

APPENDIX TABLE OF CONTENTS

Opinion of the Supreme Court of Ohio, 2018 Ohio 4002 (October 4, 2018).....	1a
Opinion of the Eighth District Court of Appeals for Ohio, 79 N.E.3d 600 (February 23, 2017)	9a
Opinion and Judgement Entry of the Trial Court for the Court of Common Pleas, Cuyahoga County, Ohio (January 25, 2016).....	23a
Transcript of Proceedings of the Oral Argument on Defendant's Motion to Suppress Evidence (January 11, 2016).....	36a
Body Camera Footage Recorded on the Date of the Appellant's arrest.....	145a

OPINION OF THE
SUPREME COURT OF OHIO, 2018 OHIO 4002
(OCTOBER 4, 2018)

SUPREME COURT OF OHIO

2018 Ohio 4002

THE STATE OF OHIO,

Appellant,

v.

VEGA,

Appellee.

Slip Opinion No. 2018-Ohio-4002
[Until this Opinion appears in the Ohio Official
Reports advance sheets, it may be cited as
State v. Vega, Slip Opinion No. 2018-Ohio-4002.]

(No. 2017-0618—Submitted June 12, 2018
Decided October 3, 2018.)

Appeal from the Court of Appeals for
Cuyahoga County, No. 104058, 2017-Ohio-651

Before: KENNEDY, FRENCH, FISCHER, DEWINE,
and ZAYAS, JJ, O'CONNOR, C.J., MARILYN
ZAYAS, J., DEGENARO, J.

O'DONNELL, J.

{¶ 1} The state of Ohio appeals from a judgment of the Eighth District Court of Appeals that affirmed the trial court's suppression of 150 individually wrapped pieces of marijuana infused candy contained in two sealed Priority Mail envelopes located inside an open box on the back seat of Edwin Vega's car during a traffic stop. The issues presented on this appeal concern the legality of the search of the sealed envelopes located in Vega's vehicle and the duration of the traffic stop.

Facts and Procedural History

{¶ 2} On March 28, 2015, Officer Jeffrey Madej, of the Cleveland State University Police Department, observed Vega turn left at a red light at E. 18th Street and Euclid Avenue in Cleveland. He initiated a traffic stop, and while approaching the car, he smelled a strong odor of marijuana coming from the vehicle. He asked Vega to exit the vehicle because he intended to search it based on the strong smell.

{¶ 3} During the search, Madej recovered three cell phones, several raw buds of marijuana, a small amount of what Madej called "shake weed," and an open package of fruit flavored SweetStone candy in the console. He also found several cases of rolling papers, aerosol canisters containing an odor masking agent, and a partially opened U.S. Postal Service box containing two sealed Priority Mail envelopes. Madej felt the packages and believed that they contained individually packaged drugs. Vega told him that they contained stickers, but Madej did not believe the contents felt like stickers and wanted to open them, but Vega refused to consent.

{¶ 4} Madej contacted his supervisor and other officers in an attempt to determine whether he had probable cause to open the envelopes and to secure a drug-detecting dog but he could not do so. He then wrote Vega tickets for making an illegal turn and possessing marijuana. After explaining the tickets to Vega, Madej decided to open the sealed envelopes based on the odor of marijuana coming from the car and the discovery of three cell phones, the aerosol canisters, the large quantity of rolling papers, the marijuana buds, and the shake weed.

{¶ 5} Madej opened one of the envelopes and found three large Ziplock clear bags containing 75 packages that indicated that they contained marijuana infused candy. Madej realized that the packaging was the same as the packaging of the candy he had seen in the center console and that it also was marijuana infused. He then arrested Vega for drug trafficking. The arrest occurred one hour and 12 minutes after the initial traffic stop. Later testing confirmed the candy contained marijuana. The second sealed envelope was later opened and also contained 75 packages of marijuana infused candy.

{¶ 6} On September 9, 2015, a grand jury indicted Vega for drug trafficking, drug possession, and possession of criminal tools. Vega moved to suppress the marijuana candy found in the mail envelopes, arguing a lack of probable cause to open the envelopes and a violation of his constitutional rights based on the duration of the stop.

{¶ 7} On January 25, 2016, the trial court granted Vega's motion to suppress the marijuana candy recovered from the envelopes, holding that the smell of marijuana coming from the vehicle did not provide

probable cause to open the envelopes because Madej agreed at trial that they did not smell like marijuana. The court also held that the police had detained Vega for an unreasonable length of time.

{¶ 8} A divided Eighth District Court of Appeals panel affirmed the trial court's judgment. The majority explained that the police had probable cause to search Vega's vehicle based on finding a small amount of marijuana and on the smell of marijuana but that they did not have probable cause to open the envelopes, because they did not smell of marijuana and the trial court did not believe that Madej opened them with the belief that they contained marijuana. Lastly, the majority concluded that Madej should have released Vega after issuing the misdemeanor citations, since "the search of the car revealed no further incriminating evidence." 2017-Ohio-651, 79 N.E.3d 600, ¶ 14.

{¶ 9} The dissenting jurist explained that the trial court's ruling of probable cause to search meant that Madej could open the envelopes because he reasonably believed they could contain marijuana, and the delay in opening them was immaterial because Madej had probable cause to open them.

{¶ 10} The state appealed to this court, and we accepted the following proposition of law:

The Fourth Amendment's prohibition against unreasonable searches and seizures is not violated when police extend a traffic stop based on probable cause that the vehicle contains contraband. Officers may extend the traffic stop and detain the driver for as long as necessary to reasonably complete the search of the vehicle and its packages and con-

ainers without a showing of individualized probable cause for each one. *Rodriguez v. United States*, [__ U.S. __,] 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015) and *United States v. Ross*, 456 U.S. 798, [102 S.Ct. 2157,] 72 L.Ed.2d 572 (1982) explained.

Positions of the Parties

{¶ 11} The state urges that Madej lawfully opened the envelopes in Vega's car because he had probable cause to believe they contained marijuana. It further justifies the extended traffic stop based on the probable cause to search the vehicle and Madej's reasonable efforts to obtain a canine unit to assist in the search.

{¶ 12} Vega agrees that Madej had probable cause to search but Vega asserts the police lacked probable cause to open the envelopes because they did not smell like marijuana. He also claims the infused candy should be suppressed because of the length of his detention.

Law and Analysis

Search and Seizure

{¶ 13} In *United States v. Ross*, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982), the court held that the automobile exception to the Fourth Amendment's warrant requirement permits the warrantless searches of containers that could contain items for which officers have probable cause to search. In *Ross*, the Supreme Court examined whether the search of a brown bag found in the trunk of a vehicle was reasonable within the meaning of the Fourth Amend-

ment. The court held that “[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.” *Id.* at 825.

{¶ 14} Nearly two decades later, the court revisited warrantless searches of containers under the automobile exception. In *Wyoming v. Houghton*, during a traffic stop, an officer observed a syringe in the driver’s shirt pocket, so he searched the car and the purse of a passenger and found more drug paraphernalia in the purse. 526 U.S. 295, 119 S.Ct. 1297, 143 L.Ed.2d 408 (1999). Although the Wyoming Supreme Court suppressed the evidence, the United States Supreme Court reversed, explaining that “neither *Ross* itself nor the historical evidence it relied upon admits of a distinction among packages or containers based on ownership. When there is probable cause to search for contraband in a car, it is reasonable for police officers * * * to examine packages and containers without a showing of individualized probable cause for each one.” *Id.* at 302.

{¶ 15} This court has recognized that “the smell of marijuana, alone, by a person qualified to recognize the odor, is sufficient to establish probable cause to search a motor vehicle, pursuant to the automobile exception to the warrant requirement.” *State v. Moore*, 90 Ohio St.3d 47, 48, 734 N.E.2d 804 (2000).

{¶ 16} In this case, Madej testified that he smelled a strong odor of marijuana which could not be accounted for by the small amount of marijuana that he found in the center console. He also found other indicia of trafficking, to wit, three cell phones, odor masking agents, and cases of rolling papers. Based on

the probable cause to search and the holding in *Ross*, Madej lawfully opened the sealed envelopes.

Extension of Traffic Stop

{¶ 17} In *Rodriguez v. United States*, the United States Supreme Court held that absent reasonable suspicion of criminal activity, the extension of a traffic stop to allow a drug-detecting dog to sniff the vehicle violates the Fourth Amendment. ___ U.S. ___, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015). When an officer has reasonable suspicion of criminal activity, however, nothing in *Rodriguez* limits his ability to prolong the stop for a reasonable time in order to conduct an investigation. *See id.* at 1615 (“An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop * * * [but] he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual”). We have held that a traffic stop may be prolonged if there is “reasonable suspicion under the totality of the circumstances [to] justif[y] the ongoing detention.” *State v. Batchili*, 113 Ohio St.3d 403, 2007-Ohio-2204, 865 N.E.2d 1282, ¶¶ 22.

{¶ 18} Vega claims that his detention became unlawful after he received the traffic citations, because no reasonable suspicion existed to prolong the stop to conduct further investigation. He ignores that probable cause existed to detain him and open the envelopes based on the strong odor of marijuana coming from the car and other evidence of trafficking. Even though Madej could not locate a canine unit, the length of the detention was reasonable because probable cause existed to search the vehicle and its

contents. *See Rodriguez* and *Batchili*. And based on *Ross*, Madej acted lawfully when he opened the envelopes because he had probable cause to search the vehicle and he reasonably believed they could have contained marijuana.

{¶ 19} The length of the stop was extended based on probable cause to believe that the vehicle contained contraband, and we therefore reject his claim of unlawful detention.

Conclusion

{¶ 20} After finding marijuana and other drug paraphernalia in Vega's car, Madej had probable cause to open the envelopes because it was reasonable to believe that they could contain marijuana. Further, based on *Rodriguez* and *Batchili*, Madej had the right to detain Vega for as long as reasonably necessary to complete the search of the vehicle.

{¶ 21} Accordingly, we reverse the judgment of the appellate court and remand the matter to the trial court for further proceedings consistent with this opinion.

Judgment reversed and cause remanded.

KENNEDY, FRENCH, FISCHER, DEWINE, and ZAYAS, JJ., concur.

O'CONNOR, C.J., concurs in judgment only.

MARILYN ZAYAS, J., of the First District Court of Appeals, sitting for DEGENARO, J.

OPINION OF THE EIGHTH DISTRICT COURT OF
APPEALS FOR OHIO, 79 N.E.3D 600
(FEBRUARY 23, 2017)

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

79 N.E.3d 600

STATE OF OHIO,

Plaintiff-Appellant,

v.

EDWIN A. VEGA,

Defendant-Appellee.

No. 104058

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-599025-A

Before: BLACKMON, J.,
KILBANE, P.J., and STEWART, J.

PATRICIA ANN BLACKMON, J.:

{¶ 1} The state of Ohio appeals from the trial court's granting defendant Edwin Vega's ("Vega") motion to suppress and assigns the following error for our review:

I. The Trial Court Erred When It Suppressed the Evidence

{¶ 2} Having reviewed the record and pertinent law, we affirm. The apposite facts follow.

{¶ 3} On March 28, 2015, Cleveland State University Police Officer Jeffrey Madej initiated a traffic stop at E. 18th Street and Payne Avenue in Cleveland, after allegedly witnessing Vega turn left at a red light. Officer Madej approached Vega’s car, smelled a strong odor of raw marijuana coming from the vehicle, and advised Vega that he was going to search the car. Vega was put in the back of the police car. In the center console and cup holder area of Vega’s vehicle, Officer Madej found three cell phones, several “raw buds of marijuana,” a small amount of “shake weed,” and an open pack of hard candy. Officer Madej also found cases of rolling papers, several aerosol canisters of an “odor masking agent,” and “a white package box, USPS box, on the back seat.” This box was partially opened and inside were “two white mail packages,” which were sealed but unlabeled.

{¶ 4} Vega told Officer Madej that the envelopes contained stickers and refused to give consent to open the packages. Officer Madej continued to detain Vega, and approximately 23 minutes into the traffic stop, conferred with other officers and law enforcement officials, both on the scene and via phone calls, and tried to locate a narcotics K9 unit. After 38 additional minutes, the police were unsuccessful in locating a K9 unit. Approximately 53 minutes into the traffic stop, Officer Madej wrote Vega tickets for a traffic infringement and misdemeanor possession of marijuana.

{¶ 5} In the meantime, the police made a “collaborative decision” to open the packages. This decision was “based * * * on the strong odor of marijuana coming from the vehicle.” Inside the packages, Officer Madej found “three large Ziplock clear bags containing a large amount of SweetStone Candy.” This is the same brand of candy that was found in the center console. It was not until the packages were opened that Officer Madej realized the candy “could contain THC.” One hour and 12 minutes after Officer Madej stopped Vega’s car, Vega was arrested for drug trafficking.

{¶ 6} On September 9, 2015, Vega was indicted with five drug-related offenses. On January 11, the court held a suppression hearing, and on January 25, 2016, the court granted Vega’s motion to suppress, finding that Vega was unlawfully detained for an unreasonable amount of time after the initial search of his vehicle revealed a misdemeanor quantity of marijuana. The court suppressed the “150 individual packages of the SweetStone candy found in the envelopes that were opened during a constitutionally impermissible detention.”

{¶ 7} It is from this order that the state of Ohio appeals.

Standard of Review—Motion to Suppress

Appellate review of a motion to suppress presents a mixed question of law and fact. When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. Consequently, an

appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.

(Citations omitted.) *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8.

Law and Analysis

{¶ 8} The Fourth Amendment to the United States Constitution provides protection against warrantless searches and seizures. There are exceptions, however, to the warrant requirement. *See generally State v. Smith*, 124 Ohio St.3d 163, 2009-Ohio-6426, 920 N.E.2d 949. “[T]he smell of marijuana, alone, by a person qualified to recognize the odor, is sufficient to establish probable cause to conduct a search.” *State v. Moore*, 90 Ohio St.3d 47, 53, 730 N.E.2d 804 (2000).

{¶ 9} However, the Ohio Supreme Court has held that “where police officers have probable cause to search an entire vehicle, they may conduct a warrantless search of every part of the vehicle and its contents, including all movable containers and packages, that may logically conceal the object of the search.” (Emphasis added.) *State v. Welch*, 18 Ohio St.3d 88, 92, 480 N.E.2d 384 (1985). *See also State v. Young*, 146 Ohio App.3d 245, 257, 765 N.E.2d 938 (11th Dist. 2001) (“[t]he right to be free of unreasonable searches precludes the issuance of a search warrant for a litany of narcotics based upon the observation of a misdemeanor amount of marijuana”).

{¶ 10} In the case at hand, the trial court found that Officer Madej's search of the envelopes in Vega's backseat was unreasonable. This finding is supported by Officer Madej's testimony that his probable cause to search was based "on the strong odor of marijuana coming from the vehicle * * * along with other indicators [such as] the odor-masking agent * * * [and] a lot of rolling papers." Officer Madej was looking for "marijuana in its raw form. Bud marijuana. Something that hasn't been smoked yet." He testified that, because the odor was "billowing out of Vega's car, he was looking for more than the three marijuana buds and "shake weed" that he found in the center console.

{¶ 11} However, Officer Madej also testified that the envelopes "were not the source of the odor of marijuana." Additionally, the officer's testimony is inconsistent as to what he thought was in the envelopes. He testified as follows during the suppression hearing: he thought the envelopes contained "individually packaged drugs"; the envelopes "felt like it was individual bags and it wasn't consistent with stickers," and the packages showed no signs of containing "illicit materials."

{¶ 12} As to the hard candy found in the center console of Vega's car, Officer Madej testified he "didn't pay attention to it" when he first found it, that he didn't find anything "illicit" about it, and that it had no odor. Officer Madej did not mention the candy to any of the other officers he conferred with, nor did he mention the candy in Vega's traffic citations. In short, Officer Madej was not searching for candy. Furthermore, his testimony supports the finding that Officer Madej had no reason to believe

the large amount of raw marijuana he was searching for was contained in the two envelopes.

{¶ 13} This case is on point with *State v. Gonzales*, 6th Dist. Wood No. WD-07-060, 2009-Ohio-168, ¶ 17, which holds that “compartments and packages within a vehicle which could contain the illicit object for which the police have probable cause to believe exist may also be searched.”

{¶ 14} In the case at hand, the police had probable cause to search Vega’s vehicle when they found a small amount of loose marijuana and detected a strong odor of raw marijuana. Officer Madej did, in fact, conduct this search. However, he did not find any additional marijuana, and he could not get a K9 unit to the scene within a reasonable amount of time. Vega should have been released after his misdemeanor citations were issued and the search of the car revealed no further incriminating evidence. If, before the police completed this search, a K9 unit had alerted that the sealed envelopes may contain drugs, this may have constituted probable cause to open the envelopes. Furthermore, if Officer Madej had detected an odor of marijuana coming from the envelopes or testified that, in his training and experience, raw marijuana was typically packaged in envelopes of this type, these scenarios may have constituted probable cause as well.

{¶ 15} Police may conduct “a canine sniff of the vehicle during a traffic stop, so long as the duration of the traffic stop is not extended beyond what is reasonably necessary to resolve the issue that led to the stop and issue a traffic citation.” (Citations omitted.) *State v. Greene*, 2d Dist. Montgomery No. 25577, 2013-Ohio-4516, ¶ 22. Although this case is

factually different than *Greene* in that a misdemeanor amount of marijuana was found in Vega's vehicle, the same rationale can be used to determine that the search of the envelopes violated Vega's Fourth Amendment rights. In other words, the police cannot extend the search of a vehicle—after the search revealed no further contraband—to wait for a K9 unit to arrive and sniff a sealed package.

{¶ 16} The trial court in the case at hand found that "without more, the smell of marijuana does not provide probable cause to open every container located during the search." Additionally, the court concluded that the "delay while waiting for an answer via either the 'sniff' of trained K-9 officer or legal guidance from superiors exceeded constitutionally permissible grounds to detain the defendant in this case." *See State v. Miller*, 10th Dist. Franklin Nos. 10AP-1017 and 10AP-1018, 2011-Ohio-3600, ¶ 30 ("a police officer may stop and detain someone for a minor misdemeanor offense, but the officer is not allowed to arrest that person and conduct a search incident to that arrest").

{¶ 17} In conclusion, the smell of marijuana amounts to probable cause to search a vehicle. However, this is limited to "every part of the vehicle and its contents that may conceal the object of the search." *U.S. v. Ross*, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982). The trial court in the case at hand, after evaluating the credibility of Officer Madej's testimony, concluded that the Officer was searching for raw marijuana and did not believe the envelopes contained this contraband. This factual conclusion is supported by the evidence in the record. The court then concluded that an unreasonable amount of time

passed while the police were looking for another basis for probable cause to open the envelopes. Accordingly, the court did not err in granting Vega's motion to suppress, the state of Ohio's sole assigned error is overruled, and the trial court's judgment is affirmed.

{¶ 18} Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

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

/s/ Patricia Ann Blackmon
Judge

MARY EILEEN KILBANE, P.J., CONCURS;
MELODY J. STEWART, J., DISSENTS

**DISSENTING OPINION OF JUSTICE STEWART
(FEBRUARY 23, 2017)**

MELODY J. STEWART, J., DISSENTING;

{¶ 19} The majority concludes both that the officer could not open packages that did not smell like marijuana and that the officer unreasonably detained Vega while waiting for a drug sniffing dog. Respectfully, these conclusions are legally unsupported.

{¶ 20} The search in this case was based on more than a mere suspicion of criminal activity—the trial judge acknowledged that the officer believed that small amount of marijuana he saw on initial observation was not enough to account for the very strong odor of marijuana “billowing” from Vega’s vehicle. On that basis, the trial judge found that the officer was justified in conducting “a more thorough search.” The trial judge did not characterize his ruling as “probable cause” to search Vega’s vehicle, but that is the only reasonable conclusion from the court’s findings. The majority concedes that the arresting officer had probable cause to search Vega’s vehicle. *Ante*, at ¶ 14.

{¶ 21} In general, the Fourth Amendment to the United States Constitution does not require a warrant to search an automobile when the police have probable cause to believe it contains contraband or evidence of criminal activity. *Carroll v. United States*, 267 U.S. 132, 160-162, 45 S.Ct. 280, 69 L.Ed. 543 (1927). This exception to the warrant requirement exists because of the inherent mobility of automobiles and the reduced expectation of privacy that results from their pervasive regulation. *Id.* at 153 (explaining

that the ability to move a vehicle quickly “out of the locality or jurisdiction in which the warrant must be sought” makes it “impracticable to secure a warrant.”); *California v. Carney*, 471 U.S. 386, 390-391, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985) (“our later cases have made clear that ready mobility is not the only basis for the exception * * * [b]esides the element of mobility, less rigorous warrant requirements govern because the expectation of privacy with respect to one’s automobile is significantly less than that relating to one’s home or office.”).

{¶ 22} “If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.” *United States v. Ross*, 456 U.S. 798, 825, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982). *See also California v. Acevedo*, 500 U.S. 565, 580, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991) (“The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained”) and *Ross, supra* (“During virtually the entire history of our country—whether contraband was transported in a horse-drawn carriage, a 1921 roadster, or a modern automobile—it has been assumed that a lawful search of a vehicle would include a search of any container that might conceal the object of the search.”) (Emphasis added.)

{¶ 23} Although the majority concludes that the arresting officer had probable cause to open and search all containers or packages in the vehicle, it finds that probable cause to open the sealed envelopes ceased because the arresting officer did not smell marijuana coming from inside the envelopes. It believes that the arresting officer’s inability to smell

marijuana coming from the envelopes means that he could not have logically believed that the mailing envelopes contained marijuana.

{¶ 24} This conclusion is contrary to United States Supreme Court precedent that “[w]hen there is probable cause to search for contraband in a car, it is reasonable for police officers * * * to examine packages and containers without a showing of individualized probable cause for each one.” (Emphasis added.) *Houghton*, 526 U.S. at 302. That the officer may not have detected an odor of marijuana coming from the envelopes did not vitiate probable cause because the lack of a marijuana odor did not mean that the envelopes did not contain drug contraband. *See, e.g., State v. Dixon*, 2d Dist. Montgomery No. 22147, 2008-Ohio-1978, ¶ 9-11 (immaterial that police officer could not detect the smell of marijuana coming from a duffle bag in a car because having smelled marijuana emanating from the interior of the vehicle, “it was reasonable for the police officer to search the duffle bag sitting on the rear seat in plain view.”).

{¶ 25} As this case shows, marijuana can be found in more than just its plant form, and those alternative forms may be less odoriferous. In addition, drug traffickers go the great lengths to abate the odor of marijuana, whether by packaging, *State v. Mowler*, 8th Dist. Cuyahoga No. 100019, 2014-Ohio-831, ¶ 31 (vacuum sealing), or using odors as a masking agent. *State v. McGee*, 2013-Ohio-4165, 996 N.E.2d 1048, ¶ 25 (7th Dist.) (cologne often used to mask the smell of marijuana); *State v. Fogel*, 5th Dist. Licking No. 11-CA-97, 2012-Ohio-1960, ¶ 23 (fabric softener used to mask the smell of large amounts of marijuana).

{¶ 26} Smell is not the sine qua non of a drug search supported by probable cause. For this reason, a drug detecting dog's failure to alert to the presence of drugs does not negate probable cause to search a vehicle. *See, e.g., United States v. Williams*, 124 Fed. Appx. 885, 2005 U.S. App. LEXIS 4493, *5 (5th Cir. 2005) (holding that, “under the * * * circumstances, the failure of the drug dog to alert did not deprive the officers of probable cause to search the vehicle”); *United States v. Ramirez*, 342 F.3d 1210, 1213 (10th Cir. 2003) (“We will not require investigators to cease an otherwise reasonable investigation solely because a dog fails to alert, particularly when we have refused to require that a dog sniff test be conducted at all.”); *United States v. Gill*, 280 F.3d 923, 926 and fn.3 (9th Cir. 2002) (denying defendant’s suppression motion although a drug “dog did not alert”).

{¶ 27} Dogs are far better at detecting odors than humans. If a trained drug sniffing dog's failure to alert to the presence of drugs does not destroy probable cause, a police officer's similar failure to alert to the same drugs cannot be the basis for finding that probable cause has been destroyed. This is especially so when drug traffickers actively try to mask the odor of marijuana. In other words, it would be perfectly logical that a package might not smell. This is not a case where the police were searching for a tuba by opening a sealed envelope.

{¶ 28} The second basis for the court’s decision was that the 38-minute delay occasioned both by the officer’s consultation on the scope of the vehicle search and obtaining the services of a drug sniffing dog was so unreasonable as to void the search.

{¶ 29} Because traffic stops are “especially fraught with danger to police officers,” *Michigan v. Long*, 463 U.S. 1032, 1047, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983), “an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely.” *Rodriguez v. United States*, 575 U.S. 1, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015). An officer may take a reasonable amount of time between the initial traffic stop and deciding whether there is probable cause to search the stopped vehicle for contraband, provided that the delay is no longer than that “reasonably required to complete” the issuance of a traffic citation. *Illinois v. Caballes*, 543 U.S. 405, 407, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005).

{¶ 30} When a police officer timely determines that there is probable cause to search a vehicle for contraband, “[t]here is no requirement that the warrantless search of a vehicle occur contemporaneously with its lawful seizure.” *United States v. Johns*, 469 U.S. 478, 484,105 S.Ct. 881, 83 L.Ed.2d 890 (1985). While the police “may not indefinitely retain possession of a vehicle and its contents before they complete a vehicle search,” requiring the police to conduct an immediate search of containers and packages discovered during a warrantless vehicle search

would be of little benefit to the person whose property is searched, and where police officers are entitled to seize the container and continue to have probable cause to believe that it contains contraband, we do not think that delay in the execution of the warrantless search is necessarily unreasonable.

Id. at 487.

{¶ 31} In this case, the court focused on the length of time that elapsed while the police tried to obtain the services of a drug sniffing dog, but that fact was irrelevant. The officer had probable cause to search the vehicle, as the trial court found, after the traffic stop based on the strong odor of marijuana emanating from the car. And because there was probable cause to search, this finding permitted the officer to open the envelopes—containers that could reasonably contain the contraband—regardless of whether the services of a drug-sniffing dog could be obtained. The delay in obtaining the services of a drug-sniffing dog was immaterial and should not have been a factor in deciding the motion to suppress. I therefore dissent.

**OPINION AND JUDGEMENT ENTRY OF THE
TRIAL COURT FOR THE COURT OF COMMON
PLEAS, CUYAHOGA COUNTY, OHIO
(JANUARY 25, 2016)**

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO,

Plaintiff,

v.

EDWIN A. VEGA,

Defendant.

Case No: CR-15-599025

Before: Dick AMBROSE, Judge.

{¶ 1} Before the Court is the Motion of defendant, Edwin Vega, to Suppress Evidence (“Defendant’s Motion”), filed on 12/02/2015. Defendant’s Motion asks the Court to suppress all evidence confiscated by the Cleveland State University (“CSU”) Police Department in connection with a traffic stop of defendant’s vehicle on 3/28/2015. Defendant asserts that his rights under the Fourth Amendment to the U.S. Constitution were violated when he was stopped without probable cause, unlawfully detained and subjected to

a warrantless search of sealed envelopes inside his vehicle.

{¶ 2} The matter was set for a hearing on 1/11/2016 and before the commencement of the hearing, the State responded to Defendant's Motion with a written brief (Response to Defendant's Motion to Suppress, hereinafter "State's Response") that was provided to the Court and defense counsel. In its Response, the State, asserted that CSU police had probable cause to stop the defendant's vehicle and to further detain defendant to investigate the officer's reasonable suspicion that the defendant was involved in illegal drug activity due to a strong odor of raw marijuana coming from defendant's vehicle. The State further argues that officers had probable cause for a warrantless search of sealed envelopes found within the vehicle based on the exigent circumstances associated with the stop of an automobile.

{¶ 3} As previously stated, the hearing on Defendant's Motion was held on 1/11/2016. The State provided the testimony of Officer Jeffrey Madej who was involved in the initial stop, detention and arrest of the defendant. The State also introduced photos from the scene, physical evidence taken from defendant's vehicle and a copy of officer Madej's "body cam" (State's "Exhibit 1") which was played for the Court. At the conclusion of the hearing, counsel for the State and for the defense addressed the Court in closing arguments. Due to the fact that defense counsel did not have time to review the State's Response before the hearing, the Court gave counsel the opportunity to file post-hearing briefs with the Court, on or before 1/15/2016. Both the State and defendant filed supplemental briefs as suggested by the Court.

Testimony of Officer Madej

{¶ 4} Officer Jeffrey Madej was the only witness to testify, at the hearing. Officer Madej stated that he has been a police officer with the CSU Police Department for 9 years and that on 3/28/2015, at 11:00 A.M., he observed a grey Toyota Camry run a red light at the intersection of E. 18th and Euclid Ave. Officer Madej then initiated a traffic stop at E. 18th and Payne Ave. As he approached the car, he noticed a strong odor of marijuana coming from the driver's side window. The defendant, Edwin Vega, was the only occupant. Officer Madej asked the defendant if he had any marijuana in the vehicle and he said "no." Due to the strong odor of marijuana, Officer Madej asked the defendant to exit the vehicle after which he and Officer Nolasco, who had arrived on scene, conducted a contraband search of the passenger compartment of the vehicle. Officer Madej observed three marijuana buds along with particles of loose marijuana that he referred to as "shake weed" in the center console of the vehicle. He also found an open package of Sweet Stone Gourmet Medicated Fruit Loop Flavored Candy ("Sweet Stone Candy"). Having found evidence of illegal drugs in the defendant's car, officers Madej and Nolasco then further searched the passenger compartment of the vehicle.

{¶ 5} The State introduced photos of the inside of the defendant's car (Exhibits 15-22) which showed a vehicle cluttered with boxes, papers, bags, wrappers, bottles, a hat, shoes and envelopes. In the backseat, the officers located rolling papers and several aerosol cans of "Spray 420" odor eliminator. They also found two large, sealed but unaddressed, U.S. Postal Service Priority Mail envelopes (depicted in State's Exhibits

23-25) inside a previously opened U.S. Mail shipping box. Defendant was asked what was in the envelopes. He told the officers. "stickers". Officer Madej then asked defendant if he could open the packages. Defendant declined consent. Officer Madej questioned why defendant would not consent to a search of the packages if they only contained stickers. He also informed the defendant that the envelopes could be seized as contraband and then opened after obtaining a warrant. Defendant was not persuaded and continued his refusal to consent to a search of the envelopes.

{¶ 6} Officer Madej then requested assistance from several law enforcement agencies for a K-9 unit to "sniff search" the envelopes for the presence of drugs. While waiting (approximately 35 minutes) to hear back regarding the availability of a "drug dog", officers on scene debated the proper procedure to investigate the contents of the sealed envelopes found in the defendant's vehicle. After consulting with supervisors as well as the Ohio State Highway Patrol, officers Madej and Nolasco were told that since they had already located drugs in the vehicle, they had sufficient probable cause to open any sealed package found in the vehicle. Acting on that advice, the officers opened the envelopes. The contents of the envelopes revealed 150 individually wrapped packages of the Sweet Stone Candy which later tested positive for THC (the active ingredient in marijuana).

{¶ 7} On 9/9/2015, the defendant was indicted for Drug Trafficking, R.C. 2925.03(A) (2), a felony of the 3rd degree; Drug Possession, R.C. 2925.11(A), a felony of the 3rd degree; Drug Trafficking, R.C. 2925.03(A) (2), a felony of the 5th degree; Drug Possession, R.C. 2925.1(A), a minor misdemeanor; and Possessing

Criminal Tools, R.C. 2923.24(A), a felony of the 5th degree.

Law and Analysis

{¶ 8} The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution secure the right of citizens to be free from unreasonable searches and seizures. This right also applies when police conduct a traffic stop. “It is a basic tenet of American constitutional law that a police stop of a motor vehicle, however brief, constitutes a “seizure” within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution. *State v. Freeman* (1980), 64 Ohio St.2d 291, at 299.

{¶ 9} A traffic stop by a law enforcement officer must comply with the Fourth Amendment’s reasonableness requirement. *Whren v. United States* (1996), 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89. “[A] police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution’s shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, ‘become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission’ of issuing a ticket for the violation.” *Rodriguez v. United States* (Apr. 21, 2015), ___ U.S.___, 2015 WL 1780927, *3 citing *Illinois v. Caballes* (2005), 543 U.S. 405, 125 S.Ct. 834.

{¶ 10} When a law enforcement officer stops a vehicle for a traffic violation, the officer may detain the motorist for a period of time sufficient to issue the motorist a citation and perform routine procedures such as a computer check on the motorist’s driver’s

license, registration and vehicle plates. *State v. Thomas*, Montgomery App. No. 22833, 2009-Ohio-3520, ¶ 14. In determining whether an officer completed the tasks of a traffic, stop 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. *State v. Batchili*, 113 Ohio St.3d 403, 2007-Ohio-2204, ¶ 17.

{¶ 11} When considering the “totality of the circumstances,” police officers are permitted to “draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.” *U.S. v. Arvizu* (2002), 534 U.S. 266, 122 S.Ct. 744, 151 L.Ed.2d 740. A court reviewing the officer’s actions must give due weight to the officer’s experience and training and must view the evidence as it would be understood by those in law enforcement. *State v. Andrews* (1991), 57 Ohio St.3d 86, 87-88.

{¶ 12} In deciding whether a defendant’s 4th Amendment rights have been violated in the context of a traffic stop, the Court is to determine whether the investigatory stop is “justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.” *United States v. Cortez* (1981), 449 U.S. 411, 417. “[R]easonable suspicion can arise from information that is less reliable than that required to show probable cause.” *Alabama v. White* (1990), 496 U.S. 325, 330. Reasonable suspicion requires only that the officer “point to specific and articulable facts which, taken together with ration-

al inferences from those facts-reasonably warrant the intrusion.” *Terry v. Ohio* (1968), 392 U.S. 1, 21.

{¶ 13} “The Ohio Supreme Court has identified certain specific and articulable facts that would justify an investigatory stop by way of reasonable suspicion, factors which fall into four general categories: (1) location; (2) the officer’s experience, training or knowledge; (3) the suspect’s conduct or appearance; and (4) the surrounding circumstances. No single factor is dispositive; the decision must be viewed based on the totality of the circumstances.” *State .v. Bobo* (1988), 37 Ohio St.3d 177, 178-80.

{¶ 14} Defendant challenges the initial stop of his vehicle for a violation of local traffic ordinances and questions the validity of his continued detention at the scene. Defendant also challenges whether the search of a sealed package located in the back seat of his vehicle was constitutionally permissible. At the hearing on Defendant’s Motion, Officer Madej testified that he was in his marked police vehicle on E. 18th St. facing North at the intersection with Euclid Ave. when he observed the Defendant’s vehicle make a left turn through a red light from Euclid North-bound onto E. 18th. Although the Defendant was ultimately found not guilty of the red light violation in the Cleveland Municipal Court, this Court finds that Officer Madej had a reasonable and articulable suspicion that a traffic law was violated—*i.e.*, that defendant ran a red light. Under these circumstances, the exclusionary rule may be avoided with respect to evidence obtained in an investigative stop based on conduct that a police officer reasonably, but mistakenly, believes is a violation of the law. *Wilmington v. Conner*, 144 Ohio App.3d 735, 2002-Ohio-474, 761

N.E.2d 663 (12th Dist. 2001) (citing: *State v. Greer*, 114 Ohio App.3d 299, 300-301, 683 N.E.2d 82, 83. (2nd Dist. 1996). Officer Madej's stop of the defendant's vehicle for a traffic violation was therefore justified.

{¶ 15} It is clear from Officer Madej's testimony at the suppression hearing, and the Court's review of footage from his body cam (State's Exhibit 1), that after stopping defendant's vehicle, the officer noticed a strong smell of marijuana coming from the passenger compartment. The "smell of marijuana, alone, by a person qualified to recognize the odor, is sufficient to establish probable cause to conduct a search." *State v. Gonzales*, 6th Dist., Wood Cty., No. WD-07-060, 2004-Ohio-168, ¶ 18. Subsequently, Officer Madej conducted an initial search of the vehicle and recovered three buds of marijuana and an amount of "shake weed" or loose particles of marijuana, in the center console (State's Exhibit 12). He also found an open package of Sweet Stone Candy. Defendant does not contest this initial search, but challenges his prolonged detention after this search and what he alleges is an "arrest" for minor misdemeanor possession of marijuana. Defendant also disputes that officers on scene had probable cause to open the sealed envelopes recovered from the back seat of his car.

{¶ 16} "An overwhelming odor of raw marijuana creates probable cause to believe that a large quantity of raw marijuana will be found . . . if no large amount of raw marijuana is seen in the passenger compartment, the officer is justified in believing that a large amount of raw marijuana may be found in a container or compartment—including the trunk." *Id.* at ¶ 22, ¶ 23. Officer Madej described the odor of raw marijuana as "billowing out" of defendant's vehicle,

yet he was only able to recover 3 marijuana buds and “shake weed” from the center console of defendants vehicle. The lack of correlation between the odor and the amount of marijuana actually recovered left the officers on scene to reasonably question whether there was more marijuana hidden somewhere in the vehicle. This fact, along with the discovery of a large amount of rolling papers and aerosol spray cans used to mask the odor of marijuana led officers to suspect the sealed envelopes that were found in the open, U.S. Postal service box in the back seat.¹ However, Officer Madej admitted that at the time the envelopes were seized, they did not smell like raw marijuana. Upon his feeling the contents of the envelopes, Officer Madej remarked that they did not feel like stickers (the explanation offered by the defendant), but felt like individually packaged drugs.

{¶ 17} Up to this point in time, defendant had only been detained for approximately 22 minutes. Given the officers observation of the strong smell of marijuana, the initial search and location of raw marijuana in the center console of the vehicle, the officers’ painstaking attempts to place each particle of “shake weed in an evidence bag, and the subsequent search through the “clutter” of the backseat,

¹ Regarding the status of the sealed envelopes found in the backseat, the Court does not subscribe to defendant’s theory that these envelopes were U.S. Mail and therefore could neither be seized nor opened without a warrant. The envelopes were sealed but did not bear any address information, nor did they have any postage affixed. The box that they were taken from was a U.S. Priority Mail box that had apparently come through the mail, but was opened as it sat in the backseat and was simply serving as a container at the time it was recovered.

the Court finds the length of this portion of defendant's detention to be reasonable.

{¶ 18} However, the detention of the defendant after the point in time where he refused to consent to officers opening the two envelopes found in the backseat is the critical determination that must be made by the Court in deciding whether or not the evidence contained in those envelopes should be suppressed.

{¶ 19} It is, clear from the Court's review of State's Exhibit 1 that the after the defendant refused consent, Officer Madej called Dispatch to see if a drug sniffing dog could be transported to the scene to smell the envelopes to see if they contained illegal drugs. This occurred about 23 minutes into the stop. Several law enforcement agencies were contacted over approximately the next 38 minutes, but no K-9 units were available. While inquiries were being made about the availability of a K-9, Officers Madej and Nolasco were also contacting superiors and eventually the Ohio State Highway Patrol for advice on how to proceed with the sealed envelopes found in defendants vehicle. Near the end of the 38 minute period referenced above, Officer Nolasco received advice from the Highway Patrol that as long as they had found drugs in the vehicle, they had probable cause to open any sealed container that might contain drugs.

{¶ 20} As previously stated, When a law enforcement officer stops a vehicle for a traffic violation, the officer may detain the motorist for a period of time sufficient to issue the motorist a citation and perform routine procedures such as a computer check on the motorist's driver's license, registration and vehicle plates. *State v. Thomas*, Montgomery App. No. 22833,

2009-Ohio-3520, ¶ 14. In determining whether an officer completed the tasks of a traffic stop 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. *State v. Batchili*, 113 Ohio St.3d 403, 2007-Ohio-2204, ¶ 17. Defendant maintains that after officers located the small amount of marijuana in the center console of his vehicle, they should have written him a ticket for a minor misdemeanor (which they did after approximately 53 minutes from the time of the initial stop and 42 minutes after discovering drugs in the center console) and then released him. However, despite being told that he was not under arrest, defendant was not free to leave the scene and his detention continued for another eight minutes after the citations were issued.

{¶ 21} The amount of raw cannabis that was found in defendant's vehicle was less than 100 grams (a non-arrestable, minor misdemeanor). Officer Madej's testimony that the smell of raw marijuana was "billowing out" of the vehicle combined with the discovery of only a small amount of marijuana certainly provided reasonable suspicion that there was more marijuana elsewhere in the vehicle—justifying a more thorough search. However, without more, the smell of marijuana does not provide probable cause to open every container located during the search. There must be a reasonable basis or probable cause to open an individual package found within a vehicle exhibiting a strong smell of marijuana. The State relies on *State v. Gonzales*, 2004-Ohio-168, for the proposition that, once an officer has probable cause to search a vehicle, he may search all containers within the vehicle. This is not the

holding of *Gonzales, supra*. To the contrary; *Gonzales* cites to *United States v. Ross* (1982), 456 U.S. 798, which states that probable cause to search an automobile, is “defined by the object of the search and the places in which there is probable cause to believe it may be found.” *Id.* at 824. Here, the justification offered for opening the sealed envelopes found in the backseat is Officer Madej’s testimony that when he felt the packages, they did not feel like stickers but instead felt like individually packaged drugs (Officer Madej later told another officer that the packages felt like marijuana). This testimony must be viewed in the totality of all of the circumstances.

{¶ 22} During the initial search of the defendant’s vehicle, there was little said about the open package of the Sweet Stone Candy recovered from the center console of the vehicle. This candy was not identified as contraband by officers when they confiscated the marijuana buds and “shake weed” from the car. On cross-examination, Officer Madej admitted that he was not sure if the Sweet Stone Candy was even illegal. There was also no testimony that either the candy found in the center console or in the unopened U.S. Mail envelopes in the backseat smelled like marijuana. When he was offered the same envelopes to smell during cross-examination, Officer Madej agreed that he did not detect the odor of marijuana. The Sweet Stone Candy was not positively identified as containing THC until after it was confiscated and tested at the police station.

{¶ 23} In viewing all the testimony and evidence presented at the hearing, the Court finds that the defendant was unlawfully detained by officers for the 38 minutes after the initial stop and search of his

vehicle in which a minor misdemeanor quantity of marijuana was confiscated. During the majority of this time period, officers were trying to figure out what to do with the envelopes seized from the back of defendant's vehicle. Certainly, a drug sniffing dog, if obtained within a reasonable time after the suspect envelopes were discovered, could have possibly avoided the constitutional dilemma faced by law enforcement in this particular case. The fact that the officers sought advice from superiors before conducting a search is also commendable. However, the advice they received during the course of the stop that they could detain the defendant for an indefinite period of time because drugs had been found in his vehicle was incorrect. The resulting delay while waiting for an answer via either the "sniff" of a trained K-9 officer or legal guidance from superiors exceeded constitutionally permissible grounds to detain the defendant in this case. For this reason the 150 individual packages of the Sweet Stone candy found in the envelopes that were opened during a constitutionally impermissible detention must be suppressed. The other evidence seized, the marijuana buds, the shake weed, and the opened package of the Sweets Stone Candy are not subject to suppression as they were recovered in the context of a constitutionally permissible search. Defendant's Motion is granted consistent with this opinion.

IT IS SO ORDERED.

/s/ Dick Ambrose
Judge

Date: 1/25/2016

TRANSCRIPT OF PROCEEDINGS OF THE
ORAL ARGUMENT ON DEFENDANT'S
MOTION TO SUPPRESS EVIDENCE
(JANUARY 11, 2016)

IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION

THE STATE OF OHIO,

Plaintiff,

v.

EDWIN A. VEGA,

Defendant.

Case No. CR-599025-A
C/A: 104058, Volume I of I

Before: Dick AMBROSE, Judge.

[January 11, 2016 Transcript, p. 4]

AMBROSE, DICK, J.: On the record. We are here in Case 599025. This is captioned *State of Ohio vs. Edwin Vega*. Do I have Mr. Vega in the courtroom?

THE DEFENDANT: Yes, sir.

THE COURT: You can come forward and sit at the trial table.

So Mr. Vega is here with his attorney Justin Weatherly. And here on behalf of the State of

Ohio is Assistant County Prosecuting Attorney Eleina Thomas.

This case is set for trial, but also is set for hearing here this morning on the Defendant's Motion to Suppress which was filed on December 2nd, 2015. And I do not see a written response from the State of Ohio. I'm assuming the State is objecting to the motion.

MS. THOMAS: Your Honor, I filed it within our internal system. I'm not sure why it did not get filed with the court docket. I provided defense counsel with it. I have a copy for you.

THE COURT: It would be helpful.

MS. THOMAS: Sorry about that. I don't do the filing.

THE COURT: So I do have the State's Written Response to the Motion to Suppress, and I believe I'll let counsel explain a little bit in kind of an opening statement the nature and extent of the suppression sought. But I believe as a result of the traffic stop the Defendant was subject to a detention and then search of his vehicle, and I believe that the items sought to be suppressed would be all the items recovered from Mr. Vega's car on that day in question.

So is that basically your position, Mr. Weatherly?

DEFENDANT'S OPENING STATEMENT

MR. WEATHERLY: Yes, it is, Judge. Just briefly, Your Honor, we are challenging the validity of the traffic stop itself. We believe there is a lack of reasonable suspicion that exists for the officer to even initiate the traffic stop. Once the traffic stop was

initiated, as I'm sure the officer will testify, the police report and the body cam indicate, that there was a strong odor of marijuana emanating from the vehicle. Officer searched the car then did observe loose marijuana basically throughout the entirety of the vehicle. My client did admit to marijuana use. And as time goes on, Judge, my client is detained for approximately an hour and a half.

Nothing but loose marijuana, nothing more incriminating than loose marijuana is found in his car amounting to little more than the issuance of a minor misdemeanor citation for possession of marijuana. That citation was actually issued to my client during the course of his detention, as well as the issuance of another minor misdemeanor traffic infraction.

And the reason for the delay is that there is a package in the rear of my client's car. It's a box. The box is open. In the box are sealed packages. Sealed—I want to make this point very clear—United States Postal Service packages that are sealed. This is U.S. Mail that is unopened. And the officers can't tell if they're drugs or not. The officers don't know if there's an odor of marijuana emanating from the packages or not.

They asked my client if they're allowed to open them. He says no. They try to get a K9. They can't get one. They put in multiple phone calls to prosecutors and to the State Highway Patrol to see if they're allowed to open the packages. Ultimately they make the decision that they're just going to issue my client the citation for the minor misdemeanor marijuana and traffic stop and let him go, they even say that on the video. Then, at

the last second, as my client has been detained for approximately an hour and a half, a call from State Highway Patrol comes in and says oh, well, you have probable cause to search the vehicle because of the odor of marijuana, that gives you the right to open the packages, go ahead and open them.

So they continue to detain my client. They do open the sealed United States Postal Service packages, and inside they find what would be legal, marketable candy in the State of Colorado. It's THC candy, Your Honor, that's in individual packages that are in the United States Postal Service sealed packages that were in the rear of my client's car. They themselves have no odor to the human nose at least. Perhaps a dog would be able to indicate to them. But the officers then realize that the candy itself is laced with THC, at which point my client is arrested and charged with felonies that are enclosed in his indictment.

Based on that particular set of facts, we're arguing that the officers not only did not have the right to initiate the traffic stop against my client, they didn't have the—they violated his constitutional rights by detaining him for such a lengthy period of time, certainly outside the scope of the traffic stop. And they further violated his constitutional rights by opening the sealed packages in his car which they did not have a constitutional basis on which to do so.

I have not had an opportunity to thoroughly review the Brief in Opposition. It was just handed to me minutes ago. I know there was an issue of it getting filed. I would understand that. I'd respect-

fully request this Honorable Court consider allowing me an opportunity to draft a Brief in Reply, give me time to do that so I could counter any arguments that are made in that particular motion. I know we're set for trial today, Judge, but I would like the opportunity to Brief any response that—Brief my response to any response the State has in this case.

I guess for opening statements, Judge, that's about the gist of it. The only thing I would ask is I have been assisted in this case by a law clerk Bridgette Cunningham. I respectfully request the Court allow her to sit at the trial table with me for purposes of this hearing.

THE COURT: Okay. You say Ms. Cunningham is a law clerk?

MR. WEATHERLY: Third year at Cleveland Marshall.

THE COURT: She could sit at the trial table and get that experience. Welcome.

As to the issue about the Brief in Reply, I will make that decision after the hearing. I mean, I may give you an opportunity to file a Post-Hearing Brief rather than style it as a Brief in Reply just because I would like to go forward with the hearing and get that taken care of.

I'll entertain any initial opening by the State since I haven't had a chance, either, to review the Brief in Opposition.

MS. THOMAS: Thank you, Your Honor. Before I begin my opening statements, I don't believe we've put a mark request on the record. I would like to do that and make it clear to the Defendant that

once this trial starts, we put a witness on the stand, the mark is no longer available and the only option is to plead to the indictment.

So at this time, Your Honor, the Defendant is charged with five counts. One count of felony of the third degree trafficking with forfeiture specifications; one count of felony of the third degree drug possession with forfeiture specifications; with one count of felony of the fifth degree trafficking with forfeiture specifications; one count of minor misdemeanor drug possession, forfeiture specifications; and one count of possession of criminal tools, a felony of the fifth degree.

At this time we are willing to offer the Defendant three counts of the indictment with amendments. We are willing to take the first count felony of the third degree down to a felony of the fourth degree. This would be attempted drug trafficking, the forfeitures shall remain; we are willing to make it—drop the felony of the third degree drug possession down to a felony of the fifth degree drug possession with forfeitures remaining; as well as we are offering Count 5 as indicted, a felony of the fifth degree possession of criminal tools.

At this time we would like to relay that mark to the Defendant again and reiterate the moment we start this hearing that offer is no longer available. Only option is to plead to the indictment.

THE COURT: Is that Count 2 you're referring to as felony 5 drug possession?

MS, THOMAS: Yes. We would amend the weight to felony 4 level and add attempt to that. Actually, we will be offering F5 drug possession. If we have

to, we would amend the weight and do what we need to get it down to an F5, Your Honor.

THE COURT: He would be pleading guilty to amended Counts 1, 2, 5 as indicted, 1 and 2 are amended?

MS, THOMAS: Yes, Your Honor.

THE COURT: Is that your understanding of the plea offer, Mr. Weatherly?

MR. WEATHERLY: It is, Your Honor.

THE COURT: Do you need any time to discuss it with your client, or have you, already discussed this and ready to go?

MR. WEATHERLY: Judge, my client and I have had an immeasurable amount of time to discuss possible plea agreements, and he has stood steadfastly in disagreement to any plea agreement with regards to this case and I believe intends to go forward with this motion to suppress hearing.

THE COURT: Go ahead, Ms. Thomas. You may be heard on your State's Reply to the Motion to Suppress.

STATE'S OPENING STATEMENT

MS. THOMAS: Thank you, Your Honor. First off, it is our position that the officer had reasonable suspicion to stop the vehicle for failing—for turning left on a red light. There is body cam footage within seconds, probably 10 seconds, of the first interaction that the officer has with the Defendant. The Defendant essentially admits to running the red light. There are four opportunities on the body cam that you can hear where he admits to it. The officer comes up and is like hey, that car

even went before you and you went. And he's like, yeah, I'm sorry, my bad, something to that effect.

There's another time where he's pointing to the two different traffic tickets. He was issued two citations, one for drugs and then the other for the turning left on a red light. He points to the red light ticket, says yeah, I'm not even going to challenge that, my issue is with the marijuana. Because his main concern is his driving privileges. And so with that we say that there was reasonable suspicion to pull the car over.

Then also right after that initial conversation, within 10 or 15 seconds, the officer describes the smell of marijuana billowing out of the car. And repeatedly you can hear on the body cam other officers, this officer, who say this car has to be full of drugs with the strength of the odor coming out of the car.

Within eight minutes of the traffic stop after they run his identification and they come back they say, look, based on that smell of that marijuana we're going to search your car, you need to step out. They do a quick Terry pat down to make sure he doesn't have any weapons. He's not cuffed.

They search the car within eight minutes. They find buds, marijuana buds in the car, in the center console. They also find candy in it that has the website SweetStoneCandy.com, as well as something called to the effect of Candy Stone medicated something, candy indicating that, you know, it contains marijuana. That is their belief. As well as there are three cell phones found in the car, two packages of rolling paper, and, like I

said, the odor of the marijuana coming out of the car.

They then discover this white box that is opened which looks like it was shipped at some point. There's no way to determine if these packages were actually shipped in this box. They were just sitting in the box. The white packages themselves do not have address labels. They were not shipped as far as we can tell without jumping to conclusion what was in the box through the Postal Service.

Yes, they had the Postal Service designation on the envelope, but I can walk into the Postal Service, buy an envelope, walk out and use it for personal use without having to mail it. There is nothing that says you have to mail this particular package.

There is then a lengthy discussion on the body cam about what to do with the packages. Do they get a warrant? Do they need a warrant? Do they tow the car? Do they have to let him go? Eventually, based on the strong odor and all the other indicators of drug activity, they then open the package which case law supports, which is identified in my Brief, that once there is a strong odor that indicates there is a large amount of marijuana in the car the officers are allowed to search the entire vehicle including containers within that vehicle.

I know Mr. Weatherly addressed the length of the stop. Again, at eight minutes is when the marijuana itself was located, but the odor of marijuana was located within seconds of the interaction between the officer and defendant.

We would say that that then extends the length of a traffic stop based on the fact it is then now an investigation into drug activity and what is contained in this car.

With that, Your Honor, we would ask this motion to suppress be denied. Thank you.

THE COURT: Okay. We'll go forward then and State can call its first witness.

MS. THOMAS: Call Officer Madej.

The STATE OF OHIO, to maintain the issues on its part to be maintained, called as a witness, JEFFREY MADEJ, who, being first duly sworn, was examined and testified as follows:

THE COURT: State and spell your name.

THE WITNESS: Officer Jeffrey Madej, M-a-d-e-j, Badge No. 17, Cleveland State University Police Department.

THE COURT: Jeffrey with a J?

THE WITNESS: J-e-f-f-r-e-y.

THE COURT: Thank you.

Ms. Thomas.

DIRECT EXAMINATION OF JEFFREY MADEJ

BY MS. THOMAS:

- Q. Officer Madej, can you tell us where you work, please.
- A. On that occasion I was in my patrol vehicle, marked vehicle 149. I was facing northbound—
- Q. Stop you.

- A. In the City of Cleveland.
- Q. Who do you work for?
- A. Cleveland State University Police Department.
- Q. And what do you do for Cleveland State?
- A. Basic patrol officer.
- Q. How long have you been there?
- A. Nine years.
- Q. Have you been a police officer anywhere else?
- A. Yes.
- Q. Where?
- A. I did three years commissioned auxiliary work for the City of Maple Heights, and three months in Highland Hills, the Village of Highland Hills.
- Q. So you've been an officer about 12 years and 3 months?
- A. Approximately.
- Q. What kind of training did you go through to become an officer?
- A. I went through basic OPOTA training. I've been through OVI refresher. I'm a field training officer, firearm instructor.
- Q. How many hours of training do you have to go through to become a police officer?
- A. At the time, I believe it was approximately 626.
- Q. Do you have any continuing education that you have to go through?

- A. Once a year we do 40 hours of in-service training within our agency.
- Q. And what kind of training have you had regarding traffic stops?
- A. We have a traffic stop training we do yearly within our in-service program.
- Q. What happens? What do you learn?
- A. We go over positioning, case law regarding traffic stops, and tactics, officer safety.
- Q. Do you have to do that every year?
- A. It's been yearly for the past couple of years.
- Q. What's a couple years?
- A. Two to three. It's something they introduced fairly recently.
- Q. And what do you do currently for Independence—I'm sorry, for Cleveland State?
- A. I'm basic patrol officer still.
- Q. What are your duties as a basic patrol officer?
- A. I work night shifts 7:00 p.m. to 7:00 a.m. On that occasion I was assigned to day shift. I respond to any service calls, 9-1-1 emergencies, enforce city and state laws as well as rules and regulations of the University and provide basic patrol to the area.
- Q. And how many traffic stops do you think you do a year or month or whatever is equal—
- A. At least 50 a year.
- Q. And within those stops, what are you basically stopping people for?

- A. Generally, it's red light violations, OVI, things of those nature, safety issues.
- Q. Do you ever encounter people with drugs?
- A. Yes.
- Q. How often do you conduct traffic stops that involve drug activity?
- A. It varies. It's not a set amount. Maybe monthly. Maybe once a month.
- Q. And would this be consistent for the nine-year period you've been an officer?
- A. Over the time, yes, while I was at Cleveland State.
- Q. And then you said red light?
- A. Red light.
- Q. What do you mean by that?
- A. We enforce traffic laws pertaining to all traffic signals within our jurisdictional area.
- Q. What is the procedure for—What do you do when you initiate a traffic stop?
- A. Immediately once I stop a vehicle I immediately notify dispatch of the plate, my location, number of occupants usually. I wait for that information to come back. Once it comes back, I approach the vehicle. I immediately identify myself as a law enforcement officer and advise why I stopped them.
- Q. What do you do immediately after that?
- A. I immediately go back to my vehicle, do a records check on their license, at that time decide whether I'm going to issue a citation.

Q. And say you're going to issue a citation, roughly how long does your traffic stop normally last?

A. I would say no more than 15 minutes. Usually under that.

Q. When you have been conducting traffic stops that involve drug activity, how long are your traffic stops usually?

A. They'll vary depending on the severity of the drug offense.

Q. Will they be longer than 15 minutes?

A. Sometimes, yes.

Q. And when you encounter that, what do you do in terms of discussing something with the supervisor?

A. I'll generally discuss it with the officers on scene and come up with, you know, the best decision possible and I'll run it through my supervisor.

Q. And why do you do this?

A. To make sure we're making a good decision. To keep my supervisor informed foremost.

Q. Okay. And do you work alone or do you have a partner?

A. Single man cars. Work alone.

Q. When you initiate a traffic stop, are you always alone or at some point are other officers on scene?

A. Initially, I'm usually by myself. We try to have two people on every traffic stop just for officer safety reasons.

Q. What are the areas you normally patrol?

- A. East 13th Street to East 36th. That would be our east and west. North and south would be from Payne to Carnegie.
- Q. To generalize, that is Cleveland State Campus?
- A. The area surrounding the campus.
- Q. How familiar are you with the area of East 18th and Euclid?
- A. Quite familiar.
- Q. How many traffic stops do you think you conduct in that area?
- A. It's hard to say. I couldn't give you a set number.
- Q. Is it a frequent place for traffic stops?
- A. It can be.
- Q. And turning to I believe March of this year, were you working?
- A. Correct.
- Q. And in what capacity were you working?
- A. Basic patrol officer assigned to day shift.
- Q. What area were you patrolling?
- A. At the time I was patrolling northbound on East 18th Street, Euclid Avenue.
- Q. You're patrolling. Are you driving the car? Sitting? Where are you?
- A. Driving. I'm stopped at a light.
- Q. And you're patrolling the area. And then what happens?

- A. I was northbound on 18th. I observed the light for eastbound traffic on Euclid Avenue. The left turn lane had a green light. Several cars had gone through. Light had changed red, and I observed the Defendant's vehicle turn left through a solid red light and proceed northbound on 18th Street.
- Q. And so can you explain to us how the intersection is set up in terms of lanes and traffic lights?
- A. For eastbound traffic, we'll start southern most side of the intersection, which would be the right curb lane per se for eastbound traffic, the first lane is eastbound traffic and right turn. It has its own signal red, yellow, green. To the left of that is the left-hand turn lane for eastbound traffic. The roadway is marked left turn or U-turn. That signal is right in front of that lane, and that is solid red, then yellow arrow and green arrow. It has a sign posted' directly to the right of that stop light within feet that says left turn on green arrow only. To the left of that lane would be the eastbound bus lane for RTA buses, then there would be a cement barrier, then there would be the westbound bus lane for RTA buses, then next to that would be the westbound traffic lane for vehicles.
- Q. So when say you're in the far right lane on the curb and you have a green light, what would be the light in the lane next to it?
- A. It would be a red.
- Q. What about the bus lane?

- A. Theirs operate on a white signal, it's a horizontal bar, vertical bar and triangle. The bus would have the same right of way as the eastbound thru traffic lane along the curb.
- Q. I'm going to pull up a map so you can demonstrate to us what you're talking about. So tell me in this view where your car would be. Would you have been here (indicating) or would you have been here (indicating)?
- A. My vehicle would have been right where—right there where that arrow straight and left-hand turn arrows at the stop bar.
- Q. So would this be an accurate depiction of your viewpoint from where your car was?
- A. That's correct.
- Q. Where was the Defendant's car?
- A. It would be to the left. Off camera. Right where that silver—the second silver car is in the center lane.
- Q. So this car right here (indicating)?
- A. That's correct. That's the left-hand turn lane for eastbound traffic.
- Q. Tell us what street that is and what street you're on.
- A. I'm on northbound East 18th Street facing towards the lake. The silver car that's in the image right here would be facing eastbound on Euclid Avenue at East 18th Street.
- Q. And describe to us what these traffic lights look like.

A. The two right most traffic lights, there's two yellow ones, both of them are solid red in this image, the one you're pointing at and the one next to it, those are for the eastbound straight thru traffic lane which is the curb most lane.

The next light to the left of that yellow one that's right next to the square sign, that is the left turn signal which shows a red solid or yellow arrow or green arrow. That's for the traffic lane.

The black light is for buses.

Q. And so for the Defendant's vehicle in this lane, where the silver car is, which traffic light would dictate his ability to go or stop?

A. The third to the left.

Q. The one I'm pointing to next to the turn on arrow only sign?

A. That's correct.

Q. And so you were here, and what did you see?

A. I observed a couple cars—I can't say exactly how many—had turned left. And the light was changing, so I looked up at the light. I had a vantage point, I could clearly see the light. The light had turned solid red, and then the Defendant proceeded through the intersection making a left-hand turn onto East 18th Street.

Q. Was his car approximately where that silver car is? Was it up closer? Or where was it?

A. It would have been maybe a couple feet behind it, because there's another car that went before him that was pretty close to running it and then he went right through.

Q. So a couple feet behind this car. So where my pen is pointing, maybe like four or five feet behind the line, that is where his car was when that light turned red?

A. Yes. It was solid red before he crossed the intersection.

Q. Officer, you testified in a trial regarding this specific traffic ticket?

A. I did. Cleveland Municipal Court.

Q. And when you testified, is your recollection today the same as it was when you testified?

A. No. I made an incorrect statement as far as my position in my patrol vehicle in Cleveland Muni Court.

Q. What did you state in Cleveland Muni Court?

A. I stated I was behind the Defendant's vehicle in that turning lane.

Q. Why did you say that?

A. At the time I had reviewed my case—Most of my offenses generally occur when I'm behind the vehicle. I made an assumption that I was behind the vehicle at that time.

Q. Prior to testifying had you reviewed any notes, any video, anything regarding—

A. I reviewed the report and the front page of the ticket which was provided by the prosecutor at the time at Cleveland Muni Court.

Q. On those does it indicate, where your car was located?

- A. No. It just states I am on patrol in the area of East 18th and Euclid Avenue.
- Q. So today, your testimony is that you were actually at a different vantage point. Why is your testimony that?
- A. Because after the trial was completed I went back and I reviewed the case. I found a surveillance camera on one of our buildings, which would have been further east on Euclid. I reviewed that camera and that's when I realized my vehicle was on East 18th Street.
- Q. And in that camera view, were you able to see the traffic light to see if it was red or not?
- A. No. You cannot make it out. Due to the distance and sunlight, you were not able to make out any colors at all on the traffic signal.
- Q. Were you able to capture that video?
- A. I did not at the time. I wasn't able to see any of the traffic lights and the case was already dismissed so I did not at the time, no.
- Q. Did you ever try to go back and get it?
- A. I did eventually later on, but it was deleted due to surveillance video is only kept for a certain amount of days.
- Q. And so you initiate a traffic stop. Tell us what happens after that.
- A. I immediately made my traffic stop. I advised my dispatch of my location. I approached the suspect's vehicle. When I approached him I addressed myself as an officer, advised him why I stopped him and

asked for his driver's license and proof of insurance.

Q. And so where did you initiate this stop?

A. It would have been two traffic lights northbound from here, which would have been northbound on East 18th Street at Payne Avenue.

Q. When you approached the vehicle, what happened?

A. I advised him the reason of the stop. I stated the reason why I stopped you is you turned left through the red light. The Defendant said, yeah. I said, you know, you turned left at the red light. The car before you went and you went through after him. He said, yeah, my, bad, or, yes, I'm sorry. Then I asked for his driver's license, proof of insurance, and I said, hey, flat out, I can smell a strong odor of marijuana coming from this vehicle, do you have any marijuana? He said, no. And at that point I went back to my vehicle and did a records check on him and made a decision to go ahead and search the vehicle.

Q. Why did you go ahead to make the decision to search the vehicle?

A. Due to the strong odor of marijuana coming out of the vehicle.

Q. Was it burnt marijuana or raw marijuana?

A. It was the odor of raw marijuana.

Q. Do you recall roughly at what point the traffic stop had been going on at this point?

A. It was well under 10 minutes at this point. I don't know exactly off the top of my head the timeframe.

Q. Once you went back to the car and you advised him you were going to search it, what happened?

A. I asked him to exit the vehicle. When he exited the vehicle he said he didn't believe it was a good search and that it's a moral thing with marijuana and that he believes it's his right.

I asked him to step to the rear of the vehicle, and the backup officer, Officer Nolasco, he stayed with the Defendant for officer safety. I began searching the vehicle. Immediately in the front area by the cup holder I noticed one cell phone, then there was another cell phone in the front door, and there was a third cell phone in I believe the center console.

I opened the center console and found several raw buds of marijuana, one package of Sweet Hard Candy, something to that effect, in the center console.

Q. And what did you do after that?

A. After that came out and I advised the Defendant, hey, you got marijuana in the car. Is there anything else? He denied it. He said, am I going to get a ticket for that? I said, absolutely. And he was very concerned with the marijuana ticket because he believed it would be some sort of license suspension if he got the ticket. And at that point he made the statement to me, can't you just write me for running the thing? In my belief he was talking about the traffic stop.

Q. What happened after that?

A. I had him seated in the back of my vehicle. He was not handcuffed. I read him his rights. At

this point I began, to search the vehicle further. Due to the odor, I believed there were more drugs in the vehicle.

Q. And what happened after you searched further?

A. I searched further. Once we moved to the back seat, there was a substantial amount of rolling papers. We're talking like cases. Then we also found a box containing several aerosol canisters something to the effect of 420 odor-masking agent. It's used to mask the odor of marijuana. And then we also found—I observed a white package box, USPS box, on the back seat.

Q. And was the box sealed? Opened?

A. It's partially opened. The one lid was completely opened.

Q. What did you notice inside the box?

A. I noticed two white mail packages.

Q. Now, mail packages, were there labels on the packages?

A. No. Unlabeled.

Q. When you say mail packages, you're describing the writing?

A. Yes. The brand. Like a paper-type mail package.

Q. And were any of those packages opened?

A. No.

Q. So what did you do after you discovered those packages?

A. I felt that one package, and immediately to me it felt like it was possibly—I thought it was indiv-

idually packaged drugs. It had the feel to it. So at that point I went back and talked to the Defendant again. He was already Mirandized. I advised him of the package that I found, asked him what it was. He stated to me it was stickers.

Q. Okay.

A. To me, the feel of the package was not consistent with stickers. So I gave him the opportunity to open it up, and he said no. And at one point I asked him if the packages contained stickers—if the package contained stickers, you wouldn't have a problem opening it? And he said, no.

Q. And did you open the package at that time?

A. No, I did not.

Q. What did you do after that?

A. After that I conferred with other officers on scene, including my supervisor. We were deciding what to do. At that point we tried calling for several narcotics K9s, which we didn't have any luck with.

Q. And then after that what did you do?

A. I had written him his tickets, and then I conferred with my supervisor again, which one of the other officers on the scene had contacted the Highway Patrol—they deal with this a lot—just to double check.

Q. And then based on that conversation, is that when you opened the packages?

A. No. I went to talk to him about his tickets, misdemeanor and traffic ticket, and had them both on a clipboard. The traffic ticket being on the left side of the clipboard and the misdemeanor marijuana

on the right side of the clipboard. Basically I was explaining to him court dates, waivable, whether he wished to contest in court when to show up. During that time while I was explaining them, he pointed to the traffic ticket and said, I'm not going to fight that. He said he would show up to court on the misdemeanor marijuana.

Q. Did you ever have to testify in the misdemeanor marijuana?

A. I have not been to court on the misdemeanor marijuana.

Q. And after that what did you do?

A. I had talked to my supervisor. He said OSP had just called back, so we talked to the Highway Patrol. Made a collaborative decision amongst my officer in charge, the other officers on scene, and at that point we decided to open up the package, one package.

Q. And what was your decision based on?

A. We based it on the strong odor of marijuana coming from the vehicle. I did not believe it was coming from simply a couple marijuana buds in the center console. I believed there was more, along with other indicators, the odor-masking agent.

Q. What was in there that led—You said odor. I believe you before testified to—

A. Several cell phones. There was a Sweet Candy in the center console along with the marijuana. There was an odor-masking agent in the back seat, a quantity of it. A lot of rolling papers.

Q. I'm going to hand you two maps. One has been marked as State's Exhibit 2. Take a look at that. What is that?

A. That is a picture facing southbound on East 18th Street at Euclid Avenue.

Q. Is that accurate of the same view we were looking at on the Mondopad?

A. That's not my viewpoint, but the same traffic signal is in this viewpoint.

Q. Okay. And then how was this different from your viewpoint?

A. I was facing the opposite direction. I was facing northbound. This one's facing southbound.

Q. So in this picture there's a Jeep. Are you roughly— Is that roughly where you would have been?

A. Yes. Just set back a little further behind the stop bar.

Q. Otherwise, this is a fair and accurate depiction of where, you were located in the traffic stop?

A. Correct.

Q. And I'm going to hand you State's Exhibit 3. Can you describe what that is?

A. Yes. This is going to be facing westbound on Euclid Avenue at East 18th Street showing a view of the eastbound traffic lanes

Q. Is that a fair and accurate depiction of what we were looking at on the Mondopad?

A. Correct.

Q. You mentioned items that you found in the car prior to opening the package?

A. Correct.

Q. I'm going to hand you what's been marked as State's Exhibit 7. Also hand you what's been marked as State's Exhibit 13, which is the inventory sheet. Can you describe what is in State's Exhibit 7 and where you located that.

A. Correct. That's Item No. 6, Nokia cell phone that was located inside the driver's side door compartment.

Q. When you say Item No. 6, where is that number coming from?

A. That's coming from our evidence sheet.

Q. Okay. And is there any writing on that, on the package?

A. No.

Q. And I'm going to hand you what's been marked as State's Exhibit 4.

A. That would be Item No. 2. It's an individual package of SweetStone Candy Fruit Loop Flavor. This was found in the center console of the motor vehicle.

Q. Again, was that before or after you opened the package?

A. This is before I opened the package.

Q. I'm going to hand you what's been marked State's Exhibit 5.

- A. Labeled Item No. 8 on our inventory. A black—Appears to be a Blackberry cell phone case—a Blackberry cell phone and brown cell phone case, and that was located inside the center console as well.
- Q. I'm going to hand you what's been marked as State's Exhibit 6.
- A. Item No. 7. An iPod. It was found plugged into the cigarette lighter by the cup holder area between the two front seats.
- Q. State's Exhibit 9.
- A. Labeled evidence No. 5. It's a Blackberry model cell phone. It was in the same general area. It was in, between the two seats by the gear shifter.
- Q. I'm going to hand you what's been marked as State's Exhibit 12.
- A. Labeled Item No. 1. This is several buds of raw marijuana. It was found in the center console.
- Q. Again, at what point were these items discovered?
- A. This was discovered as soon as I pulled him out of the vehicle to advise him I was going to be doing the search, that's when these items were discovered in the center console.
- Q. And at what point again you point—You thought you were about 10 minutes in. Do you recall at what point you discovered the marijuana and all these items? Was it within that ten-minute period or after?
- A. I believe it would be within that 10-minute period.

Q. And you said—You mentioned rolling papers, 420 odor—

A. Can of odor-masking aerosol.

Q. Did you take those as evidence?

A. We did not.

Q. I'm going to hand you what's been marked as State's Exhibits 15 through 22. These are photos of the car. If you can, can you walk us through the photos. I do not have them for the Mondopad. Demonstrate to the judge as a jury what we're looking at and identify the exhibit number.

A. Exhibit 15 would be a view of the front of the Defendant's vehicle, and directly behind it would be about my patrol vehicle 149.

Exhibit No. 16 would be the position of the rear of the Defendant's vehicle.

Exhibit No. 17 Would be an image of the inside compartment of the Defendant's vehicle from an open driver door position depicting the open center console here.

Q. Is that the same center console that you discovered the marijuana in?

A. That's correct.

Q. All right. Continue.

A. Exhibit No. 18 is a view through the open passenger side rear door of the Defendant's vehicle.

Q. And if you at any point discovered any of these items in these photos, if you can detail where that would have been located.

A. The white mail box would have been sitting right here in the center of the back seat (indicating).

Again, this is another rear image of the rear of the Defendant's vehicle with the trunk opened, Exhibit No. 19.

Exhibit No. 20 is a picture of a box removed from the trunk displaying several cases of raw rolling papers.

Q. You said that's from the trunk?

A. Correct.

Q. Were there similar items—

A. There was more inside the rear of the vehicle.

Q. Okay. Now, had you searched the trunk at this point?

A. No. That was done after the package.

Q. Okay.

A. Exhibit No. 21 is an image of the rear seat of the Defendant's vehicle through the open driver's side rear door. You can see another package full case of the raw rolling papers, and I believe this box contained a bunch of the aerosol canisters of 420, and the mail package would have been sitting here (indicating).

Q. When you're referencing mail package, hand you State's Exhibit 36.

A. Yes. This is a white USPS Priority Mail Box.

Q. How was this sitting in the car?

A. Sitting on the back seat right here (indicating).

THE COURT: What was that exhibit number?

MS. THOMAS: 36.

MS. THOMAS:

Q. Can you demonstrate how if the lid was opened or closed?

A. This is how it was. What I did was I was able to look in and see the package. I reached in and felt the packages, and that, like said earlier, led me to believe it was individual packages of narcotics.

Q. The items that we went through, the cell phone and the candy and the marijuana, are these all in the same condition as when you retrieved them out of the car?

A. Yes. Once I logged them into evidence, yes.

Q. How about the box?

A. To the best of my knowledge, yes. Once it was entered into evidence, it is consistent with the way it was found.

And there was one more exhibit. Exhibit No. 22, this is an image of the front passenger area of the vehicle with the front passenger door opened again depicting the opened center console.

Q. These pictures, are they a fair and accurate depiction of how the car was when you pulled the Defendant over?

A. That's correct.

Q. And once you had come to the consensus that you should open the packages, what did you find inside?

A. We found three large Ziplock clear bags containing a large amount of SweetStone Candy. Same

thing as we found in the center console containing THC.

Q. I'm going to hand you what's been marked as State's Exhibits 10 and 11. Are these—What are these?

A. These are two white paper packages that we retrieved from the white box that was on the back seat from the Defendant's vehicle.

Q. And which is the one you opened on scene?

A. Item No. 3.

Q. What is the State's exhibit for that?

A. That is State's Exhibit No. 11.

Q. Did you say Item No. 3?

A. Item No. 3 on my evidence list, but it's Exhibit 11.

Q. I'm going to hand you State's Exhibits 23, 24, 25, 26. So explain to us, walk us through again those photos pointing for the judge what those are, indicating State's exhibit number as well as which was the one you opened on scene.

A. Okay. Exhibit No. 23, Item No. 4, this package here, this one was not opened on scene. That is Exhibit No. 23.

Exhibit No. 24 is the contents of Item No. 4.

Exhibit No. 25 would be Item No. 3, this bag.

And Exhibit No. 26 is the contents of one of the Ziplock bags that was taken out of Item No. 3.

Q. And again, looking at this, does this appear like this was mailed by the U.S. Postal Service?

- A. No. I did not see any address label on it nor was it stamped in any way, shape or form to show some kind of delivery.
- Q. You are referring to Item No. 3, but I'm referring to State's Exhibit 11.
- A. I did not see anything, either.
- Q. Are these roughly in the same condition as when you put them into evidence?
- A. Correct. Except for the fact of opening them.
- Q. I am going to hand you what's been marked as State's Exhibit 34. Can you explain to us what's in that picture.
- A. Exhibit No. 34 is an image of a NIK narcotics testing sample showing a presumptive positive for marijuana.
- Q. What is a NIK Test?
- A. It's a chemical test where you insert a small amount of whatever the substance is into it, and then through a procedure of testing it tells you whether it's presumptive positive for a certain drug or not.
- Q. Are you aware of what they were testing?
- A. Yes. My sergeant, Sergeant Joe Hunt, had tested the contents of the open bag of Sweets Candy that was found in the front center console, which would be—
- Q. State's Exhibit 4?
- A. That's correct.
- Q. And was that done on scene or was that done later?

- A. That was done at station.
- Q. I'm going to hand you what's been marked State's Exhibit 14. State's Exhibit 14, can you tell us what that is?
- A. That's a City of Cleveland Uniform Traffic Ticket, one that I issued to Ed Vega.
- Q. And what date did you issue that?
- A. That was issued on the 28th of March.
- Q. Of what year?
- A. 2015.
- Q. And did he indicate that he received that ticket?
- A. That's correct. He signed for the citation.
- Q. Is that a fair and accurate copy of his citation that you issued?
- A. Correct.
- Q. On this day were you wearing a body camera?
- A. Yes, I was.
- Q. Is that customary for you?
- A. That's correct.
- Q. And explain to us how the body cams work.
- A. The way the body cameras work are you have to flip one switch up to turn the power on to the camera and one more button on top to start the recording process.
- Q. And did you initiate or turn the body cam on for this interaction?
- A. I did.

Q. And at what point did you do that?

A. Once I pulled the vehicle over and once I had the vehicle stopped I initiated my body camera.

Q. This is before or after you witnessed him run the red light?

A. After he ran the red light.

Q. And how are your body cams maintained?

A. We wear them for the entire shift. At the end of the shift all your info is downloaded into the department computers.

Q. Does it always show the correct date and time?

A. No. Sometimes when they are serviced or they have issues you have to reformat them. Reformatting changes the date and brings them back into accurate time stamp.

Q. And now you take them back to the station you said, and what do you do with the footage?

A. We download them to departmental computers on a server.

Q. Do you have any ability to manipulate it?

A. It's against policy. I do not. Each officer has their own file. It goes there on a departmental server.

Q. Would you recognize that body cam if we watch it here in court?

A. Yes.

MS. THOMAS: I'm going to play from what is marked as State's Exhibit 1. There will be on it Officer Madej's body cam. It will be indicated by his name. And then with it there are three separate videos.

They will be marked 15-00213. Without a number in front is the first video we're going to begin with.

MS. THOMAS:

Q. So on this video this is an accurate viewpoint from where on your person?

A. This is exactly where I wear my body camera today. It's always worn in my pen pocket above my left breast.

Q. On this footage it has the date as 1/1/2007. Is that accurate?

A. Yes. It's not accurate to the day of the offense.

Q. Accurate from what I was reading?

A. Correct.

Q. Sorry. So again explain to us why the body cam has this date and time stamp on it.

A. I can't tell you why they go out of whack. One way to fix the issue is we can reformat the camera, and it's a process through the computer it changes and brings the date back to accurate.

Q. Does that in any way affect the video that the body cam is, capturing?

A. No.

Q. I'll play it.

Do you recognize that voice?

A. Yes.

Q. Whose voice is that?

A. That's my voice.

Q. I'm going to play it for a while. I may periodically stop you.

MS. THOMAS: Your Honor, so you know, each section is 30 minutes. So there is about an hour and a half of body cam. There is a lot of downtime in between it. I intended to play sections. I don't know if you want me to sit here and play the whole thing.

MR. WEATHERLY: I really don't.

THE COURT: Neither do I.

MS. THOMAS: I wanted to make sure. I will play sections, if that's all right. I'll give the Court the full footage so he can review it.

THE COURT: Okay. Thank you.

MS. THOMAS:

Q. Whose voice are we hearing now?

A. Officer Nolasco. He's the officer that responded to back me up.

Q. It goes on like this about a minute 20. I will fast forward through that minute 20.

I began playing again at 3:10. What is happening here?

A. I'm approaching the Defendant's vehicle.

Q. This part you indicate how strong the odor is?

A. Correct.

Q. Again, with the amount of traffic stops you've done and your encounter with marijuana—Let me take a step back. How often have you encountered

marijuana in the 12 years that you've been an officer?

- A. I can't even count how many times. I work for a college campus. You respond to people doing drugs all the time. I can't give you a number.
- Q. So you've had fair to say a good amount of dealings with marijuana and the odor?
- A. Oh, absolutely.
- Q. And so based on that, would you—I think you testified it was raw marijuana?
- A. Yes.
- Q. Was there any indication to you that someone had recently smoked in the car?
- A. No.
- Q. And so when you say raw marijuana, what do you mean by that?
- A. I mean marijuana just in its raw form. Bud marijuana. Something that hasn't been smoked yet.
- Q. Have you ever encountered a bit of marijuana say that is consistent with this amount before versus a large package of marijuana?
- A. I'm sorry, say that again.
- Q. Have you encountered—So you clearly have encountered a small amount of marijuana?
- A. Yes.
- Q. Have you ever encountered large quantities of marijuana?
- A. I have not personally.

Q. But the small amounts you encounter, the amount of odor you smell, would that be consistent with the smaller amounts you have encountered previously, or is there something different about this time?

A. This time the odor was much stronger, which led me to believe there was more.

Q. So at this point you have returned to your vehicle. What are you doing? What are you doing at this point?

A. This is when I check his driver's license and decide what I'm going to do next. And Nolasco has already arrived on scene.

Q. I'm going to fast forward to about 7:12. I'm playing at 7 minutes and 2 seconds. At this point the view is obstructed. What happened?

A. I didn't realize at the time—It was fairly cold that day, so I put on my patrol jacket because knew I was going to be out there for a little bit. My patrol jacket had been flapping over it when I bent over. It was covering the camera.

Q. You didn't intentionally put your jacket on?

A. No.

Q. Does it continue to record?

A. Oh, yeah. It records, continues to record.

Q. Officer, you can't see, but there is that first indication of marijuana you found in the car?

A. That's correct.

Q. For the record, I would, like to note that is at 8 minutes and 22 seconds.

You indicated on the body cam you found rolling papers?

A. Yes.

Q. How do you know that's an indicator of drugs?

A. In my experience, rolling papers are consistently used with rolling marijuana to make marijuana cigarettes.

Q. That was, for the record, at 17 minutes and 5 seconds.

Had you found rolling papers previously that we just didn't hear?

A. I believe there was an open packet of rolling papers, one single package in the center console.

Q. I'll play on.

I've stopped at 18 minutes and 12 seconds. You indicated that you discovered the 420 odor canisters?

A. That's correct.

Q. What did they say on the label? How do you know their purpose?

A. It says 420, and then I believe it has like Smoke coming from a marijuana cigarette.

Q. And how do you know what 420 means?

A. 420 commonly refers to April 20th, which is National Pot Smoking Day.

Q. Okay. I'm going to play it again.

I'm stopping it for the record at about 20 minutes into the video is when you start having the discussion with the Defendant about the package.

- A. Correct.
- Q. I'll play it again.

At 22 minutes 50 seconds I stopped it again. After discussion about the potential contents of the Package and then you start discussing a dog, what is that discussion about?

- A. Due to the package, we were going to see if we could get a local K9 to come up and sniff the package.
- Q. Was that possible?
- A. We were unsuccessful I believe I called CMHA, Sheriff's Office and Cleveland and I believe Bratenahl as well.
- Q. There was no dog available?
- A. No dog.
- Q. Do you recall roughly how long you had made an effort to get a dog there?
- A. We spent at least 15 minutes trying to get a dog. I don't know the exact time.
- Q. Could it have been longer than that?
- A. It could have been.
- Q. The rest of this video—Do you recall at this point having any interaction with the Defendant, or what did you do while you were waiting for the dog?
- A. I began starting to fill out my summons, citations.

Q. Were you doing that in the presence of the Defendant?

A. No.

Q. So if I went to the next video—and we still have probably about 7 minutes of this video—would we be missing anything that you would be doing with the interaction with the Defendant?

A. No. Files are so large they automatically start another one.

Q. Moving to 15-00213. I am going—This video starts over—starts the clock over. For the sake of the record, I am going to fast forward to 18 minutes and 48 seconds.

I'll begin playing it at 18 minutes 45 seconds.

What are we looking at 18 minutes and 49 seconds?

A. That is the white cardboard box that we removed from the back seat that contained Items 3 and 4, the white paper bags.

Q. Is that the same cardboard box that is marked as State's Exhibit 36?

A. That's correct.

Q. Did you do anything to make the flap open?

A. No. As I stated earlier, it was partially opened already.

Q. And right now it's on the trunk of the car?

A. That's correct. Trunk of the Defendant's vehicle.

Q. Going forward to the second video 19 minutes and 26 seconds.

Begin playing at 19 minutes and 25 seconds. What are we about to watch here?

- A. I'm going to start to issue him citations, explaining the court date, explaining to him he has the ability to waive the tickets; however, if he wants to contest them to show up on the court date, and physically issue him a summons.
- Q. At 21:44 you hear the indication I think you mentioned where you're discussing the tickets. He said, I'm going to fight that one. Which one is he pointing to?
- A. He points to the traffic ticket and says, I'm not going to fight that one.
- Q. At this point I stopped at 22 minutes and 8 seconds. This video will go on for another eight minutes approximately. I don't believe there's any other interaction with the Defendant. Do you recall, officer?
- A. I can't recall off the top of my head.
- Q. So at that point you had multiple interactions in roughly a 50-minute period. At any point did the Defendant mention to you that the light was yellow?
- A. He never once argued the light.
- Q. Did he—So say that again.
- A. He never argued whether it was red or yellow.
- Q. In fact, did he ever admit to you that he ran the red light?
- A. In several ways, yes.

Q. I'm going to play the final video on the CD. It's marked 15-00213 and in parentheses there will be a 3 indicating it's the third video.

Playing the video at 10 minutes. Then the video stops. This video is approximately ten minutes.

So throughout the portion of the video that we did not play, what is happening?

A. We were—I was conferring with the other Officers, then ultimately I conferred with Sergeant Flaherty, then my officer in charge Tom Lear. I did not talk to OSP directly. One of the other officers did. We collaborated and made a decision we were going to open up the package. At that point we opened it up, found the contents and that's when I'm questioning him in the rear seat about the contents.

Q. At any point did you put him in handcuffs?

A. Not yet, no.

Q. Had he asked for anything? Did you accommodate him in any way?

A. I asked him several times if he was okay. At one point he said he was thirsty. I said I don't have any water for him but if he has any water in his car he could have it. He indicated he did, so I retrieved the bottle of water for him.

Q. Is it common to put someone in a patrol car while you're there?

A. Yes.

Q. Why?

A. Officer safety.

Q. At the time that you placed him in the car, how many other officers were on scene?

A. At that time, it was just one other officer, my backup, Officer Nolasco.

Q. And so I believe on the video you can hear him as well. You were searching the car together?

A. Together.

Q. At that point the Defendant—Before that the Defendant was placed in the car?

A. Correct.

Q. There was no one else on scene?

A. Correct. Not at that moment. I did call my supervisor over. You hear in the video I asked for Unit 27.

Q. And after you discovered the candy in the console and you discovered the candy in the packages, what did you do?

A. At that point Vince Nolasco, my partner, secured him in handcuffs and advised him that he was going to be placed under arrest for drug trafficking due to the bulk amount.

MS. THOMAS: Nothing further, Your Honor.

THE COURT: Thank you.

Instead of going right to cross examination, given the hour I'm going to take a break for lunch.

Officer, I'm telling you please don't discuss your testimony—

THE WITNESS: Absolutely.

THE COURT: —during the lunch break. You will remain under oath.

We will make it back here by 1:15, try to get started right then. Give everybody about an hour. We'll adjourn until 1:15. Thank you.

(Thereupon, a luncheon recess was had.)

AMBROSE, DICK, J.: If we could get back on the record. Again, we're here in Case 599025, *State of Ohio vs. Edwin Vega*. Mr. Vega is present in court with his attorney Justin Weatherly. And he is also assisted by Bridgette Cunningham. Then here on behalf of the State of Ohio is Assistant County Prosecuting Attorney Eleina Thomas.

We are proceeding with the post-lunch suppression hearing. Previously Officer Jeffrey Madej was testifying on direct examination. He is now subject to cross examination. So, Officer Madej, you may come and retake the witness stand. I will not swear you in again because you remain under oath.

THE WITNESS: I do.

THE COURT: And we'll proceed from there with Mr. Weatherly and cross examination.

MR. WEATHERLY: Thank you very much, Your Honor.

CROSS-EXAMINATION OF JEFFREY MADEJ

MR. WEATHERLY:

Q. Officer Madej, my name is attorney Justin Weatherly. I believe we have met before, although it was some time ago. I'm going to be asking you some questions regarding your testimony here today.

And just so you know, I have a tendency to move kind of fast. I'm a fast talker. I was cursed with it. I will try to go as slow as I can so I don't run into those types of problems. If you don't understand something because I did move too fast, let me know, ask me to rephrase. Don't speculate as to what I was asking you. Okay?

- A. Sure.
- Q. Now, we begin with the traffic stop here. That was the first thing addressed by the State in your direct examination. And as you've testified previously, you actually testified at a trial for that specific traffic violation against Mr. Vega; is that not correct?
- A. That's correct.
- Q. In the Cleveland Municipal Court in front of Judge Lauren Moore?
- A. That's correct.
- Q. Do you recall about when that was, what month?
- A. I don't recall.
- Q. April? May? Somewhere around there?
- A. Probably.
- Q. Usually those hearings are conducted within a month or two after the initial traffic stop; is that not correct?
- A. Correct.
- Q. Any particular reason to believe that this particular trial did not take place during that timeframe?
- A. No.

Q. At that trial you testified that you were traveling I believe you said eastbound on Euclid behind Mr. Vega's vehicle at which point you witnessed him make an illegal left turn through the intersection that you previously described. But then today you corrected that testimony; is that not correct?

A. That's correct.

Q. Okay. And obviously memories fade over time. And I think you testified on direct that you make upwards of 50 traffic stops per year at the least, right?

A. Correct.

Q. And impossible you remember every specific detail about every traffic stop; am I not correct?

A. Correct.

Q. However, if you're someone like Mr. Vega, or myself, or a normal human being, you probably don't get stopped 50 times in one year. You would think that's probably correct, right?

A. Correct.

Q. In fact, looking at Mr. Vega's record, he's never had a year he got stopped 50 times by a police officer, correct?

A. Not that I'm aware.

Q. Okay. So you would think that a traffic stop for the person who's being stopped by the officer given that it's a far more rare circumstance might be a little more vivid in that person's memory than perhaps yours who makes that type of traffic

stop very, very regularly very, very often, correct? Possible at least?

- A. Possibility.
- Q. Okay. And so that was actually one of the issues that was raised at trial, if I recall correctly. Not only when you testified at trial do we now know you were mistaken about the location of your vehicle, but also at trial you testified that you couldn't really remember some of the details about or surrounding that traffic stop. Do you know what I'm talking about?
- A. Bus.
- Q. The bus. That's exactly right. As you described the intersection, there's three lanes, there's a bus lane on the left, the middle lane is actually the left turn lane, and right lane or curb lane goes straight ahead. And if, as you alleged at trial, you didn't believe there was a bus in the bus lane, and, of course, had there been, and had my client turned left while the bus lane was green or had the signal to go, the bus would have plowed through my client's car, correct?
- A. That's not necessarily true. When the light turned red, he then entered and went through the intersection. Once that light turns red, the bus lane and the straight traffic lane would then turn green. So they would be starting from a stopped position, so there would be some sort of a delay.
- Q. Okay. And do you remember my client's testimony at trial that he remembers there was a bus, in fact, stopped in the bus lane and that was why he knew he was legal to proceed for the left turn?

- A. That's what he stated.
- Q. Do you remember that testimony?
- A. Yes.
- Q. But in your testimony, this was several months ago, right, in fact, last year, you couldn't recall whether or not there was a bus in that lane, correct?
- A. Could not recall the position of every vehicle.
- Q. And I assume that given the fact that we're now far more many months removed from that trial, that your memory isn't far more vivid as to the traffic stop considering even more time has passed; is that not correct?
- A. Given the opportunity to review that surveillance camera, that reassured me.
- Q. It reassured you what?
- A. As far as position of my vehicle.
- Q. Right. Right. But that was video that you alone watched, correct?
- A. That's correct.
- Q. You didn't watch that with the prosecuting attorney?
- A. I did not.
- Q. You didn't make a copy for court today?
- A. No. It was recorded.
- Q. It was something you happened to look at after the trial?
- A. Correct.

Q. Okay. You do recall my client's testimony at the trial that he knew he was okay to go because there was a bus in that lane that was stopped? Do you recall my client testifying as to that?

A. Something to that effect.

Q. Okay. And, in fact; that was one of the reasons that the judge determined that his testimony rendered the prosecution incapable of proving his guilt beyond a reasonable doubt. I believe that was her verdict; was it not?

A. Something to that effect.

Q. Something to effect. Okay. So but from your testimony here today, you pulled him over because you felt you could vividly see the traffic lights and that you saw my client go through the red light, correct?

A. Correct.

Q. Okay. That's not his interpretation of the events, that's not necessarily how the Cleveland Municipal Court ruled, but that is your recollection as you sit here today, correct?

A. That is how it occurred.

Q. Okay. Now, you also stated there was another car that went through the red light. Is that also true?

A. Proceeding as the light was changing. There was one vehicle in front of him making a left-hand turn.

Q. Did that car go through the red light as well?

- A. It was changing as they were going through, and then the light was solid red, then the Defendant turned left through the solid red.
- Q. So the car in front of my client's vehicle did not make a traffic violation, according to your testimony, only my client did?
- A. Correct.
- Q. Okay. Then when you pulled him over and we saw in the video you did mention to him, hey, you blew that light, I think his response was, yeah, yeah. He just kept saying yeah basically the entire time; is that right?
- A. He said, yes, one time, and then, yes, sorry, my bad.
- Q. Again, you had the occasion to stop quite a number of people in your time as a police officer, correct?
- A. That's correct.
- Q. You've had the occasion to do that. And sometimes it's an unpleasant experience for the person that you're pulling over; is that not correct?
- A. Try to be as professional as I am.
- Q. I'm not saying that you are unprofessional. Please. I'm saying the average citizen doesn't necessarily enjoy getting pulled over by a police officer for a traffic violation, correct?
- A. I agree.
- Q. And oftentimes a Police officer who is armed and has a badge and, has an authoritative tone, as most officers do, sometimes they could cause the

people that they stopped to be unduly nervous or apprehensive even though there might not be cause for it, correct?

- A. Correct.
- Q. Under those circumstance, it's not likely that person's going to attempt to get into an argument with you or flat out yell at you. They may just simply agree with what you're saying when you ask them a few questions. Is that something that occurs with you regularly when you stop people?
- A. Correct.
- Q. Okay. And then so you stop him and that's when you immediately noticed the strong odor of marijuana emanating from the vehicle, correct?
- A. That's correct.
- Q. In fact, within seconds of the approach I think your exact words were, straight up, man, where is the weed, the odor is billowing out of your car? It was just that obvious?
- A. Yes.
- Q. And with your training and experience, you know that when you have the odor of marijuana that gives you the opportunity to search the interior of the vehicle, correct?
- A. That's correct.
- Q. That's what you did?
- A. Correct.
- Q. Now, you can't arrest Mr. Vega just because you smell the odor of marijuana, correct?

- A. Correct.
- Q. Nor can you arrest him for a traffic violation, correct?
- A. Not that violation, correct.
- Q. Not that violation, exactly. In fact, the two violations for which you filled out citations, they're both minor misdemeanors, correct?
- A. Correct.
- Q. Maximum penalty of a \$150 fine, no jail time, no probation, I think one has two points associated with it, the other one may have a license suspension associated with it, but they're not arrestable offenses, correct?
- A. Correct.
- Q. Unless, of course, you believe that Mr. Vega is not going to appear at court when you issue the citation, and that actually entitles you to arrest him for a minor misdemeanor; is that not correct?
- A. Correct.
- Q. You didn't have any indication that Mr. Vega wasn't going to go to court, correct?
- A. No.
- Q. He didn't give you any—any evidence at all or indication whatsoever that he was not going to appear for his traffic citations or pay for his tickets, did he?
- A. Not at that time.
- Q. Not at that time. Not during the entirety of the stop, correct?

A. Correct.

Q. Okay. So you ask him to step out of the car, and at that time even though he's not under arrest he's not free to go, correct? He can't walk down the street and leave his car, can he?

A. That's correct.

Q. He's basically under detention. He's being detained, he's not arrested, but you have a responsibility as an officer to investigate the odor of that marijuana, so that's what you do, correct?

A. That's correct.

Q. And it's a strong odor of marijuana?

A. Correct.

Q. As we saw in the video, there was a lot of it in the car. Now, I understand the prosecutor showed you a small bag of marijuana. That's what's in here as one of her exhibits. She showed you that bag, correct?

A. That's correct.

Q. But as we heard the video, it wasn't like it was a small bag in one location. It was spread throughout the vehicle in the center console, correct?

A. What it was, there was three main buds. There was a little bit what they refer to as shake weed, which is a very fine, ground up, loose particles of the marijuana at the bottom of the center console.

Q. And there was quite a bit of that, correct?

A. It was spread around. It wasn't a measurable amount. I'm saying it's everywhere because it's hard to pick up that shake weed with bare hands.

Q. Exactly. Thus your phrase is I believe you said, it's damn near impossible to collect all of this. You also said, there's no way to get all of this weed out of here, it's everywhere. You said those things on the video?

A. That's correct.

Q. Like you said, there wasn't a huge measurable amount. It's not like he had pounds of weed. It was spread out all over the place, correct?

A. Throughout the center console.

Q. It was spread out?

A. Correct.

Q. And therefore difficult to retrieve?

A. Correct.

Q. That was the only marijuana you found in the vehicle?

A. That is correct.

Q. It was a strong odor of raw marijuana you said emanating from the vehicle, not smoked marijuana?

A. Correct.

Q. Now, you searched the car, you find the marijuana, and I think you mentioned that you find the rolling papers also. I don't think you charged him with that?

A. No.

Q. I don't believe it's illegal to have the aerosol cans, either, in the back. Those are not illegal by any means. You found those. And then you did—I

know that the State mentioned as Item 2 and then State's Exhibit 4 which is the hard candy, you found that in the center console as well?

- A. That's correct.
- Q. That's correct. But you didn't pay attention to it when you first found it, did you?
- A. Not at first.
- Q. Didn't know what it was?
- A. Wasn't 100% sure what it was.
- Q. You thought nothing of it. You thought it was just regular candy? You didn't find anything to be illicit about that candy?
- A. Not at all.
- Q. It didn't have an odor about it, did it?
- A. No.
- Q. It didn't blatantly say on the package this is illegal weed, right.
- A. No.
- Q. Did not. So although you found it, you made no mention of it, not to your other fellow officers and not as far as citations you wrote out to Mr. Vega near the end of the video, correct?
- A. No.
- Q. In fact, as you watch the video, I know we skipped over a lot of it, a lot of officers come on scene and leave the scene. Each time you have to explain to them what you're doing and what's going on; is that not true?
- A. Correct.

Q. And every time you sort of rehash the events of the day; yeah, I mean, I saw this guy, looked like he made an illegal left turn, pulled him over. Strong odor of marijuana, coming out of the car. I searched the car. Found a bunch of weed in the car. He's got these packages in the back and I don't know if I can open these packages. That's sort of how you describe it to other officers, correct?

A. In some words.

Q. At no time as you're describing it to other officers do you mention as part of the reason that you are detaining Mr. Vega that you're also detaining him because you also found a package of marijuana candy in the car, correct?

A. Correct.

Q. And at that time you didn't know that that candy actually contained marijuana, right?

A. No. That's true.

Q. What's that?

A. I said no.

Q. You did not know that?

A. No.

Q. In fact, it wasn't until you opened the sealed United States Post Office packages and found more of the same candy did you realize that that initial bag of candy that you found also could contain THC?

A. That's correct.

Q. Okay. So you're going through the car. You find the candy. You don't really pay attention to the

candy. You're more focused on retrieving all of the marijuana, correct?

- A. That's correct.
- Q. As you retrieve all the marijuana you say to yourself it still smells like weed in here. And so you see the packages in the back. That's when you asked Mr. Vega's consent to open those packages; is that not correct?
- A. That's correct.
- Q. He does not give you content?
- A. He does not.
- Q. He tells you, when you asked him what's inside, he says they're stickers?
- A. That's correct.
- Q. You don't believe him, but he doesn't give you any indication other than not allowing you to open them that there's anything in there that's illegal or illicit at any time. He doesn't say, I don't want you to open that because there is gunpowder in there, or, I don't want you to open that because I have drugs in there, correct?
- A. Right.
- Q. But you don't believe him, and that's why you think there might be something illegal in those packages?
- A. That's correct.
- Q. But the packages themselves don't exhibit any signs of being illicit materials; is that not true?
- A. That's correct.

Q. In fact, when your officer comments on the video, I can't tell if the odor of marijuana is just the ambient smell coming from the car and has rubbed off on the packages or these packages themselves smell like marijuana. Doesn't he say that?

A. That's correct.

Q. You agree with that as well, right?

A. The car had a very, very strong odor of marijuana.

Q. The car had a very, very strong odor of marijuana. But the packages themselves—I'm sorry. The odor of marijuana was not emanating from the packages themselves, correct?

A. No.

Q. And you said you thought they felt like they might be smaller bags of contraband but you really couldn't tell what they were by feeling them, you couldn't tell what they were by smelling them or holding them in your hands, correct?

A. It felt like it was individual bags and it wasn't consistent with stickers.

Q. But it wasn't consistent with any specific type of contraband, either? You couldn't feel it and say you know what, that feels like acid?

A. No.

Q. Or that feels like loose marijuana? You couldn't tell by holding it what it was, right?

A. Correct.

Q. Okay. So at that point you decide that he's not going to give you consent to open the packages so you're going to get a K9 dog out and see if they could give an alert to the packages which at that point would give you probable cause to open them, fight?

A. That's correct.

Q. But you can't find a K9?

A. I can't find a K9.

Q. Cleveland doesn't have one to give you. Sheriff's Department doesn't have one give to you. You might have called Bratenahl, even maybe Euclid, they didn't have spares available. And all the time the clock is ticking, right? You have Mr. Vega detained. He's not allowed to leave, is he?

A. No.

Q. He's in the back of your partner's squad car. He's not cuffed, he's not under arrest, but he's not allowed to leave, either, is he?

A. That's correct.

Q. And from the time that you stopped Mr. Vega's car and the time that you actually put him under arrest for the possession of the marijuana candy, about an hour and 12 minutes, give or take?

A. I can't be certain exactly.

Q. We have three videos, right?

A. Uh-huh.

Q. Two of them are 30 minutes, right?

A. Correct.

Q. That's when it times out and goes to the next video. The third one is 10 to 12 minutes long. You started the video right before you approached the vehicle?

A. That's correct.

Q. Mr. Vega was in cuffs right before you stopped the video?

A. Correct.

Q. So roughly about an hour and 10, hour and 12 minutes?

A. Yes.

Q. And during most of that time you are waiting for that K9 unit which never comes; is that not correct?

A. A majority of the time, yes.

Q. Okay. And while you're waiting for that K9 unit Mr. Vega is not under arrest, correct?

A. That's correct.

Q. The reason for that is because you don't have any grounds on which to arrest him, correct?

A. Correct.

Q. Because the only evidence you have against Mr. Vega at this time is that, according to you, he made an illegal left turn, a minor misdemeanor and non-arrestable offense, correct?

A. Correct.

Q. And because he had loose marijuana in the car. Also a minor misdemeanor, also a non-arrestable offense, correct?

- A. Correct.
- Q. And, as you stated earlier, he had given you zero indication that he would not appear in court. And, in fact, basically gave you the indication that he was going to appear in court and therefore responsibly take care of the citations you were planning on issuing him, correct?
- A. Correct.
- Q. The reason he wasn't under arrest is because you had no grounds on which to arrest him, yet there was no K9 dog on its way, all the while Mr. Vega is sitting being detained not free to leave for approximately an hour and 12 minutes, correct?
- A. Yes. We were also calling OSP and conversing with them as well.
- Q. Because you were trying to determine whether or not it was legal for you to open these packages because you didn't know?
- A. Correct.
- Q. And ultimately you made the determination you were going to let him go, didn't you?
- A. We brought it up, and I made mention we may have to.
- Q. Well, I believe if you go to the second video, 11 minutes in you actually make the decision that you're going to let Mr. Vega go because there is no K9 units on the way, you don't feel like you have the grounds to open those packages, and you don't have any grounds to arrest Mr. Vega at the time, and it's at that point where you fill

out the citation for possession of marijuana and that traffic ticket; is that not correct?

- A. Yes.
- Q. And in the video we even see, and during direct examination around the 20-minute or so mark of the second video, we can see those two citations fully filled out and you have Mr. Vega sign them, citation for the minor misdemeanor marijuana and citation for his traffic violation, correct?
- A. That's correct.
- Q. And, in fact, you issue those citations to Mr. Vega at that time; is that not correct?
- A. That is—I don't know if I issued his copies at that time, but I did have him sign them.
- Q. Okay. After he signs them, you don't have anything else to do other than issue the copies to him, correct? There is no other paperwork to fill out, right?
- A. Correct.
- Q. There's no other—The last portion of this citation that gets filled out is actually filled out by Mr. Vega when he signs it. You don't add anything to the citation after he signs it, do you?
- A. No.
- Q. No. So once he signs it, all you got to do is rip them off and hand them to him, but you can't remember or not whether or not you actually did that at the time?
- A. Right.

Q. Around the 20-minute mark of video two, that's when we saw those two citations fully filled out on your clipboard and we hear you having Mr. Vega sign them; is that right?

A. Correct.

Q. So after the citations are either handed to Mr. Vega or ready to hand to Mr. Vega once he signs them, he is then detained additionally for—if that happened in the 20-minute mark on video 2, then we know there are 10 more minutes in video 2, and 10 minutes in video 3., and it's actually in video 3 when you actually open up the packages, correct?

A. Correct.

Q. And when you open up the packages you find the candy, you read the label, and at that time you realize that the candy most likely has THC in it?

A. Correct.

Q. Which is the chemical form of marijuana?

A. Correct.

Q. And that's when you decide to arrest Mr. Vega?

A. Right.

Q. This is after you have detained him to wait for a K9 that never shows, correct?

A. Correct.

Q. And after you have either issued him citations Ear minor misdemeanor non-arrestable offenses or prepared those citations to the point of being able to issue them to him without actually handing them to him, correct?

- A. And I was still conversing with my OIC officer in charge at the time and other officers on scene.
- Q. Correct. And did any of them read to you any codified ordinances with regard to U.S. Mail?
- A. No.
- Q. So no one ever mentions to you—

MS. THOMAS: Your Honor, I'm going to object. I believe this would be beyond the scope of his knowledge or relevance to this proceeding.

THE COURT: See if he does know about it. He's asking him that question.

MR. WEATHERLY: I am trying to find out if he knows the answer because in all honesty, I didn't.

MR. WEATHERLY:

- Q. There's Codified Ordinance Federal Rule, 43 F.R. 14308-15. That is a federal codified ordinance that deals specifically with the opening of U.S. Mail. Are you familiar with that particular ordinance?
- A. No.
- Q. Now, there was a lot of talk about this box. And, for the record, I'm holding up the actual Priority Mail Box that was found in the back of Mr. Vega's car, correct?
- A. Correct.
- Q. This box is open and inside were two plastic bags, larger plastic bags. I'm holding my hands over those plastic bags right now; is that not correct?
- A. That's correct.

Q. Now, your testimony is that the box itself was open, the bags themselves were sealed, correct?

A. That's correct.

Q. The bags themselves did not have any labelling on them, but this box does, doesn't it?

A. It does.

Q. This box has an actual address of where it was shipped to and a return address as well; is that not correct?

A. Correct.

MR. WEATHERLY: Permission to approach the witness, Your Honor?

THE COURT: You may.

MR. WEATHERLY:

Q. Can you please read the name and address of the person to whom this box is shipped.

A. E. Vega, 4757 Brookwood, Brooklyn, Ohio.

Q. E. Vega. Do you believe that refers to Mr. Edwin Vega, the Defendant in this case?

A. It could.

Q. Does it appear that box actually was shipped through the mail?

A. It appears as so.

Q. Okay. Now, I know there was no labelling on the packages inside of this box which was open, but those packages were sealed, were they not?

A. They were.

Q. So if this box was shipped through the mail, what happened was the box itself was opened but the contents, packages inside those were never opened at all. Those were in sealed United States Post Office packages, correct?

A. Correct.

Q. Okay. And you're not familiar with the federal rule which prohibits looking in someone else's mail without specific grounds, correct?

A. Correct.

Q. And the Ohio State Highway Patrol didn't convey to you any of those specific federal rules, did they?

A. No.

Q. What they told you is that as long as you've got probable cause to search the car, you've got probable cause to search everything in it, go ahead and open the packages; is that not right?

A. Something to that effect.

Q. Something to that effect. So that's when you opened the packages at that point. In actuality, the only evidence you had when you opened those packages were; one, that Mr. Vega had allegedly committed a traffic violation; two, that he had quite a bit of loose marijuana in his car which is a non-arrestable offense; and three, that he did not give you consent to open those packages. Is there something I'm missing?

A. There were criminal indicators in the car. The feel was not consistent with that of stickers.

Q. Perhaps not stickers, but not necessarily consistent with any known contraband, either?

- A. The way it felt, it felt like individual packages.
- Q. Packages of what?
- A. At that time I thought it was marijuana.
- Q. The packages didn't smell like marijuana?
- A. It didn't.
- Q. So that was an assumption that the packages felt like marijuana, and an assumption that actually ended up proving to be wrong. They were not Individual packages of marijuana, they were Individual packages of candy?
- A. Yes. Could have been masked with a different odor, something to conceal the odor.
- Q. Could have been, but wasn't.

MR. WEATHERLY: One moment, Your Honor.

THE COURT: Yes.

MR. WEATHERLY:

- Q. You found those packages within 18 minutes of pulling Mr. Vega over, correct?
- A. Somewhere in that ballpark, yes.
- Q. And within that 18-minute period you also searched his car, found the loose marijuana and the canisters, the rolling papers, all that stuff was found within the first 18 minutes?
- A. Correct.
- Q. You didn't find any additional evidence that would lead you to believe there was contraband in those USPS packages subsequent to that 18-minute mark when everything was found, correct? There was no additional evidence or anything found?

- A. Correct.
- Q. So there was no additional probable cause at that time that was found. All the probable cause that you had occurred within 18 minutes of that traffic stop, right?
- A. Correct.
- Q. Yet again, Mr. Vega was there for about an hour and 10 minutes before he was handcuffed.

Now, with regards to the package itself, you said it felt like individual packages. Did it feel like it could have been dangerous ordnances in there? Did it feel like there could have been like weapons or bombs? Were they ticking in any way?

- A. No.
- Q. Did you feel like you needed to call the bomb Squad?
- A. I did not.
- Q. So you didn't believe that there was any reason to believe that there was something dangerous enclosed in those packages, correct?

- A. No.

MR. WEATHERLY: No further questions at this time.

THE COURT: Thank you. Any redirect?

MS. THOMAS: Yes, Your Honor.

REDIRECT EXAMINATION OF JEFFREY MADEJ
BY MS. THOMAS:

- Q. Going back to this package, do you recall what was in this package when you came to court today?

A. When I came to court today?

Q. Yes.

A. There was nothing in it.

Q. Do you recall if you transported anything in here in that package?

A. Yeah. I think actually some of the items were in there. The money, the cell phones were put in there in the box.

Q. so it would be fair to say that these items were located in this box?

A. Correct.

Q. Correct. So it's possible to put something in this box that was not shipped in this box?

A. Absolutely.

Q. So this box opens, right. And did it look to you was there any indication that these were the packages that were in that box?

A. No.

Q. Did you ever go to the postal service and track this package and see how much it weighed at the time that it was shipped?

A. No.

Q. So was there any way to tell what really was shipped in this box?

A. I have no clue what it is.

Q. So again, you had no indication that that was mailed, correct?

- A. Exactly. Could have been used to transport anything.
- Q. Would you think it was mail if it was a white envelope that didn't have the U.S. Postal Service on it?
- A. No.
- Q. Does it mean it's mail just because it's an envelope that was either given or purchased at the post office?
- A. No. Used for anything.
- Q. Could you put something in there that was not shipped by mail?
- A. Absolutely.
- Q. And again, when you opened this package, what had you done to insure that you were able to open that package?
- A. I had probable cause, I had the traffic stop and I had the strong odor of marijuana. It was an ongoing narcotic investigation at that point.
- Q. And you had conferred with your supervisors?
- A. Yes.
- Q. Who else?
- A. Conferred with one of the officers on scene, my supervisor at the time, and then an officer who was on scene also contacted Ohio State Highway Patrol.
- Q. And we have body cam today; is that correct?
- A. That's correct.

- D. Was that body cam available at the time of the traffic ticket trial?
- A. Yes.
- Q. Was it given to the prosecutor's office at that time?
- A. I'm not aware that it was or not. I do not believe it was.
- Q. Was it played in that trial?
- A. It was not.
- Q. Okay. And, in fact, in that trial do you recall what the Defendant said happened regarding the red light?
- A. Yeah. He had said—I'm sorry, go again.
- Q. Do you recall what the Defendant's testimony was regarding whether the light was red or not?
- A. First he said it was a green light, and in testimony he later stated, he went through a yellow because he was concentrating on the bus next to him.
- Q. And would it be fair to say that trial happened around June 18th, 2015?
- A. In that ballpark.
- Q. Do you recall the date of this incident?
- A. March 28th. Is that correct? The date of incident I don't have off the top of my head.
- Q. Yes. So on March 28th what did Mr. Vega say to you about the red light?
- A. He didn't say anything. He said, I'm sorry. Then he said, yeah, my bad.
- Q. What was that in response to?

- A. When I explained to him why I stopped him.
- Q. In all that hour and 10 minutes that you interacted with him, did he ever mention at that time that it was a yellow light?
- A. He never once did.
- Q. Did he ever mention the light was green?
- A. Never.
- Q. In fact, what did he do?
- A. He didn't contest it. He said he wasn't going to fight that one but he had an issue with the marijuana ticket.
- Q. He apologized to you for running the red Light?
- A. Yes. At another point during the traffic stop when I had him exit the vehicle and I found the marijuana I came back and told him that I found the marijuana. He said, are you going to cite me for it? I said, yes. He said, can't you just write me for running the thing?
- Q. And by that running the thing?
- A. I believed he was referring to the red light.
- Q. And you testified on direct about the recording of the intersection—
- A. Correct.
- Q. —that you were unable to retrieve. Again, at what point did you look at that video?
- A. It wasn't until after the trial.
- Q. And what did you see on the video?

- A. What I observed was my vehicle positioned at the stop bar northbound on East 18th Street, several vehicles turned left through the intersection with the Defendant being the last with the bus to his left. After he went through the intersection the bus started up and cleared the intersection.
- Q. You saw that video. Were you ever able to retrieve that video?
- A. I was not. At the time I did not save it. And I put in a request later on. They're only saved—They're rewritten over X amount of days.
- Q. Why did you not retrieve it at that very moment?
- A. Because I couldn't tell whether it was red or green. You couldn't see the color of the light. At that point he had already been found not guilty and I didn't think it was helpful to the case since it was already heard and I couldn't determine for certain what color the light was.
- Q. You couldn't determine when? Based on the video?
- A. Based on the video.
- Q. Okay. But what is your memory of what the Light was?
- A. My memory is that light was definitely red. I wouldn't have stopped the Defendant if it wasn't red.
- Q. Why not?
- A. Because I don't stop people for violations they do not commit.
- Q. Have you ever ticketed someone for running a yellow light and said they ran a red light?

- A. I have not.
- Q. We talked about the detention of the defendant. Why was he detained the way he was?
- A. He was detained in the back of the vehicle not in handcuffs because he wasn't under arrest at the time. And we were continuing a narcotics Investigation. I believed that the amount of marijuana I found was not responsible for the odor we were detecting from the car. The feel of the package, his statements didn't add up. The rest of the indicators, the cell phones, masking agents, led me to believe there was narcotics in that package.
- Q. 20 minutes into this stop you have a discussion with him about stickers versus whether it's marijuana?
- A. That's correct.
- Q. In that, what did he indicate to you about stickers? And explain your conversation at that point.
- A. I asked him what was in the package. He stated stickers. We went back and forth a couple times whether he would open the package. I made a statement something to the effect of if that package contained stickers, you would—if that package didn't con—trying to remember it clear as possible. If that package didn't contain stickers, you wouldn't open it? He said, no. Which led me to believe even more that it contained contraband.
- Q. Essentially he said to you if it was just stickers I would let you open it?
- A. Yes. That's the way I perceived it.

Q. Okay. And how often have you encountered drugs in your job as a police officer?

A. Fairly often.

Q. In just a patrol setting? A traffic stop? Or have you responded to houses?

A. All kinds of settings. We work on a college campus, so obviously we respond to a lot of marijuana use in the dormitories. It's a very fairly common call.

Q. Is it common for you to detain someone until you can figure out if there's actually contraband somewhere or not?

A. That's correct.

Q. And would there be a scenario where you would say oh, you know, there might be contraband here but just go ahead and I'll figure it out and let you leave?

A. No.

Q. Why is that?

A. Because they could destruct more evidence, they could have stuff on him. I need to do my due diligence and complete my investigation.

Q. And in this instance, contraband was located in a vehicle; is that correct?

A. That is correct.

Q. And if you were not able at this point in your search to arrest the Defendant, what would have happened potentially to that evidence had you let him go?

MR. WEATHERLY: Objection.

A. The Defendant could have driven—

THE COURT: It's overruled.

A. The Defendant could have driven the vehicle away and destroyed any evidence pertaining to this.

MS. THOMAS:

Q. What else could you have done?

A. Could have taken it and requested a search warrant.

Q. You could have done either?

A. I could have done either.

Q. In fact, did you not contemplate doing either?

A. That was one of my options, yes.

Q. In the video we can hear you say, man, it's everywhere, it's everywhere. What were you referring to when you were searching the vehicle?

A. I was referring to the shake, term shake weed, which was in the center console. Again, it's a very fine almost granulated. It's a smaller particle of the marijuana, and it was loose in the bottom. And when I was trying to retrieve the marijuana from the center console I was trying to retrieve everything. But by doing so with the human hand, it's very hard to pick that up. I kept saying, yeah, there's a lot of it, because I couldn't pick it all up.

Q. Where was that all concentrated?

A. In the center console.

Q. So you're not looking through the whole car going there's weed everywhere; there's weed everywhere, right?

A. Absolutely not.

Q. Just the center console?

A. Just the center console.

Q. Referring to the video?

A. Correct.

Q. Looking at State's Exhibit 12, was there a significant more amount of weed located in the center console than that?

A. There was some more shake weed in the center console, correct.

Q. Looking at that, describe—is there a way to distinguish in that packet what the shake weed is?

A. Absolutely. You see the smaller fine particles right here. Almost like parsley. It's very hard to pick up with your fingers, especially wearing gloves with it being cold out. It can get anywhere. You can see when you tilt the bag it gets stuff in all the corners. That would be very hard to retrieve out of a center console.

Q. If you were able to retrieve every piece of Shake marijuana, would you have been able to fill up that bag?

A. No.

Q. No?

A. No way.

Q. So there was no possible way there was more marijuana in this form at least that you saw in the car than what would be contained possibly in that package?

A. No.

Q. Again, with your experience, have you ever encountered marijuana in this amount before?

A. Yes.

Q. And did it smell to the extent of marijuana that it did in the car?

A. No.

Q. In fact, smelling this, smelling that, can you smell the marijuana in that package?

A. Absolutely.

Q. Was that how strong it was?

A. It was much stronger than this. My backup officer, he smelled it on the way up to the car as well.

Q. Do you know how far he was away from the car?

A. I don't know exactly how far.

Q. A foot? Three feet? Five feet?

A. He was on the passenger side a couple feet back.

Q. But from there he could smell the marijuana?

A. Oh, absolutely.

Q. Could you smell this marijuana from back here?

A. No, I cannot.

Q. At this point you and I are standing ten feet away from each other?

A. That's correct.

Q. Have you ever encountered THC before?

A. In this form, no.

Q. In another form?

A. No. Just marijuana.

Q. So THC is what?

A. The derivative of the marijuana. It's the product of the marijuana.

Q. And you've used a lot of colloquial terms about marijuana. How do you know those terms and how do you know that THC is part of marijuana?

A. Through basic training, drug training in the academy. Also in the streets in different interactions.

Q. Interactions with college students?

A. Yes.

Q. With the strength of the odor of the marijuana, was it your opinion at the time that marijuana with how much you smelled it would have been consistent with a package like this?

A. Absolutely.

Q. Then this box again, where was that, located?

A. On the back seat.

Q. So this wasn't in the trunk?

A. No.

Q. How far away from the center console are we talking?

A. A foot and a half.

Q. And again, opened or closed?

A. The flap was down, but it was not sealed. It was accessible.

Q. So easily just move up and down?

A. Yes.

Q. Could you see inside?

A. Yes.

MS. THOMAS: Nothing further, Your Honor.

THE COURT: Thank you. Any redirect?

MR. WEATHERLY: Yes, I do, Your Honor.

Permission to approach the witness, Your Honor?

THE COURT: You may.

MR. WEATHERLY: Thank you, Judge.

RE CROSS-EXAMINATION OF JEFFREY MADEJ

BY MR. WEATHERLY:

Q. Officer, I want to bring you State's Exhibit 12. You just held it up to your nose and smelled it. Could you do that again for me?

A. (Witness complies.)

Q. Do you smell marijuana?

A. I do.

Q. Marijuana is in a sealed plastic bag; is that not correct?

- A. That's correct.
- Q. I'll now bring you Item No. 4, State's Exhibit 10. Could you please bring that up to your nose. What do you smell? You smell marijuana?
- A. Like a cinnamon-y smell
- Q. Do you smell marijuana?
- A. I do not.
- Q. You do not smell marijuana. In fact, Item No. 4, State's Exhibit 10, is the package that you retrieved in the back of my client's car, is that correct?
- A. That's correct.
- Q. And as you were investigating it, you were investigating the source of an extremely strong odor of marijuana; is that correct?
- A. That's correct.
- Q. But, as you just proved here in court, that extremely strong odor of marijuana was not coming from the package you retrieved from the back of Mr. Vega's car inside the United States postal box, correct?
- A. Correct.
- Q. And what you also just proved is that if there were individual packages of just loose marijuana, as is in State's Exhibit 12, you could smell it because you just did, didn't you?
- A. I could, but it could be covered by a masking agent as well.

Q. It wasn't. In fact, those bags that you found in the postal box in the back of Mr. Vega's car were not the source of the odor of the marijuana that you smelled, correct?

A. Correct.

Q. Bringing you State's Exhibit 36, there is a postage stamp in the upper right-hand corner and near the middle of it there is a portion that says Date of Sale. Do you see that?

A. Yes.

Q. And could you read the date, please?

A. March 7th of 2015.

Q. March 7th of 2015. So a couple weeks prior to the traffic stop in this case, correct?

A. That's correct.

Q. And I believe the State was attempting to insinuate during the course of redirect examination that the fact that the sealed United States Postal office packages were in this box, which was unsealed, that perhaps the box was simply being used for transportation and had not actually gone through the mail. But there is no reason to believe that this box did not go through the mail, is there?

A. No.

Q. There's no evidence either way?

A. No way.

Q. Right? The fact of the matter is this is a United States Postal Service box, correct?

- A. Appears to be.
- Q. And based on the packaging, based on the labeling, based on the postage stamp we just went through, it looks like it actually did go through the mail, did it not?
- A. That's correct.
- Q. It also looks like it's addressed to Edwin Vega; does it not?
- A. That's correct.
- Q. Inside of it were two smaller bags that also were coincidentally United States Postal Service bags that were, in fact, sealed inside that box, correct?
- A. That's correct.
- Q. Okay. Now, going back to the strong odor of marijuana. Even though it was an unbelievably strong odor of marijuana emanating from that car, the fact of the matter is that you concluded the odor of that marijuana, was nothing more than the shake that you found in the car because there was nothing else in that car, was there?
- A. That we were able to locate.
- Q. That you were able to locate. Well, you had the car for a great deal of time; didn't you?
- A. Yes.
- Q. In fact, after you arrested my client you towed the car; didn't you?
- A. Yes.
- Q. Conduct an inventory search?

- A. We did an inventory search, yes.
- Q. And outside of the shake marijuana we discussed before and these two packages at issue in this case, no other marijuana was found in the car?
- A. Correct.
- Q. So the source had to have been from that little amount of marijuana?

MS. THOMAS: Objection, Your Honor. Speculating.

THE COURT: I'll allow it.

MR. WEATHERLY:

- Q. Had to have been from that marijuana. There was nothing else in there that could have caused the smell?
- A. I don't know if there could have been trapped doors.
- Q. Now we're speculating as to a potential for trapped doors in the car as opposed to the fact that there is just a bunch of loose weed in the car.

Let me ask you this; after you pulled Mr. Vega out of the car and you put him in Officer Nolasko's back seat of the car, you patted him down, right, didn't have any weapons on him?

- A. I did not. Officer Nolasko did not.
- Q. You were confident he didn't have any weapons or contraband on him when he got in Officer Nolasko's car?
- A. Weapons, yes.
- Q. Okay. And he was even being observed by officer Nolasko while you searched the car, correct?

- A. Nolasko was helping me search the vehicle.
- Q. Well, was Mr. Vega in a position where he could have jumped out of the car and ran to the car and destroyed a bunch of evidence while you were searching it?
- A. Not at that time, no.
- Q. Why not?
- A. Because he was in the back of our vehicle.
- Q. Could he have gotten out of that vehicle?
- A. No.
- Q. Without being opened from the outside, correct?
- A. Yes.
- Q. In fact, that vehicle is a rolling prison. Once you put them in the back, they don't get out until you let them out?
- A. I would have to open the door from the outside.
- Q. You would have to do that. Mr. Vega couldn't do that, correct?
- A. No.
- Q. He was in the back of that vehicle for almost the entirety of that one hour and 10 minutes that you had him stopped?
- A. Yes. And at no time did he ask to get out or anything along those lines.
- Q. A couple more questions then I'll finish up here. To your recollection you testified as to the color of the light when Mr. Vega pulled through was that it was red. That's your testimony here today, correct?

- A. That is correct.
- Q. And in June your recollection of what happened with Mr. Vega was you were actually driving behind car and saw him go through the red light, and then you later determined that recollection to be incorrect; is that not correct?
- A. The position of my vehicle was incorrect. The light was red.
- Q. So you were mistaken about your recollection of the events on March 28th involving the traffic stop of Mr. Vega?
- A. In regards to my position, yes.
- Q. But it's not possible that you were mistaken about any other portion of that traffic stop, only the position of your car, right?
- A. Correct.
- Q. That's because we're actually able to prove that you, in fact, had a different position, but unfortunately because we don't have a video we can't prove anything else, can we?
- A. That's correct.
- Q. Finally, there's been a lot of discussion about statements made by Mr. Vega. On redirect you mentioned that when you asked him about what was in the package he said stickers, right?
- A. Correct.
- Q. And then at one point you had a conversation where you said to him, well, hey, if it was just stickers why wouldn't you just let me open it? If it's just stickers, you would let me open it, right?

And he said, no. Is that to the effect of what happened?

- A. Yeah, pretty close, yes.
- Q. And your interpretation of that conversation was that basically he had to have been lying about the fact there were stickers in the packaging because if it was just stickers he would just let you open the package. Is that not your interpretation?
- A. Correct.
- Q. But based—And I heard it, too. It was played for the entire courtroom. It could also be interpreted that you asked him, hey, if it's just stickers, you would let me open it, right, because there's nothing wrong with stickers? He said, no. Meaning, even if it was just stickers he still wasn't going to let you open it because he didn't want you rummaging through any more of his crap anymore. Is that not also an interpretation of his response to your question?
- A. Could be.

MR. WEATHERLY: Thank you. No further questions.

THE COURT: Thank you. Anything further on redirect?

FURTHER REDIRECT EXAMINATION OF JEFFREY MADEJ

BY MS. THOMAS:

- Q. What was your interpretation of what he said at that time in the moment?

- A. My interpretation at that moment was that if it didn't contain any contraband that he would have opened that package up.
- Q. So that's what you were working off of?
- A. Absolutely.
- Q. And at the time when you pulled these out of the car, didn't we hear in the video you said you couldn't tell if the smell was coming from the package or coming from the car?
- A. That's true.
- Q. Today now your testimony is that today you cannot tell what this package smells like?
- A. I cannot tell.
- Q. But at that time could you tell?
- A. No.

MS. THOMAS: Nothing further.

MR. WEATHERLY: Nothing based on that, Judge.

THE COURT: Thank you, officer. You may step, down.

THE WITNESS: Thank you, Your Honor.

(Thereupon, the witness was excused.)

THE COURT: Do you have another witness?

MS. THOMAS: No. I'll rest subject to admission.

THE COURT: All right. Any objection to any of the exhibits?

MR. WEATHERLY: No objection, Your Honor.

THE COURT: Okay. And are you going to be introducing testimony?

MR. WEATHERLY: I assume you're admitting the body cam.

MS. THOMAS: Yes.

MR. WEATHERLY: If the State is admitting the body cam, I have no evidence to admit nor do I have any witnesses to call.

THE COURT: All right. We can go right to—I'll accept the exhibits as introduced into evidence, and I'll allow the parties to close briefly with closing statements.

I'll let you go first, Ms. Thomas.

STATE'S CLOSING ARGUMENT

MS. THOMAS: Thank you, Your Honor. As this court heard the testimony, officer saw the Defendant, based on how we can see on Google Maps, from a vantage point he could see where the Defendant was located as well as what the color of the lights were. He testified the light was red and, in fact, a car had gone through the light prior to the Defendant and the Defendant followed it. That car had crossed the line and not quite run the red light at that point, but yet at the time Mr. Vega was in position the light had turned red before he crossed the what's referred to as the limit line. That line where if your car is before that line, it's running a red light. If your car is after that line, it's not running a red light.

He testified to that in June, he testified to that today, and, in fact, he went above and beyond and looked at the video to see it after the traffic trial, even though he was found not guilty, he went and saw the video just to see could I see

the color of the lights. In fact, that's when he realized he was wrong about the position of his car. He disclosed that to the State. We disclosed that to the defense. He was incorrect regarding that, but there was also testimony that he tickets people in the manner you're supposed to within the law.

So save for that, he had reasonable suspicion to believe the Defendant had committed a traffic violation. In the trial that is beyond a reasonable doubt. That is not the standard that we are here today for. It's reasonable suspicion. In fact, case law supports that a ruling in a trial court regarding a traffic citation is irrelevant and that this court is supposed to make its own independent determination. That law is laid out in my Brief, Your Honor. And, in fact, it's *Michigan v. De-Fillippo*, 443 U.S. 31. It states, "a later acquittal for which a person is arrested is irrelevant to the validity of an arrest."

I believe enough facts were articulated here on the record to show the State has at least met the burden of reasonable suspicion if not probable cause to have made that traffic stop.

Moving on to the probable cause to search the vehicle. Within minutes of the stop, and you could tell by the body cam, that the stop occurred and, of course, the officer has to run the plates, to get a background on the person potentially driving the car, he walks up to the car and it's approximately ten seconds within walking up to the car is when you could hear the officer kind of in a shocked manner describe the billowing smell of raw marijuana coming from the car. He even

says, dude, I'm going to be honest, where's the marijuana, because it was so strong. And every officer you hear that comes in contact with that car says—even after they find the few buds they do of the leaf marijuana—is like there's got to be more drugs there. This car has to be full of drugs. Where is that smell coming from.

Based on that, they have the ability of probable cause to search the car based on the smell of raw marijuana on itself, the fact that this officer has experience dealing with marijuana, he is permitted to search that car. He then finds in the car in the center console marijuana, he finds rolling papers, he finds canisters specifically made to mask the odor of marijuana, he finds three cell phones, all giving him probable cause to continue his search based on his experience with marijuana.

The quantity that he found he believed was not capable of creating the smell that was emanating from that vehicle; therefore, he is permitted by case law to continue his search until he finds that smell. In fact, it's been upheld that again doing so based on the fact that the quantity or the strength of the odor, that that is what then allows you to continue and dictates ultimately what you are permitted to search. Because of the strength of the odor, it would be consistent with finding a large amount of marijuana; therefore, he is able to search a package like you would be able to search a duffle bag or something else that would be in a car that is permissible to search.

Moving on to the length of the traffic stop. The traffic stop with the search took eight minutes.

Eight minutes from pulling him over, to the activation of the body cam, to running the background on the driver, or I would say the car associated with the stop, to the smell of marijuana, to the first discovery of the buds. Eight minutes. Based upon that, they then were able to expand the scope of their search; therefore, expanding any time that would be needed to conduct the search.

They did not want to—This officer called a supervisor, supervisor called a supervisor. They then called Ohio State Highway Patrol because they wanted to make sure what they were doing was legal. They did so and they sought outside opinions to open a package, again, as you would open a duffle bag, a zipped duffle bag. That has been upheld in numerous cases. In fact, *State v. Gonzales*, 2009-Ohio-168, goes through a lengthy discussion about finding items in a car, the ability to search packages. It says specifically in this case, “packages or containers if it is consistent with the smell.” So again, every step is lengthening the ability to conduct this.

It then turns from a traffic stop to a narcotics investigation. They are in a car. At that time they could not let Mr. Vega drive away with the evidence. They could have seized it, yes, or they can detain him until they’re able to ascertain where that smell is coming from. They also could have gotten a warrant. If they would have gotten a warrant, he would have been sitting there a lot longer. But they weren’t even required to get a warrant because case law supports that you can open packages within a car.

There's no indication those are the packages that were in the box that were being mailed. In fact, that package was sent, what did we say on the record, two weeks prior to this incident. Who hasn't shipped something at Christmastime in a box you received and shipped something else in it? As much as the inference of him making these are the packages, these could have been his packages and reusing the box to ship something else or these to someone else.

We would say that based on the totality of the circumstances, based on everything that was found, based on probable cause, this was a valid stop and search that lead to the discovery of candy that contained marijuana, as well as marijuana leaves, the cell phones, the rolling papers and everything else that is indicative of drug use, drug trafficking.

We would ask that you dismiss or deny the Motion to Suppress, Your Honor.

THE COURT: Thank you. All right.

Mr. Weatherly.

DEFENDANT'S CLOSING ARGUMENT

MR. WEATHERLY: Thank you very much, Judge.

Your Honor, thanks to the body cam in this case, the facts of this, case really aren't so much in dispute. It's basically an interpretation of the law. What this case comes down to unfortunately, and I commend the officer for making the best efforts to try and follow the law in this case, but it simply wasn't, and the State has a completely

misinterpreted view of what the law dictates in this case

Judge, actually there are several examples of what went wrong during the course of this traffic stop. We'll start with the traffic stop itself. Judge, reasonable suspicion is the standard required in order to initiate a traffic stop in this case. However, when it comes to the actual making a traffic violation, then the standard becomes probable cause. The Court must find there's probable cause to believe that a traffic violation was actually made by the Defendant in this case. And, of course, the only testimony we have is Officer Madej's testimony, which unfortunately lacks credibility-wise. Why a lack of credibility? Well, he already testified regarding nothing more than that traffic stop. That testimony occurred within two months of the traffic stop. We're now 10 months away from that traffic stop, 9 months at least, and he didn't even get it right back then. He didn't even remember where his car was relative to the position of Mr. Vega's car. At the time he couldn't remember whether or not there was a bus in the left turn lane, where Mr. Vega could specifically remember there was a bus in that left turn lane.

So the officer is basically saying just remember—you know, what I remember now that's the truth, but the stuff I screwed up back then that doesn't count and don't hold that against me and my testimony now is credible. Judge, you have to take all his credibility into account here.

I'm not saying that this officer is purposely lying at all. But what I'm saying is memories fade. What I'm saying is he makes 50 plus traffic

stops a year and he can't remember all of them and that his own testimony regarding his recollection of the traffic stop is where his recollection of my client's remembrance of the traffic stop shows and indicates that perhaps my client—most likely my client did have a far better recollection of what occurred, that there was a bus there, that my client did make a legal left turn and that the traffic stop was legal. If the traffic stop was legal, Judge, all the evidence that is obtained subsequently has to be suppressed.

The first part of our argument here, I do believe based on the conflicting testimony between Officer Madej's initial testimony regarding the traffic stop back in June and then how he's able to disprove himself and his conflicting testimony today indicates there is likely not probable cause to determine that my client actually did commit a traffic violation on March 28th.

Now, I'm going to move to the second part of our argument, which is the actual search. There's no denying once Officer Madej smelled the odor of marijuana he was entitled to search, that car. I mean, he did. He detained my client and searched the car and found the source of the marijuana, and that should be the end of it. Because, as he testified, Judge, after 15 to 18 minutes all of the evidence he was ever going to find in that car to give him the ability to search these packages he's already found. It didn't take him long at all to get it all. That's 15 to 18 minutes. That's the course of a normal traffic stop.

What he did after was the constitutional violation. He wanted to get a K9 dog to smell these

packages because he knew, we all know, if a K9 came out, smelled those packages and gave an alert, now he's got probable cause to go in those packages. Without that K9, he doesn't have any probable cause to go in those packages. So what does he do? He sits around and waits for that K9.

As he testified, Judge, he waited the vast majority—the vast majority of this hour and 12-minute long video is him waiting for that K9 that never comes, that never gives him probable cause.

Your Honor, I point you to the Supreme Court's case in 2015, *Rodriguez v. United States*, where it specifically talks about the use of K9. If you've got a guy stopped for a traffic violation, you cannot detain that person outside of the scope of the initial traffic stop any longer to get that K9 there to sniff the package. If the K9 happens to be there and happens to do his sniff during the course of that natural traffic stop, then that's legal. But you cannot wait not one second longer for the K9.

And the fact of the matter is, Judge, in this case the scope of the traffic stop ceased to exist at the 18-minute mark because at that point he had recovered the marijuana in the car, which was the source of the odor of the marijuana; he had determined, wrongly or not, that my client had committed a traffic violation; and he had conducted his search of the car. He had no additional evidence to keep my client detained at that time, yet he did for nearly an additional hour with no reason to do it. None whatsoever. In fact, Judge, that was his own determination because in the second video about 20 minutes in he determines no K9, no reason to go into the packages there, I guess

I'm just going to issue him a citation and let him go.

We didn't cite this case in our Brief, so that's one reason I would like the opportunity for Brief in Reply. I'm sure you're familiar with it. An Ohio case. It was ratified by the State of Ohio. It involves a woman who was pulled over for a speeding ticket. The officer issues her a speeding ticket. After the citation is in the woman's hand, the officer says, by the way, you mind if I search your car? She consents. The officer searches the car and finds paraphernalia and she's charged with felony offenses. The court ruled you can't do that. Once that traffic citation is in her hand, the purpose for the traffic stop ceases to exist and you have no right to extend that traffic stop not one second.

So now we're into the second problem with this case. First, we waited for K9 and we didn't have the right to do that. And secondly, we issued a citation, thus ending the purpose of the officer's interaction with my client as a whole yet continue to detain him afterwards. Now, the officer said he couldn't remember whether or not he issued the citation or if he just filled it out and walked around with it. The fact of the matter is he testified that the very last thing you do when you issue a minor misdemeanor citation or citation for a traffic ticket is you have the person sign it. Once they sign it, there is nothing else to do but rip it off and hand it to him. That's what he testified to.

We know that before those packages were opened those citations were completed and they were

signed by my client, and my client gave the officer no indication that he would not appear in court as a result of those citations.

And we did cite this in our Brief, Judge. When you're citing someone for a minor misdemeanor, you don't have the right to detain them and you don't have the right to arrest them unless you believe they're not going to show up for court. The officer testified that was not the case for my client. He had no reason to believe my client would not show up for court and therefore had no reason to detain him as a result of a minor misdemeanor, a non-arrestable offense, of possession of marijuana or minor misdemeanor traffic violation for which he was charged.

So we've got an unreasonable and undue and unconstitutional delay waiting for a K9. And then we have additional unreasonable, unconstitutional, undue detention following the issuance of a citation for minor misdemeanor infractions.

Finally, Judge, we go to the actual fact that this isn't just a box or a package that's being opened up. This is U.S. Mail. There is a code associated with U.S. Mail.

And I know that the State is attempting to show that perhaps this wasn't U.S. Mail and that maybe he was just reusing the box. But I'm sorry, reasonable minds would not look at that box and say that never went through the mail. Reasonable minds look at that box and state emphatically it did go through the mail. Because not only does the outer portion of the box show it had been packaged, sent, there is postage on it, yes, that

box was opened, but the two packages inside, Judge, were sealed. And they weren't sealed in Ziplock bags. They were sealed in United States Postal Service envelopes. Who hasn't got a package where you get a box in the mail and you open the box, what's inside the box? It's another box. You open that box and it's two smaller boxes. And you open those boxes and there is whatever the hell you are supposed to get in the mail.

That package went through the mail, the United States Mail, and there are only a select few reasons why the State can ever open up someone's mail. Those involved, if they believe there's a dangerous ordnance in there and that could be a danger to the public. I asked the officer if he heard it ticking, if he thought it was a bomb, or dangerous ordnance. He said no to that question. The other one is, and we all know this one, and that's when it's a suspicious package and the Postal Service officer likes to have a drug dog sniff it. And if the dog alerts, then that gives you probable cause to open it up.

Well, we didn't have a K9, Judge, so there is no justification for opening someone else's sealed United States Mail. That is statute. That's not me misquoting case law or interpreting the gray area of the law. That's actual federal statute that says if you've got mail, nobody else is allowed to open it save for a couple of specific reasons, and I went through them and they're in my Brief, Judge.

Finally here, the State is trying to argue that the reason that all of this is legal, what the officer did here, is because of the automobile exception to the warrant requirement. And we did address

that in our Brief, Your Honor. And I specifically argue that the automobile exception here does not apply. Reason being, the automobile exception is comprised of two elements. It is exigent circumstances coupled with probable cause. That's what the automobile exception is.

Here there were no exigent circumstances. I asked the officer when he was testifying if Mr. Vega had the opportunity to get out of the car, to damage or destroy any of the evidence in his own car, to basically interrupt their searching of his car in any way. And he said no, Mr. Vega was locked in the back of my partner's squad car. That's what he was, Judge. He was locked back there. Once you go in the back of the squad car and they close the door behind you, you can't get out. It's a cage, it's a rolling cage. The only way Mr. Vega could get out is if they opened the door for him. That's why there is no officer watching Mr. Vega. They know he wasn't going anywhere.

So there were no exigent circumstances, because they could have taken that package, they could have seized it, they could have taken it back to their station, they could have gotten the appropriate search warrant for it, and if, and only if, a neutral and detached magistrate would have signed a search warrant allowing them to look into, then at that time they could have gone into the package. But they didn't. They're just claiming there were exigent circumstances because they chose not to take that option.

The other part is probable cause. We went through the probable cause, Judge. And the probable

cause they had was he allegedly committed a traffic violation, minor misdemeanor, non-arrestable offense; he was in possession of marijuana, loose marijuana, minor misdemeanor, non-arrestable offense; and there were other indicators that made the officer believe that there might be evidence of additional contraband in the car but nothing specific about those packages which lead them to believe they themselves were contraband other than the fact my client wouldn't consent to allowing them to open them.

We did cite in our Brief, Your Honor, just because someone says you can't look in their house doesn't give you the right to look in their house. Just because someone doesn't give you consent to open their packages doesn't create probable cause to be able to open those packages. The law is very clear on that.

And I believe that the officer did misinterpret Mr. Vega's words when the officer said, hey, if they were just stickers, wouldn't you let me open the package? And Mr. Vega said, no. He wasn't saying no, I would let you open the package if it was Stickers. He was saying no, I wouldn't let you open the package no matter what's in there because I don't want you opening my things, I don't want you Going through my car or searching anymore than you already have. And that conversation occurred after he had been detained for about a half hour, which is about twice the length of a normal traffic stop according to the officer's own testimony.

Exigent circumstances did not exist. Probable cause did not exist. The automobile exception does not apply. And even if it does, Judge, what do you do about the fact that you can't—the law is very clear, the Supreme Court has ruled very clearly, you can't detain someone to get a K9. You can't. You can't extend a stop to get a K9. The law—The Supreme Court of the United States ruled on that. Even if you can, Judge, which you can't, you certainly can't detain anyone after the scope of your initial traffic stop has subsided, and that occurs the second you issue the citation.

We saw on the video before those packages were opened the citations for the marijuana and the citation for the traffic stop were fully filled out. They were signed by Mr. Vega. They were either then given to Mr. Vega or for some reason not given to Mr. Vega. The fact of the matter is they were done, they were complete. The purpose for the stop was done, it was over. They had no lawful right to detain Mr. Vega. If they continued to do so, then they opened the packages, then they arrested him.

There's a nexus between the constitutional violation, the length of detention of my client, and how that then translated into the unlawful search of the packages in the back of his car in violation of federal law, and, as a result of the nexus, the exclusionary rule applies, Judge. That evidence, those two packages, should not be admitted at trial. We ask you to grant the Defendant's Motion to Suppress in this case, Judge.

THE COURT: Thank you.

You have rebuttal?

STATE'S FINAL CLOSING ARGUMENT

MS. THOMAS: I do, Your Honor.

Mr. Weatherly, in outlining the automobile exception, he talked about exigent circumstances. In *State v. Mills* and *State v. Russell*, 2004-Ohio-1700 and 62 Ohio St.3d 357, it says the court has repeatedly recognized the inherent mobility of an automobile as justification of exigent circumstances whenever the car is readily mobile. The fact that a car is mobile is the exigent circumstances. That's what the case law says we don't have to prove some independent other exigent thing. The court says the fact it's a mobile working car is exigent circumstances in itself.

Then, "Probable cause is a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction."

State vs. Kessler. There must be probable cause to believe that they will find the instrumentality of a crime or evidence pertaining to a crime before they begin their warrantless searches. If an officer smells marijuana, the officer is justified in searching the passenger compartment and trunk.

State v. Gonzales, I've discussed the first time, additionally, compartments and packages within a vehicle which contain the illicit object for which the police have probable cause to believe exist may also be searched. "Thus, compartments and

packages within the vehicle which could contain the illicit object for which the police have probable cause to believe exists may also be searched. After an officer has probable cause to believe that a vehicle contains contraband, a permissible search of the vehicle is defined by the object of the search and the places in which there is probable cause to believe it may be found." *State v. Gonzales* quoting *U.S. v. Ross*, 1982 Supreme Court Case 456 U.S. 798.

We have gone through the fact that there was a strong odor of marijuana. He was capable of searching any and all packages in that passenger compartment because of how strong the marijuana was. There has never been something that says just because a search warrant or a search does not bear the fruits of what you think it's going to means oh wait, it's not valid. That's not how it works. It works if you have a probable cause to do the search and then if you find something we end up here. If you don't, then you don't get charged with anything.

Also, Mr. Weatherly is talking about the fact that he was issued the citations and everything like that, everything that stopped the traffic stop. This became a narcotics investigation. Once they smelled the marijuana, they discovered those packages which he believed contained marijuana itself, based on the feel, you could hear it on the body cam almost immediately he's like that feels like individually wrapped like dime bags or something like that with marijuana in it for sale.

Mr. Weatherly was talking about the package and the fact that this has been shipped through

the mails. I don't think we ever contested this particular box was shipped through the mail. There is a U.S. Postal tracking on it, it's addressed, a return address. We've never said this box wasn't used for mail. What we're saying is the contents inside the box were not the contents that were shipped. I mean, the way this box came to court, it had all these items in it. They didn't put these back in there. They used it to transport something else. This was shipped two weeks prior to this incident. The way it looked is maybe he was thinking of reusing the box to ship this package to someone else. But it was not sealed. It was not ready to be shipped. It is not U.S. Mail.

The fact that this bag has U.S. Postal Service on it, you can pick those up for free or you pay for them at the postal service. If this would have been a shoebox taped up, then it would be okay? It would be using it for the same purpose.

There is nothing on those packages that indicate those were ready for shipment or had been received by the mail. They happen to be in a box that had shipped something.

Talk about the K9. A K9 that is brought to—In the case law it talks about K9s being brought to the scene. It is usually to give an officer probable cause to search the vehicle. Within two minutes we had probable cause to search the vehicle. Within eight minutes marijuana was found. In that they determined that that was not enough marijuana to create the odor; therefore, they had probable cause to continue to search the vehicle.

The K9 was to see if they could detect an odor from the bag. The testimony was there was so much marijuana coming out of the car they couldn't tell if it was coming from the bag, if it wasn't coming from the bag. Today we're not capable of smelling marijuana because we now know what is inside and the fact you, cannot smell THC. At that time they did not know that, Your Honor. They were working off the operation they could smell so much marijuana it could be coming from the bag, it couldn't be coming from the bag. It felt like it was individually packed marijuana.

The interpretation of the Defendant's statement was if it was just stickers I would let you open it, man. But it wasn't. That's, how he interpreted it. That's the knowledge the officer was operating on at the time of that search.

And again, the case that Mr. Weatherly cites regarding the woman who was given the citation then they waited to bring a drug dog to see if it would detect on a car, it's not relevant here, Your Honor. We already had probable cause way before the issuing of the citations to conduct the search that they had.

Again, we would just ask that you deny the motion. Your Honor.

THE COURT: Thank you. All right. I will grant the prior request to file a Post-Hearing Brief on the law. I'll give you three days, though, to do that since we're obviously holding up the trial while that has to play itself out. So Briefs should be

filed on or about Friday. I'm limiting the pages no more than five pages.

So with that, though, I'll adjourn, consider this on the subsequent submissions and issue a ruling after that. We'll have to reschedule the trial date based on the Court's findings Thank you. We're adjourned.

(Thereupon, Court was adjourned.)

**BODY CAMERA FOOTAGE RECORDED ON THE
DATE OF THE APPELLANT'S ARREST**

The body cam footage for both Officer Madej and Officer Nolasco can be found at the following link:

[https://www.supremecourtpress.com/caseInfo/
EdwinVega/EdwinVega_BodyCam.html](https://www.supremecourtpress.com/caseInfo/EdwinVega/EdwinVega_BodyCam.html)