

In the  
**Supreme Court of Ohio**

STATE OF OHIO,	:	Case Nos. 2024-1184
	:	
Appellee,	:	On Appeal from the
	:	Meigs County
v.	:	Court of Appeals,
	:	Fourth Appellate District
JOHN KINCAID,	:	
	:	Court of Appeals
Appellant.	:	Case No. 22CA4

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**MERIT BRIEF OF AMICUS CURIAE OHIO ATTORNEY GENERAL  
DAVE YOST IN SUPPORT OF APPELLEE**

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## **INTRODUCTION**

John Kincaid was already stopped for a traffic violation when the police conducted a canine sniff for drugs in his car. The canine sniff was not a search under Supreme Court precedent, so conducting the sniff only burdened Kincaid's Fourth Amendment rights if the officer extended the traffic stop in the process. The evidence does not support the idea that they did; in fact, it suggests otherwise.

Kincaid does not seriously attempt to show that the officers extended the stop. Instead, his main theory is that the police have no right to complete a traffic stop and its attendant license, background, and insurance checks if they are also interested in any potential non-traffic criminal offenses. His other theory is that the lower courts created a new exception contrary to Supreme Court law. Neither argument is correct, so the lower court was right to deny the motion to suppress.

## **STATEMENT OF AMICUS INTEREST**

The Attorney General is Ohio's chief law officer. R.C. 109.02. He is interested in maintaining police officers' ability to conduct lawful traffic stops to ensure the safety of Ohioans on the road.

## **STATEMENT OF THE CASE AND FACTS**

This case began with a traffic stop and became a dispute over a motion to suppress. The events unfolded as follows.

**I. Deputy Campbell stops John Kincaid and finds drugs in Kincaid's car.**

Deputy Tylun Campbell is a certified canine handler working for the Meigs County Sheriff's Department. Hearing Tr. 7–8 (July 12, 2021). He and his dog Cheri were on patrol in December 2019 when they encountered John Kincaid. *Id.* at 8, 11. Deputy Campbell saw Kincaid's car swerve over the center line in the road, so Campbell stopped him. *Id.* at 12–13. Deputy Campbell recognized Kincaid and decided to deploy his drug dog, so he radioed for backup to help ensure his safety while he handled Cheri. *Id.* at 13–14, 29, 34. Backup came within about five to ten minutes. *Id.* at 30. During that five-to-ten minutes, Deputy Campbell asked dispatch to run the licenses of both Kincaid and his passenger. *Id.* at 32–33. He also asked Kincaid and his passenger questions, some of which related to whether they had illegal drugs in the car. *Id.* at 32. The record lacks further details about how long each task took or exactly how Deputy Campbell went about his business.

When Deputy Campbell ran Cheri around the car, she indicated that drugs were in the car. *Id.* at 15–16. Deputy Campbell had Kincaid and his passenger exit the car, and he searched the car for the drugs. *Id.* at 17. The search turned up a cigarette box with bags of illegal drugs. *Id.* at 19. The search also revealed money in the car, and Kincaid told Deputy Campbell that he was selling drugs for another person. *Id.* at 22–23. Deputy Campbell did not ultimately ticket Kincaid for his traffic violation. *Id.* at 27.

## **II. The State charges Kincaid, who unsuccessfully seeks to suppress the drugs as evidence.**

The State charged Kincaid with drug-related crimes, and the grand jury indicted. *State v. Kincaid*, 2024-Ohio-2668, ¶2 (“App.Op.”). Kincaid filed a motion to suppress the evidence of the drugs in the car on the theory that they were obtained illegally. *Id.* at ¶3. If the Deputy’s search of the car or his use of the drug dog was unconstitutional, and if no exception applied, then the trial court would be required to exclude the resulting evidence from Kincaid’s trial. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961). Among other things, Kincaid told the trial court that “[d]uring that time waiting” for backup to arrive, “Campbell questioned Defendant on the contents of the car, specifically asking about narcotics, and having the dispatch center run the occupants['] information.” Def. Br. in Support, *State v. Kincaid*, 21-CR-047, at 2 (Aug. 13, 2021). The trial court denied the motion to suppress. App.Op. at ¶7.

## **III. Kincaid appeals to the Court of Appeals and to this Court.**

Kincaid appealed to the Fourth District Court of Appeals. Relevant here, he argued that the trial court should have suppressed the drug evidence. *Id.* at ¶8. The appeals court rejected his argument. It explained that a using a drug-detecting canine to sniff for drugs during a traffic stop does not implicate the Fourth Amendment so long as it does not extend the length of the traffic stop. *Id.* at ¶14 (citing *Rodriguez v. United States*, 575 U.S. 348 (2015)). The court noted that Deputy Campbell “performed general administrative tasks associated with the stop” after stopping Kincaid, and it concluded

that the evidence did not show “that the canine sniff improperly or unreasonably prolonged this traffic stop.” *Id.* at ¶26. Separately, the court opined that Deputy Campbell’s decision to call for backup was reasonable because the stop occurred at night and raised concerns for officer safety. *Id.* at ¶27. One judge dissented, writing that the purpose of the stop ended after Deputy Campbell decided not to issue a citation for the marked-lanes violation. *Id.* at ¶¶35–36 (Hess, J., dissenting).

Kincaid appealed to this Court, raising one proposition of law: “There is no officer-safety exception to the Supreme Court’s holding in *Rodriguez v. United States*, 575 U.S. 348 (2015).” Jur. Mem. at 4. This Court accepted the case for review. 10/29/2024 *Case Announcements*, 2024-Ohio-5104.

## ARGUMENT

### **Amicus Curiae Ohio Attorney General’s Proposition of Law:**

*A police officer’s traffic-stop “mission” does not end when he develops an interest in non-traffic criminal activity.*

The Fourth Amendment protects the people’s right to be “secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. The protection extends to drivers on the road, but it does not shield them from all police investigations and inquiries. This case presents the question of whether the State violated John Kincaid’s Fourth Amendment rights. If it did, and assuming no exception applies, then the trial court erred by declining to suppress the evidence of drugs that Deputy Campbell found after using a drug-detecting canine during the traffic



stop. But it did not, so the trial court was right to deny suppression of the evidence. This Court should affirm.

As a preliminary note, Kincaid does not raise any argument under the Ohio Constitution, which also prohibits “unreasonable searches and seizures.” Ohio Const. Art. I, §14. To the extent that the Ohio Constitution may have afforded him relief different than that of the federal Constitution, Kincaid has missed his chance to claim that relief. *See State v. Dunlap*, 2024-Ohio-4821, ¶15 (plurality op.).

#### **I. Officers pursue various tasks during traffic stops.**

Each step of a traffic stop follows a well-worn path under the Fourth Amendment. A traffic stop begins when an officer has “reasonable suspicion,” which means a “particularized and objective basis for suspecting the particular person stopped of criminal activity.” *Kansas v. Glover*, 589 U.S. 376, 380 (2020) (quotation omitted); *Dunlap*, 2024-Ohio-4821 at ¶16 (plurality op.). When officers stop a car, they seize the driver and passengers based on that reasonable suspicion, frequently suspicion of violating the traffic laws. *Brendlin v. California*, 551 U.S. 249, 255–57 (2007). During a lawfully initiated stop, the officer may then pursue what the United States Supreme Court has called the “officer’s mission” for the traffic stop. *Rodriguez v. United States*, 575 U.S. 348, 355 (2015). His mission includes, at least, the “ordinary inquiries incident to the traffic stop,” such as “checking the driver’s license, determining whether there are outstanding warrants

against the driver, and inspecting the automobile's registration and proof of insurance."

*Id.* (quotation and brackets omitted); accord *State v. Batchili*, 2007-Ohio-2204, ¶12.

Depending on the circumstances, the Fourth Amendment permits additional actions by the officer during the traffic stop. If the officer comes to reasonably suspect other criminal activity during the stop, he may extend his stop to address that additional reasonable suspicion. See *Rodriguez*, 575 U.S. at 358. And even without additional reasonable suspicion, the officer can engage in "unrelated investigations that did not lengthen the roadside detention." *Id.* at 354.

Investigations unrelated to the traffic stop do not violate the Fourth Amendment when they do not add to the already-justified seizure of the car's occupants. Relevant here, using a canine to sniff for drugs is not a "search" under the Fourth Amendment because it does not invade any reasonable expectation of privacy. *Illinois v. Caballes*, 543 U.S. 405, 408–09 (2005). Asking brief questions unrelated to the traffic stop is also not a seizure. *Rodriguez*, 575 U.S. at 354–55; *State v. Robinette*, 80 Ohio St. 3d 234, 240–41 (1991). And investigations that do not prolong the stop do not implicate the Fourth Amendment because they do not increase the time of the seizure. *Rodriguez*, 575 U.S. at 354. Putting these principles together, a canine sniff at the exterior of an already-stopped car does not implicate the Fourth Amendment as long as it does not add time to the traffic stop. *Caballes*, 543 U.S. at 409; *Rodriguez*, 575 U.S. at 350. Because there is no additional Fourth-

Amendment intrusion, the officer needs no “additional Fourth Amendment justification.” *Muehler v. Mena*, 544 U.S. 93, 101 (2005).

The Fourth Amendment permits some additional de minimis intrusions on the car’s occupants, but only if those intrusions are related to the officer’s justified tasks. For example, an officer may require a stopped driver or passenger to exit the vehicle during an ordinary traffic stop if he deems it necessary for his safety. *Pennsylvania v. Mimms*, 434 U.S. 106, 110–11 (1977) (*per curiam*); *Maryland v. Wilson*, 519 U.S. 408, 413–15 (1997). But that de minimis intrusion is permitted only because it serves the officer’s ordinary traffic-stop mission. *Rodriguez*, 575 U.S. at 356–57. In other words, it is justified by the original reasonable suspicion for the stop. A de minimis intrusion that is not related to the original traffic stop would need to be justified by a separate reasonable suspicion of its own; otherwise it creates an unjustified invasion of the occupants’ Fourth Amendment rights.

## **II. Deputy Campbell did not unlawfully extend Kincaid’s traffic stop.**

No one contests that stopping Kincaid’s car was a seizure or that Deputy Campbell was justified by reasonable suspicion of a traffic violation. The question is whether Deputy Campbell extended the stop in order to administer the canine sniff for drugs. *Accord Batchili*, 2007-Ohio-2204 at ¶8. He did not.

Start with the evidence elicited at the suppression hearing. Deputy Campbell stopped Kincaid’s car after it swerved over the center line, and Deputy Campbell recognized

Kincaid and called for backup. Hearing Tr., at 12–14, 29, 34. Within five-to-ten minutes, backup came and Deputy Campbell ran his dog Cheri around the car. *Id.* at 30. During that time, Deputy Campbell also ran Kincaid’s and his passenger’s licenses. *Id.* at 33. Nothing from those facts suggests that Deputy Campbell extended the stop in order to wait for backup or to run the dog. See *Batchili*, 2007-Ohio-2204 at ¶¶13–14 (background checks were not complete at nine minutes into the stop); *State v. Turpyn*, 2021-Ohio-1251, ¶¶31–33 (5th Dist.) (traffic stop could not have been completed in ten minutes). Indeed, nothing there suggests that the license checks were complete before the dog sniff occurred.

Kincaid’s own statements do not support the idea that the police unlawfully extended the stop. He has admitted that Deputy Campbell was processing his license during the time the backup officer was en route. He wrote in his trial brief, “During that time waiting Campbell questioned Defendant on the contents of the car, specifically asking about narcotics, and having the dispatch center run the occupants[’] information.” Def. Br. in Support, *State v. Kincaid*, 21-CR-047, at 2 (Aug. 13, 2021). Since “having the dispatch center run the occupants[’] information,” *id.*, is squarely inside the officer’s “mission” during a traffic stop, *Rodriguez*, 575 U.S. at 355, Kincaid agrees that Deputy Campbell was completing mission-centered tasks during the five-to-ten minutes that backup took to arrive. He never alleged—much less attempted to prove—that Deputy Campbell had finished the mission of the stop before the canine alert that ultimately led to the evidence.

### **III. Kincaid's counter-arguments fail.**

Kincaid raises three main counter-arguments. The first fails because it relies on the wrong framework. The second fails because it relies on irrelevant facts. And the third simply misreads the lower court's decision.

Primarily, Kincaid argues that Deputy Campbell's authority to detain Kincaid ended when his "investigation of the marked-lanes violation" was done. Kincaid Br. at 10. According to Kincaid, that means that Deputy Campbell necessarily was doing "nothing to process the traffic stop" while backup was on its way. *Id.* at 11 (quotation omitted). That does not follow. Deputy Campbell was right to continue the "mission" of the stop despite there being no more facts to investigate as to the marked-lanes violation. *Rodriguez*, 575 U.S. at 355. That mission goes "[b]eyond determining whether to issue a traffic ticket." *Id.* He thus properly continued with the process of "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* And indeed, that is essentially what Kincaid admits Deputy Campbell was doing. Def. Br. in Support, *State v. Kincaid*, 21-CR-047, at 2 (Aug. 13, 2021). (To be sure, Kincaid now says that the warrant check "was completed before backup arrived," Kincaid Br. at 11, but that is not what he told the trial court, nor did he tout this potential fact dispute as a reason for this Court to take up jurisdiction.)

Secondarily, Kincaid argues that Deputy Campbell could not have been still on the “mission” of the stop because he never wrote a ticket for the marked-lanes violation. Kincaid Br. at 11. This Court has already rejected that argument as “suffer[ing] from logical and legal difficulties.” *Batchili*, 2007-Ohio-2204 at ¶20. “The failure to issue a traffic citation when there is an indication of a potentially far more significant crime is easily excused when more pressing issues are being addressed.” *Id.* And what is more, “the constitutionality of a prolonged traffic stop does not depend on the issuance of a citation.” *Id.* at ¶21.

Finally, Kincaid accuses the court below of creating an officer-safety exception to *Rodriguez*. It did not. The Fourth District correctly wrote that extending a traffic stop in order to conduct a canine sniff would be unlawful absent reasonable suspicion to justify the extension. App.Op. at ¶14 (citing *Rodriguez*, 575 U.S. 348). It also noted that “the pertinent question is not whether a canine sniff occurs before or after an officer issues, or could have issued, a traffic citation, but whether the canine sniff extends the stop.” *Id.* at ¶15. As for Kincaid’s traffic stop, the court held that “the officer performed general administrative tasks associated with the stop” and that the canine sniff did not “improperly or unreasonably prolong[] this traffic stop.” *Id.* at ¶26. In context, the court’s later statements about the importance of officer safety do not negate the court’s correct interpretation and application of the law. *See id.* at ¶27.

## CONCLUSION

For the foregoing reasons, the Court should affirm the Fourth District.

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I hereby certify that a copy of the foregoing Merit Brief of Amicus Curiae Ohio Attorney General Dave Yost in Support of Appellee was served this 29th day of January, 2025, by e-mail on the following:

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