IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-260023 TRIAL NO. B-2502948
Plaintiff-Appellant,	:	
vs.	:	*JUDGMENT ENTRY*
QUENTIN ANDERSON,	:	
Defendant-Appellee.	:	

This cause was heard upon the appeal, the record, the briefs, and arguments.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is reversed and the cause is remanded.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 8/26/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer Hensley
Administrative Judge

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Plaintiff-Appellant,	:	
vs.	:	*O P I N I O N*
QUENTIN ANDERSON,	:	
Defendant-Appellee.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: August 26, 2026

Connie Pillich, Hamilton County Prosecuting Attorney, and *Scott Heenan,* Assistant Prosecuting Attorney, for Plaintiff-Appellant,

Angela W. Chang, Hamilton County Public Defender, and *Lora Peters*, Assistant Public Defender, for Defendant-Appellee.

NESTOR, Judge.

{¶1} A fundamental right of American democracy is freedom from warrantless search and seizure. In certain circumstances, police who search without a warrant do so in good-faith reliance on existing law that allows them to invade that freedom. Before Ohio legalized recreational marijuana in 2023, case law allowed warrantless automobile searches based on the smell of marijuana alone. In 2025, in *State v. Gray,* 2025-Ohio-4607 (1st Dist.), this court concluded that pursuant to the legalization, the smell of marijuana alone could no longer be the basis of a warrantless search.

{¶2} This case involves a pre-*Gray* search that took place in the gray area of marijuana jurisprudence between 2023 and 2025. Cincinnati police officers stopped defendant-appellee Quentin Anderson's car for equipment violations. After smelling burnt marijuana, officers searched the car and found bags of marijuana. Anderson was charged with trafficking in and possession of marijuana.

{¶3} Anderson moved to suppress the evidence found during the warrantless search. The trial court granted his motion to suppress. The State now appeals. We conclude that the trial court should determine in the first instance whether the good-faith exception applies to the warrantless automobile search in this case.

I. Factual and Procedural History

{¶4} On June 11, 2025, Cincinnati Police Officer Vincent Bley conducted a traffic stop in College Hill. The driver of the car was defendant-appellee Quentin Anderson. The interaction was captured on officers' body-worn camera footage ("BWC"), which was admitted into evidence at the suppression hearing. The following facts were gleaned at the hearing.

{¶5} Officer Bley initially stopped Anderson's car for equipment violations,

specifically, a broken mirror and excessive window tint. Officer Bley testified that upon approaching Anderson's car, he "was hit with a strong odor of burnt marijuana." After informing Anderson that he was stopped for equipment violations, Officer Bley told Anderson that he could smell marijuana and asked Anderson if he had been smoking. Anderson replied that he had not.

{¶6} Officer Bley asked Anderson if officers could search his car. Anderson said no, and did not give consent to search.

{¶7} Anderson could not find his driver's license, but provided Officer Bley with his social security number. Officer Bley returned to his cruiser to run Anderson's information. While in his cruiser, Officer Bley discussed the stop with another officer, Officer Koch-Hutchinson. Officer Koch-Hutchinson agreed with Officer Bley's conclusion that Anderson's car smelled like burnt marijuana and opined that he thought it would be reasonable to search Anderson's car.

{¶8} Officer Bley returned to Anderson's car and instructed Anderson to get out of the car. Anderson complied, but repeated that he did not provide consent to search. Officer Koch-Hutchinson told him that they did not need his consent to search because the smell of marijuana gave them probable cause.

{¶9} Officer Bley performed a horizontal gaze nystagmus test to determine if Anderson was impaired.[1] While Officer Bley is performing the test, another officer, Officer Grassow, can be seen on the BWC crouching down at the driver's seat door of Anderson's car. Officer Grassow then informed Officer Bley that he had found a scale under the driver's seat.

{¶10} Officer Bley then attempted to handcuff Anderson. Anderson ran. As

[1] The record does not reflect the results of this test.

Officer Bley apprehended Anderson, Officer Koch-Hutchinson searched the car and found bags of marijuana.

{¶11} Anderson was indicted for trafficking in marijuana in violation of R.C. 2925.03(A)(2), a fourth-degree felony, and possession of marijuana in violation of R.C. 2925.11(A), a fifth-degree felony.

{¶12} Anderson moved to suppress the marijuana, arguing that the search was unconstitutional pursuant to this court's recent holding in *Gray* that "the odor of marijuana alone is no longer sufficient to establish probable cause to search a vehicle under the automobile exception to the warrant requirement." *Gray*, 2025-Ohio-4607 (1st Dist.).

{¶13} Importantly, the search of Anderson's car occurred on June 11, 2025. Our decision in *Gray* was released on October 3, 2025, four months after this search took place.

{¶14} In opposing the motion to suppress, the State argued that the basis of the search was not just the smell of burnt marijuana, but also plain view of the scale, Anderson's exhibited signs of impairment, and his hasty flight.

{¶15} The trial court granted the motion to suppress, reasoning that under *Gray*, "the odor of burnt marijuana, without additional indicia of illegal conduct, does not establish probable cause to search a vehicle." In its findings of fact, the trial court noted that "[t]he record does not reflect impaired driving prior to the stop, . . . observations of slurred speech, bloodshot eyes, loss of balance, or smoke emanating from the vehicle." It also rejected the State's arguments regarding plain view of the scale, Anderson's flight, and the inventory exception.

{¶16} The State now appeals.

II. Analysis

{¶17} In one assignment of error, the State alleges that the trial court erred in granting Anderson's motion to suppress.

A. Assignment of Error

{¶18} Our review of a trial court's decision on a motion to suppress "presents a mixed question of law and fact." *State v. Burnside*, 2003-Ohio-5372, ¶ 8. We accept the trial court's factual findings as long as they are supported by competent, credible evidence. *State v. Rogers*, 2022-Ohio-4535, ¶ 26 (1st Dist.). We then independently determine whether the facts satisfy the applicable legal standard. *Id.*

{¶19} The Fourth Amendment protects against unreasonable searches and seizures by the government. U.S. Const., amend. IV. Warrantless searches and seizures "are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967).

{¶20} One exception to the Fourth Amendment's prohibition against warrantless searches is the "automobile exception." *State v. Jackson*, 2022-Ohio-4365, ¶ 28, citing *Chambers v. Maroney*, 399 U.S. 42, 51 (1970). Under the automobile exception, officers may conduct a warrantless search of a vehicle if they have probable cause to believe the vehicle contains evidence of criminal activity. *Id.*

{¶21} In 2000, the Supreme Court of Ohio held 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*, 2000-Ohio-10, ¶ 6. Eighteen years later, the Court reaffirmed the notion that the smell of marijuana alone establishes probable cause to search a car in *State v. Vega*, 2018-Ohio-4002, ¶ 15.

{¶22} However, in 2023, the people of Ohio voted to legalize recreational marijuana. *State v. Sawyer*, 2026-Ohio-2913, ¶ 13 (1st Dist.). Based on this shift in Ohio law, this court held in *Gray* that "the smell of marijuana is no longer automatically indicative of criminal activity, as it was at the time that *Moore* and *Vega* were decided." *Gray*, 2025-Ohio-4607, at ¶ 61 (1st Dist.). Given that it is still illegal to smoke marijuana in a car, we explained that the smell of marijuana was a relevant factor in determining probable cause under the totality of the circumstances. *Id.* at ¶ 47, 61. But under the totality of the circumstances, additional indicia of illegal activity, such as "smoke emanating from the vehicle, impaired driving, or other signs of impairment" would increase the likelihood that an officer had probable cause to search a vehicle under the automobile exception to the warrant requirement. *Id.* at ¶ 62.

{¶23} Here, the trial court found, and we agree, that the search of Anderson's car was unconstitutional under *Gray*. However, *Gray* was not published, and therefore, was not binding precedent, at the time of the search.

{¶24} In *Gray*, we did not need to consider whether the good-faith exception applied because the State failed to raise it below. *Id.* at ¶ 66. Here, the State argues, in the trial court and in this court, that the officers acted in good-faith reliance on binding appellate precedent in conducting the search.

{¶25} The good-faith exception is an exception to the exclusionary rule of the Fourth Amendment. Under the exclusionary rule, evidence obtained in violation of the Fourth Amendment may not be used at trial. *State v. Johnson*, 2014-Ohio-5021, ¶ 40. In *Johnson*, the Ohio Supreme Court discussed the exclusionary rule, reasoning that "the exclusionary rule's 'sole purpose is to deter future violations of the Fourth Amendment.'" *Id.*, quoting *Davis v. United States*, 564 U.S. 229, 236-237 (2011). But excluding reliable evidence serves no deterrent purpose when officers act in good faith.

See id. Therefore, "'searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule.'" *Id.* at ¶ 42, quoting *Davis* at 232.

{¶26} The search of Anderson's car took place during a period of evolving marijuana jurisprudence. As noted above, prior to Ohio's legalization of recreational marijuana, the Ohio Supreme Court held that the smell of marijuana alone was sufficient probable cause to search a vehicle. *Moore*, 2000-Ohio-10, at ¶ 6; *Vega*, 2018-Ohio-4002, at ¶ 15.

{¶27} But, after recreational marijuana was legalized, appellate districts in Ohio began to signal a shift from *Moore* and *Vega*. Nine months prior to the search of Anderson's car, the Second District decided *State v. Tomlin*, 2024-Ohio-4710 (2d Dist.). *Tomlin* concerned a traffic stop that occurred before Ohio legalized recreational marijuana. *Id.* at ¶ 25. In finding that the officer had probable cause to search the car, the *Tomlin* court held "[b]ecause non-medical marijuana was still illegal in Ohio at the time of the traffic stop in this case, we need not address whether the legalization of marijuana has invalidated" *Moore*'s principle that the smell of marijuana alone provides sufficient probable cause to search. *Id.* "For purposes of this case," the court explained, "*Moore* remains valid and applicable." *Id.*

{¶28} By expressly limiting its reliance on *Moore* to pre-legalization, *Tomlin* suggested that the validity of *Moore* after legalization was an open question.

{¶29} The Fifth District had also released an opinion indicating that the legalization of recreational marijuana was changing how the smell of marijuana factors into the probable cause analysis a few months prior to the search in the instant case. *See State v. Duch*, 2025-Ohio-1162, ¶ 27 (5th Dist.) ("We see no reason why the odor of burnt marijuana should not be subject to the same analysis as the odor of alcohol.").

The *Duch* court ultimately held that the search at issue was supported by sufficient probable cause. *Id.* at ¶ 28. But critically, the court noted that "the odor of burnt or raw marijuana alone, would not be sufficient to provide a reasonable suspicion to expand the scope of the initial traffic stop in order to conduct field sobriety tests." *Id.* at ¶ 27.

{¶30} Based on this shift in the case law, the question is whether the good-faith exception applies to the search at issue in this case. On one hand, *Moore* and *Vega* have not been expressly overruled. But on the other hand, a year and a half after recreational marijuana was legalized, a reasonable police officer might be expected to recognize that the legal landscape governing searches based on the odor of marijuana was changing.

{¶31} We cannot make that determination today. The trial court, in its order, did not address the application of the good-faith exception to this search. "'When a trial court does not consider one of the arguments raised in support of a motion, but grants the motion solely on the basis of the second argument, the first argument is not properly before the court of appeals.'" *Reid v. Reese*, 2023-Ohio-4815, ¶ 26 (1st Dist.), quoting *Marra v. Nationwide Ins. Co.*, 2007-Ohio-356, ¶ 62 (7th Dist.); *see State v. Richardson*, 2012-Ohio-1232, ¶ 47 (2d Dist.) (remanding the matter to the trial court for consideration of the good-faith exception); *State v. Mendell*, 2010-Ohio-6107, ¶ 17 (2d Dist.) (same). The answer to that question depends in part on the status of the law at the time of the search, the policy position adopted by the relevant agencies involved in training the police, and the experience and training of the officers involved in the stop.

III. Conclusion

{¶32} We sustain the assignment of error, reverse the trial court's judgment,

and remand the cause for the trial court to conduct a hearing to consider the good-faith exception in the first instance.

Judgment reversed and cause remanded.

BOCK, P.J., and **MOORE, J.,** concur.