**[Cite as *State v. Cooper*, 2023-Ohio-2897.]**

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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| STATE OF OHIO | : | JUDGES: |
| | : | |
| | : | Hon. Patricia A. Delaney, P.J. |
| Plaintiff-Appellee | : | Hon. Craig R. Baldwin, J. |
| | : | Hon. Andrew J. King, J. |
| -vs- | : | |
| | : | Case No. 2022CA00091 |
| | : | |
| LARENTA COOPER | : | |
| | : | |
| | : | |
| Defendant-Appellant | : | O P I N I O N |

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| CHARACTER OF PROCEEDING: | Appeal from the Stark County Court of Common Pleas, Case No. 2021CR2429 |
| JUDGMENT: | AFFIRMED |
| DATE OF JUDGMENT ENTRY: | August 18, 2023 |

APPEARANCES:

| For Plaintiff-Appellee: | For Defendant-Appellant: |
|---|---|
| KYLE L. STONE<br>STARK CO. PROSECUTOR<br>VICKI L. DESANTIS<br>110 Central Plaza S., Ste. 510<br>Canton, OH 44702-1413 | MARK J. MILLER<br>500 City Park Ave., Ste. C<br>Columbus, OH 43215 |

*Delaney, J.*

{¶1} Appellant Larenta Cooper appeals from the August 5, 2022 Judgment Entry of conviction and sentence of the Stark County Court of Common Pleas, incorporating the trial court's March 31, 2022 Judgment Entry overruling his motion to suppress. Appellee is the state of Ohio.

## FACTS AND PROCEDURAL HISTORY

*Suppression hearing of March 14, 2022*

{¶2} The following evidence is adduced from the record of the suppression hearing on March 14, 2022, at which Ptl. Michael Brown of the Canton Police Department was the sole witness.

{¶3} Brown testified that on October 31, 2021, he was the passenger in a Jackson Township Police cruiser driven by an unnamed Jackson Township Police officer.[1] That evening, Brown and the Jackson officer were participating in a joint Violence Interdiction Patrol, which Brown described as "directed patrol overtime" in which officers increased police presence in noted trouble areas, specifically, bars in the city of Canton and Jackson Township. Brown and the Jackson officer were in the vicinity of the Boom-Boom Room, which is not a bar but had a crowd that evening because of a concert or social event.

{¶4} The Jackson officer drove while Brown ran plates on the in-car computer. The Jackson officer asked him to run a plate reading "KINGME3." Brown testified the requested registration "popped up red in the system," i.e. the screen was red, without further explanation. Brown testified that in a Canton police cruiser, if he runs a registration

[1] This officer was identified at trial as Ptl. Moreno.

and the information comes back red, it means there is some problem with the registration such as a stolen vehicle, a warrant for the registered owner, or an expired tag. The Canton cruiser computer would provide further information including an explanation why the registration was red, such as "stolen vehicle" or "expired registration." In the instant case, there was no such explanation, and Brown was not able to clarify what the red indication meant in a Jackson Township cruiser.

{¶5} Brown told the Jackson officer to "flip around" and follow the "KINGME3" vehicle, a blue Mazda. The cruiser made a U-turn behind the vehicle and Brown again ran the plate. As he did so, the Jackson officer illuminated lights and sirens to effectuate a traffic stop, but the Mazda sped away.

{¶6} The cruiser pursued the Mazda through the crowded parking lot of the Boom-Boom Room to an alley; the Mazda ran a stoplight at an access road to Cleveland Avenue and proceeded toward the 1800 block. The vehicle stopped abruptly when the driver struck steel cables connected to a telephone pole at the side of the road.

{¶7} Appellant was the sole occupant of the vehicle; after the crash, he got out of the car and police "felony stopped" him, meaning their weapons were drawn and they gave appellant verbal commands to come back to the scene. Appellant failed to obey the verbal commands and proceeded toward the front of the wrecked car.

{¶8} A maroon vehicle pulled up beside the Mazda briefly and spoke with appellant. An officer later contacted the occupants of the maroon vehicle and Brown testified the driver was possibly appellant's sister.

{¶9} Appellant was apprehended and placed in a cruiser. A large amount of currency and a digital scale were found upon his person. A subsequent search of the

interior of the vehicle found a quantity of marijuana, and a police sergeant found four bags of narcotics in the broken casing of the front driver's-side headlight of the vehicle, the smashed headlight appellant had walked toward before he was apprehended.

*Jury trial of May 10*

{¶10} The evidence adduced from the record of appellant's jury trial was identical in many respects to the evidence at the suppression hearing. Appellee presented the evidence of Brown's body cam video and presented more evidence arising from appellant's stop and arrest. Sgt. Slone heard over the radio that Brown was in pursuit of a vehicle and came to the scene. He searched appellant's vehicle and found an open container, marijuana, and four cell phones. He walked around the exterior of the crashed vehicle to inspect the damage and noticed the headlight housing was torn apart when it struck the steel cable. Slone immediately observed four bags of narcotics in the wrecked headlight and advised Brown. The narcotics appeared to have been thrown into the housing of the headlight.

{¶11} Appellant was not the vehicle's registered owner. The owner did appear on the crash scene, but Brown was not aware how she was notified of the crash.

*Indictment, suppression, trial, and conviction/acquittal*

{¶12} Appellant was charged by indictment as follows: one count of trafficking in heroin pursuant to R.C. 2925.03(A)(1) and/or (A)(2)(C)(6)(e) [Count I], a felony of the second degree; and one count of possession of heroin pursuant to R.C. 2925.11(A)(C)(6)(d) [Count II], a felony of the second degree; one count of trafficking in a fentanyl-related compound [Count III], a felony of the second degree; one count of possession of a fentanyl-related compound pursuant to R.C. 2925.11(A)(C)(11)(d) [Count

IV], a felony of the second degree; one count of aggravated trafficking in drugs pursuant to R.C. 2925.03(A)(2)(C)(1)(c) [Count V], a felony of the third degree; one count of aggravated possession of drugs pursuant to R.C. 2925.11(A)(C)(1)(b) [Count VI], a felony of the third degree; one count of trafficking in cocaine pursuant to R.C. 2925.03(A)(2)(C)(4)(a) [Count VII], a felony of the fifth degree; one count of possession of cocaine pursuant to R.C. 2925.11(A)(C)(4)(a) [Count VIII], a felony of the fifth degree; and one count of failure to comply with an order or signal of a police officer pursuant to R.C. 2921.331(B)(C)(5)(a)(i) and/or (ii) [Count IX], a felony of the third degree. Appellant entered pleas of not guilty.

{¶13} On February 17, 2022, appellant filed a motion to suppress evidence flowing from the traffic stop, which he argued was not premised upon reasonable suspicion. Appellee responded with a memorandum in opposition. The trial court held an evidentiary hearing on March 14, 2022, and overruled the motion to suppress by judgment entry dated March 31, 2022.

{¶14} The matter proceeded to trial by jury. Appellant was found not guilty of the trafficking offenses [Counts I, III, V, and VII] and guilty of the remaining counts [Counts II, IV, VI, VII, VIII, and IX].

{¶15} Appellant appeared before the trial court for sentencing on May 16, 2022. The trial court imposed a total aggregate indefinite prison term of 11 to 14 years.

{¶16} Appellant now appeals from the nunc pro tunc Judgment Entry of convictions and sentence dated August 5, 2022.

{¶17} Appellant raises four assignments of error:

**ASSIGNMENTS OF ERROR**

{¶18} "I. APPELLANT'S CONSTITUTIONAL RIGHTS AS GUARANTEED BY THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 14 OF THE OHIO CONSTITUTION WERE VIOLATED WHEN THE TRIAL COURT OVERRULED APPELLANT'S MOTION TO SUPPRESS."

{¶19} "II. IN ORDER FOR A DEFENDANT TO BE CONVICTED OF FELONY FAILURE TO COMPLY WITH THE ORDER OR SIGNAL OF A POLICE OFFICER, THE TRIAL COURT MUST USE A VERDICT FORM THAT EITHER (A) STATES THE DEGREE OF THE OFFENSE, OR (B) INCLUDES THE 'WILLFUL' MENS REA LANGUAGE FROM R.C. 2921.331(B)—MERELY REFERENCING THE CODE SECTION IN THE VERDICT FORM IS INSUFFICIENT AS A MATTER OF LAW."

{¶20} "III. THE TRIAL COURT ERRED IN IMPOSING CONSECUTIVE SENTENCES WITHOUT MAKING THE REQUIRED FINDINGS PURSUANT TO R.C. 2929.14(C)(4) DEPRIVING APPELLANT OF DUE PROCESS CONTRARY TO THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND CORRESPONDING RIGHTS UNDER THE OHIO CONSTITUTION."

{¶21} "IV. AS AMENDED BY THE REAGAN TOKES ACT, THE OHIO REVISED CODE'S SENTENCES FOR FIRST AND SECOND DEGREE QUALIFYING FELONIES VIOLATES THE CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF OHIO."

## ANALYSIS

I.

{¶22} In his first assignment of error, appellant argues the stop of his vehicle was not predicated upon reasonable, articulable suspicion, therefore the trial court should have granted his motion to suppress. We disagree.

{¶23} Appellate review of a trial court's decision to deny a motion to suppress involves a mixed question of law and fact. *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1 (4th Dist.1998). During a suppression hearing, the trial court assumes the role of trier of fact and, as such, is in the best position to resolve questions of fact and to evaluate witness credibility. *State v. Brooks*, 75 Ohio St.3d 148, 154, 661 N.E.2d 1030 (1996). A reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Medcalf*, 111 Ohio App.3d 142, 145, 675 N.E.2d 1268 (4th Dist.1996). Accepting these facts as true, the appellate court must independently determine as a matter of law, without deference to the trial court's conclusion, whether the trial court's decision meets the applicable legal standard. *State v. Williams*, 86 Ohio App.3d 37, 42, 619 N.E.2d 1141 (4th Dist.1993), overruled on other grounds.

{¶24} There are three methods of challenging a trial court's ruling on a motion to suppress on appeal. First, an appellant may challenge the trial court's finding of fact. In reviewing a challenge of this nature, an appellate court must determine whether the trial court's findings of fact are against the manifest weight of the evidence. See, *State v. Fanning*, 1 Ohio St.3d 19, 437 N.E.2d 583 (1982); *State v. Klein*, 73 Ohio App.3d 486, 597 N.E.2d 1141 (4th Dist.1991). Second, an appellant may argue the trial court failed

to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. See*, Williams*, supra. Finally, an appellant may argue the trial court has incorrectly decided the ultimate or final issues raised in a motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry*, 95 Ohio App.3d 93, 96,620 N.E.2d 906 (8th Dist.1994).

{¶25} Appellant argues the officer lacked reasonable and articulable suspicion for the traffic stop. The Fourth Amendment to the United States Constitution prohibits warrantless searches and seizures, rendering them per se unreasonable unless an exception applies. *Katz v. United States,* 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). An investigative stop, or *Terry* stop, is a common exception to the Fourth Amendment warrant requirement. *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Because the "balance between the public interest and the individual's right to personal security" tilts in favor of a standard less than probable cause in such cases, the Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity "may be afoot." *United States v. Brignoni–Ponce,* 422 U.S. 873, 878, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975); *United States v. Sokolow,* 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989). In *Terry,* the Supreme Court held that a police officer may stop an individual if the officer has a reasonable suspicion based upon specific and articulable facts that criminal behavior has occurred or is imminent. See, *State v. Chatton,* 11 Ohio St.3d 59, 61, 463 N.E.2d 1237 (1984).

{¶26} The propriety of an investigative stop must be viewed in light of the totality of the circumstances surrounding the stop "as viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold." *State v. Andrews,* 57 Ohio St.3d 86, 87–88, 565 N.E.2d 1271 (1991); *State v. Bobo,* 37 Ohio St.3d 177, 178, 524 N.E.2d 489 (1988). The Supreme Court of the United States has re-emphasized the importance of reviewing the totality of the circumstances in making a reasonable-suspicion determination:

> When discussing how reviewing courts should make reasonable-suspicion determinations, we have said repeatedly that they must look at the "totality of the circumstances" of each case to see whether the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing. This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that "might well elude an untrained person." Although an officer's reliance on a mere "hunch" is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard.
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> *United States v. Arvizu,* 534 U.S. 266, 273, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002), citing *United States v. Cortez,* 449 U.S. 411, 417–418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).

{¶27} The issue presented by the instant case is whether police had reasonable, articulable suspicion of criminal activity at the time they seized appellant, i.e. attempted to pull him over. Appellant's Brief, 7. Appellant argues running the license plate "KINGME3" and observing the nebulous "red screen" is not a sufficient basis for reasonable, articulable suspicion. Under the facts of the instant case, we disagree.

{¶28} Appellant argues only that appellee did not present "enough" basis for reasonable, articulable suspicion. Brief, 8. Upon our review of the record, we note Brown testified Moreno asked him to run the plate reading "KINGME3" belonging to a blue Mazda with tinted windows driving the opposite direction. The Jackson cruiser's computer-aided dispatch system (CAD) was similar to Canton's, but not identical to the system Brown was familiar with. Brown entered the license plate and "the registration popped up red…within the CAD system." T. Suppression, 12, 13, 28. Canton's system will also indicate red alerts on registrations, but with more detail than Jackson's. In Brown's experience, a red registration alert means an outstanding warrant, expired tags, or a stolen vehicle. T. Suppression, 12, 16, 19. Brown instructed Moreno to get behind the Mazda to initiate a traffic stop; Moreno made a U-turn as Brown ran the registration again, and observed another red alert. Moreno initiated lights and siren and appellant drove away. Brown testified he always initiates a traffic stop if the registration indicates a red alert. T. Suppression, 37.

{¶29} There is no question that the non-intrusive license plate check is permissible. See, *State v. Lambert*, 4th Dist. Lawrence No. 93 CA 28, 1994 WL 116613, *2, appeal not allowed, 70 Ohio St.3d 1413, 637 N.E.2d 10. The issue is whether the undefined "red alert" gave Brown and Moreno reasonable, articulable suspicion to traffic-

stop appellant. The Ohio Supreme Court has emphasized that probable cause is not required to make a traffic stop; rather the standard is reasonable and articulable suspicion. *State v. Mays,* 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, ¶ 23.

{¶30} Appellant argues the quantity and quality of the information at Brown's disposal was weak. However, we are bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Medcalf*, 111 Ohio App.3d 142, 145, 675 N.E.2d 1268 (4th Dist.1996). In the instant case, the trial court found the traffic stop resulted from the plate appearing "red" in the system—"wanted." Judgment Entry, 2. The trial court found Brown's training and experience led him to believe this was a wanted vehicle.

{¶31} As noted supra, the trial court's findings are supported by competent, credible evidence upon our own review of the record. Upon review of the totality of the circumstances, Brown had a "particularized and objective basis" for suspecting legal wrongdoing, drawn from his own experience and specialized training. See, *Arvizu,* 534 U.S. 266, 273, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002), supra. Appellant also argues the trial court incorrectly decided the instant case on the basis of *State v. Chatton*, 11 Ohio St.3d 59, 463 N.E.2d 1237 (1984), but we agree with appellee that the trial court's point in citing *Chatton* was in support of the premise that even if Brown erred in suspecting appellant committed some violation, he was justified in stopping appellant to investigate further.

{¶32} We conclude Brown demonstrated reasonable and articulable suspicion to initiate the attempt to traffic-stop appellant's vehicle. The trial court did not err in overruling appellant's motion to suppress and the first assignment of error is overruled.

II.

{¶33} In his second assignment of error, appellant argues the verdict form was insufficient to convict him upon a felony of the third degree in Count IX, failure to comply with an order or signal of a police officer. We disagree.

{¶34} In Count IX of the indictment, appellant was charged with one count of failure to comply with an order or signal of a police officer pursuant to R.C. 2921.331(B)(C)(5)(a)(ii), a felony of the third degree. Those sections state the following:

> (B) No person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop.
>
> (C)(1) Whoever violates this section is guilty of failure to comply with an order or signal of a police officer.
>
> * * * *.
>
> (5)(a) A violation of division (B) of this section is a felony of the third degree if the jury or judge as trier of fact finds any of the following by proof beyond a reasonable doubt:
>
> * * * *.
>
> (ii) The operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.

{¶35} The jury verdict in the instant case upon Count IX states in pertinent part: "We, the jury in this case, duly impaneled and sworn, do find the defendant, Larenta

Cooper, * GUILTY of Failure to Comply with the Order or Signal of a Police Officer, pursuant to R.C. 2921.33(B)(C)(5)(a)(ii)." (*Sic*).[2]

{¶36} Appellant argues the verdict form is defective because it does not state the degree of felony or the willful mens-rea language; therefore, he asserts, he has been found guilty of the lowest degree of the offense, a misdemeanor.

{¶37} We examined the same argument in *State v. Craig*, 5th Dist. Licking No. 17-CA-61, 2018-Ohio-1987, appeal not allowed, 154 Ohio St.3d 1430, 2018-Ohio-4670, 111 N.E.3d 1192, also involving a conviction upon R.C. 2921.331(B)(C)(5)(a)(ii). In *Craig*, we noted generally the statutory definition of an offense need not be included on the

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[2] As appellee acknowledges, the cited Revised Code section contains a typographical error and should state "R.C. **2921.331**(B)(C)(5)(a)(ii)" (emphasis added). The error is a simple typographical error in the numerical designation of the offense. See, *State of Ohio/City of Northwood Appellee v. Daniel L. Smoot Appellant*, 6th Dist. Wood No. WD-19-034, 2020-Ohio-838, ¶ 49. The indictment, jury instructions, and judgment entries correctly list the applicable code section as R.C. 2921.**331**(B)(C)(5)(a)(ii). (Emphasis added). See, *State v. Selvage*, 12th Dist. Clermont No. CA2011-08-058, 2012-Ohio-2149, *cause dismissed,* 133 Ohio St.3d 1406, 2012-Ohio-4634, 975 N.E.2d 1026. Appellant has not raised the issue of the clerical error, and upon our review we find no prejudicial effect therefrom. The law is clear that "[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court *at any time*" so long as the "clerical mistake" is a "type of mistake or omission mechanical in nature, which is apparent on the record and which does not involve a legal decision or judgment by an attorney." Crim.R. 36; see also, *State v. Bradford*, 4th Dist. No. 16CA3531, 2017-Ohio-3003, 91 N.E.3d 10, ¶ 24, citing *State ex rel. Bradford v. Dinkelacker*, 146 Ohio St.3d 219, 2016-Ohio-2916, 54 N.E.3d 1216 ["We are reassured in our decision by the fact that * * * the Supreme Court of Ohio has reviewed Appellant's Hamilton County convictions in the course of a mandamus appeal, acknowledged the discrepancy [in Revised Code sections] between the verdict form and the sentencing entry, yet failed to sua sponte recognize that the error rendered either the conviction or sentence void or contrary to law."]; *State v. Martinez*, 6th Dist. Lucas No. L-95-009, 1995 WL 680005, *3, appeal not allowed, 75 Ohio St.3d 1449, 663 N.E.2d 330 (1996) [typographical error in subsection of statute on the verdict form but trial court correctly instructed jury on law, jury polled as to verdict, and defendant sentenced under correct subsection].

verdict form. *Id.,* ¶ 10, citing *State v. Martin*, 2nd Dist. Montgomery No. 22744, 2009–Ohio–5303, ¶ 8. R.C. 2945.75 contains an exception to this rule:

> (A) When the presence of one or more additional elements makes an offense one of more serious degree:
>
> * * * *.
>
> (2) A guilty verdict shall state either the degree of the offense of which the offender is found guilty, or that such additional element or elements are present. Otherwise, a guilty verdict constitutes a finding of guilty of the least degree of the offense charged.

{¶38} Therefore, a verdict form signed by a jury must include either the degree of the offense or a statement an aggravating element has been found to justify convicting a defendant of a greater degree of a criminal offense. *Craig,* supra, ¶ 12, citing *State v. Pelfrey,* 112 Ohio St. 3d 422, 860 N.E.2d 735, 2007–Ohio–256, ¶ 14. The verdict form itself is the only relevant thing to consider in determining whether the dictates of R.C. 2945.75 have been followed. *Id.* If the verdict form fails to include the degree of the offense or a statement the aggravating element has been found, the defendant can only be convicted of the least degree of the offense. *Id.* at ¶ 13.

{¶39} A felony conviction upon the offense of fleeing and eluding occurs only upon a conviction of R.C. 2921.331(B). *Id.* at ¶ 22. Without the element of willful elusion or flight, there can be no felony conviction, and thus the element of willful flight constitutes "one or more additional elements" which make an offense one of a more serious degree pursuant to R.C. 2945.75. *Id.*; see, *State v. McDonald*, 137 Ohio St.3d 517, 2013-Ohio-5042, 1 N.E.3d 374, ¶ 29, Lanziger, J., concurring ["a reference to R.C. 2921.331(B) and

(C)(5)(a)(ii) would have been sufficient, as would a reference to the degree of the offense as a felony of the third degree."]

{¶40} In *Craig,* supra, the verdict form was identical to the verdict form in the instant case, citing both subsection (B) and (C)(5)(a)(ii). We found the verdict form adequately sufficient to convict the offender of the felony-level offense:

> Appellant was indicted solely with a violation of subsection (B). The jury was instructed solely as to the elements of subsection (B). * * *. The jury was further instructed as to the definition of "willful." * * *. The verdict form specifically referred only to subsection (B), with no reference to subsection (A). We therefore find the verdict form sufficient to convict Appellant of R.C. 2921.331(B), which then allowed the jury to proceed to the special finding pursuant to (C)(5)(a)(ii) which elevated the offense to a third degree felony.
>
> *State v. Craig*, 5th Dist. Licking No. 17-CA-61, 2018-Ohio-1987, ¶ 16, appeal not allowed, 154 Ohio St.3d 1430, 2018-Ohio-4670, 111 N.E.3d 1192.

{¶41} In the instant case, the verdict form specifically references R.C. 2921.331(B)(C)(5)(a)(ii), elevating the offense to the level of a felony and specifying a felony of the third degree. The jury's intent is therefore evident upon the face of the verdict form and appellant was found guilty upon the third-degree felony. His second assignment of error is overruled.

III.

{¶42} In appellant's third assignment of error, he argues the trial court erred in sentencing him to consecutive prison terms. We disagree.

*Standard of review for felony sentences*

{¶43} We review felony sentences using the standard of review set forth in R.C. 2953.08. *State v. Corbett*, 5th Dist. No. 22CA0013, 2023-Ohio-556, 209 N.E.3d 280, ¶ 24, citing *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 22. In *State v. Gwynne*, a plurality of the Supreme Court of Ohio held that an appellate court may only review individual felony sentences under R.C. 2929.11 and R.C. 2929.12, while R.C. 2953.08(G)(2) is the exclusive means of appellate review of consecutive felony sentences. 158 Ohio St.3d 279, 2019-Ohio-4761, 141 N.E.3d 169, ¶ 16-18.

{¶44} R.C. 2953.08(G)(2) provides we may either increase, reduce, modify, or vacate a sentence and remand for resentencing where we clearly and convincingly find that ***either*** the record does not support the sentencing court's findings under R.C. 2929.13(B) or (D), 2929.14(B)(2)(e) or (C)(4), or 2929.20(I), ***or*** the sentence is otherwise contrary to law. *See, also, State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.2d 659, ¶ 28; *Gwynne,* supra, ¶ 16.

{¶45} Clear and convincing evidence is that evidence "which will provide in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford,* 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus. "Where the degree of proof required to sustain an issue must be clear and convincing, a reviewing court will examine the record to determine whether the trier of

facts had sufficient evidence before it to satisfy the requisite degree of proof." *Cross,* 161 Ohio St. at 477, 120 N.E.2d 118.

*Requisite findings for imposition of consecutive sentences*

{¶46} In Ohio, there is a statutory presumption in favor of concurrent sentences for most felony offenses. R.C. 2929.41(A). The trial court may overcome this presumption by making the statutory, enumerated findings set forth in R.C. 2929.14(C)(4). *State v. Bonnell*, 140 Ohio St.3d 209, 16 N.E.3d 659, 2014-Ohio-3177, ¶ 23. R.C. 2929.14(C)(4) states:

> If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:
>
> (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.
>
> (b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two

> or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.
>
> (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶47} "In order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to state reasons to support its findings." *State v. Newman*, 5th Dist. Fairfield No. 20-CA-44, 2021-Ohio-2124, 2021 WL 2628079, ¶ 100, citing *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus. In other words, the sentencing court does not have to perform "a word-for-word recitation of the language of the statute." *Id.* at ¶ 29. Therefore, "as long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld." *Id.* If a sentencing court fails to make the findings required by R.C. 2929.14(C)(4), a consecutive sentence imposed is contrary to law. *Id.* at ¶ 34. The trial court is not required "to give a talismanic incantation of the words of the statute, provided that the necessary findings can be found in the record and are incorporated into the sentencing entry." *Id.* at ¶ 37.

{¶48} Appellant argues the trial court failed to make any requisite findings on the record at the sentencing hearing to impose consecutive sentences.

{¶49} At the sentencing hearing, defense trial counsel acknowledged appellant's prior felony record and appellee noted the possible prison terms appellant faced. The trial court then stated the following:

> * * * *.
>
> Okay, I've reviewed the parameters outlined in 2929.11 through 17 of the Revised Code, including the seriousness of the offense, the recidivism factors.
>
> I've also taken into consideration your criminal record, the CCW I believe you did fourteen months in about 2014. But more alarming was your 2015 conviction where it indicated that you had conveyed into the Stark County Jail cocaine and heroin.
>
> Just from seeing you and seeing you in the courtroom, you seem like a very nice young man, I don't know why you would travel down this path. Unfortunately my job is to protect the public and issue a sentence that is appropriate for the level of the crime.
>
> And I've got to be very candid with you, this drug situation is completely out of hand. I mean we lost over a hundred thousand people in America last year on these opioids, seventy-five percent of them were fentanyl.
>
> And the level of the different drugs that you had, you had heroin, you had fentanyl, you had cocaine, and I think you even had meth if I recall correctly. So all these drugs are what's destroying this community and you should know better because you've already been

through this process, you've already known that you're going to pay a price for that.

I can't let this stuff go on, this fentanyl is just killing people. And you're with two thousand dollars in cash, you're with a scale, this is unacceptable behavior for me and if you're going to behave like that then there's a price that you're going to pay.

And you knew that and it's sad because if you have this legitimate business, the construction business, I don't know why you would engage in this type of activity.

* * * *.

T. Sentencing, 8-9.

{¶50} The trial court thereupon sentenced appellant to a 6-year term upon Count II (possession of heroin), consecutive to a term of 24 months on Count VI (aggravated drug possession), consecutive to a term of 12 months upon Count VIII (possession of cocaine).

{¶51} The trial court then stated the following regarding Count IX, fleeing and eluding:

* * * *.

What's troublesome even more to me is during this case you didn't stop for the police. You put the police on the chase, you're lucky you didn't kill yourself when you hit the pole.

Again it just shows me another part of your character right now that I don't agree with and so I'm going to sentence you to twenty-

> four months on that, and that will be run consecutive with the possession of heroin, the aggravated possession of drugs, the possession of cocaine.
>
> * * * *.
>
> T. Sentencing, 12.

{¶52} The record does not indicate that the trial court ordered a pre-sentence investigation; nor does it indicate appellant waived preparation of a P.S.I. The record does contain, however, the trial court's reference to appellant's criminal history, supra, which includes narcotics-related offenses. See, *State v. Oder*, 5th Dist. Licking No. 2021 CA 00061, 2022-Ohio-3048, 2022 WL 3971226, ¶ 71.

{¶53} The issue posed by this case is whether we can discern that the trial court engaged in the proper analysis regarding imposition of consecutive sentences. *State v. Corbett*, supra, 5th Dist. No. 22CA0013, 2023-Ohio-556, 209 N.E.3d 280, ¶ 34. In *State v. Bonnell*, the trial court stated at the sentencing hearing where it imposed consecutive sentences, "Going through all of the sentencing factors, I cannot overlook the fact your record is atrocious. The courts have given you opportunities. * * * On the PSI pages 4 through 16, it's pretty clear that at this point in time you've shown very little respect for society and the rule of society. The Court feels that a sentence is appropriate." *Bonnell*, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 9. The Ohio Supreme Court reviewed the requirements of R.C. 2929.14(C)(4) with the trial court record in *Bonnell* to find the trial court had met some of the mandated statutory findings of R.C. 2929.14(C)(4), but not all. The Supreme Court discerned from the trial court's statement that Bonnell "had shown very little respect for society" so there was a need to protect the public from future crimes

or to punish Bonnell. *Id.* at ¶ 33. The Court also concluded by the trial court's description of Bonnell's record as "atrocious" that it knew of Bonnell's criminal record, and that record related to a history of criminal conduct demonstrating a need to protect the public from future crime. *Id.* at ¶ 33. The Supreme Court found the trial court, however, never addressed the proportionality of consecutive sentences to the seriousness of Bonnell's conduct and the danger he posed to the public; therefore, it vacated the sentence and remanded the matter to the trial court for resentencing. *Id.* at ¶ 33, 37.

{¶54} In the instant appeal, appellant summarily argues only that the trial court failed to make required findings pursuant to R.C. 2929.14(C)(4). Unlike *Bonnell*, we can discern from the trial court's statements at the sentencing hearing regarding the crimes appellant has committed that the trial court addressed the proportionality of consecutive sentences. *Oder*, supra, 2022-Ohio-3048, ¶ 73. According to the Ohio Supreme Court, "the record must contain a basis upon which a reviewing court can determine that the trial court made the findings required by R.C. 2929.14(C)(4) before it imposed consecutive sentences." *Bonnell*, supra, ¶ 28. "[A]s long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld." *Id.* at ¶ 29.

{¶55} R.C. 2953.08(G)(2)(b) does not provide a basis for an appellate court to modify or vacate a sentence based on its view that the sentence is not supported by the record under R.C. 2929.11 and 2929.12. *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649, ¶39. The Ohio Supreme Court further elucidated in *State v. Toles*, 166 Ohio St.3d 397, 2021-Ohio-3531, 186 N.E.3d 784, ¶10, "R.C. 2953.08, as amended,

precludes second-guessing a sentence imposed by the trial court based on its weighing of the considerations in R.C. 2929.11 and 2929.12."

{¶56} Upon review, we find that the trial court's sentencing on the charges complies with applicable rules and sentencing statutes. The sentence was within the statutory sentencing range. Appellant has not shown that the trial court imposed the sentence based on impermissible consideration, meaning considerations that fall outside those contained in R.C. 2929.11 and R.C. 2929.12. Further, the record contains evidence supporting the trial court's findings under R.C. 2929.14(C)(4). Therefore, we have no basis for concluding that it is contrary to law. *State v. Worden*, 5th Dist. Muskingum No. CT2022-0030, 2022-Ohio-4648, 2022 WL 17849111, ¶ 28; see also, *State v. Washington,* 5th Dist. Richland No. 2020 CA 0066, 2022-Ohio-625, 2022 WL 620185, ¶123-124, appeal not allowed, 167 Ohio St.3d 1450, 2022-Ohio-2246, 189 N.E.3d 828.

{¶57} Appellant's third assignment of error is overruled.

IV.

{¶58} In his fourth assignment of error, appellant argues his indefinite sentence pursuant to the Reagan Tokes Act is unconstitutional as violative of the right to trial by jury, separation of powers, and the right to due process. Because the Ohio Supreme Court recently overruled these arguments in *State v. Hacker*, 2023-Ohio-2535, --N.E.3d--, and we have previously overruled these arguments, we disagree.

{¶59} We first note that pursuant to *State v. Maddox*, 168 Ohio St.3d 292, 2022-Ohio-764, 198 N.E.3d 797, the Ohio Supreme Court held that constitutional challenges to the Reagan Tokes Act are ripe for review on direct appeal. *State v. Turner*, 5th Dist. Licking No. 2022 CA 00040, 2023-Ohio-441, 2023 WL 2017516, ¶ 40.

{¶60} In *State v. Householder*, 5th Dist. Muskingum No. CT2021-0026, 2022-Ohio-1542, 2022 WL 1439978, this Court set forth its position on the arguments raised in appellant's fourth Assignment of Error:

> For the reasons stated in the dissenting opinion of The Honorable W. Scott Gwin in *State v. Wolfe*, 5th Dist. Licking No. 2020CA00021, 2020-Ohio-5501 [2020 WL 7054428], we find the Reagan Tokes Law does not violate Appellant's constitutional rights to trial by jury and due process of law, and does not violate the constitutional requirement of separation of powers. We hereby adopt the dissenting opinion in *Wolfe* as the opinion of this Court. In so holding, we also note the sentencing law has been found constitutional by the Second, Third, Sixth, and Twelfth Districts, and also by the Eighth District sitting en banc. *See, e.g., State v. Ferguson*, 2nd Dist. Montgomery No. 28644, 2020-Ohio-4153 [2020 WL 4919694]; *State v. Hacker*, 3rd Dist. Logan, 2020-Ohio-5048 [161 N.E.3d 112]; *State v. Maddox*, 6th Dist. Lucas, 2022-Ohio-1350 [188 N.E.3d 682]; *State v. Guyton*, 12th Dist. Butler No. CA2019-12-203, 2020-Ohio-3837 [2020 WL 4279793]; *State v. Delvallie*, 8th Dist. Cuyahoga, 2022-Ohio-470 [185 N.E.3d 536]. Further, we reject Appellant's claim the Reagan Tokes Act violates equal protection for the reasons stated in *State v. Hodgkin*, 12th Dist. Warren No. CA2020-08-048, 2021-Ohio-1353 [2021 WL 1530036].

{¶61} Based on the forgoing authority, the trial court did not err in sentencing appellant to an indefinite term. *Turner*, supra, 2023-Ohio-441, ¶ 42; *State v. Corbett*, 5th Dist. No. 22CA0013, 2023-Ohio-556, 209 N.E.3d 280, ¶ 46; *Hacker,* supra.

{¶62} Appellant's fourth assignment of error is overruled.

## CONCLUSION

{¶63} Appellant's four assignments of error are overruled and the judgment of the Stark County Court of Common Pleas is affirmed.

By: Delaney, P.J.,

Baldwin, J. and

King, J., concur.