

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	No. 115473
REGGIE JORDAN,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 8, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-23-684719-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Chloe Robinson and Owen Knapp, Assistant Prosecuting Attorneys, *for appellee*.

Eric M. Levy, *for appellant*.

DEENA R. CALABRESE, J.:

{¶ 1} On July 25, 2025, a jury found defendant-appellant Reggie Jordan guilty of one count of possession of a fentanyl-related compound with a major drug offender (“MDO”) specification and one count of possession of cocaine. The trial court sentenced Jordan to an aggregate minimum term of 16 years of imprisonment,

with a maximum of 21.5 years. This timely appeal followed. Finding no merit to the appeal, we affirm.

I. Facts and Procedural History

A. The Indictment

{¶ 2} On October 25, 2023, the Cuyahoga County Grand Jury returned a seven-count indictment charging Jordan and codefendant Stanley Barrow with a total of seven drug-related offenses:

Count 1: trafficking, a felony of the first degree in violation of R.C. 2925.03(A)(2), with an MDO specification pursuant to R.C. 2941.1410(B), as well as forfeiture specifications (fentanyl-related compound — Jordan and Barrow);

Count 2: drug possession, a felony of the first degree in violation of R.C. 2925.11(A), with MDO specification pursuant to R.C. 2941.1410(B), as well as forfeiture specifications (fentanyl-related compound — Jordan and Barrow);

Count 3: trafficking, a felony of the first degree in violation of R.C. 2925.03(A)(2), with forfeiture specifications (cocaine — Jordan only);

Count 4: trafficking, a felony of the first degree in violation of R.C. 2925.03(A)(2), with forfeiture specifications (cocaine — Barrow only);

Count 5: drug possession, a felony of the first degree in violation of R.C. 2925.11(A), with forfeiture specifications (cocaine — Jordan and Barrow);

Count 6: tampering with evidence, a felony of the third degree in violation of R.C. 2921.12(A)(1) (Jordan and Barrow); and

Count 7: possessing criminal tools, a felony of the fifth degree in violation of R.C. 2923.24(A) (Jordan and Barrow).

{¶ 3} Jordan and Barrow were tried together, and Barrow's convictions are the subject of a companion appeal, *State v. Barrow*, 8th Dist. Cuyahoga No. 115482.

B. Factual Background and Motions to Suppress

{¶ 4} In the midmorning hours of March 14, 2023, Jordan and Barrow were occupying an apartment in North Olmsted, Ohio. A 911 caller lodged a noise complaint regarding the apartment, and North Olmsted police were dispatched to the location. North Olmsted police officers ultimately decided to enter the premises without a warrant based on alleged exigent circumstances.

{¶ 5} Jordan and Barrow each filed motions to suppress. Jordan filed his motion on May 17, 2024. The State filed its opposition several months later, on September 13, 2024. The State’s opposition brief did not mention a search warrant.

{¶ 6} The trial court scheduled a suppression hearing and, depending on the outcome, a jury trial for January 28, 2025. That morning, the State noted on the record that it had just received a copy of a search warrant that North Olmsted police had obtained after they had entered and allegedly observed drugs in plain view. The State explained that the “search warrant came into the possession of the State’s Assistant Prosecutor . . . this morning” and that “[s]he immediately turned it over to defense counsel to let them see it.” (Tr. 38.) The State explained that “nobody put two and two together that there was a search warrant done.” (Tr. 38.) It also reported that the warrant affidavit, in addition to the warrant itself, had been turned over to defense counsel. (Tr. 38.)

{¶ 7} Jordan’s counsel argued that there were “material misrepresentations” in the affidavit when compared to “what’s contained in the police reports.” (Tr. 38-

39.) He also criticized the late disclosure, assigning the blame to North Olmsted police and city prosecutors.

{¶ 8} The trial court continued the suppression hearing and trial. On February 1, 2025, Jordan filed a motion for a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978), based on alleged inconsistencies between the warrant affidavit and police reports. According to Jordan’s motion, North Olmsted police had secured the warrant from a Rocky River Municipal Court judge. However, neither the warrant affidavit nor the police reports — indeed, not even the warrant itself — were attached to Jordan’s motion for a *Franks* hearing. They also were not offered for admission or proffered at the suppression hearing. Those documents, therefore, are not part of the record on appeal.

C. The Suppression Hearing

{¶ 9} The trial court held the suppression hearing on July 11, 2025. The State asserted that there were “clear, exigent circumstances” supporting the warrantless entry. (Tr. 69.) It called a single witness, North Olmsted Patrol Officer Alexander Pickens.

{¶ 10} Officer Pickens testified to his training as a police officer, which included training in the administration of Narcan for opioid overdoses. He stated that officers are “trained to administer it nasally” and that “we carry it on our person and have it in our cruisers.” (Tr. 79.) Officer Pickens testified that it was principally employed in cases involving fentanyl or heroin and that to his knowledge it does not reverse the effects of an overdose stemming from nonopioid drugs. (Tr. 79.)

{¶ 11} At approximately 3:29 a.m. on March 14, 2023, Officer Pickens was working the night shift and responded to a call for a noise complaint at 23303 Lorain Road. The State played two 911 calls at the suppression hearing, as well as several calls between officers and dispatch. Officer Pickens testified that officers knocked on the door to the apartment and identified themselves as police. He stated they “were told to hold on so [they] continued to wait.” Asked to describe the radio call marked as State’s exhibit No. 6, Officer Pickens stated that it referenced the sounds of items being smashed in the apartment, “[s]tomp[ing] and screaming for help,” and that one of the occupants had said he was “tripping,” which to him suggested drug use. (Tr. 83-84.)¹

{¶ 12} The State played State’s exhibit No. 8, another radio call, for the trial court. Officer Pickens testified that the radio call indicated a male inside the apartment had “[r]equested an ambulance.” (Tr. 85.)² In the recording, dispatch asked whether to send an ambulance, and an officer replied, “Yeah, if you just want to start one.” An officer also described an occupant “[s]mashing the window screen out” in the third-floor apartment. (Tr. 85.)

¹ The State identified these as State’s exhibit Nos. 1-9 at the suppression hearing, and those exhibits were admitted without objection at the conclusion of the hearing. The record contains no separate schedule of exhibits for the suppression hearing. Nevertheless, based upon the descriptions in the transcript, the radio call referencing “tripping,” “smashing things,” “stomp[ing],” and “screaming for help — State’s exhibit No. 6 at the suppression hearing — appears to correspond to State’s exhibit No. 221 at trial, which is part of the record.

² Based on testimony, this radio call appears to correspond to State’s exhibit No. 223 at trial.

{¶ 13} Officer Pickens testified that because one of the occupants asked for help and an ambulance, they were concerned “that there was something medical going on.” (Tr. 86.) Officer Pickens stated that the male asked twice for an ambulance. He testified that in such circumstances, officers “advise dispatch of the situation and have them have an ambulance en route. And then we try and figure out what’s going on so that way we can relay it to the medics.” (Tr. 87.) Upon questioning by the trial court, Officer Pickens testified that they requested an ambulance when he heard a male say “Help me. Send an ambulance.” (Tr. 144.) He “relayed that to the dispatch, and they immediately dispatched the ambulance.” (Tr. 144.)

{¶ 14} Officer Pickens stated that the police continued their attempts to elicit further response from the occupants while they waited approximately 10-15 minutes for the ambulance to arrive. (Tr. 144.)

{¶ 15} According to Officer Pickens, the loud commotion coming from the apartment stopped abruptly. More specifically, he testified that a “loud thud” followed by silence ultimately triggered the police to force entry into the apartment:

A. We continued to knock. We heard noises coming from inside the apartment. And then, after a while, we heard a loud thud. And then we continued to try and get an answer from the apartment, and we heard nothing.

Q. And why is that important?

A. We believed, at that time, that we would have to go in to make potential life-saving measures and they were, potentially, unconscious.

(Tr. 88.)

{¶ 16} Officer Pickens stated that it was “[t]he fire department” that “made the determination to enter,” but that “[i]f the fire department wasn’t, [the police] were going to make entry.” (Tr. 89-90.) A couch was blocking the door. After moving it to gain entry, police found Jordan “unconscious covered in white powder in the fetal position on the floor.” (Tr. 89.) They administered Narcan. (Tr. 91.)

{¶ 17} Officer Pickens testified that they would not have entered the apartment if they had not believed there was a medical emergency. (Tr. 90.) He further identified photographs depicting Jordan on a “stretcher in the back of the ambulance” with “[v]omit and saliva” around his mouth and white powder on his hands and forearms. (Tr. 90-91.) Officer Pickens also identified several exhibits depicting the interior of the apartment. He described a floor with “white powder . . . [r]ight inside the door.” (Tr. 97-98.) He confirmed, based on photos, that the kitchen, which was also “right inside the door,” contained white powder everywhere. (Tr. 98.) The kitchen sink appeared to contain drugs.

{¶ 18} Officer Pickens testified that he had reason to believe there was more than one person in the apartment. (Tr. 104.) The officers continued to observe suspected narcotics, including on the floor, as they walked through the apartment from the front door, past the kitchen, and into the bathroom. They reached the bathroom and found Barrow, who was likewise unconscious. (Tr. 100-101.)

{¶ 19} The trial court denied the motion to suppress, concluding that “[t]here’s been uncontroverted testimony and evidence that there was a cry for help.” (Tr. 158.) The trial court found the officers’ decision to summon medical

personnel prior to entry “the most telling aspect[.]” (Tr. 158.) It concluded that the police “had an objectively reasonable basis to believe that someone needed help.” (Tr. 159.)³

D. Trial

{¶ 20} The case proceeded to trial on July 21, 2024. We note at the outset that while the jury returned guilty verdicts on two counts of drug possession, one for a fentanyl-related compound and one for cocaine, it acquitted Jordan of all other charges, including trafficking, tampering with evidence, and possession of criminal tools. For purposes of brevity, therefore, we focus principally on trial testimony and other evidence relevant to issues pertinent to this appeal.

{¶ 21} At trial, Officer Pickens again testified concerning the circumstances that led police to enter the apartment, where they found Jordan unconscious, in a fetal position, and covered in white powder. Another witness for the State, Detective Majed Abuzahrieh, was employed by the time of trial with the Cuyahoga County Sheriff’s Department. At the time of the incident, however, he had served as a North Olmsted patrol officer for several years. On the night in question, he responded to the Kensington Court Apartments after Officer Pickens had already arrived. While knocking at the door, he heard “[s]creaming, groaning, moaning,” and “other noises.” (Tr. 563.) After 10 to 20 minutes had passed, he “heard . . . a thump of what [he] was immediately able to identify as a human body hitting the floor.” (Tr. 524.)

³ The trial court addressed the *Franks* issue only briefly, noting at the outset of the suppression hearing that if the officers lawfully entered based upon exigent circumstances, drugs observed in plain view would provide a basis for a search warrant. (Tr. 53.)

After the thump or thud, there was silence except for the sound of running water that he had heard upon arrival.

{¶ 22} In conjunction with members of the North Olmsted Fire Department who had also arrived at the scene, they determined to make entry. Detective Abuzahrieh stated that they suspected there was a medical emergency because after the thud or thump, they were “no longer getting a verbal response.” (Tr. 525.)

{¶ 23} Upon entry, they observed Jordan on the floor in a fetal position, unresponsive other than thrashing or tensing when touched, and with “white powder on his body.” (Tr. 526.) Detective Abuzahrieh testified that he considered this consistent with opioid usage and overdose. They also observed “white sprinkles” and or “white droplets” on other surfaces (Tr. 525.)

{¶ 24} Detective Abuzahrieh testified that they handcuffed Jordan for their safety and his own, prior to administering Narcan. He explained that in his experience, the administration of Narcan prompted a response similar to waking someone suddenly from a deep sleep, triggering a “fight or flight” reaction that could prove to be dangerous. (Tr. 528.)

{¶ 25} Prior to allowing the fire department to enter, officers cleared the apartment to ensure safety, looking for other individuals. He continued through the apartment and found Barrow in the bathtub, “unconscious, passed out, and unresponsive” despite the fact that the shower was running. (Tr. 530-531.) After handcuffing Barrow and moving him to the living room, officers “did a search [for] additional persons in any portion of the apartment that a person would be

reasonably located.” (Tr. 531.) Finding no one, they allowed the fire department to enter and provide aid to Jordan and Barrow, including administration of Narcan. Detective Abuzahrieh was present when multiple doses of Narcan were given and testified that Jordan and Barrow “had an immediate response,” including “nasal breathing.” (Tr. 532-533.) They were ultimately transported to the hospital for evaluation. (Tr. 538.)

{¶ 26} Detective Abuzahrieh testified that in performing the initial sweep of the apartment, they observed “numerous bags of white substances and just other rock-like substances” in the kitchen sink, as well as “numerous baggies” in the residence, all “within plain view.” (Tr. 533-534.) Additional items within plain view included several cell phones, piles of cash, filtered masks, a blender, a pill press, and a scale. There was a couch, a table, and chairs, but no bed. He further described the white substance that was visible:

Throughout the apartment there was just a layer of white dust almost throughout the kitchen surfaces. On the floor there were other — I don’t want to say droplets because it didn’t appear to be wet, but a dust that — not dust. It’s hard to describe. White substances or like white droplets on the ground throughout the kitchen. The kitchen table also had like a sheen of white dust all over it. Not to be confused with just regular house dust, but like to me it appeared to be the same substances that we located throughout the apartment.

(Tr. 535.) He believed, based on his training and experience, that it was “[c]rack cocaine or coke.” (Tr. 535.) He also testified that the multiple, individual bags of white substances, combined with the referenced paraphernalia such as a pill press and scale, suggested drug trafficking. (Tr. 535.) Detective Abuzahrieh remained in

the apartment, and “anything in plain view was photographed and collected.” (Tr. 538.) He identified State’s exhibit Nos. 1 through 102 as the referenced photographs, several of which depicted white substances in baggies or covering various surfaces, including overturned chairs. He testified that none of the closet doors or drawers were “manipulated” by police during the protective sweep. (Tr. 547.) In other words, if a closet door or drawer was depicted as open in a photograph, that is how they had found it at the time. State’s exhibit Nos. 28 and 30 depicted Jordan in an ambulance with “the white substance on his hands, forearms, shoulders, [and] chest,” as well as on his hand and fingernails. (Tr. 545.) State’s exhibit Nos. 31 and 32 depicted the white substance on “his fingernails, palms,” and “fingers,” as well as on his wrist. (Tr. 545.)

{¶ 27} Detective Abuzahrieh testified that the kitchen sink had been running, and in fact overflowing, when police entered the apartment. They turned off the faucet and allowed it to drain. They were then “left with numerous bags of the substances.” (Tr. 543.) They photographed several items suspected to be drugs, sometimes placing a ruler next to the items. (Tr. 548-549.) The bags were ultimately removed from the sink, and unbagged items left behind were photographed. (Tr. 557-558.)

{¶ 28} The evidence was collected at the scene, bagged, and transported back to the station to be entered into property management software. Detective Abuzahrieh participated in the collection of evidence. He described the software as “essentially an evidence management entry system.” (Tr. 561.)

{¶ 29} On cross-examination, Detective Abuzahrieh conceded that the contents of the plastic baggies found in the kitchen sink, i.e., some of the suspected drugs, were wet. (Tr. 577-578.) He further conceded that whether the white substance was crack cocaine or fentanyl, it would become heavier because of the water. (Tr. 578.) Defense counsel walked him through several images that he conceded depicted bags with visible moisture. While there were no pictures of the sink when it was filled with water, he admitted that water was inside the plastic packages. (Tr. 590.)

{¶ 30} On redirect, Detective Abuzahrieh testified that the suspected items inside the wet bags were dried prior to being entered into the evidence room and stored:

Q. Detective, how were those drugs inside those wet bags collected?

A. So those items were collected. Obviously, due to them being wet, they have to be dried out and any moisture removed as per policy and to preserve the evidence. Any wet items cannot be entered into the evidence room or property room without being dried out. So those drugs would have been placed in a brown bag, dried, and then entered.

Q. And then submitted for testing; is that correct?

A. Correct. So the weight of the items would be the dry weight.

(Tr. 591.)

{¶ 31} The suspected drugs were sent to the Cuyahoga County Regional Forensic Science Laboratory for testing on March 20, 2023, and a lab report was issued on May 30, 2023. Forensic scientist Heather Pilch-Cooper testified concerning testing of the collected samples. She was recognized as an expert in the

field of drug chemistry without objection and identified State's exhibit No. 210 as her report pertaining to this case. (Tr. 639, 645.) Evidence bag 001 had been preliminarily identified as suspected crack cocaine. Testing was divided into subparts. Item 001.01 in the report reflected testing of 54 white fragments of suspected drugs. Pilch-Cooper testified that the weight was 140.28 grams and that testing revealed the mixture to contain 4-ANPP and fentanyl, both classified as Schedule II drugs. She testified that 4-ANPP is a "precursor chemical that is used to make fentanyl," and that fentanyl itself was "a synthetic opioid compound." (Tr. 650.) Items 001.02 and 001.03 tested positive for illicit drugs as well, including cocaine, 4-ANPP, and fentanyl. Specifically, item 001.02 weighed 0.42 grams and "was found to contain cocaine, 4-ANPP, and fentanyl." (Tr. 651.) Item 001.03 weighed 30.5 grams and "was found to be cocaine-based." (Tr. 651.) Additional evidence bags likewise contained substances revealed to be illicit drugs.

{¶ 32} Pilch-Cooper testified that lab scales were calibrated annually, but also tested daily "before we begin any work" using standard 1-gram, 10-gram, and 50-gram weights. (Tr. 654.) She identified State's exhibit Nos. 187-209 as photos of the items tested. With respect to the contents of evidence bag 001, she testified that none of the items appeared to be wet and that she "did not have it noted in [her] report that they were damp or wet." (Tr. 655.) Pilch-Cooper further testified that she could tell from the image that they were not wet because when something is received "that's damp or wet, there will be stains on the paper or watermarks on the paper showing that these items were wet or damp because the paper absorbs water

from them and there is none of that in this photograph.” (Tr. 655-656.) She later reiterated on redirect that “[a]t the time they were tested, there was no indication of water or it would have been noted in [her] report.” (Tr. 673.) She “did not indicate . . . that there was any wetness or dampness in the sample.” (Tr. 676.)

{¶ 33} The jury found Jordan guilty of one count of drug possession (Count 2 — fentanyl-related compound), a felony of the first degree in violation of R.C. 2925.11(A) with an MDO specification pursuant to R.C. 2941.1410(B), as well as certain forfeiture specifications, and one count of drug possession (Count 5 — cocaine), a felony of the fifth degree in violation of R.C. 2925.11(A), along with certain forfeiture specifications. Jordan was acquitted of all other charges.

{¶ 34} On July 28, 2025, the trial court sentenced Jordan to a prison term of five years on the MDO specification, to be served prior and consecutive to a minimum term of 11 years up to a maximum of 16 years and 6 months on the underlying drug-possession count. It sentenced Jordan to a prison term of 12 months on the fifth-degree felony drug-possession count, to be served concurrently.

{¶ 35} Consistent with the indictment, the trial court initially treated Count 5 as a felony of the first degree. Following a limited remand, the designation was corrected to a felony of the fifth degree via a nunc pro tunc journal entry. The 12-month concurrent sentence, however, remained unchanged.

{¶ 36} This timely appeal followed.

II. Assignments of Error

{¶ 37} Jordan presents six assignments of error for our review:

First Assignment of Error: The trial court erred by denying appellant's motion to suppress evidence due to illegal entry into a home in violation of the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution.

Second Assignment of Error: The trial court erred by denying appellant's motion for a *Franks* hearing and finding the false statements negated probable cause.

Third Assignment of Error: The evidence was insufficient to support the convictions for drug possession in counts two and five and the first degree felony and major drug offender specification enhancements in count two where the state failed to prove all elements of the offense including possession and the actual weight of the controlled substance exclusive of external water weight, violating appellant's due process rights.

Fourth Assignment of Error: The drug possession convictions were against the manifest weight of the evidence.

Fifth Assignment of Error: The trial court erred by giving incomplete jury instructions regarding the mixture and weight of the controlled substances.

Sixth Assignment of Error: The MDO specification in count two was unconstitutional as it required a factual finding by the court, not a jury, and further, as the jury made the finding regarding weight of the contraband the MDO finding violated Ohio law.

{¶ 38} We find no merit to any of Jordan's assignments of error.

Accordingly, we affirm the trial court's judgment in its entirety.

III. Analysis

A. First Assignment of Error

{¶ 39} In his first assignment of error, Jordan challenges the trial court's denial of his motion to suppress evidence, arguing that entry into the apartment violated the Fourth Amendment to the Constitution of the United States and Section

14, Article I, of the Constitution of Ohio. We find no merit to this assignment of error.

{¶ 40} “An appellate review of a motion to suppress presents a mixed question of law and fact.” *State v. Byrd*, 2022-Ohio-4635, ¶ 14 (8th Dist.), citing *State v. Burnside*, 2003-Ohio-5372, ¶ 8. “Because the trial court assumes the role of trier of fact and is in the best position to resolve factual questions and evaluate witness credibility, we must accept the trial court’s findings of fact if they are supported by competent, credible evidence.” *State v. Thompson*, 2020-Ohio-486, ¶ 9 (8th Dist.), citing *State v. Riedel*, 2017-Ohio-8865, ¶ 30 (8th Dist.). *See also Byrd* at ¶ 14, citing *State v. Preztak*, 2009-Ohio-621, ¶ 22 (8th Dist.). We then “independently determine, as a matter of law, whether the applicable legal standard has been satisfied.” *State v. Moore*, 2014-Ohio-2979, ¶ 9 (8th Dist.), citing *State v. Jones*, 2014-Ohio-496 (8th Dist.).

{¶ 41} This court has stated:

The Fourth Amendment to the Constitution of the United States and Section 14, Article I, of the Constitution of Ohio, prohibit unreasonable searches of persons and seizure of their property. Evidence obtained by the State in violation of that prohibition must be suppressed from use by the State in its criminal prosecution of the person from whom it was seized.

State v. Baker, 2007-Ohio-5450, ¶ 12 (8th Dist.).

{¶ 42} “The Fourth Amendment ordinarily requires that police officers get a warrant before entering a home without permission.” *Lange v. California*, 594 U.S. 295, 298 (2021). A search conducted in the absence of a warrant “is reasonable only

if it falls within a specific exception to the warrant requirement.” *Riley v. California*, 573 U.S. 373, 382 (2014), citing *Kentucky v. King*, 563 U.S. 452, 459-460 (2011). “When a defendant moves to suppress evidence recovered during a warrantless search, the state has the burden of showing that the search fits within one of the defined exceptions to the Fourth Amendment’s warrant requirement.” *State v. Banks-Harvey*, 2018-Ohio-201, ¶ 18, citing *Athens v. Wolf*, 38 Ohio St.2d 237, 241 (1974).

{¶ 43} “One important exception” to the warrant requirement “is for exigent circumstances.” *Lange* at 301. This exception “applies when ‘the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable.’” *Id.*, quoting *King* at 460. “The exception enables law enforcement officers to handle ‘emergenc[ies]’— situations presenting a ‘compelling need for official action and no time to secure a warrant.’” *Lange* at 301, quoting *Riley* at 402. *See also State v. Beckwith*, 2008-Ohio-2780, ¶ 19 (8th Dist.). The United States Supreme Court “has identified several such exigencies. An officer, for example, may ‘enter a home without a warrant *to render emergency assistance to an injured occupant[,] to protect an occupant from imminent injury,*’ or to ensure his own safety.” (Emphasis added.) *Lange* at 301, quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006).

{¶ 44} “Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate

aid.” *Mincey v. Arizona*, 437 U.S. 385, 392 (1978). “The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.” *Id.*, quoting *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963).

{¶ 45} Moreover, the officers’ “subjective motivation is irrelevant.” *Brigham City* at 404. “An action is ‘reasonable’ under the Fourth Amendment, regardless of the individual officer’s state of mind, ‘as long as the circumstances, viewed *objectively*, justify [the] action.’” (Emphasis in original.) *Id.*, quoting *Scott v. United States*, 436 U.S. 128, 138 (1978).

{¶ 46} Finally, “the police may seize any evidence that is in plain view during the course of their legitimate emergency activities.” *Mincey* at 393, citing *Michigan v. Tyler*, 436 U.S. 499, 509-510 (1978), and *Coolidge v. New Hampshire*, 403 U.S. 443, 465-466 (1971).

{¶ 47} In *Michigan v. Fisher*, 558 U.S. 45 (2009), police responded to a call reporting a disturbance and found, inter alia, a damaged pickup truck with blood on the hood and on the clothes within, and also on one of the doors to the house. They were able to see Fisher through a window. They observed that his hand was cut and he was “screaming and throwing things.” *Id.* at 45. Furthermore, the back door had been locked “and a couch had been placed to block the front door.” *Id.* Officers knocked, but Fisher refused to answer. When officers asked if he needed medical attention, he “demanded, with accompanying profanity, that the officers go to get a

search warrant.” *Id.* An officer nevertheless made entry. The trial court granted Fisher’s motion to suppress.

{¶ 48} The United States Supreme Court ultimately held that the warrantless entry did not violate the Fourth Amendment. It concluded that “[a] straightforward application of the emergency aid exception, as in *Brigham City*, [547 U.S. 398,] dictates that the officer’s entry was reasonable.” *Fisher* at 48. It rejected the reasoning of the Michigan Court of Appeals, which held that there was insufficient evidence of an emergency justifying a warrantless intrusion:

Even a casual review of *Brigham City* reveals the flaw in this reasoning. Officers do not need ironclad proof of “a likely serious, life-threatening” injury to invoke the emergency aid exception. The only injury police could confirm in *Brigham City* was the bloody lip they saw the juvenile inflict upon the adult. Fisher argues that the officers here could not have been motivated by a perceived need to provide medical assistance, since they never summoned emergency medical personnel. This would have no bearing, of course, upon their need to ensure that Fisher was not endangering someone else in the house. Moreover, even if the failure to summon medical personnel conclusively established that [the officer] did not subjectively believe, when he entered the house, that Fisher or someone else was seriously injured (which is doubtful), the test, as we have said, is not what [the officer] believed, but whether there was “an objectively reasonable basis for believing” that medical assistance was needed, or persons were in danger, *Brigham City*, *supra*, at 406, 126 S.Ct. 1943, 164 L.Ed.2d 650; *Mincey*, *supra*, at 392, 98 S.Ct. 2408, 57 L.Ed.2d 290.

Id. at 49. In the present case, there was uncontroverted testimony that before entering the apartment, North Olmsted police heard an individual say he was “tripping,” that the individual asked for help, and that he requested an ambulance. There also was uncontroverted testimony that unlike in *Fisher* — and even though subjective belief is irrelevant — North Olmsted police summoned medical aid before

entering the dwelling. Indeed, the uncontroverted testimony was that even with medical personnel on the scene, the officers continued to knock and announce themselves. It was not until officers heard a thud or thump, followed by silence, that they decided — in conjunction with medical personnel, no less — to make a warrantless entry.

{¶ 49} In his argument, Jordan minimizes the thud and ignores the sudden silence. He states that “[a] ‘thud’ is consistent with a mundane household occurrence” such as “dropping an object or moving furniture, not inherently a medical emergency.” (Jordan’s brief at p. 10-11.) The officers’ observation of a thud, however, cannot be divorced from the silence that immediately followed, which itself must be contrasted with the preceding cacophony. This included sounds of screaming and smashing, observations of a window being broken, an occupant’s announcement that they were “tripping,” a cry for help, and even the request for an ambulance. The trial court found the officers’ decision to summon medical personnel prior to entry “the most telling aspect,” driving its ultimate conclusion that police had an objectively reasonable basis to believe that occupants needed emergency assistance. (Tr. 158.) *See also Case v. Montana*, 607 U.S. 107, 110 (2026) (*Brigham City*’s reasonableness standard was satisfied where police had an objectively reasonable basis for believing that a homeowner intended to commit suicide and might already have shot himself.)⁴ We find no error in that conclusion.

⁴ We agree with the State that the present case is not properly viewed through the lens of a “community caretaking” exception. “In *Caniglia v. Strom*, 593 U.S. 194, 198, 141 S.Ct. 1596, 209 L.Ed.2d 604 (2021),” the Supreme Court “rejected a ‘community caretaking

{¶ 50} We also find no error in the trial court’s rejection of an argument that a protective sweep of the apartment was impermissible. Protective sweeps are generally discussed when performed incident to an arrest as described in *Maryland v. Buie*, 494 U.S. 325 (1990). *See also State v. Woods*, 2026-Ohio-1204, ¶ 19 (8th Dist.) (While *Buie* was limited to situations incident to an arrest, the Ohio Supreme Court has recognized that officers may conduct a protective sweep without an arrest in certain circumstances.). In the present case, however, the officers’ actions are better characterized as a continuation of their provision of emergency aid rather than a sweep incident to an arrest. In *Mincey*, 437 U.S. 385, the Supreme Court authorized “a prompt warrantless search of the area to see if there are other victims[.]” *Id.* at 392. In *Case*, the Supreme Court held that “an emergency-aid entry provides no basis to search the premises beyond *what is reasonably needed to deal with the emergency while maintaining the officers’ safety.*” (Emphasis added.) *Case* at 117. Furthermore, as discussed above, “the police may seize any evidence that is in plain view during the course of their legitimate emergency activities.” *Mincey* at 393, citing *Tyler*, 436 U.S. at 509-510, and *Coolidge*, 403 U.S. at 465-466.

{¶ 51} As the State correctly notes, the testimony established that upon entry, police found Jordan unconscious and covered in white powder, suggesting an

rule’ allowing a warrantless home entry even absent a ‘need to render emergency assistance’ to an occupant.” (Emphasis added.) *Case* at 112. Here, the State offered a straightforward argument that the circumstances, viewed objectively, justified a warrantless entry to render emergency assistance.

overdose. This supported an objectively reasonable assessment that a serious medical emergency was occurring. Officer Pickens testified that based on his observations at the scene, he had reason to believe there was more than one person in the apartment. (Tr. 103-104.) Jordan was in no position to discuss who else might be in the apartment, and that potential second person was also a possible overdose victim requiring immediate assistance. The emergency, in other words, was not limited to Jordan. The testimony therefore supported a reasonable belief that more than one individual was in the apartment and required emergency aid. Accordingly, the officers' movements in an effort to locate other distressed individuals did not exceed the scope of the exigency and were permissible under *Mincey*. See also *Beckwith*, 2008-Ohio-2780, at ¶ 21 (8th Dist.). Testimony further established that the direct route to the bathroom, where Barrow was found, went past the kitchen, where suspected drugs were in plain view.

{¶ 52} Jordan argues that the protective sweep “morphed into a criminal investigation” and resulted in “searching areas not in plain view relative to the alleged medical emergency[.]” (Jordan’s brief at p. 11.) These characterizations are not supported by the record. Indeed, Jordan’s citation to the transcript in support of this proposition consists entirely of the arguments of counsel, not testimony.

{¶ 53} Jordan’s first assignment of error is overruled.

B. Second Assignment of Error

{¶ 54} In his second assignment of error, Jordan argues that the trial court erred by denying his motion for a *Franks* hearing and by failing to find that purported false statements in the warrant affidavit negated probable cause.

{¶ 55} As discussed above, Jordan supplemented his motion to suppress with a motion for a hearing pursuant to *Franks*, 438 U.S. 154. Jordan claimed there were inconsistencies between the warrant affidavit and North Olmsted police reports. According to Jordan’s motion, after the initial entry into the apartment, North Olmsted police secured a search warrant from a Rocky River Municipal Court judge. The motion, however, did not include affidavits or sworn statements supporting a claim of deliberate falsification.

{¶ 56} “There is . . . a presumption of validity with respect to the affidavit supporting [a] search warrant.” *Franks* at 172. “To successfully attack the veracity of a facially sufficient search warrant affidavit, a defendant must show by a preponderance of the evidence that the affiant made a false statement, either ‘intentionally, or with reckless disregard for the truth.’” *State v. Waddy*, 63 Ohio St.3d 424, 441 (1992), quoting *Franks* at 155-156. “‘Reckless disregard’ means that the affiant had serious doubts about the truth of an allegation.” *State v. McKnight*, 2005-Ohio-6046, ¶ 31, citing *United States v. Williams*, 737 F.2d 594, 602 (7th Cir. 1984). “The [defendant’s] attack must be more than conclusory. . . . Allegations [by defendant] of negligence or innocent mistake are insufficient.” *Franks* at 155.

Omissions can likewise qualify as false statements under certain circumstances. *State v. Woods*, 2024-Ohio-467, ¶ 48 (8th Dist.).

{¶ 57} Here, neither the warrant affidavit nor any police reports were attached to Jordan’s motion for a *Franks* hearing. Neither was the warrant itself. Moreover, while they were discussed at the suppression hearing, they were not marked as exhibits, offered for admission, or proffered by any party. The descriptions of their contents were limited to representations by counsel and were incomplete.

{¶ 58} In short, the warrant affidavit, the purportedly inconsistent police reports, and the warrant itself are not part of the record on appeal. Omission of the warrant affidavit from the appellate record is fatal to appellate review. A *Franks* analysis requires examination of the affidavit for at least two distinct purposes: First, determining whether the affiant’s representations were knowingly false or made with reckless disregard for the truth; and second, after excising any knowingly or recklessly false material, determining whether the remainder of the affidavit still established probable cause. *See, e.g., State v. Mason*, 2017-Ohio-7065, ¶ 23 (8th Dist.).

{¶ 59} Here, “[w]hile there is significant testimony about the challenged affidavit, this affidavit is not within the record before this court; therefore, we are prevented from conducting a proper analysis of this issue.” *State v. Parker*, 2011-Ohio-1059, ¶ 48 (8th Dist.). “In the absence of evidence contained within the record, we must presume regularity in the proceedings below.” *Id.*, citing *State v. Farris*,

2005-Ohio-1749, ¶ 9 (8th Dist.). Jordan has therefore “failed to demonstrate error on the part of the trial court in denying appellant’s motion to suppress pursuant to *Franks*[, 438 U.S. 154].” *Parker* at ¶ 48.

{¶ 60} In addition, this is not merely a case in which the *Franks* issue is unreviewable because of a defect in the record. The Ohio Supreme Court has held that “a challenge to the factual veracity of a warrant affidavit must be supported by an offer of proof which specifically outlines the portions of the affidavit alleged to be false, and the supporting reasons for the defendant’s claim.” *State v. Sheron*, 2013-Ohio-1989, ¶ 30 (8th Dist.), quoting *State v. Roberts*, 62 Ohio St.2d 170, 178 (1980). “In order to overcome” the presumption of validity, “the defendant must support his allegations with something more than conclusory accusations.” *Sheron* at ¶ 29. “In order to require a trial court to hold a hearing, a defendant must first make a ‘substantial preliminary showing’ that the affiant included a false statement in the affidavit either knowingly and intentionally, or with reckless disregard for the truth.” *Sheron* at ¶ 31, citing *Roberts* at 177, and *Franks* at 155.

{¶ 61} A motion that merely describes an affidavit and says it conflicts with unidentified police reports, without submitting the affidavit, reports, sworn statements, or some explanation for their absence, does not satisfy the required “substantial preliminary showing.” That failure carried over to the suppression hearing itself. The transcript does not indicate that the affidavit or reports were marked, offered, admitted, proffered, or retained by the trial court.

{¶ 62} Jordan’s second assignment of error is overruled.

C. Third Assignment of Error

{¶ 63} In his third assignment of error, appellant argues there was insufficient evidence to support his convictions for drug possession under Counts 2 and 5, as well as the MDO specification attached to Count 2.

{¶ 64} This court has recently reaffirmed that “[a]n appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt.” *State v. Spencer*, 2024-Ohio-5809, ¶ 15 (8th Dist.), citing *State v. Murphy*, 91 Ohio St.3d 516 (2001); *State v. Williams*, 2025-Ohio-2593, ¶ 26 (8th Dist.); *State v. Lynch*, 2025-Ohio-2769, ¶ 49 (8th Dist.). The appellate court views the evidence “in a light most favorable to the prosecution” to determine whether “any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *Spencer* at ¶ 15, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus; *Williams* at ¶ 26. The inquiry is whether the State has met its “burden of production” at trial. *State v. Dyer*, 2007-Ohio-1704, ¶ 24 (8th Dist.); *Lynch* at ¶ 49.

{¶ 65} “In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law.” *Cleveland v. Williams*, 2024-Ohio-3102, ¶ 10 (8th Dist.), quoting *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997); see also *Cleveland v. Neal*, 2024-Ohio-1467, ¶ 26 (8th Dist.); *Lynch* at ¶ 49. Appellate courts are not to assess “whether the State’s evidence is to be

believed, but whether, *if believed*, the evidence against a defendant would support a conviction.” (Emphasis added.) *Dyer* at ¶ 24; *Lynch* at ¶ 49. In considering the sufficiency of the evidence, we do not independently weigh the evidence. *Cleveland v. Wiggins*, 2025-Ohio-649, ¶ 37 (8th Dist.).

{¶ 66} In Count 2, the State charged Jordan with possession of a fentanyl-related compound in an amount equal to or exceeding 100 grams, with an accompanying MDO specification for possession of a fentanyl-related compound in an amount of at least 100 grams. In Count 5, the State charged Jordan with possession of cocaine in an amount equal to or exceeding 27 grams but less than 100 grams. Viewing the evidence in a light most favorable to the prosecution, as we must for purposes of a sufficiency analysis, we find that the evidence was sufficient to establish possession of a fentanyl-related compound and cocaine in the requisite amounts to support the respective convictions.

{¶ 67} We first address Jordan’s contention that there was insufficient evidence to establish possession generally, i.e., to support a finding that he “exercised dominion and control over” contraband where he was found unconscious in the hallway and there was purportedly no evidence that he possessed or sought to discard the fentanyl or cocaine. (Jordan’s brief at p. 18-19.) We find these arguments unpersuasive.

{¶ 68} R.C. 2925.11 provides that “[n]o person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog.” “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.” R.C. 2901.22(B). “It is necessary to look at all the attendant facts and circumstances in order to determine if a defendant knowingly possessed a controlled substance.” *State v. Loper*, 2003-Ohio-3213, ¶ 41 (8th Dist.), citing *State v. Teamer*, 82 Ohio St.3d 490, 492 (1998).

{¶ 69} *Loper* argued that the State had failed to prove possession where four individuals were present at the apartment where drugs were found, no drugs were actually found on his person, and the drugs were “discovered in the general living area.” *Loper* at ¶ 42. This court, however, recognized that “possession can be constructive” and that “[c]onstructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within the individual’s immediate physical possession.” *Id.* at ¶ 43. *See also State v. Williams*, 2025-Ohio-1457, ¶ 23 (8th Dist.).

{¶ 70} The *Loper* Court then observed that “proof by circumstantial evidence is sufficient to support constructive possession.” *Loper* at ¶ 44. Indeed, “[c]ircumstantial evidence *alone* can be used to prove constructive possession.” (Emphasis added.) *Williams* at ¶ 23, citing *State v. Alexander*, 2009-Ohio-597, ¶ 25 (8th Dist.). *See also State v. Burton*, 2019-Ohio-2431, ¶ 46 (8th Dist.). “Thus, the discovery of readily accessible drugs in close proximity to a person constitutes circumstantial evidence that the person was in constructive possession of the drugs.” *Williams* at ¶ 23, quoting *State v. Harris*, 2013-Ohio-484, ¶ 16 (8th Dist.). The *Williams* Court further observed that “[t]his court has repeatedly recognized

that constructive possession can be established by knowledge of an illegal substance or goods and the ability to exercise dominion or control over the substance or the premises on which the substance is found.” *Id.* at ¶ 23, quoting *Harris* at ¶ 18.

{¶ 71} In *Williams*, this court noted “that drugs, items frequently related to drug trafficking or possession, cash, and drug paraphernalia were found in many different areas around the house, and not just localized to a specific area or an area indicating that perhaps one of the codefendants had exclusive knowledge or control of the drugs.” *Williams* at ¶ 25. This is similar to the present case. Indeed, we agree with the State that the evidence presented to support the core finding of possession was overwhelming. Testimony and exhibits, principally photographs of the scene, indicated that the small apartment was strewn with drugs and drug paraphernalia, with white powder and larger white particles on multiple surfaces, including in the kitchen sink and on the floor. North Olmsted police testified that they heard loud activity within the apartment prior to entry, including screaming, a window screen being smashed, and running water.

{¶ 72} Upon entry, they found Jordan and Barrow alone. They observed drugs in the kitchen sink with the water running. Indeed, the majority of the drugs were in the kitchen sink, in plain view, where they could be easily observed.

{¶ 73} While Jordan was found to be unconscious when police entered, his hands and forearms were covered in white powder, and he appeared to be overdosing. Testimony established that Jordan immediately responded to administration of Narcan. (Tr. 531-533.) Testimony likewise established that

fentanyl is a potent opioid, (tr. 600-601) and that Narcan is used to reverse the effects of opiates. (Tr. 491.) Indeed, Jordan’s response to Narcan supports the inference that he was in the grip of an opioid overdose. *See State v. Penwell*, 2021-Ohio-1216, ¶ 24 (2d Dist.) (Evidence “supported the rational inference that Penwell had overdosed on an opiate, because he otherwise would not have responded to treatment with Narcan.”); *Adapt Pharma Operations Ltd. v. Teva Pharmaceuticals USA, Inc.*, 2020 U.S. Dist. LEXIS 109257, *5 (D.N.J. June 5, 2020) (Narcan “works as an ‘opioid antagonist,’ in that it quite literally reverses the effects of opioids.”); Adm.Code 4729-8-01 (Naloxone recognized as approved by federal food and drug administration “for the reversal of a known or suspected opioid-related overdose[.]”).

{¶ 74} Jordan, plainly overdosing and covered in white powder, was in close proximity to the drugs visible in plain sight throughout the small apartment on the floor, in the kitchen, and elsewhere. “Where a sizeable amount of readily usable drugs are in close proximity to the defendant, there is circumstantial evidence to support constructive possession.” *State v. Jones*, 2015-Ohio-1818, ¶ 46 (8th Dist.). *See also State v. Nesbit*, 2019-Ohio-1646, ¶ 32 (8th Dist.). Moreover, the fact that another individual was present in the apartment in addition to Jordan does not mean that Jordan could not exercise dominion and control over the drugs. *State v. Tyler*, 2013-Ohio-5242, ¶ 24 (8th Dist.). “Exclusive control over the premises is not required.” *State v. Shary*, 2021-Ohio-3604, ¶ 48 (8th Dist.), citing *In re Farr*, 1993 Ohio App. LEXIS 5394, *16 (10th Dist. Nov. 9, 1993) (nothing in the statute states

that illegal drugs must be in the sole or exclusive possession of the accused at the time of the offense). *See also State v. Wilson*, 2015-Ohio-4979, ¶ 24 (8th Dist.) (“[T]wo or more persons may have joint constructive possession of the same object.”). *Compare State v. Hall*, 2016-Ohio-698, ¶ 16 (8th Dist.) (No evidence demonstrated that Hall handled the cocaine or heroin at any point, and the State provided no evidence that Hall was in close proximity to the narcotics other than the fact he was in the house where the drugs were found.).

{¶ 75} Taken together and viewed in a light most favorable to the State for sufficiency purposes, this evidence supported a finding that Jordan knew drugs were present, used them, and constructively possessed them. The testimony of Pilch-Cooper provided sufficient evidence of the composition of the seized drugs (fentanyl and 4-ANPP, which are Schedule II controlled substances, and cocaine).

{¶ 76} The bulk of Jordan’s argument attacks Pilch-Cooper’s testimony as to the weight of the seized chunks of fentanyl and 4-ANPP.⁵ Jordan notes, correctly, that the seized drugs became wet in the kitchen sink. He suggested at trial, specifically during his Crim.R. 29 argument, that they had been contaminated by water to such an extent that any subsequent weighing would be unreliable. Jordan relied at trial on *State v. Bilah*, 2023-Ohio-4070 (8th Dist.), and his argument on appeal is likewise centered on that case.

⁵ Jordan’s arguments concerning the weight of the seized drugs focuses exclusively on the fentanyl-related compound. As discussed above, he argues generally that he did not possess the drugs seized in the apartment, but not that the cocaine-based samples were contaminated by water.

{¶ 77} In *Bilah*, police chased the defendant through a residential neighborhood. All the while he “was pulling out plastic baggies, tearing them open, and throwing them in the air, which created a large cloud of suspected fentanyl.” *Id.* at ¶ 2. In the aftermath of the chase, police “observed what appeared to be fentanyl in the snow on the ground.” *Id.* at ¶ 3. They “skimmed the gray powder from the snow and put it into plastic vials; however, because some snow got in that then melted, the lab analysis was done on the gray liquid that had formed.” *Id.* “The gray liquid in each of the two vials tested positive for fentanyl and 4-ANPP, with one weighing 21.40 grams and the other weighing 5.04 grams; *however, the amount of fentanyl was not separated out.*” (Emphasis added.) *Id.* at ¶ 5.

{¶ 78} *Bilah* was convicted under R.C. 2925.11(A) of possession of a fentanyl-related compound in an amount that equals or exceeds 20 grams but is less than 50 grams. On appeal, he argued that the State “could not establish the weight of the fentanyl in the vials because it was mixed with melted snow and the forensic scientist could not testify to what concentration of the gray liquid in the vials was fentanyl.” *Id.* at ¶ 17. This court found merit to that argument:

Although the contents of the vials had a combined weight of 26.44 grams, it is undisputed that the vials contained liquid from the snow that was collected. The forensic scientist could not separate out the weight of the fentanyl collected in the vials. There simply was no evidence of the relative weight of fentanyl to water. Therefore, the state did not meet its burden of production at trial.

Id. at ¶ 20. This court further noted that “the forensic scientist testified the weight of the contents in the vials included the fluid and that there was no way to know if

the vials had a little more than a trace of fentanyl in them.” *Id.* at ¶ 21. It refused to “speculate as to the amount fentanyl that was in the vials.” *Id.*

{¶ 79} We view *Bilah*, 2023-Ohio-4070 (8th Dist.), as distinguishable. In that case, the laboratory sample remained a liquid, rendering the fentanyl and water from melted snow indistinguishable. Here, the laboratory did not weigh a liquid, or even visibly wet chunks of suspected contraband. It weighed 54 solid fragments. More importantly, unlike in *Bilah*, there was affirmative evidence that the weighed fragments were dry. Pilch-Cooper testified that there was no indication of any water remaining in the samples when they were weighed. Therefore, unlike in *Bilah*, the State presented evidence from which a rational juror could conclude that the laboratory weight of 140.28 grams did not include foreign tap water.

{¶ 80} Jordan’s argument that there simply must have been some residual water in the weighed samples, despite Pilch-Cooper’s testimony to the contrary, is properly understood as an attack on Pilch-Cooper’s credibility and the weight of the State’s evidence, not on the legal sufficiency of the State’s evidence. *See State v. Peterson*, 2025-Ohio-2937, ¶ 32 (11th Dist.). In *Peterson*, the Eleventh District persuasively distinguished *Bilah*, holding that because certain foreign material could be visually distinguished from methamphetamine, the question of whether it meaningfully contributed to the sample’s aggregate weight “could be considered in light of the physical evidence without undue speculation.” *Id.* The issue was “not the purity of the methamphetamine but to what extent the foreign material contributed to the overall weight. Stated otherwise, the issue raised by Peterson in

the present case involves the weight rather than the sufficiency of the evidence.” *Id.*

The *Peterson* Court wrote:

Though visible, the specks and flecks were not substantial compared to the amount of methamphetamine. Moreover, the amount of crystalline substance that was actually collected was only a portion what was found in the vehicle and on the road. The jury could readily conclude (as it did) that the weight of the foreign material did not significantly contribute to the overall weight of the methamphetamine submitted for analysis.

Id.

{¶ 81} Here, as in *Peterson*, there was evidence from an expert witness, Pilch-Cooper, that even if any moisture whatsoever remained in the weighed samples, it was not substantial. She testified that she observed no dampness, wetness, or other indication of water, such as an imprint on paper, and that any water previously absorbed had dried by the time of testing. The jury could reasonably conclude, based on her testimony, that the weight of the foreign material (water) introduced at the time of collection did not significantly contribute to the weight of the samples when tested. Jordan’s third assignment of error is overruled.

D. Fourth Assignment of Error

{¶ 82} In his fourth assignment of error, Jordan argues that his drug possession convictions were against the manifest weight of the evidence. “In contrast to a sufficiency argument, a manifest weight challenge questions whether the state met its burden of persuasion.” *State v. Hill*, 2013-Ohio-578, ¶ 32 (8th Dist.); *State v. Shirley*, 2025-Ohio-1064, ¶ 21 (8th Dist.); *State v. Wardlaw*, 2025-Ohio-2221, ¶ 67 (8th Dist.). In our manifest-weight analysis, we “must look at the

entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving conflict in the evidence, the trier of fact *clearly lost its way and created such a miscarriage of justice* that the conviction must be reversed and a new trial ordered.” (Emphasis added.) *Spencer*, 2024-Ohio-5809, at ¶ 26 (8th Dist.), citing *Thompkins*, 78 Ohio St.3d at 387. *See also Wardlaw* at ¶ 67.

{¶ 83} An appellate court will reverse on manifest weight “only in the exceptional case in which the evidence weighs heavily against the conviction.” *State v. McLoyd*, 2023-Ohio-4306, ¶ 40 (8th Dist.), quoting *Thompkins* at 387; *Williams*, 2025-Ohio-2593, at ¶ 41 (8th Dist.). This is because “in a manifest-weight review, the weight to be given the evidence and the credibility of the witnesses are primarily for the finder of fact.” *State v. Metz*, 2019-Ohio-4054, ¶ 70 (8th Dist.); *see also Cleveland v. Johns*, 2024-Ohio-3301, ¶ 24 (8th Dist.). Indeed, ““an appellate court may not substitute its own judgment for that of the finder of fact.”” *Id.* at ¶ 24, quoting *State v. Harris*, 2021-Ohio-856, ¶ 33 (8th Dist.), quoting *State v. Maldonado*, 2020-Ohio-5616, ¶ 40 (8th Dist.).

{¶ 84} The Ohio Supreme Court very recently emphasized that

“[i]n weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact.” *Eastley [v. Volkman]*, 2012-Ohio-2179, at ¶ 21. ““If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.”” *[In re] Z.C.*, 173 Ohio St. 3d 359, 2023-Ohio-4703, at ¶ 14, 230 N.E.3d 1123, quoting *Seasons Coal Co. [v. Cleveland]*, 10 Ohio St.3d [77, 80 fn. 3], quoting 5 Ohio Jur.3d, Appellate Review, § 603, at 191-192 (1978). “The

underlying rationale of giving deference to the findings of the [fact-finder] rests with the knowledge that the [fact-finder] is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” *Id.*, quoting *Seasons Coal* at 80.

State v. Reillo, 2026-Ohio-2701, ¶ 28. “The use of the word ‘manifest’ in the standard of review ‘means that we can only reverse the trier of fact if its decision is very plainly or obviously contrary to the evidence.’” *State v. Harris*, 2020-Ohio-1497, ¶ 28 (8th Dist.), quoting *State v. Hernandez*, 2018-Ohio-5031, ¶ 20 (8th Dist.); *Wardlaw* at ¶ 67. “The jury may take note of any inconsistencies and resolve them accordingly, ‘believ[ing] all, part, or none of a witness’s testimony.’” *State v. Sheline*, 2019-Ohio-528, ¶ 96 (8th Dist.), quoting *State v. Raver*, 2003-Ohio-958, ¶ 21 (10th Dist.).

{¶ 85} Jordan’s arguments as to manifest weight are largely duplicative of his sufficiency arguments. He once again attacks Pilch-Cooper’s testimony concerning the weight of the “soggy” evidence recovered from the sink. (Jordan’s brief at p. 20-21.) Pilch-Cooper, however, was qualified, without objection, as an expert. There were no inconsistencies in her testimony, and on cross-examination she remained firm that the samples she tested showed no signs of moisture, despite Jordan’s suggestion that there must have been some residual moisture. The persuasive power of her testimony, and the effectiveness of cross-examination in blunting it, were for the jury to determine. Upon review, we find nothing in her testimony that was “so inconsistent as to material facts, so impeached, or so fantastical as to render it patently unbelievable.” *Reillo* at ¶ 32.

{¶ 86} The remainder of Jordan’s manifest-weight argument is tied to the issue of constructive possession. He contends, for example, that the white powder covering his forearms and hands was never tested to determine whether it was actually contraband and that there was no evidence he was aware of any of the drugs in the apartment or in the sink. We have already concluded that the State produced sufficient evidence of constructive possession based principally on the presence of a sizeable amount of readily accessible drugs in plain view and in close proximity to Jordan. Jordan argues that the white powder covering his forearms and hands was never tested, but testimony established that he appeared to be overdosing and was revived using Narcan, which reverses the effects of opioids. The jury was free to credit this testimony, which was bolstered by photographs demonstrating Jordan’s condition. In addition, while Jordan further argues that there was no evidence he leased the apartment, exclusive control of the premises is not required. *Shary*, 2021-Ohio-3604, at ¶ 48 (8th Dist.).

{¶ 87} Even if Jordan’s arguments that he had no ties to the drugs were plausible, we cannot say that the jury lost its way in rejecting such arguments. “When there exist two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, it is not the province of this court to choose which version we believe.” *Sheline*, 2019-Ohio-528, at ¶ 102 (8th Dist.), quoting *State v. Dyke*, 2002 Ohio App. LEXIS 1197, *6 (7th Dist. Mar. 13, 2002). See also *Burton*, 2019-Ohio-2431, at ¶ 55 (8th Dist.); *State v. Ford*, 2019-Ohio-2570, ¶ 79 (8th Dist.). A conviction is “not against the manifest weight of the evidence

merely because the jury rejected the defense's theories and found the state's version of the events to be more believable." *Sheline* at ¶ 102.

{¶ 88} Having reviewed the entire record, this is not the exceptional case in which the jury clearly lost its way and created a manifest miscarriage of justice. Jordan's fourth assignment of error is overruled.

E. Fifth Assignment of Error

{¶ 89} In his fifth assignment of error, Jordan focuses exclusively on his conviction under Count 2 for possession of a fentanyl-related compound in an amount that equals or exceeds 100 grams. He argues that the trial court erred by giving incomplete jury instructions regarding the mixture and weight of the controlled substances. More specifically, Jordan returns in this assignment of error to the issue of alleged "non-filler foreign contaminants (water)" that purportedly added weight to the seized contraband. In addition, though not expressly stated in the assignment of error itself, Jordan contends that his trial counsel was ineffective in failing to request a more explicit instruction.

{¶ 90} "Requested jury instructions should ordinarily be given if they are correct statements of law, if they are applicable to the facts in the case, and if reasonable minds might reach the conclusion sought by the requested instruction." *State v. Adams*, 2015-Ohio-3954, ¶ 240. The ultimate decision whether to give an instruction is committed to the trial court's sound discretion. Generally, "[a]n appellate court reviews a trial court's refusal to give a requested jury instruction for abuse of discretion." *Id.*, citing *State v. Wolons*, 44 Ohio St.3d 64, 68 (1989). Here,

however, Jordan did not request a water-contamination instruction or object to the admission of such an instruction. He has therefore waived all but plain error on appeal. *State v. Davis*, 2021-Ohio-2311, ¶ 29 (8th Dist.), citing *State v. Lott*, 51 Ohio St.3d 160 (1990), *State v. Burns*, 2011-Ohio-4230 (8th Dist.), Crim.R. 52(B), and Crim.R. 30(A). See also *State v. Hall*, 2025-Ohio-644, ¶ 11 (8th Dist.). “Even in the context of jury instructions, ‘[p]lain error “should be applied with utmost caution and should be invoked only to prevent a clear miscarriage of justice.”’” *Cleveland v. White*, 2024-Ohio-1584, ¶ 17 (8th Dist.), quoting *State v. Skatzes*, 2004-Ohio-6391, ¶ 52, quoting *State v. Underwood*, 3 Ohio St.3d 12 (1983), syllabus. In a plain-error analysis, therefore, we review the jury instructions as a whole to determine whether a manifest injustice occurred as a result of any purported error in the instructions. *State v. Jones*, 2025-Ohio-2144, ¶ 42 (8th Dist.). “An improper or erroneous jury instruction does not constitute plain error under Crim.R. 52(B) unless, but for the error, the outcome of the trial would clearly have been different.” *Davis* at ¶ 30, citing *State v. Cooperrider*, 4 Ohio St.3d 226 (1983); *Jones* at ¶ 42. See also *White* at ¶ 17, citing *State v. Campbell*, 69 Ohio St.3d 38 (1994).

{¶ 91} Viewing the instructions as a whole, the trial court instructed the jury on the statutory components of possession and required it to determine beyond a reasonable doubt that the amount of the fentanyl-related compound, mixture, preparation, or substance equaled or exceeded 100 grams. The trial court did not erroneously instruct the jury that water was a filler that should be counted in the total weight. Rather, it simply did not give an instruction excluding water as a

potential contaminant. Such an instruction, however, was not warranted by the evidence. While the drugs were indisputably exposed to water at the scene, testimony established that the relevant weight measurement was taken after the evidence had dried. Expert witness Pilch-Cooper found no moisture in her examination of the contraband. There was therefore no evidentiary basis on which the jury could subtract or otherwise calculate alleged water contamination.

{¶ 92} We have already distinguished *Bilah*, 2023-Ohio-4070 (8th Dist.), in connection with Jordan's sufficiency argument. *Bilah* addressed sufficiency where the weighed items were actually in liquid form and the State therefore could not demonstrate how much of the weight was fentanyl as opposed to water. Jordan appears to argue for a *Bilah*-adjacent instruction whenever drugs were at one time exposed to water even in the absence of evidence as to retained moisture. We reject that argument. The trial court did not err by not instructing the jury to subtract an unknown quantity of water weight from the fragments that Pilch-Cooper testified were dry.

{¶ 93} Indeed, in light of Pilch-Cooper's testimony, we cannot conclude that if the jury had been instructed on water contamination the outcome of the trial clearly would have been different, or that a manifest injustice occurred because of the omission of such an instruction. Pilch-Cooper's expert testimony was that the fragments contained no moisture when tested at the laboratory and that they weighed 140.28 grams. To fall below the statutory threshold of 100 grams, the jury

would have to attribute more than 40 grams of the fragments' weight to retained water, despite Pilch-Cooper's testimony that those fragments were dry.

{¶ 94} Jordan further argues that his trial counsel was ineffective for failing to request an instruction on water contamination. To establish a claim of ineffective assistance of counsel, Jordan “must demonstrate that (1) his counsel was deficient in some aspect of his representation and (2) there is a reasonable probability that, were it not for counsel's errors, the result of the [proceeding] would have been different.” *State v. Thompson*, 2024-Ohio-5910, ¶ 5 (8th Dist.), quoting *In re S.A.*, 2019-Ohio-4782, ¶ 46 (8th Dist.), citing *Strickland v. Washington*, 466 U.S. 668, 687-688, 694 (1984). “Reasonable probability” is “probability sufficient to undermine confidence in the outcome.” *Strickland* at 694.

{¶ 95} As this court stated in *Thompson*, “the failure to make a showing of *either* deficient performance or prejudice defeats a claim of ineffective assistance of counsel.” (Emphasis added.) *Thompson* at ¶ 5, quoting *In re S.A.* at ¶ 46. *See also State v. Davenport*, 2018-Ohio-2933, ¶ 25 (8th Dist.). To put it even more explicitly, “[t]he failure to prove either prong of *Strickland's* two-part test makes it unnecessary for a reviewing court to consider the other prong.” *State v. McCann*, 2025-Ohio-966, ¶ 18 (8th Dist.), citing *State v. Madrigal*, 87 Ohio St.3d 378, 389 (2000). *See also Bilah*, 2023-Ohio-4070, at ¶ 11 (8th Dist.) (reviewing court need not determine whether counsel's performance was deficient before addressing whether defendant was prejudiced).

{¶ 96} “Deficient performance, the first prong of the *Strickland* test, requires a showing ‘that counsel’s representation fell below an objective standard of reasonableness.’” *McCann* at ¶ 18, quoting *Strickland* at 688. “In Ohio, every properly licensed attorney is presumed to be competent and, therefore, a defendant claiming ineffective assistance of counsel bears the burden of proof.” *In re S.A.* at ¶ 47, citing *State v. Smith*, 17 Ohio St.3d 98, 100 (1985). *See also* *McCann* at ¶ 18. Moreover, “Counsel’s tactical decisions or trial strategy cannot form the basis for a claim of ineffective counsel.” *In re S.A.* at ¶ 47, citing *State v. Foster*, 2010-Ohio-3186, ¶ 23 (8th Dist.). *See also* *State v. Clayton*, 62 Ohio St.2d 45 (1980).

{¶ 97} Reviewing courts “will strongly presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *McCann* at ¶ 17, quoting *State v. Powell*, 2019-Ohio-4345, ¶ 69 (8th Dist.); *see also* *Strickland*, 466 U.S. at 689 (A reviewing court “must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.”). We therefore afford “great deference” to “trial counsel’s performance and tactical decisions and trial strategies.” *McCann* at ¶ 17. Even “debatable” or “questionable” trial tactics generally “do not constitute ineffective assistance of counsel.” *State v. Harris*, 2022-Ohio-4630, ¶ 50 (8th Dist.), citing *State v. Scarton*, 2020-Ohio-2952, ¶ 90 (8th Dist.). Appellate courts therefore “ordinarily refrain from second-guessing strategic decisions counsel make at trial,’ . . . even where appellate counsel argues that he or she would have defended

against the charges differently.” *Scarton* at ¶ 90, quoting *State v. Myers*, 2002-Ohio-6658, ¶ 152. *See also State v. Stewart*, 2024-Ohio-5802, ¶ 54 (8th Dist.).

{¶ 98} Having thoroughly reviewed the trial court record in light of applicable legal standards, we cannot conclude that defense counsel’s decision not to request a jury instruction on water contamination constituted ineffective assistance of counsel. Counsel presented the water-contamination theory through extensive cross-examination and in closing argument. The jury was fully aware of Jordan’s contention that exposure to sink water undermined Pilch-Cooper’s testimony as to the weight of the contraband. “That another strategy may have been available does not mean that counsel provided ineffective assistance.” *Bilah*, 2023-Ohio-4070, at ¶ 12 (8th Dist.).

{¶ 99} Moreover, even assuming counsel could have requested a more specific instruction, Jordan cannot show prejudice. The trial court would have been justified in refusing it because Pilch-Cooper’s expert testimony that the fragments showed no signs of moisture foreclosed a reasonable finding that over 40 grams of water remained in the tested fragments. Upon our review, therefore, we find that Jordan has failed to demonstrate a reasonable probability that but for the alleged deficiencies in his trial counsel’s performance, the result of the proceedings would have been different.

F. Sixth Assignment of Error

{¶ 100} In his sixth assignment of error, Jordan argues that the MDO specification attached to Count 2 was unconstitutional because it required a factual

finding by the court rather than the jury and that because the jury made the finding regarding the weight of the contraband, the MDO finding violated Ohio law.

{¶ 101} Jordan concedes that review of this issue is limited to plain error, as no objection was lodged at the trial-court level. He further acknowledges that this court has previously addressed the problems that potentially flow from the language of the MDO statute. In *State v. Makin*, 2017-Ohio-2649 (8th Dist.), the appellant, like Jordan, argued that he “was denied his right to a jury trial guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution in determining the MDO Specification.” *Id.* at ¶ 9. This court summarily disposed of the associated assignment of error:

Trafficking or possession of more than 100 grams of cocaine is an MDO. R.C. 2925.03(C)(4)(g) and 2925.11(C)(4)(f). According to R.C. 2941.1410(B), the trial court is required to determine the MDO specification. As we previously recognized, “[t]his appears to be inconsistent with the principle that elements necessary for a penalty enhancement must be found by the trier of fact, not the court.” *State v. Dues*, 2014-Ohio-5276, 24 N.E.3d 751, ¶ 49 (8th Dist.), citing *State v. Fort*, 2014-Ohio-3412, 17 N.E.3d 1172, ¶ 28, and *Alleyne v. United States*, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013). However, as was the case in *Dues*, we are not required to make a determination on that issue as the jury determined in Count 13 that the aggregate amount of cocaine exceeded 100 grams. *Dues* at ¶ 50.

Id. at ¶ 10. In *Dues*, this court observed “that the United States Supreme Court’s decision in *Alleyne* appears to lead to the conclusion that Ohio’s major drug offender statutes could be constitutionally infirm where a trial court makes factual determinations to enhance a defendant’s sentence.” *Dues* at ¶ 49, citing *Fort* at ¶ 32. The *Dues* Court explained that there was no *Alleyne* problem in that case, however,

because the indictment had charged Dues with trafficking and possessing over 100 grams of contraband and “it was the jury who determined the weight of the drug — the element necessary to enhance the penalty.” *Dues* at ¶ 50. Accordingly, “[o]nce the jury found Dues guilty of these two counts, the MDO determination was automatic.” *Id.* It was the jury, therefore, that determined Dues was a major drug offender “based on its finding that he possessed over 100 grams of cocaine.” *Id.* This “does not run afoul of *Alleyne*.” *Id.*

{¶ 102} In this case, the indictment clearly contained an MDO specification on Count 2, and the jury’s verdict form indicating a finding that he possessed a fentanyl-related compound or a compound, mixture, preparation, or substance containing fentanyl that was in an amount that exceeds 100 grams. This puts to rest Jordan’s claim that the MDO finding violated his constitutional rights. In addition, there was no separate verdict form returned by the jury containing specific MDO specification language. Instead, because “the MDO determination was automatic,” *Dues* at ¶ 50, the trial court noted the MDO specification in its sentencing entry. We find no error in this regard.

{¶ 103} Jordan contends that both the trial court and the jury are required to make the MDO finding. He then appears to argue that the entire MDO scheme is unlawful because if the trial court makes the MDO determination, the finding is unconstitutional, and if the jury makes the determination as to the weight of the contraband — leading to an automatic MDO determination — that procedure runs afoul of the statute because the trial court failed to make a separate determination,

rendering the sentence contrary to law. Dues had made a different statutory-interpretation argument, but like here the end result would have been that “no drug offender could ever be found a MDO, either by the trial court or by the jury[.]” *Id.* at ¶ 54. As this court stated in *Dues*, “[w]e must construe statutes to avoid unreasonable or absurd results[.]” *Id.* at ¶ 55, citing *State ex rel. Striker v. Cline*, 2011-Ohio-5350, ¶ 25. In addition, Jordan has provided no authority to support his argument that both the trial court and the jury are required to make factual findings before the trial court imposes a sentence on the MDO specification.

{¶ 104} Moreover, the Fourth District, in *State v. Barnes*, 2020-Ohio-3943 (4th Dist.), relied on both *Dues*, 2014-Ohio-5276 (8th Dist.), and Tenth District precedent in harmonizing the statutory scheme. The Fourth District first noted that in *State v. Pena*, 2007-Ohio-4516 (10th Dist.), “the court explained that the portions of R.C. 2929.14 requiring judicial fact-finding before imposition of additional penalties for major drug offender specifications had been severed from the statute by *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.” *Barnes* at ¶ 38, citing *Pena* at ¶ 15. The *Barnes* Court explained that the defendant “was properly found guilty of the major drug offender specification contained in the indictment, in light of the jury’s finding that he was guilty of possessing an amount of heroin equal to or exceeding 100 grams.” *Barnes* at ¶ 38. The trial court was therefore required to impose a mandatory term because of Barnes’s automatic classification as a major drug offender. *Id.* The Fourth District continued:

Furthermore, it arguably would have been error for the trial court to make the major drug offender determination, in light of *Foster, supra*, as interpreted by *Pena, supra*. Moreover, we have found nothing, and Barnes has cited us to nothing that requires the trial court to include a specific determination in the sentencing entry regarding a defendant's classification as a major drug offender. Nor has Barnes provided any legal support for the proposition that the failure to include major drug offender language in a sentencing entry results in the sentence being contrary to law or resulting in reversible error on appeal.

In light of the foregoing, we cannot conclude that the trial court erred in sentencing Barnes, or that his sentence is otherwise contrary to law.

Id. at ¶ 38-39.

{¶ 105} In the present case, the trial court's sentencing entry includes MDO language, but it is framed appropriately as a determination based on the jury's factual finding. In short, the jury found that Jordan possessed the requisite amount of contraband, and the trial court imposed the automatic MDO determination. Jordan's argument that the court was required to make a more explicit MDO specification finding is undermined by *Barnes*. Nothing in the trial court's handling of the MDO specification violated Jordan's constitutional rights or ran afoul of Ohio's statutory MDO scheme.

{¶ 106} Jordan's sixth assignment of error is overruled.

{¶ 107} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's convictions having been affirmed, any bail pending appeal is terminated.

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

DEENA R. CALABRESE, JUDGE

LISA B. FORBES, P.J., and
ANITA LASTER MAYS, J., CONCUR

