[Cite as *State v. Bowen*, 2023-Ohio-2201.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
UNION COUNTY

STATE OF OHIO,

PLAINTIFF-APPELLEE, **CASE NO. 14-22-17**

v.

ADAM BOWEN, **O P I N I O N**

DEFENDANT-APPELLANT.

Appeal from Union County Common Pleas Court
Trial Court No. 21-CR-0167

Judgment Affirmed

Date of Decision: June 29, 2023

APPEARANCES:

Alison Boggs **for Appellant**

Raymond Kelly Hamilton and Andrew Bigler **for Appellee**

MILLER, P.J.

{¶1} Defendant-appellant, Adam Bowen ("Bowen"), appeals the June 29, 2022 judgment of sentence of the Union County Court of Common Pleas. For the reasons that follow, we affirm.

{¶2} On September 18, 2020, Deputy Wyatt Peyton ("Deputy Peyton") of the Union County Sheriff's Office stopped a vehicle driven by Bowen in Marysville after observing the vehicle exceed the speed limit. When Deputy Peyton asked Bowen to produce his identification, Bowen claimed he did not have it. Bowen further claimed his name to be "Derek Wilson" which he subsequently corrected to "Derek Keeran." During the stop, a drug-detection canine officer named Andor was led around the exterior of the vehicle. Andor performed an "open-air sniff" of the area surrounding Bowen's vehicle and alerted to the presence of drugs in the vehicle. Based on Andor's alert, officers on the scene searched the vehicle and located hashish inside a backpack in the back seat.

{¶3} On August 12, 2021, the Union County Grand Jury indicted Bowen on two counts: Count One of possession of hashish in violation of R.C. 2925.11(A), (C)(7)(c), a fifth-degree felony, and Count Two of obstructing official business in violation of R.C. 2921.31(A), (B), a second-degree misdemeanor. On September 15, 2021, Bowen appeared for arraignment and pleaded not guilty to the counts in the indictment.

{¶4} On January 25, 2022, Bowen filed a motion to suppress the evidence obtained during the search of his vehicle. In support of his motion, Bowen argued Deputy Peyton did not have reasonable suspicion to extend the traffic stop for the purpose of deploying Andor to sniff around the vehicle. Bowen contended that he was, therefore, unlawfully seized and the hashish discovered during the subsequent search was fruit of the unlawful seizure.

{¶5} A hearing on Bowen's motion to suppress evidence was held on March 23, 2022 and April 6, 2022. In a judgment entry filed on April 11, 2022, the trial court denied Bowen's motion to suppress evidence. The court found the investigative detention was prolonged by Bowen's attempt to mislead the officers and the passenger's efforts to produce proof of insurance. The trial court concluded that, from the totality of circumstances, officers had probable cause to search the vehicle.

{¶6} A change-of-plea hearing was held on May 4, 2022. At the hearing, Bowen withdrew his previous pleas of not guilty and pleaded no contest to the counts in the indictment. The trial court accepted Bowen's no-contest pleas and found him guilty. On June 29, 2022, the trial court sentenced Bowen to five years of community control. That same day, the trial court filed its judgment entry of sentence.

{¶7} Bowen filed his notice of appeal on July 13, 2022. He raises one assignment of error for our review.

Assignment of Error

> **The trial court erred when it denied Appellant's suppression motion.**

Suppression Motion Standard of Review

{¶8} "Appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. At a suppression hearing, the trial court assumes the role of trier of fact and, as such, is in the best position to evaluate the evidence and the credibility of witnesses. *Id. See State v. Carter*, 72 Ohio St.3d 545, 552 (1995). When reviewing a ruling on a motion to suppress, "an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence." *Burnside* at ¶ 8, citing *State v. Fanning*, 1 Ohio St.3d 19 (1982). With respect to the trial court's conclusions of law, however, our standard of review is de novo, and we must independently determine whether the facts satisfy the applicable legal standard. *Id.*, citing *State v. McNamara*, 124 Ohio App.3d 706 (4th Dist.1997).

{¶9} Bowen's challenge to the trial court's denial of his motion to suppress is two-pronged. First, Bowen argues that Deputy Peyton violated the Fourth Amendment by prolonging the traffic stop for the purpose of getting the canine to the vehicle. Second, Bowen challenges Andor's credibility. He argues the canine's

alert did not create probable cause for a warrantless search of the vehicle because the canine was trained to alert for marijuana, some variants of which are now legal.

Length of Traffic Stop

{¶10} In his motion to suppress, Bowen did not challenge the constitutionality of the initial stop of the vehicle, and after reviewing the record, we are satisfied that Deputy Peyton had probable cause to stop the vehicle after he observed Bowen traveling approximately 75 miles per hour in a 55 mile per hour zone. Rather, Bowen argued that the evidence seized from the vehicle should be suppressed because Deputy Peyton unreasonably prolonged the traffic stop to await the arrival of the drug-detection dog.

{¶11} "The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution guarantee the right to be free from unreasonable searches and seizures." *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, ¶ 7, citing *State v. Orr*, 91 Ohio St.3d 389, 391 (2001). "Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning" of the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809-810, 116 S.Ct. 1769 (1996), *United States v. Martinez-Fuerte*, 428 U.S. 543, 556, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976), and *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975). Because an

automobile stop involves the seizure of persons within the meaning of the Fourth Amendment, "[a]n automobile stop is * * * subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." *Whren* at 810, 116 S.Ct. 1769. A traffic stop is reasonable, and therefore constitutionally permissible, if it is supported either by probable cause or by a reasonable, articulable suspicion that a motorist has committed, is committing, or is about to commit a crime, including a violation of the traffic laws. *State v. Moiduddin*, 3d Dist. Union No. 14-18-15, 2019-Ohio-3544, ¶ 11. However, "[w]hen police stop a vehicle without either probable cause or a reasonable articulable suspicion of criminal activity, the seizure is violative of constitutional rights and evidence derived from such a stop must be suppressed." *State v. Clark*, 6th Dist. Wood No. WD-17-025, 2018-Ohio-2029, ¶ 22, citing *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

{¶12} "[A] seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." *Illinois v. Caballes*, 543 U.S. 405, 407, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005), citing *United States v. Jacobsen*, 466 U.S. 109, 124, 104 S.Ct. 1652, 80 L.Ed.2d 85 (1984). For example, "[a] seizure that is justified solely by the interest in issuing a * * * ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Id.*

{¶13} "'When an officer detains a motorist for a traffic violation, the stop should delay the motorist only for the amount of time necessary to issue a citation or warning.'" *State v. Hall*, 2d Dist. Darke No. 2016-CA-13, 2017-Ohio-2682, ¶ 8, quoting *State v. Hill*, 2d Dist. Montgomery No. 26345, 2016-Ohio-3087, ¶ 9, citing *State v. Batchili*, 113 Ohio St.3d 403, 2007-Ohio-2204, ¶ 12; *State v. Troutman*, 3d Dist. Marion No. 9-11-17, 2012-Ohio-407, ¶ 22. "'The reasonable stop time includes the amount of time it takes to conduct a computer check on the driver's license, registration, and vehicle plates.'" *Hall* at ¶ 8, quoting *Hill* at ¶ 9; *Rodriguez v. United States*, 575 U.S. 348, 355, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015) ("[A]n officer's mission includes 'ordinary inquiries incident to [the traffic] stop' * * * [such as] checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance."), quoting *Caballes* at 408, 125 S.Ct. 834. "'"In determining if an officer completed these tasks within a reasonable length of time, the court must evaluate the duration of the stop in light of the totality of the circumstances and consider whether the officer diligently conducted the investigation."'" *Batchili* at ¶ 12, quoting *State v. Howard*, 12th Dist. Preble Nos. CA2006-02-002 and CA2006-02-003, 2006-Ohio-5656, ¶ 15, quoting *State v. Carlson*, 102 Ohio App.3d 585, 598-599 (9th Dist.1995).

{¶14} In contrast, a canine sniff, because it is "a measure aimed at 'detect[ing] evidence of ordinary criminal wrongdoing,'" "[l]ack[s] the same close connection to roadway safety as the ordinary inquiries" and is thus "not fairly characterized as part of [a law enforcement] officer's traffic mission." *Rodriguez* at 355-356, 135 S.Ct. 1609, quoting *Indianapolis v. Edmond*, 531 U.S. 32, 40-41, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000). Nevertheless, a law enforcement officer is not constitutionally prohibited from conducting a canine sniff of a vehicle during the course of a lawful traffic stop. An exterior sniff of a vehicle by a trained drug-detection dog does not constitute a "search" within the meaning of the United States Constitution or the Ohio Constitution. *State v. Mote*, 3d Dist. Mercer No. 10-15-05, 2015-Ohio-3715, ¶ 17, quoting *State v. Cahill*, 3d Dist. Shelby No. 17-01-19, 2002-Ohio-4459, ¶ 22, quoting *State v. Rusnak*, 120 Ohio App.3d 24, 28 (6th Dist.1997) and citing *United States v. Place*, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983); *State v. Alexander-Lindsey*, 4th Dist. Lawrence, 2016-Ohio-3033, ¶ 36, quoting *State v. Waldroup*, 100 Ohio App.3d 508, 514 (12th Dist.1995). Consequently, a law enforcement officer may conduct a canine sniff of a vehicle without reasonable suspicion of additional illegal activity, provided that "'the officer conducts [the] canine sniff of the vehicle before the reasonable completion of the traffic stop procedures * * *.'" *State v. Casey*, 12th Dist. Warren No. CA2013-10-090, 2014-Ohio-2586, ¶ 22, quoting *State v. Elliott*, 7th Dist. Mahoning

No. 11 MA 182, 2012-Ohio-3350, ¶ 23, citing *State v. Winger*, 2d Dist. Darke No. 1688, 2007-Ohio-2605, ¶ 17.

{¶15} "'However, if the officer extends the traffic stop in order to conduct a canine sniff, he must have reasonable suspicion that the vehicle contains drugs in order to detain the driver while a canine unit is brought to the scene.'" *Id.*, quoting *Elliott* at ¶ 23. *See Batchili* at ¶ 15 (noting that "'the detention of a stopped driver may continue beyond [the normal] time frame when additional facts are encountered that give rise to a reasonable, articulable suspicion of criminal activity beyond that which prompted the initial stop'"), quoting *Howard* at ¶ 16; *Troutman* at ¶ 23-24. Reasonable, articulable suspicion "exists when there are '"specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion."'" *Troutman* at ¶ 24, quoting *State v. Stephenson*, 3d Dist. Union No. 14-04-08, 2004-Ohio-5102, ¶ 16, quoting *State v. Bobo*, 37 Ohio St.3d 177, 178 (1988). "In forming reasonable articulable suspicion, law enforcement officers may 'draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that "might well elude an untrained person."'" *Id.* at ¶ 25, quoting *United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002), quoting *United States v. Cortez*, 449 U.S. 411, 417-418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981). "'The "reasonable and articulable suspicion" analysis is based on the *collection* of

factors, not on the individual factors themselves.'" (Emphasis sic.) *Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, at ¶ 12, quoting *Batchili* at ¶ 19.

{¶16} At the suppression hearing, Deputy Peyton testified that on September 18, 2020, he initiated a traffic stop for speeding. (Apr. 6, 2022 Tr. at 29). Deputy Peyton's body-worn camera footage of the incident was introduced as State's Exhibit 1. (*Id.* at 6); (State's Ex. 1). State's Exhibit 1 depicts Deputy Peyton approach the passenger side of a white vehicle and make contact with the occupants – a male driver and a female passenger. (State's Ex. 1). The driver quickly admitted that he was "speeding." (*Id.*). The passenger provided Deputy Peyton with her driver's license and vehicle registration. (*Id.*). However, the driver of the vehicle claimed to have no identification. (*Id.*). The driver also claimed he did not know his social security number. (*Id.*). When Deputy Peyton asked the driver his name, he initially stated it was "Derek Wilson" and then corrected himself to "Derek Keeran." (*Id.*). When Deputy Peyton asked the driver if Wilson is his middle name, he stated that it is. (*Id.*). The driver also had difficulty spelling the name he gave to Deputy Peyton. (*Id.*).

{¶17} Deputy Peyton testified that, in his experience, when someone seemingly does not know their name, it is usually an indicator the individual does not want his or her identity known. (Apr. 6, 2022 Tr. at 8-9). According to Deputy Peyton, this can be for a variety of reasons, such as an outstanding arrest warrant, a

suspended license, or some other criminal activity being afoot. (*Id.* at 8). Deputy Peyton testified that in this particular instance, the fact the driver initially identified himself as "Derek Wilson" and then changed the name to "Derek Keeran" gave Deputy Peyton immediate suspicion the driver either had an outstanding arrest warrant or that some sort of criminal activity was occurring. (*Id.*).

{¶18} The passenger of the vehicle identified herself as the owner of the vehicle. (State's Ex. 1). She attempted to provide Deputy Peyton with proof of insurance; however, the information she provided was expired. (*Id.*). (State' s Ex. 1). The passenger stated she was going to have to "pull up" her insurance information on her phone. (*Id.*). Deputy Peyton testified the purpose of waiting on the verification of insurance is because driving without insurance could potentially be an additional citation. (Apr. 6, 2022 Tr. at 13-14).

{¶19} After receiving identifying information from the vehicle occupants, Deputy Peyton returned to his police cruiser to relay the information to dispatch and run the information provided through law enforcement systems. (*Id.* at 10). Shortly thereafter, Deputy Peyton returned to the vehicle and spoke to the occupants. (State's Ex. 1). At that time, the passenger, who was on the phone with her insurance company, stated it would be an additional eight to ten minutes for the company to provide her with the information requested. (*Id.*).

{¶20} Deputy Peyton testified that, at this point, he knew he was going to issue a traffic citation to the driver of the vehicle for speeding. (Apr. 6, 2022 Tr. at 12-13). However, Deputy Peyton stated that before he could issue the citation, he needed to verify the identity of the driver. (*Id.* at 13). Deputy Peyton stated that, at that time, he was aware of several additional indicators of criminal activity, including general nervous behavior from the driver, such as looking back at the deputy in the vehicle's mirrors and immediately lighting a cigarette. (*Id.*).

{¶21} Deputy Peyton then asked the driver for his insurance information. (*Id.* at 16); (State's Ex. 1). According to Deputy Peyton, the purpose of asking the driver for his insurance information was to aid in verifying the driver's identification. (Apr. 6, 2022 Tr. at 16). Deputy Peyton testified that if the driver provided insurance information with the name "Derek Keeran" it would help confirm his identity and the veracity of his statements. (*Id.*). However, the driver was unable to provide Deputy Peyton with any insurance information. (*Id.* at 16-17).

{¶22} Approximately 20 minutes into the traffic stop, Deputy Peyton and his supervising sergeant engaged in a brief conversation discussing whether the canine officer was still en route to the scene. (State's Ex. 1); (Apr. 6, 2022 Tr. at 18). Deputy Peyton's supervisor reminded him that he could not prolong the traffic stop for the purpose of awaiting the arrival of the canine. (State's Ex. 1); (Apr. 6, 2022

Tr. at 18). However, Deputy Peyton assured his supervisor he was not delaying the stop and that he was still waiting on information so he could accurately and proficiently issue the traffic citation. (State's Ex. 1); (Apr. 6, 2022 Tr. at 18). At that time, Deputy Peyton had still not been able to verify the identity of the driver, and he had not yet gotten verification of the passenger's insurance. (Apr. 6, 2022 Tr. at 18-19). According to Deputy Peyton, his goal at this time was still to issue a traffic station to the driver of the vehicle. (Apr. 6, 2022 Tr. at 18).

{¶23} Nearly 23 minutes into the traffic stop, Deputy Peyton approached the driver's side of the vehicle and asked the driver, who was smoking a cigarette, if he had any way to verify his identity. (State's Ex. 1). Deputy Peyton informed the driver that some individuals have photographs of their identification cards on their phone and suggested the driver check his phone for such a photograph. (*Id.*). The driver initially indicated he might have a photograph of his driver's license on his phone; however, after scrolling through his phone for a few seconds, he told Deputy Peyton did he not possess such a photograph. (*Id.*); (Apr. 6, 2022 Tr. at 19-20). According to Deputy Peyton, at this point, he still could not ascertain the identity of the driver and was still in the "investigative detention" phase of the investigation. (Apr. 6, 2022 Tr. at 19-20).

{¶24} Shortly thereafter, Officer Hertzinger of the Plain City Police Department arrived on the scene with his canine partner, Andor. (State's Ex. 1);

(Apr. 6, 2022 Tr. at 20). At the request of Officer Hertzinger, the vehicle's occupants exited the vehicle, and Officer Hertzinger ran Andor around the vehicle to conduct an open-air sniff. (State's Ex. 1); (Apr. 6, 2022 Tr. at 21). Andor subsequently alerted to the passenger side of the vehicle. (State's Ex. 1). Pursuant to the dog's alert, the officers searched the vehicle. (*Id.*). During the search, the officers located the hashish that is the subject of Count One of the instant case. (*Id.*). Officers also located the driver's identification in the vehicle and were able to confirm the driver's identity as that of "Adam Bowen." (Apr. 6, 2022 Tr. at 19).

{¶25} Deputy Peyton testified that approximately 24 minutes elapsed from the beginning of the traffic stop to the arrival of the canine unit to the scene. (*Id.* at 24); (State's Ex. 1). According to Deputy Peyton, if the driver of the vehicle provides him with the necessary information, he is able to process the citation faster. (Apr. 6, 2022 Tr. at 25-26). In such circumstances, Deputy Peyton can reasonably issue a traffic citation within approximately 15 minutes. (*Id.* at 26). However, if the individual does not provide the information requested or does not have the requested information readily available, it delays the process. (*Id.*). Deputy Peyton testified that, under the circumstances presented at the traffic stop on September 18, 2020, he would not have been able to issue the citation with the limited information Bowen provided to him at that point. (*Id.* at 28). Deputy Peyton was not able to provide a positive identification on the driver of the vehicle, and based on his

experience, he suspected the driver was not providing him with his correct name or identifying information. (*Id.*).

{¶26} After reviewing the record, we do not find Deputy Peyton extended the traffic stop in order to conduct the canine sniff. It is clear any delay in the issuance of the citation was the result of the actions of the vehicle occupants. When Bowen gave Deputy Peyton a false name, his actions delayed the vehicle stop by necessitating Deputy Peyton continue to investigate and attempt to ascertain the driver's identity. "[A]n officer's mission includes 'ordinary inquiries incident to [the traffic] stop' * * * [such as] checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile registration and proof of insurance." *Rodriguez v. United States*, 575 U.S. 348, 355, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015), quoting *Illinois v. Caballes*, 543 U.S. 405, 408 125 S.Ct. 834, 160 L.Ed.2d 842 (2005). The record indicates that Deputy Peyton was diligently attempting to complete the mission of the traffic stop in the time between the initiation of the stop and Andor's open-air sniff of the vehicle. In support of his position that the traffic stop was extended to allow for the canine to arrive on the scene, Bowen focuses on Deputy Peyton's testimony that he generally can write a traffic citation in approximately fifteen minutes. Because the canine sniff occurred approximately 24 minutes after the initiation of the traffic stop, Bowen reasons law enforcement must have delayed the traffic stop for the canine to

arrive at the scene. However, Deputy Peyton clarified that the fifteen-minute timeframe referred to situations where he possessed all the information necessary to issue the citation, such as the identity of the driver.

{¶27} Importantly, at the time the canine unit arrived, deputies had still not ascertained the identity of the driver. Bowen's own acts of providing false information regarding his identity necessarily prolonged the traffic stop and provided Deputy Peyton with additional justification for detaining him. *See State v. Redway*, 6th Dist. Wood No. WD-10-037, 2020-Ohio-3826, ¶ 7-8 ("At [the] point in time [that the canine arrived on scene], the trooper had not yet received the information from dispatch he needed to issue a traffic ticket or a warning, so the mission of the traffic stop was not yet complete."); *State v. Harper*, 4th Dist. Scioto No. 21CA3965, 2022-Ohio-4357, ¶ 36; *State v. Neal*, 10th Dist. Franklin No. 15AP-771, 2016-Ohio-1406, ¶ 22-23.

{¶28} The passenger's failure to provide Deputy Peyton with valid proof of insurance also delayed the stop. The passenger eventually received confirmation of her insurance; however, the verification took time. Deputy Peyton assisted the passenger in obtaining the verification by answering the passenger's questions. Additionally, confusion regarding which vehicles were covered under the passenger's insurance policy further increased the time needed to issue the traffic citation. The passenger did not obtain insurance verification until moments before

the canine unit arrived on the scene. Accordingly, we do not find that Deputy Peyton extended the traffic stop for the purpose of employing the canine unit.

{¶29} Moreover, even if the officers had prolonged the stop, they possessed the reasonable, articulable suspicion necessary to do so. Throughout his interaction with the vehicle's occupants, Deputy Peyton developed reasonable, articulable suspicion that criminal activity was afoot. The indicators of criminal activity Deputy Peyton observed were the driver refusing to provide identification and attempting to provide a false identity, the vehicle's occupants continuously smoking throughout the interaction, the driver looking back at Deputy Peyton nervously in the mirrors prior to the first interaction, the driver "continuously drinking water," and other "general nervousness." (Apr. 6, 2022 Tr. at 8, 13, 26, 30-31). Based upon the totality of the circumstances at the time, Deputy Peyton had reasonable, articulable suspicion criminal activity was occurring and probable cause to continue his investigation.

Credibility of Canine Officer

{¶30} Bowen further argues that Andor's alert on his vehicle did not give officers probable cause to search the vehicle because the canine was trained to alert when it detects the odor of marijuana. Bowen contends that because some forms and amounts of marijuana are now legal in Ohio, the sniff by Andor, a canine trained to alert to the presence of marijuana, among other substances, did not give officers

probable cause to search the vehicle. Bowen reasons "because [Andor] is trained to detect marijuana, and because he cannot differentiate between legal and illegal marijuana, his alert is no longer reliable and cannot be used for probable cause to conduct a warrantless search * * *."[1] (Appellant's Brief at 10).

{¶31} At the suppression hearing, Officer Hertzinger, who responded to the September 18, 2020 traffic stop with his canine partner, Andor, testified that Andor is trained to detect the odor of marijuana, cocaine, crack cocaine, methamphetamine, heroin, or any of those drugs' derivatives. (Mar. 23, 2022 Tr. at 16, 26). Officer Hertzinger further stated that Andor is not able to determine the difference between different variants of THC. (*Id.* at 27-28). However, from Officer Hertzinger's experience with Andor, he has never alerted to legal marijuana-derivatives, such as CBD. (*Id.* at 35). Further, legal marijuana derived-substances, such as CBD oil, are not used in Andor's training. (*Id.* at 27-28).

{¶32} To the extent Bowen argues that Andor's alert cannot be used to establish probable cause under any circumstances, we reject this argument. As this court recently reiterated "in the typical case, probable cause to search a vehicle may be based solely on the alert of a trained drug-detection dog." *State v. Mayo*, 3d Dist. Allen No. 1-22-28, 2023-Ohio-124, ¶ 43. Further, under the circumstances present

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[1] We note that Bowen does not argue that because Andor is trained to alert to the odor of marijuana, all open-air sniffs conducted by the canine constitute a search under the Fourth Amendment. Accordingly, we do not address the issue.

in this case, we do not find that Andor's training to alert to the odor of marijuana weighs so heavily against his credibility that his alert did not establish probable cause.

{¶33} Moreover, it is clear from the totality of circumstances that law enforcement officers had probable cause to search Bowen's vehicle. In addition to Andor's alert and the indicators of criminal activity, such as Bowen giving a false name, which we addressed in detail above, when the vehicle occupants exited the vehicle prior to the canine sniff, the odor of marijuana, which had previously been masked by the odor of cigarette smoke, immediately became apparent to law enforcement officers. (State's Ex. 1); (Mar. 23, 2022 Tr. at 40-41); (Apr. 6, 2022 Tr. at 20-21). Accordingly, we do not find that law enforcement's search of the vehicle ran afoul of the Fourth Amendment. Thus, the trial court did not err by denying Bowen's motion to suppress evidence.

Conclusion

{¶34} For the foregoing reasons, Bowen's assignment of error is overruled. Having found no error prejudicial to the appellant herein in the particulars assigned and argued, we affirm the judgment of the Union County Court of Common Pleas.

Judgment Affirmed

WILLAMOWSKI and ZIMMERMAN, J.J., concur.

/jlr