

IN THE OHIO COURT OF APPEALS  
FIFTH APPELLATE DISTRICT  
FAIRFIELD COUNTY, OHIO

STATE OF OHIO,  
  
Plaintiff - Appellee  
  
-vs-  
  
SHAY M. BROWNING,  
  
Defendant - Appellant

Case No. 2025 CA 00029  
  
Opinion And Judgment Entry  
  
Appeal from the Fairfield County Court of  
Common Pleas, Case No. 2024CR00220  
  
Judgment: Reversed and Remanded  
  
Date of Judgment Entry: September 11, 2026

**BEFORE:** Andrew J. King; Craig R. Baldwin; David M. Gormley, Judges

**APPEARANCES:** R. KYLE WITT, Prosecuting Attorney, CHRISTOPHER A. REAMER, Assistant Prosecuting Attorney, for Plaintiff-Appellee; BRIAN A. SMITH, for Defendant-Appellant.

*Baldwin, J.*

**{¶1}** The appellant, Shay M. Browning, appeals her convictions and sentence in the Fairfield County Court of Common Pleas. The appellee is the State of Ohio.

**STATEMENT OF FACTS AND THE CASE**

**{¶2}** In early 2024, the South Central Ohio Major Crimes Unit received information that the appellant was involved in trafficking methamphetamine in Fairfield County. C.B., a confidential informant, identified the appellant as a target and made a series of controlled purchases from her at a Delmont Road property in Fairfield County on April 15, April 23, April 24, and April 30, 2024. On each occasion, officers searched C.B. and his vehicle before

and after the transaction, monitored the encounter by live audio, and collected the purchased narcotics afterward.

{¶3} On April 30, 2024, some hours after the last controlled buy, law enforcement determined that the appellant would be arrested in the field. Detective Miller of the Fairfield County Sheriff's Office, driving a marked cruiser and in uniform, stopped the appellant on U.S. Route 33 as she travelled toward Fairfield County and took her into custody. The appellant was the sole occupant and driver of an Acura that was not titled in her name. A canine alerted on the vehicle, but no drugs or other contraband were recovered from it apart from \$718 in United States currency.

{¶4} Approximately five minutes into the stop, the appellant made a statement to officers, captured on Detective Miller's body camera, in which she told them to go ahead and tear the car apart, that there was nothing in it, and that they had the wrong one on the wrong day. Detective Miller testified that he administered warnings pursuant to *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), approximately thirty-six minutes into the stop.

{¶5} At 7:50 p.m. that evening, a search warrant was issued for the appellant's residence in Lancaster, Ohio. Officers executed the warrant and recovered methamphetamine, cocaine, and a .380 caliber Taurus firearm from a camper on the property.

{¶6} The following day, May 1, 2024, the appellant was interviewed at the Fairfield County jail after receiving fresh *Miranda* warnings. The interview was recorded.

{¶7} On May 9, 2024, the Fairfield County Grand Jury indicted the appellant on eleven counts of aggravated trafficking in drugs, aggravated possession of drugs, and possession of cocaine, with attendant forfeiture specifications.

**{¶8}** On February 7, 2025, the appellant filed a motion to suppress “any and all evidence against her, obtained as a result of the warrantless stop, search, seizure, and arrest of the Defendant,” asserting that “any evidence acquired after this unlawful stop should be suppressed based on being fruit from the poisonous tree.” The trial court held a hearing on March 11, 2025, at which Detective Miller was the sole witness. In lieu of closing argument, the parties submitted post-hearing briefs.

**{¶9}** By Entry filed April 8, 2025, the trial court granted the motion in part and denied it in part. The court found that the sole basis of probable cause for the planned field arrest was the series of controlled buys, that Miller observed no arrestable offense, that no warrant had been obtained, and that a plan to arrest the appellant in the field had been in place for at least a week. The court further found that the appellant “was to be arrested on suspicion of drug trafficking regardless of whether the pre-arranged canine sniff resulted in a positive alert on the vehicle, or whether any contraband was subsequently recovered from a search of the vehicle.” Concluding that “no other lawful basis for the Stop was articulated,” the court found “that the April 30, 2024, Stop of the Defendant was unlawful,” and ordered the \$718 suppressed.

**{¶10}** As to the appellant’s statements, the trial court denied relief. The court observed that “[t]he sole basis upon which the Defendant relies to suppress the statements is that they were made following an unlawful stop,” and that “[t]he Defendant does not reference, and the Court is not aware of, any controlling caselaw where statements given after properly administered *Miranda* warnings were suppressed as fruit of the poisonous tree following an earlier constitutional violation.” The court found that “the statements made by the Defendant after the Stop were made after the waiver of proper *Miranda* warnings,” and concluded that

they “were sufficiently separated from any violation from the underlying traffic stop due to a valid waiver of the Defendant’s *Miranda* rights.”

**{¶11}** As to the search of the appellant’s residence, the parties had jointly asked the court to conduct a four-corners review of the affidavit and warrant. The court found that “[t]he Search Warrant Affidavit makes no reference to the April 30, 2024, traffic stop or any evidence recovered therefrom,” that the affidavit set out the series of controlled buys conducted at the residence over the prior month together with information from the confidential informant and from other arrestees unrelated to the stop, and that probable cause supported issuance of the warrant.

**{¶12}** The matter proceeded to jury trial from July 15 through July 18, 2025. The State introduced, among other exhibits, State’s Exhibit 6, an approximately ten-second excerpt of the body camera recording containing the appellant’s April 30, 2024, statement, and State’s Exhibit 9, the recorded May 1, 2024, interview. The jury found the appellant guilty on Counts One through Five and the attendant specifications, and not guilty on Counts Six through Eleven.

**{¶13}** At sentencing on August 11, 2025, the trial court merged Count Two with Count One and Count Five with Count Four. The court imposed a mandatory indefinite term of seven to ten and one-half years on Count One, eleven months on Count Three, and a mandatory term of three years on Count Four, to be served consecutively, for an aggregate term of ten years and eleven months to a maximum of fourteen years and five months, consecutive to the appellant’s sentence in Fairfield County Case No. 2022CR0417.

**{¶14}** The appellant filed a timely notice of appeal and raises four assignments of error:

**{¶15}** “I. THE TRIAL COURT ERRED IN DENYING THE APPELLANT’S MOTION TO SUPPRESS, WITH RESPECT TO EVIDENCE DERIVED FROM THE APRIL 30, 2024 TRAFFIC STOP OF APPELLANT, INCLUDING, BUT NOT LIMITED TO EVIDENCE OBTAINED AS A RESULT OF THE APRIL 30, 2024 SEARCH WARRANT, IN VIOLATION OF APPELLANT’S RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES UNDER THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 14 OF THE OHIO CONSTITUTION.”

**{¶16}** “II. APPELLANT’S CONVICTIONS WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

**{¶17}** “III. THE TRIAL COURT ABUSED ITS DISCRETION IN OVERRULING APPELLANT’S OBJECTION AND ALLOWING INTRODUCTION OF THE PHYSICAL CONTROLLED SUBSTANCES AND FIREARM AS EXHIBITS, IN VIOLATION OF APPELLANT’S RIGHT TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION.”

**{¶18}** “IV. THE TRIAL COURT COMMITTED PLAIN ERROR IN IMPOSING CONSECUTIVE SENTENCES ON APPELLANT, BECAUSE ITS FINDINGS UNDER R.C. 2929.14(C)(4) WERE NOT SUPPORTED BY THE RECORD.”

## **I.**

**{¶19}** In her first assignment of error, the appellant argues that the trial court erred in denying the appellant’s motion to suppress, with respect to evidence derived from the April

30, 2024, traffic stop of the appellant, including, but not limited to, evidence obtained as a result of the April 30, 2024, search warrant. We agree in part and disagree in part.

### STANDARD OF REVIEW

{¶20} Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 2003-Ohio-5372, ¶ 8. When ruling on a motion to suppress, the trial court assumes the role of trier of fact and is in the best position to resolve questions of fact and to evaluate witness credibility. *Id.*; *State v. Fanning*, 1 Ohio St.3d 19, 20 (1982). A reviewing court must therefore accept the trial court's findings of fact if competent, credible evidence supports them. *Burnside* at ¶ 8; *State v. Hill*, 2024-Ohio-522, ¶ 16 (5th Dist.).

{¶21} Accepting those facts as true, the reviewing court must then independently determine, without deference to the trial court's conclusion, whether the facts satisfy the applicable legal standard. *Burnside* at ¶ 8; *State v. Castagnola*, 2015-Ohio-1565, ¶ 32. The application of the law to the trial court's findings of fact is subject to de novo review. *State v. Starcher*, 2026-Ohio-15, ¶ 7 (5th Dist.), citing *Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996).

### ANALYSIS

{¶22} The first assignment of error encompasses three distinct challenges: the admission of State's Exhibit 6, the statement the appellant made approximately five minutes into the April 30, 2024, stop; the admission of State's Exhibit 9, the recorded interview conducted the following day at the Fairfield County jail; and the admission of the physical evidence recovered from the camper during execution of the search warrant. Because they are governed by different principles, we address them separately.

### **A. The Trial Court's Finding That the Stop Was Unlawful**

{¶23} The trial court found that the April 30, 2024, stop of the appellant was unlawful. The State did not take an interlocutory appeal from that ruling under Crim.R. 12(K). On appeal it nonetheless argues that the stop was lawful, both because probable cause supported a warrantless felony arrest and because the appellant's status as a felony probationer and as a driver under suspension independently justified the stop. The appellant responds that the State waived these arguments by failing to appeal, and that the law of the case doctrine bars them.

{¶24} We address the procedural objection first. Crim.R. 12(K) provides that the State may appeal from an order granting a motion to suppress; it does not compel an appeal. The decision not to take a permissive interlocutory appeal does not forfeit the State's ability to defend the judgment ultimately entered. Nor does the law of the case doctrine apply. That doctrine binds a lower court to the mandate of a superior court upon remand. *Nolan v. Nolan*, 11 Ohio St.3d 1, 3 (1984). It does not bind a court of appeals, on first review, to a trial court's interlocutory ruling. Finally, no cross-assignment of error was required. App.R. 3(C)(2).

{¶25} Turning to the merits, the State identifies alternative bases for the stop but does not develop an argument demonstrating why those bases require reversal of the trial court's contrary determination under the applicable standard of review. An appellate court may disregard an assignment of error or argument not separately argued and supported by citation to authority. App.R. 12(A)(2); App.R. 16(A)(7). The State cites *State v. Jordan*, 2021-Ohio-3922, for the proposition that a warrantless public arrest supported by probable cause is reasonable, but it neither identifies the standard governing probable cause nor applies that standard to the facts the trial court found. Nor does it explain how the appellant's status as a probationer authorized a stop in the absence of any suspicion, or how a suspension unknown

to the arresting officer could supply an objective basis for the stop. We decline to construct the argument. *See State v. Romy*, 2021-Ohio-501, ¶ 36 (5th Dist.). The trial court's determination that the April 30, 2024, stop was unlawful stands.

### **B. Standing**

{¶26} The State contends as a threshold matter that the appellant failed to establish standing to challenge the stop because the Acura was not titled in her name and she offered no evidence of permission to operate it. The trial court did not reach the question.

{¶27} The Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution protect the right of the people to be free from unreasonable searches and seizures of their person or property. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *State v. Braucher*, 2024-Ohio-811, ¶ 26 (5th Dist.). Fourth Amendment rights are personal. Once the State challenges a defendant's claim of a Fourth Amendment interest, the defendant must establish that she herself had a privacy interest that was violated. *Rakas v. Illinois*, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978).

{¶28} The State relies upon *State v. Carter*, 69 Ohio St.3d 57 (1994), for the proposition that a non-owner driver must demonstrate permission to possess the vehicle before standing attaches. *Carter* does hold that "the driver of an automobile who demonstrates that he has the owner's permission to use the vehicle has a reasonable expectation of privacy in the vehicle and standing to challenge its stop and search." *Id.* at 63. But *Carter* holds separately, and in the same passage, that "[b]oth passengers and the driver have standing regarding the legality of a stopping because when the vehicle is stopped, they are equally seized, and their freedom of movement is equally affected." *Id.*; accord *Brendlin v. California*, 551 U.S. 249, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007).

**{¶29}** The distinction is between a challenge to the search of a vehicle and a challenge to the seizure of the person. A showing of permission bears upon the former. It has no bearing upon the latter, because every occupant of a stopped vehicle is seized when the stop is effected. *Carter* at 63.

**{¶30}** The appellant does not challenge the search of the Acura. The only evidence recovered from that search was the \$718 in currency, which the trial court suppressed and which is not before us. What the appellant challenges is the seizure of her person and the evidence she contends derived from it. As the driver of the stopped vehicle, she was seized, and she has standing to contest the legality of that seizure.

### **C. Preservation**

**{¶31}** The State further contends that the appellant failed to raise the suppression of her statements with sufficient particularity in the trial court and may not now assign as error an issue she did not present below. *See State v. Neale*, 2014-Ohio-4368 (5th Dist.).

**{¶32}** A motion to suppress must state the legal and factual issues with particularity, thereby placing the prosecutor and the trial court on notice of the issues to be heard and decided. *State v. Shindler*, 70 Ohio St.3d 54, 58 (1994). The appellant's motion sought suppression of all evidence obtained as a result of the warrantless stop, search, seizure, and arrest, and expressly invoked the fruit of the poisonous tree.

**{¶33}** We recognize that at the outset of the suppression hearing counsel stated that he did not believe the motion contained anything regarding the statements made, and that no allegation had been made that the appellant was improperly Mirandized. Read in isolation, that statement might suggest the statements were not in issue. Read in context, it does not.

Counsel's remarks responded to the prosecutor's characterization of the motion as presenting two challenges – the lawfulness of the stop, and a four-corners review of the search warrant documents. Immediately afterward, counsel identified the appellant's primary objective as establishing that there was no basis for the stop and that any arrest was therefore unlawful and argued that anything obtained during the totality of the stop or the subsequent arrest, "even if *Miranda* wasn't deficient," should be suppressed because everything flowed from the illegal stop and would be fruits of the poisonous tree.

{¶34} What counsel disclaimed was an independent challenge to the adequacy of the warnings. What he pressed, in the same colloquy, was the derivative claim that the statements were fruit of an unlawful seizure. The trial court understood the distinction and ruled upon the claim actually presented, stating that "[t]he sole basis upon which the Defendant relies to suppress the statements is that they were made following an unlawful stop," and denying the motion "as to the remaining evidence, including the statements made." Where the trial court has identified and ruled upon the claim, the notice function of *Shindler* has been served. The issue is properly before us.

#### **D. The Search of the Delmont Road Property**

{¶35} The appellant contends the trial court erred in denying suppression as to the evidence recovered from the camper. She argues that because the affidavit and warrant were executed within hours of the stop, and because she would not have been in custody but for the arrest, the warrant and its fruits derived from the unlawful seizure.

{¶36} The exclusionary rule reaches not only primary evidence obtained as a direct result of an unlawful search or seizure, but also evidence later discovered and found to be

derivative of an illegality, or “fruit of the poisonous tree.” *Carter* at 67, citing *Nardone v. United States*, 308 U.S. 338, 60 S.Ct. 266, 84 L.Ed. 307 (1939); *State v. Nowlin*, 2012-Ohio-4923, ¶ 31 (5th Dist.). However, evidence is not excluded merely because it can be traced to earlier police misconduct. Where the connection between the illegality and the discovery has become so attenuated that the taint has dissipated, or where the police discovered the evidence through an independent source, the rule does not apply. *Carter* at 67.

**{¶37}** Under *Murray v. United States*, 487 U.S. 533, 108 S.Ct. 2529, 101 L.Ed.2d 472 (1988), evidence observed during an illegal entry need not be excluded if it is later discovered during execution of a valid search warrant issued on information wholly unconnected to the prior illegality. The State must establish that no information presented in the affidavit was obtained during the unlawful conduct, and that the decision to seek the warrant was not prompted by what was learned from it. *Carter* at 68, citing *Murray*.

**{¶38}** Both requirements are satisfied. As to the first, the trial court found that the affidavit “makes no reference to the April 30, 2024, traffic stop or any evidence recovered therefrom,” and that it rested instead upon the series of controlled buys conducted at the residence over the prior month, together with information from the confidential informant and from other arrestees unrelated to the stop. Competent, credible evidence supports that finding and we accept it. *Burnside* at ¶ 8.

**{¶39}** In reviewing a magistrate’s probable cause determination, neither a trial court nor a reviewing court substitutes its judgment for that of the issuing magistrate; the inquiry is confined to whether the magistrate had a substantial basis for concluding that probable cause existed. *State v. George*, 45 Ohio St.3d 325 (1989), paragraph two of the syllabus, citing *Illinois*

*v. Gates*, 462 U.S. 213, 238-239, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). Doubtful or marginal cases are resolved in favor of upholding the warrant. *George* at 329.

**{¶40}** The framework the trial court applied was the one both parties requested. The State asked the court to conduct a four-corners review of the affidavit and warrant and to determine, excising the stop, whether probable cause remained. Counsel for the appellant agreed that no known false statements had been included in the affidavit and that a hearing under *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), was unnecessary. A defendant is entitled to a *Franks* hearing only upon making a substantial preliminary showing that the affiant knowingly and intentionally, or with reckless disregard for the truth, included a false statement or material omission in the warrant affidavit, and that the statement or omission was necessary to the finding of probable cause. *State v. Khaliq*, 2017-Ohio-7136, ¶¶ 23-25 (5th Dist.). The appellant made no such showing and sought no such hearing.

**{¶41}** As to the second requirement, the record establishes that the decision to seek the warrant preceded the stop rather than resulting from it. Detective Miller testified that the plan was to stop the appellant and take her into custody “[b]ecause we were going to initiate the search warrant on the residence.” The arrest did not supply information that prompted the decision to seek the warrant; rather, Miller’s testimony establishes that officers had decided to pursue the residential search before the stop occurred.

**{¶42}** The appellant’s contrary argument – that had officers not arrested her, the affidavit would not have been executed because she might have returned to the property during the search – inverts the sequence the testimony establishes. It also proves too much. Under that reasoning, any warrant executed while a defendant is detained would be tainted

by the detention, without regard to whether the affidavit drew upon anything the detention produced. That is not the inquiry *Murray* prescribes.

{¶43} *Carter* illustrates the distinction. There, the affidavit recited cocaine discovered during an unlawful stop, and the court concluded that the issuing judge would not have issued the warrant absent that tainted information. *Carter* at 68. Here the affidavit contained no such information, and the warrant was independently motivated by controlled buys that preceded the stop by weeks. The trial court did not err in denying suppression as to the evidence recovered during execution of the search warrant.

#### E. The Statements

{¶44} Having concluded that the April 30, 2024, stop was unlawful, we turn to whether the appellant's statements were nonetheless admissible. The trial court concluded that they were, on the ground that they followed a valid waiver of *Miranda* rights and were therefore "sufficiently separated" from the underlying violation.

{¶45} That reasoning cannot be sustained. In *Brown v. Illinois*, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975), the Supreme Court considered and rejected the precise proposition the trial court adopted. The Illinois courts had held that *Miranda* warnings alone broke the causal connection between an unlawful arrest and a subsequent statement. The Court reversed, reasoning that if warnings alone sufficed, arrests made without warrant or without probable cause, for questioning or investigation, would be encouraged, and the Fourth Amendment's protection would be reduced to a form of words. *Id.* at 602-603. Although the appellant does not separately identify the attenuation factors articulated in *Brown*, attenuation is not a separate claim; it is the legal framework governing her preserved contention that the statements were fruits of the unlawful seizure.

**{¶46}** A statement obtained after an unlawful arrest is subject to the exclusionary rule to the same extent as physical evidence. *State v. Cranford*, 2005-Ohio-1904, ¶ 24 (2d Dist.); *Wong Sun v. United States*, 371 U.S. 471, 485, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). *Miranda* warnings remain an important factor, but they are not the only factor. A statement obtained after an unlawful seizure is admissible only if it was sufficiently an act of free will to purge the primary taint, and the burden of establishing admissibility is on the prosecution. *Brown* at 602, 604. The relevant considerations are the temporal proximity between the unlawful conduct and the statement, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct. *Brown* at 603-604.

**{¶47}** Ohio courts apply the same framework. *State v. Wintermeyer*, 2017-Ohio-5521, ¶ 40 (10th Dist.), *aff'd*, 2019-Ohio-5156; *Columbus v. Shepherd*, 2011-Ohio-3302, ¶ 42 (10th Dist.), citing *Carter* at 67. Evidence obtained as a result of unconstitutional police conduct is admissible where the causal connection between the offending conduct and the resulting discovery is remote or has been interrupted by an intervening event, such that the interest protected by the constitutional guarantee that has been violated would not be served by suppression. *Wintermeyer* at ¶ 40; *Hudson v. Michigan*, 547 U.S. 586, 593, 126 S.Ct. 2159, 165 L.Ed.2d 56 (2006).

### **The Purpose and Flagrancy of the Official Misconduct**

**{¶48}** The third *Brown* factor is the one the Supreme Court has identified as particularly significant. *Brown* at 604. Here the trial court's own findings are decisive. A plan to conduct a field arrest of the appellant had been in place for at least a week before the stop. No warrant was sought. Detective Miller followed the appellant for several miles and

observed no traffic violation or other arrestable offense. And the appellant was to be arrested on suspicion of drug trafficking regardless of whether the pre-arranged canine sniff resulted in an alert, and regardless of whether any contraband was recovered from the vehicle.

{¶49} The concern is the one the Second District Court of Appeals identified in *State v. Couch*, 1999 Ohio App. LEXIS 2913 (2d Dist. Jun. 25, 1999). While few officers would make an unlawful arrest on the chance that an officer of another force, investigating a different crime, might later obtain a confession, an officer may well make an unlawful arrest in the hope that an interrogating officer of the same force, investigating the same crime, will obtain one. The *Couch* court found no such concern on its facts, where the arresting officers were unaware of the defendant's status as a suspect in the offenses he later confessed to and the interrogating officer was unaware of the illegality of the arrest. Here the officers who planned and executed the arrest and the officers who interviewed the appellant the following day were engaged in the same investigation, and the arrest was undertaken in furtherance of it.

{¶50} This was not negligence, nor was it reliance upon erroneous information supplied by a third party. Compare *Utah v. Strieff*, 579 U.S. 232, 241, 136 S.Ct. 2056, 195 L.Ed.2d 400 (2016) (officer “was at most negligent” and made “two good-faith mistakes”); *Wintermeyer* at ¶ 45 (flagrancy factor favored suppression where the officer acted upon “his own inchoate suspicion”). It was a deliberate and pre-planned decision to arrest without a warrant and without regard to what any search might produce – the investigatory arrest that *Brown* identified as the conduct the exclusionary rule exists to deter. *Brown* at 602-603. If an officer's spontaneous and inchoate suspicion weighs in favor of suppression, a plan formed a week in advance and executed without regard to what the search would reveal does so more strongly still. The third factor weighs heavily in favor of suppression as to both statements.

### State's Exhibit 6

{¶51} State's Exhibit 6 captures a statement the appellant made approximately five minutes into the stop, roughly thirty-one minutes before Detective Miller administered *Miranda* warnings. The trial court's stated rationale does not reach it. The court's analysis addressed statements "made after the waiver of proper *Miranda* warnings"; it made no finding as to a statement made before any warnings were given and supplied no basis for its admission.

{¶52} As to temporal proximity, the question is whether sufficient time elapsed between the unlawful seizure and the statement to permit the taint of the illegality to dissipate. *Wintermeyer* at ¶ 43; *Kaupp v. Texas*, 538 U.S. 626, 633, 123 S.Ct. 1843, 155 L.Ed.2d 814 (2003). Approximately five minutes elapsed here. That is not a substantial period, and, therefore, this factor favors suppression.

{¶53} As to intervening circumstances, there were none. The appellant remained detained at the roadside, in the continuing presence of the officers who had seized her, and nothing in the record separates the seizure from the statement. This factor favors suppression. *Wintermeyer* at ¶ 44.

{¶54} The third factor favors suppression for the reasons stated above. All three factors therefore point in the same direction, and the connection between the unlawful seizure and the statement was not sufficiently attenuated to dissipate the taint. *Carter* at 67. State's Exhibit 6 should have been suppressed.

### State's Exhibit 9

{¶55} State's Exhibit 9 is the recorded interview conducted at the Fairfield County jail on May 1, 2024, the day after the arrest and following fresh *Miranda* warnings.

{¶56} As to temporal proximity, approximately one day separated the unlawful arrest from the interview. A lapse of time is relevant, but it does not carry the State's burden standing alone. In *Taylor v. Alabama*, 457 U.S. 687, 102 S.Ct. 2664, 73 L.Ed.2d 314 (1982), the defendant's confession followed his unlawful arrest by six hours, during which an arrest warrant was belatedly obtained, he was given *Miranda* warnings three times, and he was permitted a visit with his girlfriend and a companion; the Court nonetheless found the confession inadmissible for lack of attenuation. The significance of the interval depends upon what occurred within it. The appellant remained in continuous custody from the moment of the unlawful arrest until the interview. The interval was not a period of restored liberty; it was a continuation of the seizure itself.

{¶57} As to intervening circumstances, we find none. Officers obtained and executed a search warrant for the Delmont Road property in the interim, and for the reasons stated in Part D that warrant establishes that the physical evidence recovered from the camper was not fruit of the unlawful stop. But the intervening-circumstances inquiry asks a different question: whether some event broke the causal connection between the unlawful seizure and the statement, such that the statement became an act of free will. Execution of a warrant against the appellant's property, by the same officers, while she remained detained by force of the unlawful arrest, did nothing to alter the relationship established between the appellant and the officers by that arrest. *Brown* at 604. Compare *State v. Russell*, 1994 Ohio App. LEXIS 4797 (5th Dist. Oct. 11, 1994) (arrest on unrelated outstanding warrants was an intervening circumstance attenuating any impropriety in the stop); *Strieff* at 240 (discovery of a valid, pre-existing arrest warrant wholly independent of the illegal stop was a critical intervening circumstance). In each of those cases the intervening event was a lawful basis for detention

that existed independently of the illegal stop. No such circumstance is present here. In *Taylor*, by contrast, the State pointed to an arrest warrant obtained after the illegal arrest and while the defendant was being interrogated. The Court held the warrant irrelevant to whether the confession was fruit of the illegal arrest, distinguishing cases in which a defendant is brought before a committing magistrate. *Taylor* at 692-693. The warrant here likewise issued after the appellant was in custody. The administration of fresh warnings is the very circumstance *Brown* holds insufficient standing alone. *Brown* at 603.

**{¶58}** The third factor favors suppression for the reasons stated above. The burden of demonstrating attenuation rested with the State. *Brown* at 604. The State did not undertake that showing, arguing instead that the stop was lawful and that the administration of warnings rendered the statements admissible. On this record the State has not established that the appellant's May 1, 2024, statement was sufficiently an act of free will to purge the taint of the unlawful arrest. State's Exhibit 9 should have been suppressed.

**{¶59}** The appellant's first assignment of error is sustained as to State's Exhibits 6 and 9 and overruled as to the evidence recovered during execution of the April 30, 2024, search warrant.

## **II., III., and IV.**

**{¶60}** Where a court of appeals finds error prejudicial to the appellant, the judgment shall be reversed and the cause remanded to the trial court for further proceedings. App.R. 12(D); *State v. Jones*, 2024-Ohio-2719, ¶¶ 19-20. Our disposition of the first assignment of error requires reversal of the appellant's convictions and sentence and a remand for further proceedings. The appellant's second, third, and fourth assignments of error are overruled as moot.

## CONCLUSION

{¶61} For the foregoing reasons, the first assignment of error is sustained in part and overruled in part. The remaining assignments of error are overruled as moot. The judgment of the Fairfield County Court of Common Pleas is reversed, and the matter is remanded to the trial court for further proceedings consistent with this opinion.

{¶62} Costs to the appellee.

By: Baldwin, J.

King, P.J. and

Gormley, J. concur.