No. __________

In the Supreme Court of the United States

RICCO SAINE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPENDIX

Andrew S. Pollis
Counsel of Record
MILTON AND CHARLOTTE KRAMER LAW CLINIC
CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW
11075 East Blvd
Cleveland, OH 44106
(216) 368–2766
andrew.pollis@case.edu

Attorney for Petitioner

APRIL MMXXVI

United States Commercial Printing Company • www.uscpc.us • (202) 866-8558

APPENDIX

TABLE OF CONTENTS

Appendix A

Opinion [Defendant's conviction affirmed], United States Court of Appeals for the Sixth Circuit, *United States of America* v. *Ricco Saine*, No. 24-5638 (Dec. 22, 2025) App-1

Appendix B

Order [petition for rehearing denied], United States Court of Appeals for the Sixth Circuit, *United States of America* v. *Ricco Saine*, No. 24-5638 (Jan. 22, 2026) App-13

Appendix C

Report and Recommendation, United States District Court for the Eastern District of Tennessee, Greeneville Division, *United States of America* v. *Ricco Saine*, No. 2:21-CR-109 (Nov. 2, 2022) App-14

Appendix D

Order [Report and Recommendation adopted and approved, Defendant's Motion to Suppress denied], United States District Court for the Eastern District of Tennessee at Greeneville, *United States of America* v. *Ricco Saine*, No. 2:21-CR-109 (Apr. 25, 2023) App-26

Appendix E

Judgment in a Criminal Case, United States District Court for the Eastern District of Tennessee at Greeneville, *United States of America* v. *Ricco Saine*,
No. 2:21-CR-109 (Jul. 3, 2024) App-28

Appendix F

Gov Brief Excerpt, United States Court of Appeals for the Sixth Circuit, *United States of America* v. *Ricco Saine*,
No. 24-5638 (Jun. 17, 2025) App-44

Appendix A
[Filed: Dec. 22, 2025]

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 25a0355p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

RICCO SAINE,
Defendant-Appellant.

No. 24-5638

Appeal from the United States District Court for the Eastern District of Tennessee at Greeneville.
No. 2:21-cr-00109-1—J. Ronnie Greer, District Judge.

Argued: October 27, 2025

Decided and Filed: December 22, 2025

Before: READLER, MURPHY, and BLOOMEKATZ, Circuit Judges.

COUNSEL

ARGUED: Andrew S. Pollis, Damien Chafin, CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW, Cleveland, Ohio, for Appellant. Luke A. McLaurin, UNITED STATES ATTORNEY'S OFFICE,

Knoxville, Tennessee, for Appellee. **ON BRIEF:** Andrew S. Pollis, Katherine Clawson, Melissa A. Ghrist, CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW, Cleveland, Ohio, for Appellant. B. Todd Martin, UNITED STATES ATTORNEY'S OFFICE, Greeneville, Tennessee, for Appellee.

OPINION

BLOOMEKATZ, Circuit Judge. Ricco Saine was convicted of two counts of knowingly possessing a firearm as a convicted felon. On appeal, he challenges his conviction on two grounds: *First*, he argues the district court erroneously denied his motion to suppress evidence seized from his truck following a search based on a drug dog's positive alert. *Second*, he argues the district court erred by admitting a text message because it is improper propensity evidence. We disagree and affirm Saine's conviction.

BACKGROUND

I. Drug Dog Alert

The relevant facts we recount here are not in dispute. In August 2021, Officer Aaron Blevins approached Ricco Saine while Saine was next to his truck in a motel parking lot. Because a Be on the Lookout (BOLO) alert indicated Saine was suspected of narcotics trafficking and because Officer Blevins believed this particular motel was a "known drug location," Officer Blevins called for a K9 unit. Mot. to Suppress Hr'g Tr., R. 217, PageID 1996–98. Officer Travis Bates arrived roughly ten minutes later with

his K9, who is certified to detect methamphetamine, cocaine, heroin, and marijuana. Officer Bates's K9 was not trained to distinguish "between legal cannabis and marijuana." *Id.* at PageID 2010. Tennessee, where the search took place, criminalizes possession of marijuana, *see, e.g.*, Tenn. Code Ann. § 39-17-417(g), but not hemp, *id.* § 39-17-402(16)(C), or certain by-products of the marijuana plant, *id.* § 39-17-402(16)(B), (E).

Officer Bates's K9 alerted next to the driver's side rear door. Following this alert, officers searched Saine's truck. They found a "small amount of what appeared to be marijuana," Mot. to Suppress Hr'g Tr., R. 217, PageID 2009, but the record does not establish the substance's actual identity. They also found an unzipped bag containing a firearm, identified as a Ruger EC9S, 9mm semiautomatic pistol (the Ruger), alongside Saine's ID.

II. Discovery of Additional Firearms

A few weeks later, Officer Mike Slater went to the home of Ricco and Tonya Saine.[1] Saine was not present. While there, Officer Slater photographed three firearms which Tonya claimed she owned: a Walther, model PK380, .380 caliber pistol (the Walther); a Springfield Armory, model Saint, 5.56 caliber rifle (the Springfield); and a second pistol. Officer Slater later obtained surveillance video footage which showed Tonya purchasing the Walther and the Springfield from a local gun store while with Saine.

---

[1] We refer to Tonya Saine by her first name to avoid confusion between her and Ricco Saine.

Roughly a month after the police discovered these guns, Saine was arrested on unrelated charges. While in police custody, he tried to make a deal with Officer Slater. He offered to tell Tonya "to hand over his AR-15" if Officer Slater agreed to vouch for his release. Trial Tr. Vol. II, R. 265, PageID 3419. Around this same time, the police seized both the Walther and the Springfield from Tonya. Executing a search warrant, the police also acquired Saine's cellphone and downloaded its data. This data included a text conversation between Saine and Tonya featuring the following exchange:

> Tonya: "I've got your gun and stuff in the house"
>
> Saine: "K"

Id. at PageID 3443–44. These messages were sent eight days after Tonya purchased the Walther and the Springfield.

III. Procedural History

The government charged Saine with two counts of unlawfully possessing a firearm as a convicted felon. *See* 18 U.S.C. §§ 922(g)(1), 924(e)(1). In one count, it charged Saine with possessing the Ruger found in his truck outside the motel. In the other, it charged him with possessing both the Walther and the Springfield discovered at his and Tonya's home.

A. Saine's Motion to Suppress

Saine moved the district court to suppress the Ruger, arguing that the police uncovered it through an unconstitutional search of his truck. His motion to suppress primarily focused on whether the police

were justified in calling for a K9 unit in the first place, though he does not renew this argument on appeal. At the suppression hearing, he questioned whether the K9 could differentiate between legal substances, like hemp, and illegal marijuana substances. Saine presses this argument now.

The district court rejected Saine's argument that the K9's inability to differentiate between hemp and illegal marijuana rendered the search unconstitutional. It reasoned that *Florida v. Harris*, 568 U.S. 237 (2013), held that the alert of a drug sniffing dog is presumptively sufficient for probable cause, and it noted that Saine did not provide any caselaw indicating that a K9 alert is unreliable when the dog cannot distinguish between legal cannabis and illegal marijuana.

After the district court denied his motion to suppress, Saine's case proceeded to trial.

B. Saine's Objection to Admission of the Text Message Exchange

At trial, Saine, through counsel, objected to admission of the text exchange in which Tonya indicated Saine's "gun and stuff" were at their house. He argued that the exchange was inadmissible both as hearsay and as improper propensity evidence under Federal Rule of Evidence 404(b). As to the hearsay issue which Saine does not renew on appeal, the district court agreed with the government that the exchange could serve as proof of Saine's state of mind (i.e., to prove he knew about the gun) rather than for the truth of the matter asserted (i.e., that she had his gun at home). The district court never directly addressed Saine's 404(b) objection, but it did admit the

evidence to prove that Saine "knew [Tonya] had a gun that belonged to him." Trial Tr. Vol. II, R. 265, PageID 3362. The district court offered to give the jury a limiting instruction on this evidence, but Saine's counsel declined.

The jury returned a guilty verdict on both counts.

ANALYSIS

Saine challenges his conviction on two grounds. *First*, Saine argues that the district court erred when it declined to suppress the Ruger because the police did not have probable cause to search his truck even after the positive alert from the K9.[2] *Second*, Saine argues that the district court erred in admitting the text message exchange because, absent evidence linking the message's reference to "your gun" to the specific guns charged in the indictment, this evidence constituted impermissible propensity evidence.

I. Fourth Amendment

When reviewing a district court's order denying a motion to suppress, we review factual findings for clear error and conclusions of law de novo. *United States v. Stevenson*, 43 F.4th 641, 644 (6th Cir. 2022). Officers may search a car without a warrant if they have probable cause to believe it contains evidence of criminality. *Hernandez v. Boles*, 949 F.3d 251, 259

---

[2] The government argues that this argument is waived on appeal because Saine did not object to the magistrate judge's report and recommendation. But any possible forfeiture is not a jurisdictional barrier, *see Thomas v. Arn*, 474 U.S. 140, 155 (1985), and we need not address forfeiture given our resolution on the merits, *see United States v. West*, 789 F. App'x 520, 522 (6th Cir. 2019).

(6th Cir. 2020). In *Florida v. Harris*, the Supreme Court held that a K9's positive alert presumptively supplies probable cause to search a vehicle so long as the government provides evidence that the K9 reliably identifies contraband in controlled settings. 568 U.S. at 248.

At issue here is whether *Harris*'s presumption that a K9's positive alert provides probable cause still applies with the same force when a state has legalized marijuana, at least in some forms, or other substances, like hemp, whose smells are indistinguishable from marijuana. Saine argues *Harris* does not apply here since the K9 could not distinguish between legal and illegal substances and *Harris* depended on the K9's ability to distinguish between contraband and non-contraband. Saine relies on the fact that the K9 in this case could not distinguish between hemp—which is legal in Tennessee—and illegal marijuana.

This argument fails because probable cause determinations focus on probabilities, not certainties. Probable cause does not require officers to eliminate alternative innocent explanations. *See United States v. Martin*, 289 F.3d 392, 400 (6th Cir. 2002). Rather, it "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *District of Columbia v. Wesby*, 583 U.S. 48, 57 (2018) (citation modified). So the fact that an officer—or a K9—*could* have merely smelled hemp or another legal cannabis substance does not necessarily negate probable cause.

We have already held that human officers smelling marijuana can provide probable cause for an arrest, even when certain types of cannabis are legal. *See United States v. Santiago*, 139 F.4th 570, 574–75 (6th

Cir. 2025). Saine argues that K9s are categorically different from human officers. Specifically, he contends that K9s are like a device that provides an automatic response upon smelling certain drugs, while human officers can take account of the surrounding circumstances beyond the smell, and officers can consider other contextual factors in distinguishing between legal and illegal cannabis substances. But the context of a dog sniff always must be considered too. The Supreme Court recognized as much in *Harris* when it noted that the circumstances of any specific K9 alert may make it unreliable. 568 U.S. at 247. Saine, therefore, has not provided us a persuasive reason to distinguish *Santiago* here.

Nor are there contextual factors that make this K9 alert unreliable. There may come a day when hemp or other legal cannabis substances are so pervasive that the alert of a K9 trained to identify the smell of marijuana, but not to distinguish between legal and illegal forms of cannabis, no longer tends to indicate a "fair probability" of contraband. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Based on the sparse record before us in this case, that day is not today.

Instead, multiple other factors in this case support our conclusion that Officer Blevins had probable cause to search Saine's truck. Officer Blevins testified that this particular motel is a "known hot bed of criminal activity," including drug crimes, based on his experience as an officer. Mot. to Suppress Hr'g Tr., R. 217, PageID 1998. And there was a BOLO alert indicating Saine was potentially involved in narcotics trafficking. Taking all this together—the K9 alert, the location, and the BOLO—the "totality of the circumstances" reflects a fair probability that contraband

would be found in Saine's truck. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003). So the officers had probable cause to search it.

Thus, the district court did not err when it denied Saine's motion to suppress.

II. Rule 404(b)

Federal Rule of Evidence 404(b) requires the district court to exclude evidence of prior bad acts if the evidence is offered to show a person is likely to act in that same bad way again. *See* Fed. R. Evid. 404(b)(1) (governing admission of evidence of "other crime[s], wrong[s], or [bad] act[s]"). Before admitting such evidence, the district court must make an initial determination that there is "sufficient evidence to support a finding by the jury that the defendant committed" the prior bad act. *United States v. Clay*, 667 F.3d 689, 694 (6th Cir. 2012) (quoting *Huddleston v. United States*, 485 U.S. 681, 685 (1988)). After this determination, the court must then analyze whether the evidence was admitted for a proper purpose and whether its inclusion would be unduly prejudicial. *Id.* at 694, 696.

Here, Saine argues that the district court erred by admitting the text exchange between him and Tonya, where Tonya messaged "I've got your gun and stuff in the house," and Saine replied, "K." He contends that this exchange could have been referring to a different, uncharged gun. And, if it were, then the jury may have inferred that because Saine previously possessed a firearm, he was likely to do so again. Saine argues that using the texts to demonstrate his propensity to possess guns would be impermissible under Rule 404(b).

But this argument puts the cart before the horse. The district court did not admit the texts to prove that Saine possessed another firearm; rather, it admitted the texts to prove what he "knew." Trial Tr. Vol. II, R. 265, PageID 3362. Since Saine's knowledge is not itself a prior bad act, Rule 404(b) is not the correct framework. Indeed, the district court offered to give the jury a limiting instruction on this evidence, instructing them to only consider it as evidence of Saine's "state of mind" or "what he knew." *Id.* at PageID 3363. This instruction would have addressed Saine's concerns that the jury might make an impermissible propensity inference. However, Saine's counsel made a strategic decision to reject the instruction.

Even if we did apply Rule 404(b) to this evidence, however, this challenge would still fail. The first inquiry is whether there was sufficient evidence for a jury to find that the prior bad act occurred. *Clay*, 667 F.3d at 694. But there might not be a prior bad act at all. The text was sent just eight days after the Walther and Springfield were purchased and three days before officers found these guns at the couple's shared home, which is where Tonya said the gun was in her text. It is possible the text referred to another handgun, perhaps the unindicted pistol the officers found at the house. Despite this, there was enough evidence in the record that the text *did* refer to the Walther or Springfield to justify sending the question to the jury. *See United States v. Whitlow*, 134 F.4th 914, 925 (6th Cir. 2025) (admitting photographs of the defendant holding a firearm, even though the defendant alleged they depicted a different firearm than the one charged in his indictment); *see also United States v.*

Hunter, 558 F.3d 495, 504 (6th Cir. 2009) (admitting similar evidence over a Rule 403 objection); *United States v. Gibbs*, 797 F.3d 416, 422–23 (6th Cir. 2015) (same). The government contends "your gun" refers to the Walther or the Springfield; Saine contends it does not. Whose version of the facts is correct is a quintessential jury question.[3]

Saine finally points out that, even if the district court admitted the texts for a proper purpose, the evidence is still inadmissible if its prejudicial effect substantially outweighs its probative value. *Clay*, 667 F.3d at 696. On review, we "look at the evidence in the light most favorable to its proponent, maximizing its probative value and minimizing its prejudicial effect." *United States v. Zipkin*, 729 F.2d 384, 389–90 (6th Cir. 1984). The potential prejudice if the jury concluded "your gun" referred to some uncharged gun does not substantially outweigh the probability that it referred to the Walther or Springfield and was thus probative of the government's case. Thus, the district court did not abuse its discretion in admitting the text.

---

[3] *United States v. Grubbs*, 506 F.3d 434 (6th Cir. 2007), which Saine relies on for the proposition that there must be a nexus between the firearm referenced in the evidence and the one charged, does not say otherwise. In that case, we called it a "tenuous leap" to infer the defendant possessed a black, semi-automatic gun based on his earlier possession of a "dark-colored" and "automatic" gun. *Id.* at 441. However, evidence of Grubbs's prior possession was not excluded under Rule 404(b); instead, we held the testimony was insufficient to support a conviction without persuasive additional evidence. *Id.* at 441–43. On appeal, Saine does not dispute that there was sufficient evidence to convict him, so *Grubbs* is inapposite.

CONCLUSION

We affirm Saine's conviction.

Appendix B
[Filed: Jan. 22, 2026]

No. 24-5638

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. RICCO SAINE, Defendant-Appellant.	))))))))	O R D E R

BEFORE: READLER, MURPHY, and BLOOMEKATZ, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

Appendix C
[E.D. Ten. ECF No. 118]
[Filed: Nov. 2, 2022]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

GREENEVILLE DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)))	2:21-CR-109
vs.	))	
RICCO SAINE, Defendant.	))	

REPORT AND RECOMMENDATION

Before the Court is Defendant Ricco Saine's Motion to Suppress the Fruits of an Unconstitutional Search [Doc. 30] seeking the suppression of certain evidence obtained during a vehicle search conducted on or about August 27, 2021. The United States filed a Response in opposition to Defendant's Motion [Doc. 82]. The Court then conducted an evidentiary hearing on the motion on October 6, 2022. Defendant, his counsel Timothy W. Hudson, Esq., Defendant Tonya Saine ("Ms. Saine")[1], Ms. Saine's counsel Jessica C. McAfee, Esq., and Assistant United States Attorneys B. Todd Martin, Esq. and M. Blake Watson, Esq. were present

[1] Given that the motion at issue relates only to Defendant Ricco Saine, the Court will refer to him as Defendant and to his wife/co-defendant Tonya Saine as Ms. Saine for clarity of the record.

before the Court. Kingsport Police Department Officer Aaron Blevins and K9 Officer Travis Bates testified at the hearing. This matter is before the Court pursuant to 28 U.S.C. § 636(b) and the standing orders of the District Court for a Report and Recommendation. For the reasons stated herein, the undersigned **RECOMMENDS** that the Motion to Suppress [Doc. 30] be **DENIED**.

I. BACKGROUND

On October 13, 2021, a federal grand jury returned an indictment against Defendant, charging him with violating 18 U.S.C. § 922(g)(1) by knowingly possessing a firearm, namely a Ruger LCP9, 9mm semi-automatic pistol, while being aware that he was prohibited from doing so because he is a convicted felon. On April 12, 2022, a federal grand jury returned a superseding indictment adding counts against Ms. Saine and charging Defendant with additional counts of violating 21 U.S.C. §§ 841(a)(1), (b)(1)(A) by knowingly possessing with intent to distribute 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers and 18 U.S.C. §§ 922(g)(1) and 924(e) by knowingly possessing firearms that were transported in interstate commerce, namely a Springfield Armory, model Saint, 5.56 caliber rifle and a Walther, model PK380, .380 caliber pistol. On July 13, 2022, a federal grand jury returned a second superseding indictment charging Defendant with possession of a Ruger EC9S rather than a Ruger LCP9. On October 12, 2022, a federal grand jury returned a third superseding indictment which did not alter the charges brought against Defendant but added allegations that he had incurred convictions for multiple aggravated

robberies and an aggravated burglary prior to possessing the firearms at issue.

In his Motion, Defendant argues that the search of his vehicle on August 27, 2021, in the West Side Inn parking lot in Kingsport, Tennessee was unreasonable under the Fourth Amendment because it was conducted without a warrant and based on the alert of a canine which did not arrive on the scene until ten minutes after Defendant was arrested. [Doc. 30, p. 2]. Because he claims the search was unreasonable, he contends that any evidence obtained as a result, which includes marijuana and a firearm, should be suppressed. [Doc. 30, p. 1]. In response, the United States avers that the deployment of a canine after Defendant's arrest was lawful and provided sufficient probable cause to justify a search of his vehicle. [Doc. 82, p. 8]. The United States contends that the Court should not exclude the evidence obtained. [Doc. 82, p. 9].

II. FINDINGS OF FACT

a. Officer Aaron Blevins's Testimony

Officer Aaron Blevins ("Officer Blevins") testified first at the hearing. He advised that he has worked for the Kingsport Police Department for a little over three years as a patrolman. On August 27, 2021, he was on routine patrol around the West Side Inn in Kingsport when he saw Defendant standing outside the motel next to a red Dodge Ram Rebel truck. Officer Blevins testified that he recognized Defendant because he had previously seen him at the West Side Inn and also because he had viewed a photo of him circulated with a "Be On the Lookout" ("BOLO") alert issued by the Church Hill Police Department. The

BOLO indicated that Defendant was wanted for narcotics trafficking. Additionally, Officer Blevins noted he had received an email that alerted Kingsport PD officers to a disturbance at the West Side Inn involving a red Ram Rebel. A copy of the BOLO was admitted into evidence as Exhibit 5. A copy of the email was admitted into evidence as Exhibit 6.

Officer Blevins testified that he alerted other officers by radio that he had seen Defendant, and three officers responded. Officer Blevins then placed Defendant under arrest based on a warrant issued earlier in the day based upon a shoplifting charge levied against Defendant. Defendant asked that someone lock his car, so another of the officers on the scene rolled up the drivers' side window of Defendant's truck, locked it, and shut the door. Officer Blevins then called for the K9 unit to come to the scene based on the BOLO indicating Defendant could have narcotics. Officer Blevins further testified that the West Side Inn is a known location for criminal activity, including drug offenses, and Officer Blevins personally witnessed numerous arrests there. Officer Blevins remembers K9 Officer Travis Bates arriving at the scene in three to four minutes.[2] While Defendant was in handcuffs, Officer Blevins assisted him in calling his wife to come to the West Side Inn to retrieve the truck. Video footage of Defendant and his truck at

[2] Defendant's brief states that the K9 unit arrived approximately ten minutes after Defendant's arrest, and the United States has not offered conflicting evidence. The video admitted as Exhibit 7 was submitted in two parts, and it does not show the full length of time between Defendant's arrest and the arrival of the K9 unit. Thus, the Court finds approximately ten minutes passed between Defendant's arrest and the arrival of the K9 unit.

the time of the arrest was admitted into evidence as Exhibit 7. Officer Blevins was outside the camera's frame, but the video shows both Defendant standing in front of the motel clerk's window beside the truck and an officer locking the truck.

b. Officer Travis Bates's Testimony

Officer Travis Bates ("Officer Bates") testified next. Officer Bates advised that he works for the Kingsport Police Department as a patrolman and canine handler in the K9 unit. He has been a canine handler since 2020. After attending a police academy in 2016, Officer Bates completed an eight-week basic training with a senior canine handler and completed a certification with his dog. His dog is certified to detect odors of methamphetamine, cocaine, heroin, and marijuana. A copy of the canine certification was admitted into evidence as Exhibit 8.

On August 27, 2021, Officer Bates arrived at the West Side Inn where he guided his canine, Jimmy, on a leash around the relevant vehicle based on Officer Blevins's request. Jimmy is trained to sit at the strongest source of an odor, and in this case, his behavior began to change on the drivers' side of the vehicle before sitting down next to the drivers' side rear door. A copy of Officer Bates's report was admitted into evidence as Exhibit 9. At the evidentiary hearing, the United States played a separate video file from Exhibit 7, which shows Jimmy circling the truck and sitting down at the rear door on the drivers' side. Another officer then found marijuana inside the truck but on the passengers' side. On cross-examination, Officer Bates testified that Jimmy is not trained to distinguish between the odors of legal cannabis and

illegal marijuana, but that Jimmy alerted to the scent of marijuana, which he was trained to detect.[3] Officer Bates further advised that it is not unusual for a K9 to detect the odor of illegal drugs at a part of the vehicle other than the area immediately adjacent to where the substances are located.

III. ANALYSIS

Defendant asks the Court to find that the warrantless search of his vehicle was conducted in violation of his Fourth Amendment rights. To determine whether Defendant's position has merit, the Court must assess whether the deployment of the canine after Defendant's arrest was lawful.

The Fourth Amendment provides people with "the right to . . . be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . .." U.S. Const. amend. IV. Warrantless searches and seizures in private areas are presumptively unreasonable unless an exception to the warrant requirement applies. *Payton v. New York*, 445 U.S. 573, 586–88 (1980). One such exception is the automobile exception, which allows law enforcement to search a vehicle where the search is supported by probable cause. *United States v. McGhee*, 672 F. Supp. 2d 804, 812 (S.D. Ohio 2009) (citing *Maryland v. Dyson,* 527 U.S. 465, 466–67 (1999); *United States v. Ross,* 456 U.S. 798, 807–09 (1982)). The Supreme

---

[3] The Court allowed defense counsel to submit supplemental research related to the issue of legal cannabis versus illegal marijuana. The Court is not aware of any caselaw finding that a canine's inability to distinguish between legal cannabis and illegal marijuana renders the canine's alert to marijuana untrustworthy, and defense counsel has submitted none.

Court has routinely acknowledged that the core basis for the automobile exception to the warrant requirement is the inherently mobile character of a vehicle and, more recently, the lesser expectation of privacy in an automobile. *United States v. Smith*, 510 F.3d 641, 647 (6th Cir. 2007) (citing *California v. Carney*, 471 U.S. 386 (1985)). The probable cause determination is judged from the totality of the circumstances at the time of the search. *Id.* at 648 (citing *Smith v. Thornburg*, 136 F.3d 1070, 1074–75 (6th Cir. 1998)). A lawful warrantless vehicle search does not have to occur during a traffic stop, and the Sixth Circuit has upheld such searches while officers were in control of the keys and driver. *Id.* at 650. Defendant repeatedly asserts that rules relating to the automobile exception are inapplicable here, because his car was not searched during a traffic stop. However, the Sixth Circuit's decision in *United States v. Smith* has rendered this argument unavailing. 510 F.3d at 646, 650 (finding probable cause for the search of a vehicle parked outside the defendant's residence and noting that the court had "upheld warrantless automobile searches in which officers were in control of both the keys to the vehicle and the operator of the vehicle").

Defendant acknowledges that his arrest was lawful but argues that the ten minutes between his arrest and the arrival of the K9 unit was an unreasonable extension of the time needed to accomplish his arrest, rendering the vehicle search unconstitutional. So, the question for the Court is whether a ten-minute delay between Defendant's arrest and the arrival of the K9 unit rendered the search unconstitutional. As both parties acknowledge, an officer needs no suspicion or cause to perform a canine sniff of a stopped

vehicle during a lawful stop, because the use of a dog for drug detection does not implicate privacy concerns. *See Illinois v. Caballes*, 543 U.S. 405, 408–09 (2005). At the same time, the Sixth Circuit has held that police officers cannot extend routine traffic stops to wait for K9 units to arrive unless they have reasonable suspicion of criminal activity. *United States v. Salas*, 820 F. App'x 405, 412 (6th Cir. 2020) (finding a delayed dog sniff during a traffic stop constitutional when it "arose out of an extensive investigation into an ongoing drug enterprise."). Notably, delays of up to 30 minutes have been found to be constitutional. *See United States v. McAllister*, 31 F. App'x 859, 862, 865 (6th Cir. 2002) (holding that a five to ten-minute wait for a canine after a traffic stop was permissible); *United States v. Ortega–Ramos*, 56 F.3d 65, 1995 WL 314889, at *3 (6th Cir. May 23, 1995) (concluding that a fifteen-minute wait for a canine after an initial vehicle stop was permissible); *United States v. Knox,* 839 F.2d 285, 290 (6th Cir. 1988) (determining that a thirty–minute hold at an airport was permissible).

In this case, the Court finds that the brief delay between Defendant's arrest and arrival of the K9 unit did not render the search of Defendant's vehicle unconstitutional. Officers had reasonable suspicion to believe they would find evidence of criminal activity related to Defendant in the red truck parked outside the West Side Inn. The truck at issue clearly belonged to Defendant-he was standing next to it when Officer Blevins arrived, and the officer observed Defendant shut the driver's side door. Then, after Defendant was arrested, he asked that someone lock the truck and he called his wife to come and pick it up. While Defendant asserts that he was actually "on foot"

when officers arrived, the mere fact that he was standing beside his truck as opposed to being seated in it did not render him "on foot." This is particularly true given Defendant's proximity to the truck and the fact that the vehicle was not parked in a parking space but was instead pulled in front of the office window. Moreover, Officer Blevins had reason to believe that Defendant was involved in criminal activity based on the BOLO he had received, indicating that Defendant was connected to narcotics trafficking. Finally, Officer Blevins knew that the West Side Inn was a hotbed for criminal activity and had personally witnessed multiple drug-related arrests there. The totality of the circumstances was sufficient to provide reasonable suspicion that Defendant was connected to drug-related activity and as such, it was likewise reasonable for Officer Blevins to call in the K9 unit, even when it meant a brief extension of Defendant's arrest process.

The Court further finds that two cases from the Sixth Circuit are particularly instructive here. In *U.S. v. Diaz,* 25 F.3d 392 (6th Cir. 1994), drug agents obtained information from a suspected drug courier about the location of defendant's vehicle. Agents found the vehicle in a motel parking lot and a drug detection dog alerted on the vehicle. *Id.* While the defendant consented to the search of his vehicle thereafter because he said he believed he had no choice, he attempted to challenge the constitutionality of the search claiming both that the K9's alert was unreliable and that agents were without authority to enter the motel parking lot to deploy the K9 in the first instance. *Id.* The Court found that the search was constitutional and in doing so, rejected the

defendant's contention that he had a reasonable expectation of privacy in his vehicle while it was parked in the motel parking lot, despite him being a paying guest. *Id.* at 396.

The Court's reasoning was more recently confirmed in *U.S. v. Gooch,* 499 F.3d 596 (6th Cir. 2007). There, the Court found that the warrantless search of a vehicle located in a business parking lot was appropriate, again relying upon defendant's lack of a reasonable expectation of privacy as to his vehicle. The defendant in *Gooch* attempted to distinguish his circumstances from those in *Diaz* in part by noting that he had paid to park in a special valet area of the lot. In finding that defendant lacked a reasonable expectation of privacy, the Court noted that access to the parking lot was not controlled by a gate where you needed a code or card to enter and further noted that the parking lot was shared by several commercial businesses. *Id.* at 601–02.

In applying these cases to the one at hand, the Court notes that officers would have been justified in bringing a K9 into the motel parking lot at any time to conduct a free-air sniff of Defendant's vehicle even without reasonable suspicion. As such, the Court must find that even if officers had unreasonably extended Defendant's arrest to deploy the K9 unit, suppression would not be an appropriate remedy as officers were entitled to conduct a free-air sniff of the vehicle with or without Defendant's presence. Of further note, while Defendant had contacted his wife to retrieve the truck, she had not yet arrived by the time the K9 unit appeared on scene and conducted the search so the truck would still have been accessible to

the K9 even if Defendant had already been transported.

The Court next turns to the probable cause issue raised by Defendant. The alert of a drug sniffing dog is sufficient probable cause to search a vehicle if the Court finds reason to trust the dog's alert. *Florida v. Harris*, 568 U.S. 237, 246–47 (2013). The Court can presume that a dog's alert provides probable cause based on "evidence of a dog's satisfactory performance in a certification or training program." *Id.* at 246. Here, Officer Bates testified about K9 Jimmy's certification in detecting multiple drug odors including marijuana, and the United States moved into evidence a copy of the K9's credentials. The defense did not present any evidence challenging K9 Jimmy's certification but instead questioned his ability to distinguish between legal cannabis and illegal marijuana. The Court finds no caselaw holding that the inability to distinguish between cannabis and marijuana renders a canine sniff unreliable, and Defendant has pointed to none. Accordingly, the Court finds that the search of Defendant's vehicle was supported by probable cause and did not violate the Fourth Amendment.

IV. CONCLUSION

The Court concludes that the search of Defendant's vehicle was supported by probable cause, such that the search did not violate Defendant's rights under the Fourth Amendment. For this reason, as more fully outlined above, the undersigned

RECOMMENDS that Defendant's Motion to Suppress [Doc. 30] be **DENIED**.[4]

Respectfully Submitted,

/s Cynthia Richardson Wyrick
United States Magistrate Judge

---

[4] Any objections to this report and recommendation must be served and filed within **fourteen (14) days** after service of a copy of this recommended disposition on the objecting party. Fed. R. Crim. P. 59(b)(2). Failure to file objections within the time specified waives the right to review by the District Court. Fed. R. Crim. P. 59(b)(2); *see United States v. Branch*, 537 F.3d 582 (6th. Cir. 2008); *see also Thomas v. Arn*, 474 U.S. 140, 155 (1985) (providing that failure to file objections in compliance with the time period waives the right to appeal the District Court's order). The District Court need not provide *de novo* review where objections to this report and recommendation are frivolous, conclusive, or general. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986). Only specific objections are reserved for appellate review. *Smith v. Detroit Federation of Teachers*, 829 F.2d 1370, 1373 (6th Cir. 1987).

Appendix D
[E.D. Ten. ECF No. 177]
[Filed: Apr. 25, 2023]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA, Plaintiff,	)))	No. 2:21-CR-109
v.	))	
RICCO SAINE Defendant.	))	

ORDER

This matter is before the Court on the Report and Recommendation of United States Magistrate Judge Cynthia R. Wyrick dated November 2, 2022. [Doc. 118]. In her Report and Recommendation, the Magistrate Judge recommends that Defendant Ricco Saine's ("Defendant") Motion to Suppress the Fruits of an Unconstitutional Search [Doc. 30] be denied. [*Id.* at 1]. Neither party has filed objections to the recommendation within the time allowed. See Fed. R. Civ. P. 72.

After consideration of the record as a whole and after careful consideration of the Report and Recommendation, and for the reasons set out in the Report and Recommendation which are incorporated by reference herein, it is hereby **ORDERED** that the Report and Recommendation [Doc. 118] is **ADOPTED** and **APPROVED**. Defendant's Motion to Suppress [Doc. 30] is **DENIED**.

So ordered.

ENTER:

s/J. RONNIE GREER
UNITED STATES
DISTRICT JUDGE

Appendix E
[E.D. Ten. ECF No. 258]
[Filed: Jul. 3, 2024]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA	JUDGMENT IN A CRIMINAL CASE
v.	Case Number: 2:21-CR-00109-JRG-CRW(1)
RICCO SAINE	David L Leonard Defendant's Attorney
USM#70194-509	

THE DEFENDANT:

☐ Pleaded guilty to count(s):

☐ Pleaded nolo contendere to count(s) which was accepted by the court.

☒ Was found guilty on count(s) 1sss and 5sss after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section and Nature of Offense	**Date Violation Concluded**	**Count**
18:922(g)(1) & 18:924(e) Possession of a Firearm by a Convicted Felon	09/04/2021	1sss

18:922(g)(1) & 18:924(e) Possession of a Firearm by a Convicted Felon	09/04/2021	5sss

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. § 3553.

☐ The defendant has been found not guilty on count(s).

☐ All remaining count(s) as to this defendant are dismissed upon motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and the United States attorney of any material change in the defendant's economic circumstances.

June 24, 2024
Date of Imposition of Judgment

/s/ J Ronnie Greer
Signature of Judicial Officer

J Ronnie Greer, United States District Judge
Name & Title of Judicial Officer

July 3, 2024
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

262 months as to Counts One and Five, to run concurrently, for a net effective sentence of **262 months**. This sentence shall run concurrently with any sentence that might be imposed in Sullivan County, Tennessee, General Sessions Court Docket Number 2021-RK-7141, and to any sentence that might be imposed in Sullivan County, Tennessee, General Sessions Court Docket Numbers 2021- RK-71218, 2021-RK-71361, and 2021-RK-71373.

☒ The court makes the following recommendations to the Bureau of Prisons:

1. Credit for time served **from 10/19/21 to the present.**
2. 500 hours of substance abuse treatment from the BOP Institution Residential Drug Abuse Treatment Program.
3. Receive a complete physical and mental health evaluation and receive appropriate treatment while in the custody of the Bureau of Prisons.
4. Participate in a full range of educational classes and training to learn a trade or marketable skills while incarcerated.
5. Designation to the BOP federal facility in Lexington, KY.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on

to ,
at ,
with a certified copy of this judgment.

____
UNITED STATES MARSHAL

By______________________________
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **five (5) years** as to Counts One and Five, to run concurrently for a net effective term of **five (5) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentencing of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act

(34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)

7. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before

the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the mandatory, standard, and any special conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature ________________________
Date _____________________

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant must participate in a program of testing and treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.
2. The defendant must not take any prescribed narcotic drug, or other controlled substance, without notifying the physician that he/she has a substance abuse problem and without obtaining prior permission from his/her probation officer.
3. The defendant must participate in a program of mental health treatment, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer. The defendant must waive all rights to confidentiality regarding mental health treatment in order to allow release of information to the supervising United States Probation Officer and to authorize open communication between the probation officer and the mental health treatment provider.
4. The defendant must submit his or her person, property, house, residence, vehicle, papers, [computers (as defined in Title 18 U.S.C. § 1030(e)(1), other electronic communications or data storage devices or media,] or office, to a search conducted by a United States probation officer or designee. Failure to submit to a search may be grounds for revocation of release. The defendant must warn

any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his/her supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments sheet of this judgment.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment **
TOTALS	$200.00	$.00	$.00	$.00	$.00

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ Restitution amount ordered pursuant to plea agreement $

The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day

after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options under the Schedule of Payments sheet of this judgment may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

- ☐ the interest requirement is waived for the
  ☐ fine ☐ restitution
- ☐ the interest requirement for the
  ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of **$200.00** due immediately
☐ not later than , or
☒ in accordance with ☐ C, ☐ D, ☐ E, or
☒ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal *(e.g., weekly, monthly, quarterly)* installments of $ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal *(e.g., weekly, monthly, quarterly)* installments of $ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
F ☒ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to **U.S. District Court, 220 West Depot Street, Suite 200, James H. Quillen United States Courthouse, Greeneville, TN 37743**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:

The defendant is to forfeit his interest in the firearms listed in the Notice of Forfeiture filed on December 6, 2023, as Document 241.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA Assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

Appendix F
[CA6 ECF No. 41]
[Filed: Jun. 17, 2025]

Gov Brief Excerpt

training program." *Florida v. Harris*, 568 U.S. 237, 246-47 (2013). In this case, the dog was certified to detect the odors of methamphetamine, cocaine, heroin, and marijuana, so its alert to the truck signaled the presence of one or more of those odors. (R. 217, Hr'g Tr. at 2001-02, 2010.)

Saine disputes that conclusion by asserting—for the first time—that the dog "could not distinguish between contraband and legal cannabis."[6] (Saine Brief at 20.) This Court rejected a similar argument as "right on the facts"—*i.e.*, that hemp is legal in Tennessee—"but wrong on the law." *United States v. Santiago*, No. 24-5762, 2025 WL 1604156, at *4 (6th Cir. June 6, 2025). Even if the "odors of hemp (legal) and marijuana (illegal) are indistinguishable," *United States v. McCallister*, 39 F.4th 368, 375 (6th Cir. 2022), the inability to distinguish them by odor alone does

---

[6] His suppression motion contained no challenge to the dog's reliability (R. 30, Motion, 61-64), so this issue was not preserved for appeal and should be deemed waived or subject to plain-error review. *See United States v. Caldwell*, 518 F.3d 426, 430 (6th Cir. 2008) (finding that a suppression issue first raised on appeal has either been waived or forfeited); *United States v. Soto*, 794 F.3d 635, 655-56 (6th Cir. 2015) (discussing amendment to Rule 12). Here, Saine has not proven—as he must—that the alleged error was clear or obvious, that it adversely affected his substantial rights, and that it seriously affected the fairness, integrity or public reputation of the judicial proceedings. *Johnson v. United States,* 520 U.S. 461, 467 (1997).

not negate the probable cause arising from that odor, since officers need not "rule out an innocent explanation for suspicious facts," *Santiago*, 2025 WL 1604156, at *4 (internal quotation marks omitted); *see also id.* at *3 ("Officers are justified . . . in believing that marijuana is present where they smell it"). (*See also* R. 118, Report & Recommendation at 393 ("The Court finds no caselaw holding that the inability to distinguish between cannabis and marijuana renders a canine sniff unreliable"); *accord id.* at 389.)

The narcotics-detection dog in this case had been trained to detect four controlled substances and alerted to "one of the odors that he was trained on." (R. 217, Hr'g Tr. at 2010.) Its alert, standing alone, thus provided probable cause to search the truck.[7] *See id.* at *4 (concluding that "the mere fact that [a defendant] *could* have possessed hemp did not negate the officers' reasonable ground for believing [he] possessed marijuana") (emphasis in original).

The existence of probable cause authorized the officers to search "every part of the vehicle that might

---

[7] The other circumstances discussed by Saine—*i.e.*, that officers had been directed to "be on the lookout" for Saine on suspicion of narcotics-trafficking and that the motel was in a high-crime area—explained why the narcotics-detection dog was brought to the motel; those facts were not used to support the probable-cause finding. (*E.g.*, R. 118, Report & Recommendation at 391 (finding that the "totality of the circumstances . . . provide[d] reasonable suspicion that [Saine] was connected to drug-related activity and [made it] reasonable for Officer Blevins to call in the K9 unit"); *contra* Saine Brief at 24-26.) The magistrate judge additionally found that "officers would have been justified in bringing a K9 into the motel parking lot at any time to conduct a free-air sniff of [the truck] even without reasonable suspicion." (R. 118, Report & Recommendation at 392.)

contain" the drugs to which the dog alerted, including the bag containing the loaded firearm and Saine's identification card. *United States v. Ross*, 456 U.S. 798, 820-21 (1982) (explaining that the scope of the search "extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search"). In other words, probable cause "authorizes a search of any area of the vehicle in which the evidence might be found." *Arizona v. Gant*, 556 U.S. 332, 347 (2009).

Settled precedent thus confirms that the alert by the trained narcotics-detection dog created probable cause to search the truck, that the firearm was found within the scope of the authorized search, and that the firearm should not have been suppressed. Saine's arguments to the contrary should be rejected as waived or, in any event, as meritless.[8]

---

[8] Saine argues at length about the appropriate remedy if this Court were to find that the firearm was unconstitutionally seized and should have been suppressed. (Saine Brief at 26-31.) Yet he has not established the prerequisite; the United States maintains that the firearm was rightly admitted.