ¶ 19, citing *State v. Guseman*, 2009-Ohio-952, ¶ 20 (4th Dist.). "Moreover, the Supreme Court of

Ohio has held, '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 . . . even if the officer had some ulterior motive for making the stop[.]' " *State v. Andrews,* 2025-Ohio-2803, (4th Dist.) quoting *Dayton v. Erickson,* 76 Ohio St. 3d 3 (1996), paragraph one of the syllabus.

{¶47} After hearing the evidence, the trial court found that Norman was on State Route 348 and observed the taxi leaving the Briar Patch. When the taxi stopped at the stop sign on Morgan Drive and State Route 104, the driver failed to make a signal when turning onto 104. The taxi then traveled from the lane of travel into a turn lane, to turn east onto State Route 348, and the driver did not use a turn signal when changing lanes. Then, when turning left onto State Route 348 eastbound, the taxi driver did not put on a turn signal until stopped at the traffic light, therefore, not within 100 feet of the turn.

{¶48} The trial court commented that the video is hard to see, but the trial court was familiar with the area and therefore knew the perspective of the video differed from the eye of the trooper. The trial court also noticed that the taxi traveled a short distance. Noting the glare of the sun, the trial court emphasized that the video corroborated the third signal violation because it shows the taxi driver did not signal until after the taxi had come to a complete stop.

{¶49} R.C. 4511.39, entitled “Use of signals for stopping, turning, decreasing speed, moving left or right; limitations, provides, in pertinent part:

> (A) No person shall turn a vehicle or trackless trolley or move right or left upon a highway unless and until such person has exercised due care to ascertain that the movement can be made with reasonable

> safety nor without giving an appropriate signal in the manner hereinafter provided.
>
> When required, a signal of intention to turn or move right or left shall be given continuously during not less than the last one hundred feet traveled by the vehicle * * * before turning . . . .

A violation of R.C. 4511.39 has been held to provide sufficient justification to initiate a stop of a defendant's vehicle. *State v. Cremeans,* 2022-Ohio-3932, ¶ 29 (4th Dist.), citing *State v. Williams,* 2014-Ohio-4897, ¶ 9 (4th Dist.); *State v. Payne*, 2012-Ohio-4696, ¶ 18 (4th Dist.); *State v. Harris,* 2012-Ohio-4237, ¶ 13 (4th Dist.). "Moreover, simply because a driver cannot ultimately be convicted of a traffic offense 'is not determinative of whether the officer acted reasonably in stopping and citing [the driver] for that offense.' " *State v. Taylor,* 2016-Ohio-1231, ¶ 20, quoting *Bowling Green v. Goodwin*, 2006-Ohio-3563, ¶ 15. This is true even if the driver cannot ultimately be convicted of a traffic offense because "[p]robable cause does not require the officer to correctly predict that a conviction will result." *Id.*

{¶50} A review of the cruiser video reveals that the first violation mentioned by Norman, when the vehicle failed to signal when turning from Morgan Drive onto State Route 104 is obscured, perhaps by a reflection of sunlight. It is difficult to determine from the camera's perspective how Norman could have seen the turn onto State Route 104. On the other hand, the second violation, where the taxi failed to signal before entering the turning lane, could have been seen from the vantage point of the cruiser, although it is not visible on the video. Finally, and most importantly, the video clearly shows that the taxi came up to the intersection before turning onto State Route 348 and sits for

some time before activating a turn single (not 100 feet before). Thus, at least the third violation is clear from the testimony and the video. However, Norman clearly explained the three different violations in the suppression hearing and his testimony at trial was consistent with the hearing at the motion to suppress. The trial court was free to believe Norman's testimony that he observed the turn signal violations, even though two of the three violations could not be conclusively confirmed on review of the cruiser video. *See State v. Meadows,* 2022-Ohio-287, ¶ 19 (4th Dist.). Certainly, while the video does not conclusively show Norman's testimony about the traffic violations, the video footage does not contradict his testimony, either. *See generally, Id.* at ¶ 18, *State v. Shisler,* 2006-Ohio-5265, ¶ 2-3, 6 (1st Dist.). Further, when Carver testified at the trial she acknowledged she was late activating her turn signal because she did not turn it on until she saw the trooper. It is undisputable that the third turn signal violation occurred. We therefore conclude that Norman had reasonable suspicion to stop the taxi.

{¶51} Even though Norman had valid reason to stop the vehicle, "[i]t is well-established that the scope and duration of a routine traffic stop 'must be carefully tailored to its underlying justification * * * and last no longer than is necessary to effectuate the purpose of the stop.' " *State v. Jones*, 2022-Ohio-561, ¶ 21 (4th Dist.), quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983). Therefore, generally, "[w]hen a law enforcement officer stops a vehicle for a traffic violation, the officer may detain the motorist for a period of time sufficient to issue the motorist a citation and to perform routine procedures such as a

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

{¶52} However, "[a]n officer may expand the scope of the stop and may continue to detain the vehicle and its occupants without running afoul of the Fourth Amendment if the officer discovers further facts which give rise to a reasonable suspicion that additional criminal activity is afoot." *State v. Dunbar*, 2024-Ohio-1460, ¶ 29 (4th Dist.), quoting *State v. Rose*, 2006-Ohio-5292, ¶ 17 (4th Dist.), citing *State v. Robinette*, 80 Ohio St. 3d 234, 240 (1997). A reviewing court looks to the totality of the circumstances to determine whether reasonable articulable suspicion exists when a traffic stop is extended. *State v. Batchili*, 2007-Ohio-2204, ¶ 17, citing *United States v. Arvizu*, 534 U.S. 266, 274 (2002).

{¶53} Clearly, Norman had reasonable suspicion to continue to detain the vehicle when he questioned Carver's level of impairment when operating the vehicle, identified Smith consistent with the ODRC picture, and confirmed that Smith had a felony parole warrant.

{¶54} Norman also had probable cause to search the vehicle. " 'When a law enforcement officer has probable cause to believe that a vehicle contains contraband, the officer may search a validly stopped motor vehicle based upon the well-established automobile exception to the warrant requirement.' " *State v. Boykins,* 2024-Ohio-5898, ¶ 15 (4th Dist.) quoting *State v. Malone*, 2022-Ohio-1409, ¶ 30 (4th Dist.), citing *State v. Moore*, 90 Ohio St.3d 47, 51 (2000). Probable cause exists when there is a "fair probability that contraband or

evidence of a crime will be found in a particular place." *Boykins* at ¶ 15, quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

{¶55} "The smell of marijuana, alone, by a person qualified to recognize this odor, is sufficient to establish probable cause to conduct a search." *State v. Jones,* 2022-Ohio-561, ¶ 29, quoting *State v. Moore,* 90 Ohio St.3d 47 (2000), syllabus. "Any odor of marijuana emanating from a legally stopped vehicle creates probable cause to believe that a violation of the law has occurred." *Id.*, quoting *State v. Brown*, 2017-Ohio-2880, ¶ 9 (2d Dist.). "[W]hen a police officer has probable cause to believe a vehicle contains evidence of a crime, the officer may conduct a warrantless search of every part of the vehicle and its contents, including all movable containers and packages, that could logically conceal the objects of the search." *State v. Farrow,* 2023-Oho-682, ¶ 18, (4th Dist.), quoting *State v. Maddox*, 2021-Ohio-586, ¶ 20 (10th Dist.), citing *United States v. Ross*, 456 U.S. 798 (1982).

{¶56} The State showed Norman had sufficient reasons to search the taxi. The State established that Norman was familiar with the raw smell of marijuana, through both training and experience. The trial court noted that Norman immediately smelled the odor of raw marijuana when he approached the vehicle, and that Norman verified Smith's identity and parole warrant. On the video, Norman can be heard speaking to Tackett-Dye about smelling the odor of marijuana.

{¶57} Additionally, the trial court also stated several reasons why Carver's arrest for OVI was proper and that even if the trooper did not have probable

cause to search based on the smell of raw marijuana, Norman followed departmental policy and properly completed an inventory search form for the cab when Carver was cited for OVI and the cab was towed.

{¶58} " 'The inventory-search exception is a well-defined exception to the Fourth Amendment's warrant requirement.' " *State v. Tyree,* 2024-Ohio-1186, ¶ 27, quoting *State v. Banks-Harvey*, 2018-Ohio-201, ¶ 20, citing *Illinois v. Lafayette*, 462 U.S. 640, 643 (1983). " 'This administrative search and inventory is intended to help guard against claims of theft or careless handling and also protects the police from dangerous instruments.' " *Id.*, quoting *Banks-Harvey* at ¶ 20, citing *Colorado v. Bertine*, 479 U.S. 367, 373 (1987). " 'To satisfy the requirements of the Fourth Amendment to the United States Constitution, an inventory search of a lawfully impounded vehicle must be conducted in good faith and in accordance with reasonable standardized procedure(s) or established routine.' " *Id.* quoting *State v. Hathman*, 65 Ohio St.3d 403, (1992), paragraph one of the syllabus.

{¶59} Here, Norman testified that he arrested Carver for OVI, which is supported by the ticket exhibit. Norman explained the taxi was towed because there was no driver after Carver's arrest, and the vehicle was released to a tow truck company. The State asked Norman, "[a]re there policies and procedures by the highway patrol in regards to what you have to do with a vehicle before it's towed or impounded if you're making an arrest?" Norman responded that he must fill out an administrative inventory on a form 25(D) – a vehicle inventory/custody report. The State entered an exhibit which showed that the

vehicle was indeed towed by a tow truck to be held until taxi company employees could retrieve it and further shows that a vehicle inventory form was properly executed. Hence, Norman would have inevitably discovered the drugs when taking the taxi's inventory, even if he had no probable cause to search the vehicle based on the smell of raw marijuana.

{¶60} We find that Smith did not have standing to challenge the search of the taxi. However, he had standing to challenge the stop and his subsequent detention that arose before the search. The stop was valid. Further, the trooper had reason to detain Smith both because he had a felony warrant, and Norman was investigating an OVI. Even if Smith did have standing to challenge the search, Norman had probable cause to search the taxi to determine the origin of the raw smell of marijuana and would have found the suspected drugs in any event as a result of the inventory performed due to Carver's arrest for OVI. Thus, Norman's actions pass constitutional muster. We find this assignment of error to have no merit and therefore overrule it.

III. Third Assignment of Error

{¶61} In his third assignment of error, Smith contends his convictions were not supported by legally sufficient evidence. While Smith claims that the State failed to meet its burden to prove every essential element of the case against him, he specifically argues that State did not prove he knew there were drugs in the taxi on October 19, 2022. He says that the State's case relied on the admission of improper other acts evidence to support inferences in order to prove knowledge.

{¶62} Smith also argues the State did not produce any evidence showing he knew or exercised dominion or control over the drugs found in the taxi that day because he had no drugs on his person, and no one testified that they saw him with the drugs in the taxi. While Smith was also convicted of possessing criminal tools, namely the taxi and cell phones, Smith does not address that conviction in his brief.

{¶63} The State responds that sufficient competent, credible evidence existed upon which the jury could render guilty verdicts beyond a reasonable doubt regarding both trafficking and possession.

A. Law.

{¶64} Whether the evidence is legally sufficient to sustain a conviction is a question of law that courts review de novo. *State v. Brown,* 2025-Ohio-2804, ¶ 16, citing *State v. Groce*, 2020-Ohio-6671, ¶ 7. " '[A]n appellate court does not ask whether the evidence should be believed but, rather, whether the evidence, "if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." ' " *Brown* at ¶ 17, quoting *State v. Pountney*, 2018-Ohio-22, ¶ 19, quoting *State v. Jenks,* 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. Thus, "[w]hen reviewing the sufficiency of the evidence to support a criminal conviction, the relevant inquiry for the appellate court 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. Crawl,* 2025-Ohio-2799, ¶ 9, quoting *Jenks* at paragraph two of the syllabus. "A trial court's verdict should stand on appeal

unless reasonable minds could not reach the trier of fact's conclusion." *Id.*, citing *State v. Montgomery*, 2016-Ohio-5487, ¶ 74.

{¶65} "[I]n conducting a sufficiency review, a reviewing court must consider all the evidence admitted at trial, even improperly admitted evidence[.]" *State v. Kareski*, 2013-Ohio-4008, ¶ 24. Therefore, "we must consider whether the evidence that the state offered and the trial court admitted whether the trial court admitted the evidence erroneously or not, would have been sufficient to sustain a guilty verdict." *State v. Kolle,* 2022-Ohio-4322, ¶ 19, (4th Dist.), quoting *State v. Dotson*, 2018-Ohio-2481, ¶ 64 (7th Dist.), citing *State v. Grabe,* 2017-Ohio-1017, ¶ 15 (7th Dist.), citing *State v. Brewer,* 2009-Ohio-593, ¶ 17 and *Lockhart v. Nelson*, 488 U.S. 33, 35 (1988).

B. Analysis

{¶66} We note at the outset that the counts surviving merger were Count 1, trafficking in a fentanyl-related compound, with a major drug offender specification, a first-degree felony, Count 2, aggravated trafficking in drugs (methamphetamine), a second-degree felony, and Count 21, possessing criminal tools, a fifth-degree felony. Smith does not challenge his conviction for possessing criminal tools, but instead, directs our focus to the trafficking and possession counts. He also does not challenge the identity or weight of the drugs. Primarily, he focuses on whether the State proved he knew about the drugs in the taxi, and whether he had control over them.

{¶67} The issue of trafficking and possession "are interrelated because to sustain an R.C. 2925.03(A)(2) trafficking conviction as principal offender, the state must also prove that the defendant had control over, i.e., possessed, the illegal substance." *State v. Foster, 202-Ohio-746,* ¶ 22 (4th Dist.), citing *State v. Cabrales,* 2008-Ohio-1625, ¶ 40, quoting R.C. 2925.01(K) (in order to ship, transport, deliver, distribute, etc., "the offender must 'hav[e] control over' " the illegal substance); *see also, State v. Jones,* 2011-Ohio-1108, ¶ 11 (4th Dist.).

{¶68} R.C. 2925.03(A)(2) provides, in pertinent part, "(A) [n]o person shall knowingly do any of the following * * * (2) [p]repare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person."

{¶69} R.C. 2925.11(A), provides, in pertinent part: "[n]o person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog." "Possession" is generally defined as "having control over a thing or substance but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found." R.C. 2925.01(K); *State v. Bennett,* 2024-Ohio-4557, ¶ 35, (4th Dist.). "Possession may be actual or constructive." *Bennett* at ¶ 35 citing *State v. Gavin*, 2015-Ohio-2996, ¶ 35, (4th Dist.), quoting *State v. Moon*, 2009-Ohio-4830, ¶ 19, (4th Dist.). "Actual possession exists when circumstances indicate that an individual has or had an item within his immediate physical

possession[.]" *Id.* citing *State v. Kingsland*, 2008-Ohio-4148, ¶ 13, (4th Dist.). Constructive possession, on the other hand, "exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within his immediate physical possession." *Id.* citing *Gavin* at ¶ 35. "For constructive possession to exist, the State must show that the defendant was conscious of the object's presence." *Bennett* at ¶ 35, citing *State v. Meddock*, 2017-Ohio-4414, ¶ 56 (4th Dist.). "Both dominion and control, and whether a person is conscious of an object's presence, may be established through circumstantial evidence." *Bennett* at ¶ 35 quoting *Gavin* at ¶ 36. "Moreover, two or more persons may have joint constructive possession of the same object." *State v. Brown,* 2009-Ohio-5390, ¶ 19 (4th Dist.), accord *State v. Smith,* 2020-Ohio-5316, ¶ 36 (4th Dist.).

{¶70} Furthermore, R.C. 2901.22(B) provides:

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

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

{¶71} In addition to arguing that Smith was a principal offender, the State contended at trial that Smith is also guilty under a theory of complicity. As we have observed, "[t]he complicity statute does not require the state to charge the defendant with complicity." *State v. Whitehead,* 2022-Ohio-479, ¶ 82 (4th Dist.).

"Instead, R.C. 2923.03(F) allows the state to charge the defendant as a principal offender." *Id.* "The statute provides that '[a] charge of complicity may be stated in terms of [the complicity statute], or in terms of the principal offense.' " *Id.*, quoting R.C. 2923.03(F).

{¶72} R.C. 2923.03(A)(2) provides, "[n]o person, acting with the kind of culpability required for the commission of an offense, shall do any of the following: * * * (2) [a]id or abet another in committing the offense." " '[T]o aid or abet is " ' "[t]o assist or facilitate the commission of a crime, or to promote its accomplishment." ' " *Id.* at ¶ 80, quoting *State v. McFarland,* 2020-Ohio-3343, ¶27, quoting *State v. Johnson,* 93 Ohio St.3d 240, 243 (2001), quoting *Black's Law Dictionary* (7th Ed. 1999). " '[P]articipation in criminal intent may be inferred from presence, companionship, and conduct before and after the offense is committed.' " *Id.* at 81, quoting *Johnson* at 245, quoting *State v. Pruitt,* 28 Ohio App. 2d 29, 34 (4th Dist. 1971). "However, ' "the mere presence of an accused at the scene of a crime is not sufficient to prove, in and of itself, that the accused was an aider and abettor." ' " *Id.* quoting *Johnson* at 243, quoting *State v. Widner*, 69 Ohio Stt.2d 267, 269 (1982).

{¶73} In the case sub judice, it is undisputed that a large amount of several separately packaged drugs were found in the taxi, and that the drugs were within reach of both Smith and Langford. Both Smith and Langford, therefore, could have constructively possessed the drugs. As to whether Smith knew about the drugs, there is sufficient circumstantial evidence that he both possessed and trafficked the drugs. The drugs were found in the chicken boxes,

and Carver testified that Smith was the passenger who purchased the two boxes of chicken at the Briar Patch. Smith gave a phony name and social security number to the trooper. Smith had plastic bags in his pockets, which were known to be used in drug trafficking activity, and task force members testified the drugs found under the bench seat were in the weight and street value not known for persons that solely possess drugs for their personal use. Smith had a ski mask on his head, presumably to disguise himself, and also notably had dipping sauce from the chicken on his pants, which was very well linked to someone rapidly stuffing drugs in the chicken boxes.

{¶74} The troopers found the "dope" cell phone in an area which could only be attributed to Smith, and it contained many messages of persons seeking "ice," "fire" and "cream," the street names for the drugs found in the vehicle. Carver testified that Smith paid for the taxi and also tipped her in "dope" for taking him to Dayton, where he frequently travelled after persons requested drugs from him. One witness testified that she saw Smith mixing drugs in a blender, which is common for drug dealers, one witness testified that he frequently used taxis to travel from Dayton to Portsmouth, and one witness spoke to Smith's trafficking activity -- even specifically referred to Smith as her "drug dealer." The "dope" cell phone contained pictures of stacks of currency and indications that large sums of money had been earned within short time periods. Further, Smith's use of various aliases also shows consciousness of guilt.

{¶75} While Smith argues the State's case relied on the admission of improper other acts evidence to support inferences in order to prove knowledge,

we disagree and have already determined the trial court did not err in admitting the evidence. Further, even assuming arguendo that part of the admission of other-acts evidence was error, when evaluating the sufficiency of evidence, we do not concern ourselves with whether evidence is admitted in error, as we are required to evaluate the existence of all evidence admitted, whether improper or not. The State presented sufficient evidence of Smith's guilt for all offenses, such that we find no merit and overrule his third assignment of error.

CONCLUSION

{¶76} Having found no merit to Smith's three assignments of error, we affirm the trial court's judgment entry of conviction.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. 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.

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

Abele, J. and Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

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