[Cite as *State v. El*, 2026-Ohio-4489.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO, :

Plaintiff-Appellee, :

No. 116326

v. :

ALQAADIR EL, :

Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: November 12, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-25-706317-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Christopher Woodworth, Assistant Prosecuting Attorney, *for appellee*.

Dunham Law, LLC and Michael P. Dunham, *for appellant*.

DEENA R. CALABRESE, J.:

{¶ 1} Defendant-appellant Alqaadir El appeals his convictions after pleading no contest to charges of having weapons while under disability and carrying a concealed weapon. El challenges the trial court's denial of his motion to suppress

evidence seized and statements he made during an encounter with police. He further contends that his conviction for having weapons while under disability violated his right to keep and bear arms under U.S. Const., amends. II and XIV, as well as Ohio Const., art. I, § 4. Finally, El argues that his trial counsel was ineffective in failing to raise such constitutional challenges. Finding no merit to the appeal, the trial court's judgment is affirmed.

I. Facts and Procedural History

{¶ 2} On October 22, 2025, the Cuyahoga County Grand Jury returned a two-count indictment charging El with having weapons while under disability, a felony of the third degree in violation of R.C. 2923.13(A)(3), and carrying concealed weapons, a felony of the fourth degree in violation of R.C. 2923.12(A)(2). Each count contained a forfeiture specification pertaining to a SCCY 9 mm handgun. Pursuant to the indictment and bill of particulars, the charge of having weapons while under disability was predicated upon El's conviction for trafficking in violation of R.C. 2925.03 in Cuyahoga C.P. No. CR-09-522488-A.

{¶ 3} The indictment stemmed from El's encounter with several Cleveland police officers beginning at approximately 11:55 p.m. on October 12, 2025, an interaction thoroughly explored in the course of the suppression hearing discussed below. On January 16, 2026, following discovery and initial pretrials, El filed a motion to suppress all evidence concerning the October 12 encounter. Specifically, he sought to preclude the State from introducing any statements, items, or other evidence obtained during El's interaction with police, including his admission that

there was a firearm in the vehicle he was driving "and officer observations following that admission."

{¶ 4} The trial court held a hearing on the motion to suppress on February 27, 2026. The State called a single witness, Cleveland Police Officer Jonathon Selleny, and introduced two exhibits consisting of body-camera footage from Officer Selleny and from his partner, Officer Anthony Krokos. Officer Selleny testified that late at night on October 12, 2025, he and his partner were patrolling the area of East 22nd Street and Cedar Avenue near "[t]he old juvenile detention facility that they're in the process of demolishing." (Tr. 17.)[1] He described the area as a "hotspot for the city" known to police, including him personally, as an area subject to frequent calls for homicides, shootings, aggravated robberies, and other criminal activity. (Tr. 16-17.)

{¶ 5} Officer Selleny testified that while patrolling the area, he observed a Kia SUV "backed into a very dark, almost unlit, basically dead end alley." (Tr. 18.) He viewed the vehicle's make as significant because he and other police officers had "been dealing with a rash of Kia thefts specifically for a number of years." (Tr. 18.) He testified that he "personally [had] recovered numerous stolen vehicles, including Kias, in and around that area." (Tr. 18.)

{¶ 6} Officer Selleny and his partner pulled into the alley to make contact with the vehicle's operator. Two additional officers in another patrol car had pulled

---

[1] Officer Selleny referred to "22nd and Cedar," but this court may take judicial notice of Google Maps to determine locations and distances. *State v. McGrath*, 2025-Ohio-2600, ¶ 32, fn. 4 (8th Dist.); *State v. Bradford*, 2018-Ohio-1417, ¶ 71 (8th Dist.); *Mitchell v. TVA*, 2015 U.S. Dist. LEXIS 56527, *2-3, fn. 1 (E.D.Tenn. Apr. 30, 2015).

in behind El's vehicle. (Tr. 36.) Officer Selleny testified that he wanted to determine whether the car was stolen and why it was parked there, because it is "not typically a place that people park or have any reason to necessarily be hanging out that late at night." (Tr. 20.) He further testified to his recollection that neither police emergency lights nor any police siren had been activated either before or during the encounter with El. (Tr. 48.)

{¶ 7} Body-camera footage and testimony indicated that as they approached the car, El appeared to be exiting or outside the driver's side door of the vehicle, which was open. (Tr. 35.) Officer Selleny directed him to step away from the car and move to the front of the vehicle. He testified that this was based on the lighting, the location, and the fact that he had not "identified who I'm dealing with." (Tr. 27.) He testified that asking El to move to the front of his vehicle "was a safety request." (Tr. 27.) He asked El for his identification, which El provided, and which was then turned over to Officer Krokos.

{¶ 8} Officer Selleny testified that when El was asked why he was there, he stated he was "working armed security." (Tr. 20.) Body-camera footage indicated that in response to being asked why he was there, El simply said he was "doing security here." Body-camera footage further indicated that Officer Selleny stated that the only reason they were having a conversation was because there had been "a lot of stolen cars over here, and this is a Kia." Officer Selleny then asked El, "Got any guns or anything with you or nothing?" El replied, "I mean, well, yeah, I'm an armed security officer," and appeared to gesture towards the vehicle with his right hand.

Officer Selleny then asked, "Do you have a gun on you physically right now?" El responded that he did not. Officer Selleny asked El to keep his hands visible, but no pat-down ensued.

{¶ 9} Officer Selleny testified, and body-camera footage confirmed, that El remained standing outside of his vehicle, and was not handcuffed, while the officers ran a search on El's identification. The ID search indicated potential outstanding warrants. Officer Selleny also testified, consistent with body-camera footage, that El had indicated he was working for "R-CAP Security," which in Officer Selleny's experience was "known to employ felons that are in possession of firearms." (Tr. 39.) This, combined with El's statement that he was working armed security, prompted Officer Selleny to conduct an Ohio Law Enforcement Gateway ("OHLEG") search for any criminal or driving history.

{¶ 10} Body-camera footage indicated that Officer Selleny returned to his cruiser to continue searching records. According to Officer Selleny, the OHLEG search returned results indicating that El had prior felony drug convictions, including felony cocaine possession, felony drug trafficking, and a conviction for having weapons while under disability. These results led him to believe that El "was unable to legally possess a firearm." (Tr. 23.)

{¶ 11} Officer Krokos had followed Officer Selleny to the police cruiser. Body-camera footage indicates that Officer Selleny asked Officer Krokos to confirm that the firearm was in the vehicle. Officer Krokos returned to speak briefly with El. The body-camera footage indicates that he asked El, "You say the firearm's in the

vehicle?" El responded, "Huh?" and Officer Krokos then asked, "You said your gun's in the car?" El pointed to the vehicle and responded, "Yeah."

{¶ 12} After Officer Krokos returned to the police cruiser and informed Officer Selleny of the gun's location, Officer Selleny returned to El's vehicle. He testified that at that time, El was being detained because he was in the process of being arrested. He testified that El was advised of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). According to Officer Selleny's testimony, he learned that the "firearm was under the driver's seat and it was his girlfriend's gun allegedly." (Tr. 24.)

{¶ 13} According to the body-camera footage, at least a portion of this conversation occurred before El was read his *Miranda* rights. Officer Selleny exited his police cruiser, approached El, and said, "The gun in the car is yours, right?" When El responded, "Huh?" Officer Selleny repeated the question. It was at that point that El indicated the gun was actually his girlfriend's. Officer Selleny then asked him to place his hands behind his back and, as El was being handcuffed, informed him that he was being arrested because he was not legally permitted to be in possession of a handgun because of his previous convictions. Officer Brittany Stacho, one of two additional Cleveland police officers at the scene, then read El his *Miranda* rights. (Tr. 37-38.)

{¶ 14} The body-camera footage reflects that at the moment Officer Stacho finished providing El with his *Miranda* advisements, Officer Selleny — while shining a flashlight in the driver's side window — asked him, "Where's the gun in the car?"

El responded that it was "under the seat." Officer Selleny recovered the firearm, with a bullet in the chamber, from under the driver's seat. He further explained to the trial court that because they could not leave the vehicle unattended, police policy was "to inventory the vehicle . . . and then the vehicle gets towed." (Tr. 24.)

{¶ 15} On cross-examination, Officer Selleny conceded that he began asking El about the firearm before El was notified of his *Miranda* rights. He further conceded that he was not sure whether El responded in the affirmative, or at all, when Officer Stacho asked El if he understood those rights. He further clarified that it was Officer Stacho and her partner, Officer Whitner, who had first observed the Kia vehicle and that the officers "had discussed how to approach the situation from a safety standpoint for everybody involved." (Tr. 42.) He further conceded that El was calm, cooperative, and honest with police throughout the encounter.

{¶ 16} The State rested subject to the admission of exhibits (the two body-camera videos), which were admitted without objection. The defense rested without calling witnesses. Following brief closing arguments, the trial court took the matter under advisement. On March 5, 2026, it issued its opinion. The trial court found Officer Selleny's testimony credible, characterized the encounter as consensual, and denied El's motion to suppress.

{¶ 17} On March 18, 2026, El pleaded no contest to the charges in the indictment. The trial court found El guilty and sentenced him to five years of community control. This timely appeal followed.

II. Assignments of Error

{¶ 18} El presents three assignments of error for our review:

> Assignment of Error 1: The trial court erred in denying Mr. El's motion to suppress in violation of his right to be free from unreasonable search and seizure, coercive custodial interrogation, self-incrimination, and due process of law under the US Constitution. Amend. IV, US Con. Amend. V, US Con. Amend. XIV, and, Ohio Con. Art. I. Tr. Passim.
>
> Assignment of Error 2: The trial court erred in finding Mr. El guilty on a no contest plea because the indictment, bill of particulars, and, statement of facts show that the charges violate both on its face and as applied the right to keep and bear arms under US Con. Amend. II, US Con. Amend. XIV, and, Ohio Con. Art. I. Tr. Passim.
>
> Assignment of Error 3: Mr. El was denied effective assistance of counsel under US Con. Amend VI, US Con. Amend XIV, and, Ohio Con. Art. I. Tr. Passim.

{¶ 19} Finding no merit to any of El's assignments of error, the trial court's judgment is affirmed.

III. Analysis

A. First Assignment of Error

{¶ 20} In his first assignment of error, El contends that the trial court erred in denying his motion to suppress. "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. This court will accept the trial court's findings of fact if they are supported by competent, credible evidence. *Byrd* at ¶ 14, citing *State v. Preztak*, 2009-Ohio-621, ¶ 22 (8th Dist.); *State v. Taylor*, 2026-Ohio-1041, ¶ 16 (8th Dist.). This court will 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.).

{¶ 21} The Fourth Amendment of the U.S. Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and is enforceable against the states through the Due Process Clause of the Fourteenth Amendment. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961). Article I, Section 14 of the Ohio Constitution contains language almost identical to the Fourth Amendment. It generally affords Ohioans the same protections against unreasonable searches and seizures in felony cases. *State v. Robinette*, 80 Ohio St.3d 234, 245 (1997) (holding "that Section 14, Article I of the Ohio Constitution affords protections that are coextensive with those provided by the Fourth Amendment").[2] "'Evidence obtained by the State in violation of these constitutional provisions must be suppressed from use by the State in its criminal prosecution of the person from whom it was seized.'" *State v. Taylor*, 2026-Ohio-1041, ¶ 15 (8th Dist.), quoting *State v. Baker*, 2007-Ohio-5450, ¶ 12 (8th Dist.).

[2] The Ohio Supreme Court has found that the Ohio Constitution provides more robust protections than the Fourth Amendment to the United States Constitution in certain contexts, but none that are relevant here. *See, e.g., State v. Brown*, 2015-Ohio-2438 (holding that Article I, Section 14 of the Ohio Constitution provides greater protection than the Fourth Amendment against searches and seizures made by law enforcement personnel who lack authority to make an arrest); *State v. Brown*, 2003-Ohio-3931 (holding that Ohio Constitution provides greater protection than the Fourth Amendment against warrantless arrests for minor misdemeanors).

1. Classifying the Police Encounter

{¶ 22} Interactions between police and individuals can fall into three distinct categories: 1) a consensual encounter, 2) a brief investigatory stop or detention, or 3) an arrest. *State v. Parrish*, 2023-Ohio-3356, ¶ 14 (8th Dist.), citing *State v. Thomas*, 2011-Ohio-1292, ¶ 9 (2d Dist.). *See also State v. Millerton*, 2015-Ohio-34, ¶ 20 (2d Dist.), citing *State v. Jones*, 2010-Ohio-2854, ¶ 13 (10th Dist.).

{¶ 23} The trial court characterized the officers' interaction with El as a consensual encounter. The analysis will begin with the officers' decision to approach El's stopped vehicle. This court has explained:

> In a consensual encounter, police practices such as approaching a person in a public place, engaging the person in conversation, requesting information, examining one's identification, and requesting to search a person's belongings are permissible, and Fourth Amendment guarantees are not implicated in such encounters.

State v. Hicks, 2023-Ohio-4126, ¶ 36 (8th Dist.), citing *State v. Jackson*, 2022-Ohio-187, ¶ 32 (8th Dist.). "These encounters remain consensual as long as the police officer, by physical force or show of authority, has not restrained the person's liberty such that a reasonable person would not feel free to walk away." *Id.*, citing *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). *See also Terry v. Ohio*, 392 U.S. 1, 19, fn. 16 (1968) ("[N]ot all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred.").

{¶ 24} Accordingly, "when a police officer merely approaches and questions persons seated within parked vehicles, a consensual encounter occurs that does not constitute a seizure so as to require reasonable suspicion supported by specific and articulable facts." *State v. Franklin*, 2014-Ohio-1422, ¶ 14 (8th Dist.). Here, as in *Franklin*, the officers "did not pull over appellant, nor did they activate their overhead lights when they stopped their patrol vehicle." *Franklin* at ¶ 15. There was nothing indicating that officers had ordered El to step out of his vehicle. The body-camera footage reflects that he was already outside the automobile as Officer Selleny and his partner approached him.

{¶ 25} *State v. Robinson*, 1997 Ohio App. LEXIS 4023 (12th Dist. Sept. 8, 1997), is also instructive. In that case, the Twelfth District held that there was no seizure at the time an officer approached the defendant's vehicle and made inquiries. It was shortly after midnight, and the vehicle was parked in the lot of a restaurant that had by that time closed for business. The *Robinson* Court found that the initial contact was a consensual encounter, not a stop or seizure implicating Fourth Amendment rights and requiring reasonable suspicion. The facts here, at least as to the officers' initial approach, are similar to those in *Robinson*. It was nearly midnight. El was parked in an alley. Indeed, the alley was not adjacent to a business that had simply closed for the evening, as in *Robinson*, but to the permanently closed juvenile detention center. Officer Selleny approached the vehicle and first asked, "What's up, man? You chillin'?"

{¶ 26} In this case, however, our independent review of the body-camera footage suggests that even if the interaction began as consensual, it quickly ceased being so. Immediately following his greeting, while observing El near the driver's side door of the vehicle, Officer Selleny took on a commanding tone. He twice told El to "step away from the car." He then directed El to "step to the front" of the car. Officer Selleny testified that this was "a safety request" based upon the location, the poor lighting conditions, and his personal experiences involving firearm-related crime in the area and stolen Kia vehicles. (Tr. 27.) Even crediting Officer Selleny's testimony that his commands were driven by concerns for officer safety, however, they were precisely that — commands. And the repeated commands were issued in an authoritative tone that left little doubt that compliance was required. This constituted a seizure under the Fourth Amendment. *See, e.g., State v. Hurtt*, 2018-Ohio-1263, ¶ 21 (4th Dist.) (holding that directive "to step to the front of the vehicle, for officer safety . . . constitutes a seizure under the Fourth Amendment").

{¶ 27} The *Hurtt* Court distinguished the facts in that case from *State v. Blankenship*, 2014-Ohio-3600 (4th Dist.), in which "the trial court found that the officer phrased his statement as a *request*." (Emphasis added.) *Hurtt* at ¶ 23. The *Hurtt* Court deferred to the trial court's conclusion, based on the trial court's observation of the officer's testimony, that the officer "phrased his statement to *Hurtt* directing him to get out of the vehicle and move to the front of the vehicle as an order." *Id.* at ¶ 24.

{¶ 28} In the present case, even though the trial court found Officer Selleny's testimony credible and characterized the interaction as "a consensual encounter," it did not directly address Officer Selleny's twice-repeated command that El step away from the car or his command that El move to the front of the vehicle. Furthermore, unlike the Fourth District when it decided *Blankenship* and *Hurtt*, the body-camera footage is available for review. Despite any deference to the trial court's factual findings in a suppression hearing, particularly as to credibility, this court may independently review body-camera footage. *See, e.g., Cleveland v. McClairn*, 2026-Ohio-3641, ¶ 21 (8th Dist.). "[T]he test for existence of a 'show of authority' is an objective one: not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person." *California v. Hodari D.*, 499 U.S. 621, 628 (1991). Officer Selleny's directive was not a request, but an order. Moreover, Officer Selleny testified that there were four officers on scene, in two vehicles, and that they coordinated their approach. The body-camera footage suggests that El's vehicle was boxed in by the two police patrol cars, with one patrol car in front and the other behind. Even if the encounter began as consensual, it quickly became an investigative detention. Therefore, the focus now shifts to reasonable suspicion.

2. Reasonable Suspicion for the Investigative Detention

{¶ 29} Fourth Amendment protections "extend to brief investigative stops that fall short of traditional arrests." *State v. Hairston*, 2019-Ohio-1622, ¶ 9, citing *United States v. Arvizu*, 534 U.S. 266, 273 (2002). "An officer may conduct such a

stop, i.e., a *Terry* stop, when he or she 'has a reasonable suspicion based on specific and articulable facts that criminal behavior has occurred or is imminent.'" *State v. Shabazz*, 2026-Ohio-3630, ¶ 28 (8th Dist.), quoting *Hairston* at ¶ 9, citing *Terry*, 392 U.S. at 30.

{¶ 30} "Reasonable suspicion is a standard less demanding than one for probable cause in quantity and content, as well as reliability." *State v. Hallowell*, 2026-Ohio-1036, ¶ 27 (7th Dist.), citing *State v. Muldrow*, 2016-Ohio-4774, ¶ 24 (10th Dist.), citing *Alabama v. White*, 496 U.S. 325, 330 (1990). *See also Hairston* at ¶ 10 ("The reasonable-suspicion standard is less demanding than the probable-cause standard used when analyzing an arrest."). "To justify a stop based on reasonable suspicion, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." (Cleaned up.) *Shabazz* at ¶ 29. *See also McClairn* at ¶ 10, citing *State v. Williams*, 51 Ohio St.3d 58, 60 (1990).

{¶ 31} "The determination whether an officer had reasonable suspicion to conduct a *Terry* stop must be based on the totality of circumstances 'viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold.'" *Hairston* at ¶ 10, quoting *State v. Andrews*, 57 Ohio St.3d 86, 87-88 (1991). *See also McClairn*, 2026-Ohio-3641, at ¶ 10 (8th Dist.). Furthermore, "[a]n assessment of the totality of the circumstances 'does not deal with hard certainties, but with probabilities.'" *Hairston* at ¶ 10, quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981). An appellate court must "consider the

cumulative facts 'not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.'" *Hairston* at ¶ 10, quoting *Cortez* at 418.

{¶ 32} Accordingly, it is erroneous to "focus[] on individual factors in isolation rather than on the totality of the circumstances." *Hairston*, 2019-Ohio-1622, at ¶ 15, citing *Arvizu*, 534 U.S. at 274. "The reasonable-suspicion determination must be 'based on the *collection* of factors, not on the individual factors themselves.'" (Emphasis in original.) *Hairston* at ¶ 15, quoting *State v. Batchili*, 2007-Ohio-2204, ¶ 19.

{¶ 33} When the totality of the circumstances are considered, the investigatory detention of El was supported by reasonable suspicion. Officer Selleny testified, and body-camera footage confirmed, that it was nearly midnight when officers approached El's vehicle. That vehicle, a Kia, was not parked in a lot or on the street, but in a dark, dead-end alley. It was not parked near a home or business, but rather adjacent to the fenced-off, decommissioned juvenile detention center. In other words, it was "not typically a place that people park or have any reason to necessarily be hanging out that late at night." (Tr. 20.) Officer Selleny testified to his own personal experience of "dealing with a rash of Kia thefts." (Tr. 18.) He testified that he "personally [had] recovered numerous stolen vehicles, including Kias, in and around" the area where El was parked. (Tr. 18.) The trial court found Officer Selleny's testimony credible.

{¶ 34} Moreover, Officer Selleny's explanation was not a post hoc justification raised for the first time at the suppression hearing. On the body-camera footage, Officer Selleny can clearly be heard telling El, "So the only reason why we're even having these conversations right now is that there's a lot of stolen cars over here, and this is a Kia." *See, e.g., State v. Freeman*, 64 Ohio St.2d 291, 292 (1980) (finding reasonable suspicion and noting, inter alia, that officer "explained to appellant that he had stopped him due to the fact that there had been much theft and criminal damage in the parking lot lately").

{¶ 35} "An officer's experience with criminal activity in an area and an area's reputation for criminal activity are factors" the Ohio Supreme Court has "found relevant to the reasonable-suspicion analysis." *Hairston*, 2019-Ohio-1622, at ¶ 12, citing *Andrews*, 57 Ohio St.3d at 88, and *State v. Bobo*, 37 Ohio St.3d 177, 179 (1988). Officer Selleny was "'not required to ignore the relevant characteristics of [the] location in determining whether the circumstances [were] sufficiently suspicious to warrant further investigation.'" *Hairston* at ¶ 15, quoting *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). *See also Shabazz*, 2026-Ohio-3630, at ¶ 33 (8th Dist.) (holding that even where officer "did not observe any overt criminal behavior," factors including officer's knowledge of prior criminal activity at location could "combine[] to create reasonable suspicion of drug activity"). Even the time of night — for example, the fact that it was "after dark" — is "another circumstance" the Ohio Supreme Court has "found to be of some significance in the reasonable-suspicion analysis." *Hairston* at ¶ 12, citing *Bobo* at 179.

{¶ 36} In *Freeman*, the Ohio Supreme Court held that the "specific and articulable facts supporting" reasonable suspicion included:

> (1) the location of the investigation being a high crime area; (2) the officer being quite aware of recent criminal activity in the motel parking lot in which appellant was parked; (3) the time of night being 3:00 a.m.; and (4) the appellant sitting alone in the car at the rear of the building for approximately 20 minutes with the engine turned off.

Freeman at 295. Under such circumstances, "the officer was only performing his police duties in a conscientious manner," and "[i]t is contra to the very nature of the duty of an officer to patrol in a high crime area and to be oblivious to such aforementioned facts." *Id.*

{¶ 37} In the present case, considering the totality of the circumstances as viewed through the eyes of a reasonable police officer, the cumulative facts rose to the level of reasonable suspicion. Officer Selleny testified to his personal knowledge that this was a high-crime area and that Kias were commonly stolen. It was very late at night. The vehicle was backed into a dead-end alley. This justified commencing an investigatory detention.

{¶ 38} Indeed, Officer Selleny's unrebutted testimony, which the trial court found credible, is bolstered by the explanation El himself provided for his presence. Assuming El was being truthful with the officers, this precise location — immediately adjacent to a fenced-off, decommissioned public building — was so prone to mischief that R-CAP was contracted to provide late-night armed security there. It would be illogical to conclude that patrol officers lacked reasonable

suspicion to investigate when they observed, at nearly midnight, an unmarked vehicle of a type typically stolen parked in exactly that spot.

3. Firearm Questions Prior to *Miranda* Advisements

{¶ 39} The investigatory detention began in earnest when Officer Selleny asked El what he was doing. El responded that he was "doing security here." He then asked El for identification. No *Terry* pat-down occurred at this juncture, and El was not handcuffed. It does not appear that any officer drew his or her firearm. Officer Selleny did, however, briefly ask El whether he had a gun on him, to which El responded, "I mean, well, yeah, I'm an armed security officer." These questions occurred before El was read his rights under *Miranda*, 384 U.S. 436.

{¶ 40} In *Miranda*, the United States Supreme Court established procedural safeguards for securing the privilege against self-incrimination guaranteed by the Fifth Amendment to the United States Constitution. Under the Fourteenth Amendment to the United States Constitution, the privilege against self-incrimination applies to a witness in a state proceeding. *Malloy v. Hogan*, 378 U.S. 1, 3 (1964). "A similar privilege is recognized in Article I, Section 10 of the Ohio Constitution." *Cleveland v. Oles*, 2017-Ohio-5834, ¶ 8.

{¶ 41} *Miranda* warnings are designed to protect a suspect from coercive pressure during a custodial interrogation. *Miranda* at 444. "A custodial interrogation is 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" *Oles* at ¶ 9, quoting *Miranda* at 444. "If a suspect provides

responses while in custody without having first been informed of his or her Miranda rights, the responses may not be admitted at trial as evidence of guilt." *Oles* at ¶ 9, citing *Miranda* at 479.

{¶ 42} Here, assuming that El was not free to leave, the scenario was akin to a traffic stop. "But 'not free to leave' and 'in custody' are distinct concepts." *Oles* at ¶ 30. "For purposes of the constitutional privilege against self-incrimination, the test is not whether the individual feels free to leave but whether the situation 'exerts upon a detained person pressures that sufficiently impair his free exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights.'" *Id.* at ¶ 31, quoting *Miranda*, 384 U.S. at 437. "The relevant inquiry is whether, under the totality of the circumstances, a reasonable person in the suspect's position would have understood himself or herself to be in custody." *Oles* at ¶ 33. Here, the totality of the circumstances indicates that El was not in custody when Officer Selleny asked whether he had a gun. While Officer Selleny had ordered El to move to the front of his car, he was not subject to a pat-down or other search. He was not handcuffed. He was not told that he was under arrest. He was not told that his vehicle was about to be searched. The officers had not activated their emergency lights. Nor was El placed in a police cruiser.

{¶ 43} "During a brief investigatory stop, without placing the suspect in custody or under arrest, an officer is entitled to ask questions to confirm his suspicions that criminal activity occurred." *Millerton*, 2015-Ohio-34, at ¶ 23 (2d Dist.). For example, "an officer can ask for identification or sufficient information

to write a citation or to run a background check for outstanding warrants, often called a 'field investigation.'" *Id.*, citing *State v. Wortham*, 145 Ohio App.3d 126, 131 (2d Dist. 2001). Moreover, "it is permissible for a police officer to ask someone stopped for a traffic violation if he is armed, even absent a reasonable suspicion that the person is armed and presents a danger to the officer or others." *State v. Brown*, 2012-Ohio-5532, ¶ 11 (2d Dist.), citing *State v. Lenoir*, 1997 Ohio App. LEXIS 2494 (2d Dist. June 6, 1997). "Although any search for weapons must be based on reasonable, articulable suspicion that a weapon is present, 'a simple inquiry as to whether the person stopped has a weapon is not a search or a seizure.'" *Brown* at ¶ 11, quoting *Lenoir* at *7. "[O]fficers have a legitimate concern for their safety when conducting traffic stops." *Brown* at ¶ 11.

{¶ 44} Here, the simple inquiry into whether El had a weapon was not a search or seizure. Indeed, this is not a case where Officer Selleny (or any other officer on scene) had initiated a *Terry* pat-down, and El was not yet handcuffed. The body-camera footage reflects that he was wearing a zippered top that not only fully covered his waistband but extended to approximately mid-thigh. Officer Selleny testified that in the interest of officer safety, he asked whether El had any weapons. Even though this question preceded any *Miranda* warnings, it did not violate El's Fifth Amendment rights. Even putting aside officer safety, El was not in police custody at this point.

{¶ 45} "As occurred in this case, the detainee's response to such a question may provide the reasonable, articulable suspicion that the person is armed." *Brown*

at ¶ 12. Here, El responded "yeah" to whether he had a weapon, affirmatively stated that he was an "armed security officer," and appeared to gesture towards the vehicle. Officer Krokos later asked El whether his firearm was in the vehicle, to which he responded, "Yeah." After running El's information through OHLEG, Officer Selleny asked El whether the gun in the vehicle was his. These inquiries into the location of the gun and ownership of the gun were likewise posed before El was formally arrested; El was not subjected to a custodial interrogation when Officer Krokos and Officer Selleny asked him those questions.

{¶ 46} Reiterating again, El was standing outside the vehicle. He was not handcuffed. He was not placed in a police cruiser. He had not been subjected to a pat-down. He was not told that he or his vehicle would be searched. This was, again, the functional equivalent of a traffic stop based on reasonable suspicion.[3] "[A]n ordinary traffic stop is analogous to a *Terry* stop rather than a formal arrest, and 'persons temporarily detained pursuant to such stops are not "in custody" for the purposes of *Miranda*.'" *Boone* at ¶ 37, quoting *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984). "The custody inquiry is objective," and "*Miranda* attaches only when 'freedom of action is curtailed to a "degree associated with formal arrest."'" *Boone* at ¶ 38, quoting *Berkemer* at 440, quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983).

---

[3] "There are two types of valid traffic stops: (1) where police have probable cause that a traffic violation has occurred or was occurring and (2) where police have reasonable articulable suspicion that criminal activity has occurred." *State v. McMillon*, 2019-Ohio-2716, ¶ 11 (7th Dist.), citing inter alia, *Terry*, 392 U.S. 1. *See also State v. Boone*, 2026-Ohio-3900, ¶ 43 (7th Dist.).

{¶ 47} Roadside questioning is noncustodial where "(1) the intrusion is minimal, (2) the questioning and detention are brief, and (3) the interaction is nonthreatening or nonintimidating." *Oles*, 2017-Ohio-5834, at ¶ 24. Applying those factors here, the questioning of El prior to his formal arrest, including officer inquiries into whether the firearm was in the vehicle and ownership of the firearm, was noncustodial. First, the officers approached El's vehicle but did not activate their lights or sirens. They did not conduct a pat-down of El or handcuff him. They did not indicate that they wanted to search him or his vehicle. The intrusion was therefore minimal. *See Oles* at ¶ 26.

{¶ 48} Second, the questioning and detention were brief. Indeed, the entire interaction preceding El's arrest occurred in fewer than six minutes. In the body-camera footage, Officer Selleny exits his police cruiser at approximately the 28-second mark. He arrests El at approximately the four-minute and 23-second mark. In other words, the prearrest encounter lasted just under four minutes. Officer Selleny spent most of that time performing database searches. His partner's body-camera footage indicates that during that time El casually conversed with other officers concerning the nature of his security work, explaining, for example, that the site was prone to trespass by urban explorers' intent on recording videos for YouTube.

{¶ 49} Third, and finally, the interaction was nonthreatening and nonintimidating. As in *Oles*, El "was not handcuffed" and "[t]here is no indication that the questioning was overly repetitive or that [El] objected to any of the [officer's]

requests or questions." *Id.* at ¶ 28. "This differs from the kind of interrogation — designed to pressure a suspect to confess to illegal conduct — that was of particular concern to the Supreme Court in *Miranda*." *Id.* Indeed, unlike *Oles*, El was not questioned while sitting in a police patrol car.

{¶ 50} Moreover, even if Officer Selleny's question as to ownership of the firearm was designed to elicit an incriminating admission from El, this does not change the outcome of our analysis. *Boone*, 2026-Ohio-3900 (7th Dist.), concerned a traffic stop for slow speed and marked lane violations. The officer advised Boone of the reason for the stop, requested Boone's license and insurance, asked where Boone was coming from, and also asked whether he had been drinking. The officer conceded in his testimony "that he already suspected impairment and viewed the questions as part of his OVI investigation." *Boone* at ¶ 40. The Seventh District concluded that this "does not create custody, because the officer's unarticulated plan is irrelevant to the objective inquiry. . . . [Boone] was not arrested until after the field sobriety tests," and his "pre-arrest statements [were] therefore admissible." *Id.*, citing *Berkemer*, 468 U.S. at 441-442. *See also State v. Montgomery*, 2022-Ohio-4030, ¶ 25 (1st Dist.) ("As clearly established in *Berkemer*, an officer's unarticulated intent to arrest an offender has no bearing on whether a suspect was in custody.").

{¶ 51} El was then unequivocally placed under arrest, handcuffed, and read his *Miranda* rights. His answer to whether he understood those rights was inaudible, but Officer Selleny's sole additional question concerned the location of

the firearm in the vehicle, which Officer Selleny asked while shining a flashlight into the driver's side window. El responded that the gun was under the driver's seat. By this point, he had already acknowledged possession of a gun while gesturing to the car, and Officer Selleny had confirmed a prior felony drug-offense history that disqualified El from possessing firearms. This created probable cause to believe El had committed the offense of having weapons while under disability in violation of R.C. 2923.13(A)(3), and therefore probable cause to effect the arrest. Therefore, even putting aside whether El understood his *Miranda* rights and implicitly waived them by responding to Officer Selleny's question regarding the location of the firearm, discovery of the weapon was a foregone conclusion. The State argued at the hearing, correctly, that the firearm "would have been inevitably discovered incident to that arrest." (Tr. 55.) "[C]ircumstances unique to the vehicle context justify a search incident to a lawful arrest when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" *Arizona v. Gant*, 556 U.S. 332, 343 (2009), quoting *Thornton v. United States*, 541 U.S. 615, 632 (2004) (Scalia, J., concurring in judgment). Accordingly, "when an officer lawfully arrests 'the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of the automobile' and any containers therein." *Gant* at 340-341, quoting *New York v. Belton*, 453 U.S. 454, 460 (1981).

{¶ 52} El's first assignment of error is overruled.

B. Second Assignment of Error

{¶ 53} In his second assignment of error, El contends that his conviction for having weapons while under disability in violation of R.C. 2923.13(A)(3) violates his right to keep and bear arms pursuant to the Second and Fourteenth Amendments to the United States Constitution and Article I, Section 4 of the Ohio Constitution.[4] The determination of whether a statute is constitutional is a question of law subject to de novo review. *Crutchfield Corp. v. Testa*, 2016-Ohio-7760, ¶ 16. In a case where a constitutional challenge was raised at the trial-court level, therefore, this court would be required to conduct an independent analysis "without deference to the lower court's legal conclusions." *State v. Tidwell*, 2021-Ohio-2072, ¶ 18.

{¶ 54} "[T]he question of the constitutionality of a statute must generally be raised at the first opportunity and, in a criminal prosecution, this means in the trial court." (Cleaned up.) *State v. Johnson*, 2024-Ohio-1163, ¶ 26 (8th Dist.). "'However, we retain the discretion to consider a waived constitutional argument under a plain-error analysis.'" *Id.*, quoting *State v. Barnhart*, 2021-Ohio-2874, ¶ 8 (3d Dist.), citing *In re M.D.*, 38 Ohio St.3d 149, 151 (1988).

{¶ 55} In the present case, no constitutional challenge to R.C. 2923.13(A)(3) was raised at the trial-court level, and El concedes that our review is limited to plain error. Pursuant to Crim.R. 52(B), this court may notice plain errors affecting

---

[4] El occasionally refers to the charges in the plural, but his appellate briefs focus exclusively on constitutional challenges to the disarmament of felons pursuant to R.C. 2923.13. He does not challenge his conviction for carrying concealed weapons in violation of R.C. 2923.12(A)(2).

substantial rights, even though those errors were not brought to the attention of the trial court. "Plain error is an obvious error or defect in the trial court proceedings that affects a substantial right." *State v. Dobson*, 2026-Ohio-2929, ¶ 61 (8th Dist.), citing *State v. Rogers*, 2015-Ohio-2459, ¶ 22. Plain error "requires a showing that there was an error, that the error was plain or obvious, and that but for the error the outcome of the proceeding would have been different and that reversal is necessary to correct a manifest miscarriage of justice." *Dobson* at ¶ 61, citing *State v. Buttery*, 2020-Ohio-2998, ¶ 7, citing *State v. Quarterman*, 2014-Ohio-4034, ¶ 16.

{¶ 56} However, "even if an accused shows that the trial court committed plain error affecting the outcome of the proceeding, an appellate court is not required to correct it." *Id.* at ¶ 23. Instead, "[w]e take notice of plain error with the 'utmost caution, under exceptional circumstances, and only to prevent a manifest miscarriage of justice.'" *State v. Nicholson*, 2022-Ohio-374, ¶ 37 (8th Dist.), quoting *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus. The party asserting plain error bears the burden of demonstrating it. *Nicholson* at ¶ 37. "This is an extremely high burden." *State v. Chapman*, 2019-Ohio-1452, ¶ 20 (8th Dist.).

{¶ 57} The Second Amendment to the United States Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The Fourteenth Amendment to the United States Constitution makes the Second Amendment right to keep and bear arms fully applicable to the States. *McDonald v. Chicago*, 561 U.S.

742, 791 (2010). *See also State v. King*, 2024-Ohio-4585, ¶ 24 (8th Dist.); *Johnson*, 2024-Ohio-1163, at ¶ 18-19 (8th Dist.).

{¶ 58} However, like most rights, "'the right secured by the Second Amendment is not unlimited.'" *United States v. Rahimi*, 602 U.S. 680, 690-691 (2024), quoting *Dist. of Columbia v. Heller*, 554 U.S. 570, 626 (2008). It is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 691, quoting *Heller* at 626. In *Rahimi*, the Court cautioned that it was "not suggest[ing] that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse." *Rahimi* at 682, citing *Heller* at 626. Accordingly, the Court reaffirmed that prohibitions "on the possession of firearms by 'felons and the mentally ill' . . . are 'presumptively lawful.'" *Rahimi* at 682, quoting *Heller* at 626-627.

{¶ 59} In analyzing whether a firearm regulation is constitutional, courts are required to apply a two-part test as first articulated in *New York State Rifle & Pistol Assn. v. Bruen*, 597 U.S. 1 (2022). First, courts must determine whether the "Second Amendment's plain text covers an individual's conduct." *Id.* at 24. If the answer is yes, then the "Constitution presumptively protects that conduct." *Id. See also King* at ¶ 26. The State must then demonstrate that the challenged statute is justified by affirmatively "demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen* at 24. The State satisfies this burden by presenting a historical record of permissible firearms law "'relevantly similar'" to the

challenged law, applying "reasoning by analogy[.]" *Id.* at 28-29, quoting Sunstein, *On Analogical Reasoning*, 106 Harv.L.Rev. 741, 773 (1993). "Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* at 24, quoting *Konigsberg v. State Bar of California*, 366 U.S. 36, 49, fn. 10 (1961).

{¶ 60} "There are two ways to call into question the constitutionality of a statute: a facial challenge or an as-applied challenge." *State v. Philpotts*, 2025-Ohio-1179, ¶ 14 (8th Dist.), citing *Harrold v. Collier*, 2005-Ohio-5334, ¶ 37. "'A facial challenge to a statute is the most difficult to bring successfully because the challenger must establish that there exists no set of circumstances under which the statute would be valid.'" *Id.*, quoting *Harrold* at *id.* In contrast, an as-applied challenge "alleges that a particular application of a statute is unconstitutional." *Derrico v. State*, 2019-Ohio-1767, ¶ 17 (8th Dist.). El argues that R.C. 2923.13 is unconstitutional "on its face and as applied" with respect to its "nonviolent felons" such as himself. Like the defendant in *Philpotts*, he specifically argues "that only violent felons or those posing a danger to the community should be disarmed." *Philpotts* at ¶ 15.

{¶ 61} El was convicted for violating R.C. 2923.13(A)(3), which provides in pertinent part that "[u]nless relieved from disability . . . no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance" if they have "been convicted of any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse." The predicate

conviction, as specified in the indictment and bill of particulars, was trafficking in violation of R.C. 2925.03 in Cuyahoga C.P. No. CR-09-522488-A. El asks us to find R.C. 2923.13(A)(3) unconstitutional because, unlike R.C. 2923.13(A)(2), it disarms individuals not convicted of any felony offense of violence without a showing that such an individual is a danger to the community.

{¶ 62} The First District, in *State v. Beckley*, 2025-Ohio-4829 (1st Dist.), addressed similar arguments under a plain-error analysis. The court held that Beckley had "not identif[ied] an obvious error by the trial court in failing to declare either provision unconstitutional on its own accord." *Id.* at ¶ 64. It noted that some federal courts had found similar provisions unconstitutional where they categorically disarmed "those who merely possess, rather than traffic, drugs of abuse," but further noted that "the Fifth District upheld R.C. 2923.13(A)(3) against this very challenge" in *State v. Skaggs*, 2024-Ohio-4781 (5th Dist.). *Beckley* at ¶ 64-65. It also noted that both the Fifth District and this court "have rejected plain error arguments of the variety made here, in part because *Bruen* errors are not obvious." *Id.* at ¶ 65, citing *State v. Jenkins*, 2024-Ohio-1094 (5th Dist.), and *Johnson*, 2024-Ohio-1163 (8th Dist.). The First District held that "[g]iven the uncertainty of the law in this area and the lack of any precedent directly compelling the result that Beckley seeks," it would "decline to hold that there was an obvious error in the trial court's decision to adjudicate, rather than dismiss, his firearms charges." *Id.* at ¶ 67.

{¶ 63} The landscape at the time of this appeal is no less uncertain. *See, e.g., State v. Thacker*, 2024-Ohio-5835, ¶ 105 (1st Dist.) (holding that R.C. 2923.13(A)(3)

is unconstitutional as applied to a disability stemming from a juvenile adjudication for a nonviolent drug-trafficking offense), *appeal accepted*, *03/04/2025 Case Announcements*, 2025-Ohio-705; *State v. Reed*, 2026-Ohio-3423, ¶ 22 (1st Dist.) (noting that in *Thacker*, "the juvenile character of the adjudication provided the center of gravity for our analysis" because juveniles are "not branded with the stamp of unreformability the common law imposed upon convicted felons"); *State v. Thompson*, 2026-Ohio-1725, ¶ 68 (10th Dist.) (agreeing "with the courts that have concluded that disarmament under R.C. 2923.13 is not necessarily permanent because Ohio law provides individuals with a method to petition for relief from a prohibition on possessing firearms"). Whether certain portions of R.C. 2923.13(A)(2), which concerns felonies of violence, are definitively unconstitutional is likewise undetermined at this juncture. *See Philpotts*, 2025-Ohio-1179 (8th Dist.) (affirming trial court's decision declaring provision prohibiting firearm possession by a defendant under indictment for a felony of violence unconstitutional on its face), *appeal accepted*, *08/05/2025 Case Announcements*, 2025-Ohio-2749; *King*, 2024-Ohio-4585, at ¶ 36 (8th Dist.) (upholding constitutionality of R.C. 2923.13(A)(2) where "the predicate 'disabling' offense . . . was a juvenile adjudication that would have been felony domestic violence had King been convicted in adult court"), *appeal accepted*, *02/26/2025 Case Announcements*, 2025-Ohio-598.

{¶ 64} In *Johnson*, this court conducted a plain-error analysis in considering a constitutional challenge to R.C. 2923.13(A)(2) and (3). This court held that "[f]or

an error to be 'plain' or 'obvious,' the error must be plain 'under current law' 'at the time of appellate consideration.'" *Johnson* at ¶ 29, quoting *Johnson v. United States*, 520 U.S. 461, 467-468 (1997). As a result, an "'error cannot be plain or obvious if the law is unsettled on the issue at the time of trial and remains so on appeal.'" *Johnson* at ¶ 29, quoting *United States v. Nieto*, 66 M.J. 146, 151 (C.A.A.F. 2008) (Stucky, J., concurring), citing *United States v. Garcia-Rodriguez*, 415 F.3d 452, 455-456 (5th Cir. 2005). *See also State v. Harden*, 2022-Ohio-1436, ¶ 36 (4th Dist.) ("If the standard is unsettled, then an error in applying, or failing to apply, a particular standard could not, by definition, be an obvious error."); *United States v. Gonzalez*, 792 F.3d 534, 538 (5th Cir. 2015) ("A lack of binding authority is often dispositive in the plain-error context."); *United States v. Rodriguez*, 2024 U.S. App. LEXIS 18166, *9 (3d Cir. July 24, 2024) ("Rodriguez has not cited to any binding, current caselaw that the Second Amendment prohibits disarming people similarly situated to him, so Rodriguez's challenge does not survive plain error review."); *United States v. Trejo*, 610 F.3d 308, 319 (5th Cir. 2010) ("An error is not plain under current law if a defendant's theory requires the extension of precedent.").

{¶ 65} This court held that Johnson had failed to establish plain error "because the trial court's failure to sua sponte dismiss or otherwise vacate Johnson's weapons convictions cannot be construed as a plain or obvious error." *Johnson*, 2024-Ohio-1163, at ¶ 30 (8th Dist.). It explained:

> Viewing the current state of the law in Ohio, both at the time Johnson's convictions were entered and at the time of this court's review, we find no binding authority to suggest R.C. 2923.13(A)(2)-(3) is

> unconstitutional as applied to offenders in Johnson's position. As acknowledged by the parties in their competing appellate briefs, the interpretation and application of *Bruen* is a novel issue in this state and remains unsettled in courts across the country. It is well beyond our present need to catalog the full field of post-*Bruen* cases and the various areas of uncertainty they portray. Regardless of how this court or our sister courts inevitably resolve the conflicting application of *Bruen* to Second Amendment challenges that are properly raised before the trial court, it is clear that the constitutional implications of *Bruen* is unsettled and subject to an ongoing debate.

(Footnote omitted.) *Id.*

{¶ 66} El argues that the United States Supreme Court's recent decision in *United States v. Hemani*, ___U.S.___, 146 S.Ct. 1677 (2026), has lifted the cloud of uncertainty surrounding disqualifications based on drug-related offenses. That argument is not persuasive. *Hemani* involved a challenge to 18 U.S.C. 922(g)(3), which categorically disarms any individual "who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)." The *Hemani* Court found section 922(g)(3) "unconstitutional as applied to a marijuana user because the Government's historical evidence did not support disarming a person *for drug use alone*, without any showing that he posed a danger." (Emphasis added.) *United States v. Mannan*, 2026 U.S. Dist. LEXIS 199195, *24, fn. 15 (D.N.J. Sept. 2, 2026).

{¶ 67} Unlike El, Hemani had not been convicted of a felony drug offense, much less a felony offense of trafficking in drugs. Hemani's "only disqualifying conduct was using marijuana a few times a week, with no nexus to, for example, violence, *drug trafficking*, or any felony indictment." (Emphasis added.) *United States v. Sabattus*, 2026 U.S. Dist. LEXIS 135614, *24 (D.Me. June 18, 2026).

Compare United States v. Kimble, 142 F.4th 308, 318 (5th Cir. 2025) ("Kimble's predicate convictions for drug trafficking convey that he belongs to a class of dangerous felons that our regulatory tradition permits legislatures to disarm."). The Supreme Court expressly stated that it declined to "address 18 U.S.C. § 922(g)(1)'s provision disarming individuals *convicted of felonies (often including drug-related ones).*" (Emphasis added.) *Hemani* at 1693. *See also United States v. Torres*, 188 F.4th 1098, 1101 (8th Cir. 2026) (rejecting facial and as-applied challenge to 18 U.S.C. 922(g)(1) as "foreclosed by precedent" even after *Hemani*); *Sabattus* at *24 ("[T]he [*Hemani*] Court carefully limited its holding, expressly declining to address prosecutions involving individualized proof of dangerousness, categorical disarmament laws, or — critically — § 922(g)(1)'s prohibition on firearm possession by those convicted of felonies.").

{¶ 68} The law remains unsettled. Accordingly, the trial court did not commit plain error by not dismissing the indictment sua sponte based upon the Second Amendment.

{¶ 69} El further contends that the Ohio Constitution provides more extensive firearms rights than those found in the United States Constitution. Again, he failed to raise this argument in the trial court; therefore, to reverse, plain error must be found.

{¶ 70} Article I, Section 4 of the Ohio Constitution, states: "The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in

strict subordination to the civil power." This court has previously conducted an exhaustive analysis of decisions from the United States Supreme Court, the Ohio Supreme Court, and other appellate districts and found "that there is no distinction between the protections of Article I, Section 4 and the Second Amendment for purposes of reviewing the constitutional validity of R.C. 2923.13(A)(2)." *King*, 2024-Ohio-4585, at ¶ 39 (8th Dist.). There is nothing in the text of the Ohio Constitution, in the *King* Court's decision, or in the cases cited therein that would alter that conclusion when analyzing R.C. 2923.13(A)(3) as opposed to (A)(2). Furthermore, El has not pointed us to any such authority. Indeed, he has not developed any argument suggesting that the Ohio Constitution should be interpreted to provide broader protection in this context. He merely cites Article I, Section 4 alongside the Second Amendment. *Strauss v. Strauss*, 2011-Ohio-3831, ¶ 72 (8th Dist.) ("'If an argument exists that can support this assigned error, it is not this court's duty to root it out.'"), quoting *Cardone v. Cardone*, 1998 Ohio App. LEXIS 2028, *22 (9th Dist. May 6, 1998); *Bertalan v. Bertalan*, 2025-Ohio-1443, ¶ 77 (8th Dist.); *Manning v. Cuyahoga Metro. Hous. Auth.*, 2025-Ohio-4751, ¶ 15 (8th Dist.).

{¶ 71} Finally, El argues in the alternative that his plea was not entered knowingly, intelligently, and voluntarily because he did not know that constitutional defenses might be available to him. This argument is foreclosed for three reasons. First, El has not separately assigned error with respect to his claim that his plea was not entered knowingly, intelligently, and voluntarily. "Generally, an appellate court

need not address an appellant's argument if it is not set forth as an assignment of error in conformity with App.R. 12(A) and 16(A)." *Fig as Custodian for Fig Ohio18, L.L.C. v. Lynch*, 2024-Ohio-3196, ¶ 39 (8th Dist.), citing *Eberhard Architects, L.L.C. v. Schottenstein, Zox & Dunn Co., L.P.A.*, 2015-Ohio-2519, ¶ 16 (8th Dist.), citing *State v. Mann*, 1991 Ohio App. LEXIS 5290, *15 (8th Dist. Nov. 7, 1991). An appellate court may nevertheless "reach the merits of an argument if the assignments of error were 'readily discernable' from the propositions of law, and where the opposing party responded as if the propositions were assignments of error." *Lynch* at ¶ 39, quoting *Eberhard Architects* at ¶ 16, citing *JPMorgan Chase Bank, N.A. v. Allton*, 2014-Ohio-3742, ¶ 6-7 (10th Dist.). Here, none of El's App.R. 12(A)(4) statements of the issues presented for review touch on whether his plea was entered knowingly, intelligently, and voluntarily, and the State did not respond as if El assigned error to those aspects of his plea.

{¶ 72} Second, El's argument consists merely of the conclusory suggestion that his no-contest plea "was not made in a knowing, voluntary, and intelligent manner, as he was unaware that the law was potentially unconstitutional." He cites *Boykin v. Alabama*, 395 U.S. 238 (1969), and *Brady v. United States*, 397 U.S. 742 (1970), but supplies no discussion of those cases or even relevant pinpoint citations. "The appellant, rather than the appellate court, bears the burden to construct the necessary legal arguments that support the designated assignments of error." *Lewicki v. Grange Ins. Co.*, 2023-Ohio-4544, ¶ 41 (8th Dist.), citing *Doe v. Cuyahoga Cty. Community College*, 2022-Ohio-527, ¶ 26 (8th Dist.). *See also In re*

K.C., 2025-Ohio-5414, ¶ 22 (8th Dist.) (holding appellant did not demonstrate error where his brief made conclusory statements that the court erred but did not provide supportive legal arguments); *Story v. Story*, 2021-Ohio-2439, ¶ 30 (8th Dist.) (appellate court not obligated to construct or develop arguments for appellant or to guess at undeveloped claims).

{¶ 73} Third, the argument that *Brady* aids El's cause is unconvincing. The *Brady* Court wrote that "[t]he rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision." *Brady* at 757. *See also State v. Brown*, 2023-Ohio-2064, ¶ 14 (8th Dist.) (same). In *Brady*, the Court considered whether a guilty plea could be considered voluntary and intelligent where the plea was entered to avoid a possible death sentence under 18 U.S.C. 1201, but the statute's death-sentence provision was later deemed unconstitutional. The *Brady* Court explained that its decision in the intervening case, *United States v. Jackson*, 390 U.S. 570 (1968), "ruled neither that all pleas of guilty encouraged by the fear of a possible death sentence are involuntary pleas nor that such encouraged pleas are invalid whether involuntary or not." *Brady* at 747.

{¶ 74} The *Brady* Court further explained that *Jackson* "neither fashioned a new standard for judging the validity of guilty pleas nor mandated a new application of the test theretofore fashioned by courts and since reiterated that guilty pleas are valid if both 'voluntary' and 'intelligent.'" *Id.* Simply put, "[t]he fact that Brady did not anticipate [*Jackson*] does not impugn the truth or reliability of his plea." *Brady*

at 757. The Court found that even if it "assume[d] that Brady would not have pleaded guilty" except for the unconstitutional death-penalty provision in the United States Code, "this assumption merely identifies the penalty provision as a 'but for' cause of his plea. That the statute caused the plea in this sense does not necessarily prove that the plea was coerced and invalid as an involuntary act." *Id.* at 750.

{¶ 75} El's second assignment of error is overruled.

C. Third Assignment of Error

{¶ 76} In his third assignment of error, El contends that he was denied the effective assistance of counsel. He argues that trial counsel "should have filed a motion to dismiss on the grounds that his right to keep and bear arms was violated." There is no merit to this assignment of error.

{¶ 77} Pursuant to the Sixth Amendment of the United States Constitution and Article I, Section 10 of the Ohio Constitution, defendants in all criminal proceedings are entitled to the assistance of counsel for their defense. Furthermore, the United States Supreme Court has held that "'the right to counsel is the right to the *effective* assistance of counsel.'" (Emphasis added.) *Strickland v. Washington*, 466 U.S. 668, 686 (1984), quoting *McMann v. Richardson*, 397 U.S. 759, 771, fn. 14 (1970).

{¶ 78} To establish a claim of ineffective assistance of counsel, El "must demonstrate that (1) counsel's performance was deficient; and (2) the deficient performance prejudiced him so as to deprive him of a fair trial." *State v. Bennett*, 2023-Ohio-4412, ¶ 10 (8th Dist.), citing *State v. Trimble*, 2009-Ohio-2961, ¶ 98,

citing *Strickland* at 687. In *State v. Thompson*, 2024-Ohio-5910 (8th Dist.), this court stated that "'the failure to make a showing of *either* deficient performance or prejudice defeats a claim of ineffective assistance of counsel.'" (Emphasis added.) *Id.* at ¶ 5, quoting *In re S.A.*, 2019-Ohio-4782, ¶ 46 (8th Dist.). *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).

{¶ 79} "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, "[c]ounsel'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).

{¶ 80} 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."). "'[G]reat deference' is afforded to trial counsel's performance and tactical decisions and trial strategies." *McCann* at ¶ 17, quoting *State v. Harris*, 2022-Ohio-4630, ¶ 49 (8th Dist.). Even "debatable" or "questionable" trial tactics generally "do not constitute ineffective assistance of counsel." *Harris* at ¶ 50, citing *State v. Scarton*, 2020-Ohio-2952, ¶ 90 (8th Dist.). "In evaluating a claim of ineffective assistance of counsel, a court must be mindful that there are countless ways for an attorney to provide effective assistance in a given case, and it must give great deference to counsel's performance." *Bennett* at ¶ 10. 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.).

{¶ 81} "The reasonableness of an attorney's conduct must be considered in light of the facts of each case." *Johnson*, 2024-Ohio-1163, at ¶ 32 (8th Dist.), citing *State v. Debose*, 2022-Ohio-837, ¶ 25 (8th Dist.). "[S]tatutes are presumed constitutional." *Johnson* at ¶ 32. El "has not identified a successful facial or as-applied challenge" to R.C. 2923.13(A)(3)'s application to adult drug traffickers "at the time of his convictions." *Id.* "Generally, it is not ineffective assistance for a lawyer to 'maneuver within the existing law, declining to present untested or rejected legal theories.'" *Id.*, quoting *State v. McNeill*, 83 Ohio St.3d 438, 449 (1988).

{¶ 82} Moreover, even if El's contention was accepted that *Hemani*, ___U.S.___, 146 S.Ct. 1677, was relevant to his circumstances — an argument already rejected — "[t]rial counsel cannot be ineffective for failing to predict and argue future changes in the law." *State v. Driffin*, 2022-Ohio-804, ¶ 9 (8th Dist.), citing *State v. Lucic*, 2009-Ohio-5686, ¶ 5 (8th Dist.). Rather, "[i]n assessing ineffective assistance under *Strickland*, courts look to the status of the law at the time of the alleged deficiency by defense counsel." *State v. Thomas*, 2025-Ohio-1516, ¶ 28 (1st Dist.). In that case, at the time Thomas entered his no-contest plea, "no appellate court in Ohio had determined that any of the statutes under which Thomas was charged were unconstitutional on Second Amendment grounds. Thus, no authority compelled the result Thomas now seeks." *Id.* Even if "it was possible that he would have prevailed" on a motion to dismiss, "the *Strickland* standard for ineffective assistance of counsel requires a higher showing." *Id.* at ¶ 29.

{¶ 83} El's third assignment of error is overruled.

{¶ 84} 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. Case remanded to the trial court for execution of sentence.

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

_____
DEENA R. CALABRESE, JUDGE

SEAN C. GALLAGHER, J., CONCURS IN JUDGMENT ONLY (WITH SEPARATE OPINION);
EMANUELLA D. GROVES, P.J., DISSENTS (WITH SEPARATE OPINION)

SEAN C. GALLAGHER, J., CONCURRING IN JUDGMENT ONLY:

{¶ 85} I respectfully concur in judgment only with the lead opinion. The parties disagree whether the officers had a reasonable articulable suspicion to perform the investigative detention of El while he was parked in the alley. El believes that the officers did not, because of the case authority establishing that a high-crime area alone is insufficient to detain citizens. The State counters that the officers' experience and knowledge of the area, which was near an abandoned juvenile detention facility and a hotbed for criminal misconduct, tips the scales under the totality of the circumstances, authorizing a brief detention to perform a search for warrants based on El's responses to the officer's initial questions. The lead and dissenting opinions thoroughly address those arguments.

{¶ 86} That discussion posed by El in this appeal, however, does not address the trial court's decision or the arguments presented at the suppression hearing. The trial court held that the encounter at least began as a consensual one, and during that portion of the encounter, the officers discovered that El was conducting armed

security, a fact leading the officers to determine that El could not be in possession of a firearm. The trial court's decision classifying the initial encounter as consensual is not addressed by El in his appeal. This complicates appellate review because if consensual, the State was not required to demonstrate a reasonable articulable suspicion in approaching and asking El for his name and the purpose of his presence (the answers to which provided the evidence supporting probable cause for his arrest). *See State v. Berry*, 2018-Ohio-4791, ¶ 23 (5th Dist.) (reiterating that a consensual encounter occurs when an officer approaches a person in a public place, requests information, and the person is free to refuse to answer questions). I agree with the dissent that the high-crime nature of the area is alone insufficient to establish a reasonable articulable suspicion, but that observation does not address the question of how to classify the initial encounter. Because El has not addressed the trial court's ruling, *see* App.R. 16(A)(7), I would refrain from delving into that analysis. Accordingly, I concur in judgment only with the lead opinion.

EMANUELLA D. GROVES, P.J., DISSENTING:

{¶ 87} Respectfully, I dissent since I do not believe there was reasonable suspicion for El's investigative detention.

{¶ 88} It is well settled that a person's mere presence in a high-crime area is insufficient to rise to a reasonable suspicion of criminal activity. *State v. Carter*, 69 Ohio St.3d 57, 65 (1994) (examining the propriety of an investigative stop that took place in a high-crime area and stating "that factor alone is not sufficient to justify an

investigative stop [and t]o hold otherwise would result in the wholesale loss of the personal liberty of those with the misfortune of living in high crime areas"). The fact that El was parked

> in a high-crime area do[es] not diminish the requirements of the Fourth Amendment or its interpretation in *Terry*. The facts and circumstances before the officer must yet reasonably suggest that some specific criminal misconduct is afoot. That specificity requirement focuses on the criminal character of the act, not on its setting. Acts that are essentially neutral or ambiguous do not become specifically criminal in character because they occur in a high-crime area. Acts that are not specifically criminal in character do not become criminal because they are inapposite to their setting and, therefore, "suspicious." The setting can inform the officer's judgment, but it does not make the act criminal. In order to detain an individual to investigate for crime, some nexus between the individual and specific criminal conduct must reasonably exist and must be articulated by the officer.

(Cleaned up.) *State v. Jackson*, 2017-Ohio-1369, ¶ 22 (8th Dist.).

{¶ 89} Here, Officer Selleny failed to articulate any nexus between El and any suspicious criminal conduct justifying the investigative detention. Officer Selleny testified that he observed a Kia SUV "backed into a very dark, almost unlit, basically dead end alley" just before midnight in a criminal "hotspot for the city" where he previously "recovered numerous stolen vehicles, including Kias. . . ." Officer Selleny testified that he was not responding to a specific call for a stolen vehicle or any other criminal offense, a traffic infraction was not committed, and El was not parked illegally, intoxicated, threatening, disrespectful, or making any furtive gestures. Therefore, the investigative detention was premised upon Officer Selleny's knowledge of criminal activity in this high-crime area and his recovery of stolen vehicles "in and around that area," not any observation specific to El; El was merely

exiting or outside of the driver's side door of a Kia that he owned in a high-crime area.

{¶ 90} Accordingly, I believe that the officers lacked any particularized suspicion that El was engaged in, or about to engage in, any criminal activity. Instead, the State's case "'rests solely on the character of the area'" and the officers lacked reasonable suspicion to initiate the investigative detention of El. *Id.* at ¶ 22-23 (finding that a detective did not articulate a sufficient basis for his reasonable suspicion that a crime was afoot at the time he initiated an investigatory stop, and the investigatory stop was initiated based on a mere hunch and the belief that the defendant's parked vehicle was suspicious based on the character of the area), quoting *State v. Pettegrew*, 2009-Ohio-4981, ¶ 18 (8th Dist.). *See, e.g., State v. Mosby*, 2021-Ohio-2255, ¶ 34 (6th Dist.) (finding that the testimony provided at the suppression hearing established that an investigative stop was initiated by experienced officers, in a high-crime area, late at night but holding that "these factors alone do not support the initiation of an investigative stop, because the officers who responded . . . did not possess the requisite reasonable suspicion to believe that *appellant* was engaged in criminal activity") (emphasis in original); *State v. James*, 2018-Ohio-5033, ¶ 20-25 (8th Dist.) (finding that there was no proper justification to conduct an investigatory stop of a legally parked car occupied by the defendant in the early morning and in an area near a drug house known to police where an overdose occurred weeks earlier); *State v. Williams*, 2010-Ohio-901, ¶ 12 (8th Dist.) (holding that the defendant's "mere presence with two other

people near a corner perhaps known for drug activity was not enough to give rise to a reasonable suspicion of criminal activity, at least not in America 2009"); *State v. Porter*, 2006-Ohio-4585, ¶ 12 (8th Dist.) (finding that without any evidence of criminal or even suspicious behavior there were insufficient bases to support a reasonable suspicion of criminal activity where the defendant drove a light colored vehicle, as described in an anonymous tip, into a closed parking lot known for high drug sales).

{¶ 91} I am also concerned with the larger impact this decision may have on urban — predominantly minority — communities. Diluting the reasonable-suspicion standard in this way penalizes the residents of high-crime neighborhoods based on location alone. Geography should not be substituted for individualized suspicion, and residents should be able to move freely and lawfully throughout their communities without being subject to investigative detention.

{¶ 92} Indeed, when law-abiding citizens are stopped in the absence of reasonable suspicion, pieces of their dignity and humanity are left behind, and they are left wondering what they did to elicit an unlawful investigative detention. Where no crime was committed and no charges follow, the matter never reaches the court system, and these individuals often have little recourse when their rights are violated. Therefore, when a stop is reviewed, it is our duty "to protect the integrity of the court and its proceedings" by suppressing illegally obtained evidence. *State v. Baker*, 2007-Ohio-5450, ¶ 12 (8th Dist.).

{¶ 93} Accordingly, I would sustain El's first assignment of error, reverse the denial of El's motion to suppress evidence, and remand the matter to the trial court for further proceedings.