[Cite as *State v. Laney*, 2026-Ohio-4541.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY

STATE OF OHIO, Plaintiff-Appellee, - vs - TRAVIS D. LANEY, Defendant-Appellant.	**CASE NO. 2026-P-0002** Criminal Appeal from the Court of Common Pleas Trial Court No. 2024 CR 00973

OPINION AND JUDGMENT ENTRY

Decided: November 16, 2026
Judgment: Affirmed

Connie J. Lewandowski, Portage County Prosecutor, and *Timothy P. Bogner*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Kimberly Kendall Corral and *Alasan M. Huff*, 3311 Perkins Avenue, Suite 205, Cleveland, OH 44114 (For Defendant-Appellant).

EUGENE A. LUCCI, J.

{¶1} Appellant, Travis D. Laney, appeals from the judgment of conviction and sentence of the Portage County Court of Common Pleas, entered upon his plea of "no contest" to one count of possession of cocaine, a felony of the fifth degree. At issue is whether the trial court erred when it denied Mr. Laney's motion to dismiss based upon the State's alleged failure to preserve evidence and, if not, whether the trial court erred in denying his motion to suppress evidence. We affirm the trial court's judgment.

{¶2} Following the trial court's denial of both motions, Mr. Laney entered his no contest plea on September 10, 2025, and the trial court made a finding of guilt. On

December 8, 2025, the court sentenced Mr. Laney to 12 months of community control under the supervision of the Portage County Adult Probation Department, subject to a reserved prison term, and imposed costs. The sentencing entry was filed December 9, 2025, and Mr. Laney filed his notice of appeal on January 8, 2026. The appeal is therefore timely. App.R. 4(A)(1). A plea of no contest does not preclude our review of the trial court's rulings on these pretrial motions. Crim.R. 12(I).

{¶3} On October 30, 2024, Mr. Laney was stopped for speeding by Officer Michael Carnahan of the Kent City Police Department ("KPD"). During the stop, Mr. Laney initially appeared to consent to a search of the vehicle but then revoked that consent. Officer Carnahan asked Mr. Laney to exit the vehicle. Mr. Laney was observed reaching toward his waistband, and Officer Carnahan saw a plastic bag containing a white substance in his hand. At the officer's command, Mr. Laney dropped the bag on the driver's side floorboard, and he was removed from the vehicle and detained. Officer Carnahan then deployed his K-9 partner to conduct an open-air sniff, and the dog alerted at the driver's door. The officer searched the vehicle, retrieved the bag, and field-tested its contents, which returned positive for cocaine. Mr. Laney was arrested.

{¶4} On November 7, 2024, Mr. Laney was indicted for possession of cocaine, a felony of the fifth degree, in violation of R.C. 2925.11. On November 12, 2024, Mr. Laney's defense counsel filed various motions, the most significant of which was a motion for an order to preserve evidence. The motion sought to preserve evidence, in relevant part: "All recordings (including film, audiotape[,] and videotape) of the alleged incident . . . ." While the motion indicated the requested preservation "includes, but is not limited to . . .[,]" it did not seek specific digital records (e.g., GPS data, metadata associated with

various cameras, or automatic vehicle locator ("AVL") data). On November 13, 2024, the trial court granted the motion, issuing an order directing the State and its subdivisions to preserve enumerated categories of evidence, in relevant part, "All recordings (including film, audiotape[,] and videotape) of the alleged incident, of Defendant or any possible co-defendants at the time of the incident . . . ." None of the categories referred to global positioning system(s) ("GPS"), computer-aided dispatch ("CAD"), or AVL data. The State recognizes that there was no mention of GPS or AVL data in the motion; it, however, recognizes that these items are "arguably" encompassed by the language requesting "all recordings" in Mr. Laney's motion to preserve.[1]

{¶5} Mr. Laney filed a motion to dismiss the charge based upon the State's alleged failure to preserve evidence, in violation of the trial court's order, and a motion to suppress evidence. At the hearings, held on July 7 and July 29, 2025, the trial court received testimony from Officer Carnahan, Assistant Portage County Prosecutor Mitchell Rozaieski, Captain Jennifer Ennemoser, the KPD's Service Captain, Allison Butcher, Police Support Services Manager for Kent State University Police Department ("KSUPD"), and Mr. Laney. The following evidence and information was adduced at the hearings.

{¶6} On October 30, 2024, at approximately 5:00 p.m., Officer Carnahan was on patrol in the city of Kent. He noticed a black sedan driven by Mr. Laney and began "pacing" the vehicle. The officer asserted that pacing is a process of gauging a vehicle's speed whereby an officer attempts to keep an equal distance between him or herself and

1. As will be discussed at greater length below, testimony indicated that nothing in the trial court's order would have prompted the KPD's Service Captain to contact the record holder of the information to produce the unique information now at issue.

the subject vehicle to provide a speed reading. Officer Carnahan explained pacing is not an exact science but provides a reasonably accurate reading.

{¶7} The officer stated he paced the vehicle for four or five hundred yards, from a following distance of approximately 30 to 45 yards, and determined Mr. Laney was traveling 42 m.p.h. in a 35 m.p.h. zone. The officer confirmed that his speedometer had been calibrated and certified. After the pace was complete, while stopped at the red light at Middlebury, the officer completed a record search which indicated Mr. Laney was the subject of a drug investigation in 2014. The officer's subjective interest in that information does not bear on the validity of a stop otherwise supported by an objective basis. *Whren v. United States*, 517 U.S. 806, 813 (1996).

{¶8} The officer continued to follow the vehicle but did not immediately stop it due to the narrowness of the street. Once the vehicle entered the parking lot of "The Pub" in Kent, the officer activated his lights and initiated the stop. According to Officer Carnahan, the speeding violation occurred approximately one minute or one-half mile before the stop. Because, however, the dash cam and/or body cam only captures events up to 30 seconds prior to the activation of a cruiser's lights, no camera footage existed of the "pacing" leading to the speeding violation.

{¶9} After the stop, Officer Carnahan stated he made contact with the passenger side of the vehicle and engaged both the passenger and the driver, Mr. Laney. The officer advised the individuals of the reason for the stop and asked if either had been "in trouble" previously. The passenger stated he had "marijuana issues," but Mr. Laney did not answer. Officer Carnahan asked if there were any drugs in the vehicle, and Mr. Laney

awkwardly laughed. The officer asked if he could search the vehicle. Mr. Laney initially appeared to consent but, when he was asked to exit the vehicle, he withdrew his consent.

{¶10} During Officer Carnahan's initial interactions with the vehicle's occupants, Lieutenant Jim Ennemoser arrived for backup on the stop. After Officer Carnahan requested Mr. Laney to exit the vehicle, Lieutenant Ennemoser advised Mr. Laney to "stop reaching." Officer Carnahan testified he observed Mr. Laney reaching to the right side of his waistband. Officer Carnahan then observed a plastic, transparent tie-off bag or bindle with a white substance in Mr. Laney's possession. Fearing that Mr. Laney was attempting to conceal or destroy the bindle, the officer reached through the open window, secured Mr. Laney's left wrist, drew his taser, and ordered him to drop it. Mr. Laney dropped the object on the driver's side floorboard. Mr. Laney was then removed from the vehicle and secured in handcuffs, and the passenger exited and consented to a search of his person, which yielded nothing. Officer Carnahan, a K-9 handler, deployed his dog. The K-9 "alerted" to the driver's door. The bindle was retrieved, a field test was performed on the contents, and the test returned a positive result for cocaine. The evidence was later sent to the Ohio Bureau of Criminal Investigation ("BCI") laboratory. BCI confirmed the evidence was positive for cocaine and methamphetamine. Mr. Laney was arrested.

{¶11} Defense counsel filed an open-ended motion to preserve evidence, as described above. The trial court granted the motion. On December 18, 2024, defense counsel sent an email to Portage County Assistant Prosecutor Mitchell Rozaieski requesting, inter alia, whether KPD had GPS data showing an officer's "speed and location" for the incident in question. Mr. Rozaieski testified that, in his understanding, the GPS data was contained in the "raw" Getac link, which allowed access to the dash cam

and body cam footage. Mr. Rozaieski stated the GPS footage was sent to Mr. Laney's counsel. Mr. Rozaieski observed, however, that he was unaware, at the time of the request and order to preserve, of the existence of the AVL data. Mr. Rozaieski stated that he, as a prosecutor, had never utilized AVL data. At the hearing, he was not able to assert the data would be useful to confirm or undermine Officer Carnahan's estimation on the accuracy of his pacing speed prior to the stop.

{¶12} Captain Jennifer Ennemoser, Service Captain of KPD, testified that when an officer initiates his or her video in the cruiser or body cameras, there is a 30-second playback and, as a result, the GPS data begins with that playback. The captain stated that when defense counsel requested the GPS data, it was the first time she received such a request. After some clarification and discussion, the captain recognized that Mr. Laney's counsel was seeking information beyond the general GPS data. Instead, counsel was seeking information related to the Getac CAD, which included AVL data. According to Captain Ennemoser, the CAD system is administered by KSUPD under contract with KPD, and KSUPD in turn licenses the software from a private vendor. The system retains the CAD and AVL data for only 90 days. By the time the discovery request was clarified, the AVL data from the date of the incident had been overwritten.

{¶13} Allison Butcher, Police Support Services Manager for KSUPD, stated that KPD's AVL data is stored on KSUPD's CAD servers on the KSUPD premises. Ms. Butcher confirmed that the AVL data is automatically overwritten every 90 days, due to storage needs. Ms. Butcher stated:

> AVL in the cars, the system keeps track of the locations. My understanding is it pings every five to ten seconds, depending on the cell towers and how busy the cell towers are. And then

> it will create a package. You can go in and search up to eight hours of time. The retention is ninety days. And it shows approximate speed of the vehicles and locations of vehicles, depending on which agency you're looking for. You can search by vehicle or you can search by just date and time.

{¶14} Ms. Butcher testified that, to her knowledge, neither KPD nor the Portage County Prosecutor's Office had ever sought AVL information from her. She further testified that, had a request been made, KSUPD could have extracted the data into a separate file and held it beyond the 90-day period.

{¶15} Mr. Laney testified that he was traveling between 25 and 30 m.p.h. as he passed the officer's stationary position, and that he was traveling 35 m.p.h.—the posted limit—over the stretch on which the officer claimed to have paced him. He stated Officer Carnahan was originally 400 to 450 feet behind his vehicle and eventually ended up at the same point as him. Mr. Laney, accordingly, claimed the officer did not maintain an equal distance and/or the same speed as him. Mr. Laney acknowledged, however, that he had "no question" that Officer Carnahan's cruiser was traveling 42 to 43 m.p.h.

{¶16} At the suppression hearing, defense counsel engaged in a dialogue with the trial court regarding the reasonable scope of defense counsel's request to preserve. Mr. Laney's trial counsel conceded that his request to preserve evidence primarily discussed videos and recordings relating to the incident and did not specifically request the retention of GPS, CAD, or AVL information/data. And, although the trial court recognized the preservation order it had issued was inclusive but open-ended in its terms, the motion on which that order was based was broad rather than specific. Also, given the unique nature of the CAD information, including the AVL data, the trial court wondered whether it

> is even in the realm of possibility that [the prosecutor or police department] would consider, oh we better not purge that, or we'll contact our - - When they got the letter to preserve, I don't know that they're going to go well, we were diligent in keeping the audio, the video of all of the officer's doings, but are we going to call the CAD company and say you've got to preserve that. I don't know that that's realistically included within your motion to preserve.

{¶17} Defense counsel recognized the court's point and acknowledged the court's position was "definitely arguable." Counsel noted that he was made aware of the AVL data when he was doing research on CAD information. He acknowledged the State provided him with the GPS data, but that data did not provide any insight into the issue of Officer Carnahan's pacing prior to the stop. The trial court reiterated its point regarding the lack of specificity in defense counsel's request. The court observed, "I don't know that [the request] should or does encompass the information generated by the AVL that is not kept specifically by Kent PD."

{¶18} Defense counsel conceded the point but noted that KPD still owns, operates, and controls the system. As such, he maintained his client was entitled to all GPS data on the vehicle to which KPD has access. Counsel noted that his request was sent to the prosecutor's office within the 90-day purge period and the office forwarded the request to KPD. While defense counsel acknowledged he received GPS data, he stated it included "stuff that doesn't tell me anything . . . ." Counsel argued, "[s]o if there were two bundles, if you will, of GPS information out there . . . I got one of them that tells me nothing, and I didn't get the other one.

{¶19} The trial court recognized defense counsel's position that he did not receive the CAD and AVL data. The trial court, however, remained concerned that the information requested in the open-ended request for preservation was not specified and was not kept

"in-house" by KPD. The court also observed that, when the motion to preserve was filed, the AVL data was "probably there."

{¶20} In its judgment entry, filed August 13, 2025, the trial court found that defense counsel filed a motion to preserve evidence on November 13, 2025.[2] Further, the trial court found that defense counsel sent an email to the prosecutor's office in December 2024 requesting GPS data for the cruiser driven by Officer Carnahan at the relevant time of the stop. The court noted that this request was not included in the initial motion for preservation. The trial court found that Captain Ennemoser testified that the order to preserve received in November 2024 "would not have prompted her to provide or preserve the GPS data" at issue. The court further found that the information at issue is not kept as a record by KPD but is maintained by a third party, KSUPD. The trial court recognized the limited time frame that the CAD information and AVL data are retained. It also acknowledged Mr. Laney's testimony that he was not driving in excess of the speed limit prior to the stop.

{¶21} With respect to Mr. Laney's motion to dismiss, the trial court set forth the relevant law regarding an alleged due process violation for failure to preserve evidence. After doing so, the trial court determined that there was no basis to conclude the AVL data was destroyed intentionally; instead, the trial court concluded that the data "was not obtained prior to destruction through some miscommunication between the State, defense counsel, and KPD." The trial court accordingly overruled Mr. Laney's motion to dismiss.

2. The trial court's August 13, 2025 judgment states that the motion to preserve was filed on "November 13, 2025." This date is inaccurate. First, the motion was filed on November 12 and, second, it was filed in 2024. We perceive these inaccuracies as clerical errors.

{¶22} The trial court additionally concluded that Officer Carnahan possessed, at least, reasonable suspicion to stop Mr. Laney. As the motion to suppress was limited to the officer's basis for the stop, the trial court concluded pacing was a reasonable and acceptable manner for determining a vehicle's speed. The trial court therefore overruled Mr. Laney's motion to suppress evidence. This appeal follows.

{¶23} Mr. Laney assigns two errors for this court's review. His first provides:

{¶24} "The trial court erred when it denied appellant's motion to dismiss based on the State's failure to preserve evidence that the trial court ordered it to preserve, in violation of appellant's right to due process under the Fifth and Fourteenth Amendments of the United States Constitution."

{¶25} Under his first assignment of error, Mr. Laney argues the trial court generally ordered the State to preserve all "specific" evidence requested by the defense of the incident. Mr. Laney argues the State destroyed the AVL data which, in his view, would have provided the defense with the cruiser's speed and location. Mr. Laney asserts that this evidence would have demonstrated Officer Carnahan's testimony regarding "pacing" was in error because Mr. Laney was never traveling faster than 35 m.p.h. Accordingly, he maintains the State's alleged destruction of the AVL data violated his right to due process. He further asks this court to adopt a burden-shifting framework and, in the alternative, contends the State acted in bad faith.

{¶26} During the hearing, trial counsel admitted he did not believe he had to prove bad faith. He stated, "I'm not alleging bad faith and I want the people here in the courtroom to hear that . . . ." Instead, counsel argued that the evidence at issue was materially exculpable. Still, we shall address each aspect of the due process issue; one, which

embraces the "material-exculpable" nature of evidence, and the other, which considers "potentially useful" evidence. The former does not require a demonstration of bad faith, the latter does.

{¶27} "A trial court's ruling on a pretrial motion to dismiss a criminal indictment is subject to a mixed standard of review." *State v. Williams*, 2023-Ohio-3526, ¶ 14 (11th Dist.), citing *State v. Clemons*, 2013-Ohio-3415, ¶ 6 (4th Dist.) ("Appellate review of a trial court's decision regarding a motion to dismiss involves a mixed question of law and fact."). This court reviews a trial court's legal conclusions on a pretrial motion to dismiss criminal charges de novo. *State v. Frasure*, 2008-Ohio-1504, ¶ 35 (11th Dist.). However, "'[w]e accord due deference to the trial court's findings of fact if supported by competent, credible evidence[.]'" *Williams* at ¶ 14, quoting *Clemons* at ¶ 6. Applied here, whether the State acted in bad faith is a question of fact, and the trial court's determination is entitled to deference if supported by competent, credible evidence. Whether the evidence at issue was "materially exculpatory," by contrast, is a legal question we review de novo.

{¶28} The Due Process Clause of the Fourteenth Amendment to the United States Constitution protects a criminal defendant from conviction when the State either fails to preserve materially exculpatory evidence or, in bad faith, fails to preserve potentially useful evidence. *See, e.g., State v. Glenn*, 2015-Ohio-4832, ¶ 32-34 (11th Dist.); *Kent v. Lusane*, 2022-Ohio-4057, ¶ 31-33 (11th Dist.). Accordingly, "the suppression of *exculpatory* evidence that is material to guilt or punishment violates due process without respect to whether the state acted in bad faith." (Emphasis in original.) *State v. Jalowiec*, 2015-Ohio-5042, ¶ 48 (9th Dist.). When the State, however, fails to preserve evidence that is merely "potentially useful," a criminal defendant must demonstrate that the State

acted in bad faith. *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988); *see also State v. Geeslin*, 2007-Ohio-5239, ¶ 9-10. Although Mr. Laney invokes the Fifth Amendment as well, that Amendment's Due Process Clause constrains federal rather than state action, and we analyze his claim under the Fourteenth Amendment.

{¶29} "Evidence is 'materially exculpatory' if it (1) possesses 'an exculpatory value that was apparent before the evidence was destroyed' and (2) is 'of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.'" *State v. McClain*, 2016-Ohio-838, ¶ 21 (2d Dist.), quoting *California v. Trombetta*, 467 U.S. 479, 489 (1984). Alternatively, "'[p]otentially useful evidence indicates that the evidence may or may not have incriminated the defendant.'" *Williams*, 2023-Ohio-3526, ¶ 16 (11th Dist.), quoting *State v. Durnwald*, 2005-Ohio-4867, ¶ 30 (6th Dist.).

{¶30} To properly consider the import of the destruction of potentially useful evidence, we underscore that "'[t]he term 'bad faith' generally implies something more than bad judgment or negligence.'" *State v. Powell*, 2012-Ohio-2577, ¶ 81, quoting *State v. Tate*, 2008-Ohio-3759, ¶ 13 (5th Dist.). ""It imports a dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty through some ulterior motive or ill will partaking of the nature of fraud. It also embraces actual intent to mislead or deceive another."" *Powell* at ¶ 81, quoting *Hoskins v. Aetna Life Ins. Co*., 6 Ohio St.3d 272, 276 (1983), quoting *Slater v. Motorists Mut. Ins. Co*., 174 Ohio St. 148 (1962), paragraph two of the syllabus.

{¶31} The burden rests with the defendant to establish that the evidence at issue was materially exculpatory in his or her case. *State v. Lothes*, 2007-Ohio-4226, ¶ 17 (11th Dist.), citing *State v. Jackson*, 57 Ohio St.3d 29, 33 (1991).

{¶32} We begin with the character of the evidence at issue, because the Supreme Court of Ohio has addressed closely analogous circumstances. In *State v. Geeslin*, 2007-Ohio-5239, a portion of a trooper's cruiser video capturing the driving that supplied the basis for a traffic stop was recorded over. *Id.* at ¶ 4. The Court held that the erased footage was, at most, potentially useful rather than materially exculpatory, because it bore only on the justification for the stop and not on the defendant's guilt or innocence of the offense charged. *Id.* at ¶ 12-13; *see also id.* at ¶ 5.

{¶33} The same is true here. The AVL data would have reflected, at most, the location and approximate speed of Officer Carnahan's cruiser in the minutes preceding the stop. It could not have borne on any element of possession of cocaine—the offense to which Mr. Laney pleaded no contest and of which he stands convicted. Under *Geeslin*, that is dispositive of the materially-exculpatory inquiry: evidence going only to the validity of the stop, rather than to the conviction itself, is potentially useful and not materially exculpatory.

{¶34} That conclusion largely answers Mr. Laney's remaining arguments, but we address them in turn. Mr. Laney asks this court to depart from the general principle requiring a defendant to bear the burden of establishing the evidence at issue is materially exculpatory. Instead, he asserts that, because the State breached its duty of good faith in responding to the defense's request to preserve evidence, "the appropriate remedy is to shift to the [S]tate the burden of proof as to the exculpatory value of the evidence."

Columbus v. Forest, 36 Ohio App.3d 169, 173 (10th Dist. 1987); *see also State v. Benton*, 136 Ohio App.3d 801, 805-806 (6th Dist. 2000) (applying *Forest* where the defendant had specifically requested the item in discovery and "the [S]tate did not in good faith respond to that request").

{¶35} We need not decide whether to adopt the *Forest* framework, because its predicate is absent on this record. *Forest* and the decisions following it condition the shift on the State having had notice of the particular evidence sought and having failed, in good faith, to respond to that request.

{¶36} Further, this court has held "a general demand for discovery is *not* a request to preserve a specific item of evidence." (Emphasis in original.) *State v. DiNardo*, 2015-Ohio-1061, ¶ 23 (11th Dist.). Neither Mr. Laney's motion to preserve nor the trial court's order identified GPS, CAD, or AVL data, by name or by category. On these facts, no burden shift is triggered under *Forest*. We therefore turn to whether the State breached a duty of good faith or acted in bad faith and conclude it did neither.

{¶37} We underscore that Mr. Laney's motion to preserve was concededly broad and did not specifically request GPS information or CAD information, including AVL data. As highlighted above, the State, once the request was clarified, produced the GPS information. Captain Ennemoser testified, however, that she did not understand until well after the request was submitted that defense counsel was seeking CAD information which included AVL data. Indeed, she testified that, to her knowledge, the instant matter was the first time any form of GPS had been requested, let alone CAD files and AVL data. Because the request and order to preserve were general, because the CAD files and AVL data were stored on servers maintained by a contracting law-enforcement agency rather

than by KPD, and because the captain had never, in any prior case, received a request for such digital information, we conclude there was no lack of good faith and certainly no bad faith on the part of the State or its actors.

{¶38} Moreover, Assistant Prosecutor Rozaieski testified that, at the time he received defense counsel's email (on December 18, 2024), he forwarded the email to the prosecutor's investigator who sent all the requests directly to KPD. The Getac link was emailed from the investigator to defense counsel on May 29, 2025. The State held the GPS data when the December 18, 2024 request arrived and produced it after a motion to compel was filed by the defense on May 1, 2025. KPD then sent "everything they had in regardS to [the requests defense counsel] had." One such item was GPS data for Officer Carnahan on the date in question. Although defense counsel submitted he also was interested in the AVL data (which was not specified), Mr. Rozaieski testified he "did not know about [AVL data] until just recently." While there was a delay, the delay was seemingly premised upon either a miscommunication or a misunderstanding of defense counsel's request. By the time the matter was "cleared up," the data had been overwritten approximately five months earlier.

{¶39} The generality of the request bears not on any allocation of fault between counsel but on whether the State's conduct was culpable. Had the motion or the order identified CAD or AVL data, the State would have been on notice to contact the agency housing that data; Captain Ennemoser testified that such a request would have prompted her to do so. No such request was made, and the data was overwritten automatically by a retention setting.

{¶40} Considering these points, in light of Captain Ennemoser's testimony, in conjunction with Assistant Prosecutor Rozaieski's testimony, we cannot impute a breach of the State's duty of good faith, let alone a legal finding of bad faith. Accordingly, we hold, regardless of Mr. Laney's request for this court to adopt a burden-shifting model for failure-to-preserve claims, he has failed to set forth evidence or persuasive argument that the State breached its duty of good faith to preserve the alleged exculpatory evidence.

{¶41} Next, Mr. Laney argues that the AVL evidence had a tendency to impeach the credibility of Officer Carnahan's version of the basis of the stop. He claims the evidence would have shown that neither vehicle was traveling over 35 m.p.h. As a result, he maintains that the failure to preserve the evidence was sufficient to undermine confidence in the outcome of the proceeding. We do not agree with Mr. Laney's position

{¶42} Mr. Laney's argument assumes the exculpatory character of the evidence. Nothing in the record establishes that any exculpatory value of the AVL data was apparent before it was destroyed. We acknowledge that Ms. Butcher testified that AVL data could or might show the "approximate speed" of a vehicle as well as its location(s); she also stated, however, the AVL systems keep track of a vehicle's location by way of "pings every five to ten seconds, depending on the cell towers and how busy the cell towers are." This testimony, while indicating that the evidence could be potentially useful, does not establish it would be materially exculpatory.

{¶43} Mr. Laney also suggests the data would have shown whether Officer Carnahan's cruiser was stationary at the Longmere traffic light, a point on which the two men's accounts diverge. Even assuming location data sampled at five- to ten-second intervals could resolve that question, it would impeach the officer's recollection of a detail

preceding the pace; it would not establish Mr. Laney's speed over the stretch on which he was paced, which is the only fact bearing on the validity of the stop.

{¶44} Mr. Laney did not put forth evidence that AVL data can or will provide a specifically accurate "real-time" read of a vehicle's speed. And a speed reading sampled only every five to ten seconds is not a reliable measure of a vehicle's speed across the interval in question. Mr. Laney did not show, on this record, that any "ping" would have fallen within the stretch over which he was paced.

{¶45} At most, Mr. Laney offers this court the argument that CAD information, including AVL data, might provide some evidence of Officer Carnahan's speed at the time he was pacing. This argument, however, only establishes the evidence's possible or potential usefulness. And, as *Geeslin* instructs, evidence bearing solely on the justification for a stop is potentially useful rather than materially exculpatory.

{¶46} Accordingly, Mr. Laney has not demonstrated the evidence was materially exculpatory because its exculpatory character or value was not apparent before (or even after) it was destroyed. The value of the evidence could impact the evidential weight, but the significance of that weight is nevertheless speculative. Without more technical and/or scientific detail regarding the informational data the AVL *actually* provides, we hold it cannot be deemed materially exculpatory

{¶47} Mr. Laney also fails the second *Trombetta* requirement. *See Trombetta*, 467 U.S. at 489 (evidence must be "of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means"). He contends the element is undisputed because the data existed only in law enforcement's hands. But the question is whether he could obtain comparable evidence by other reasonably available

means; in this case, his counsel did so via effective cross-examination. Mr. Laney received the Getac GPS data and the 30 seconds of dash-cam and body-cam footage preceding activation of the cruiser's lights. Defense counsel cross-examined Officer Carnahan at length on the distance and duration of the pace and on the absence of any formal pacing training. And Mr. Laney testified himself as to his own speed, his position relative to the cruiser, and whether the vehicles stopped at Longmere. The substance of the impeachment Mr. Laney claims the data would have supplied was available to him—and was in fact developed—through the GPS data, the video, and cross-examination. This is especially true where the testimony of Ms. Butcher, the Police Support Service Manager for KSUPD, indicated the data would have been, at best, approximate and thus, inexact AVL information regarding the officer's speed might provide "pings" every five to ten seconds.

{¶48} Our decision in *Williams*, 2023-Ohio-3526 (11th Dist.), does not compel a different result. There, a trooper had actual, contemporaneous knowledge of the specific item sought—a vehicle identified by VIN and plate in a preservation letter—and the evidence was lost through affirmative conduct that departed from the agency's own written-evidence policy. *Id.* at ¶ 27-30. Here, by contrast, the prosecutor did not know that AVL data existed. Moreover, while the KPD captain knew of the system, she did not understand the defense's request to reach it until months after the retention period had run. Accordingly, no policy was violated, and the data was overwritten by an automated setting on a system administered by another agency. The duty to learn of favorable evidence known to others acting on the government's behalf does not necessarily extend to an open-ended obligation to inventory every data stream a contracting agency or its

vendor may maintain. *See Kyles v. Whitley*, 514 U.S. 419, 437 (1995). Considering this point, the due process clause of the Fourteenth Amendment—and the "fundamental fairness" requirement of Ohio's Due Course of Law Clause in Art. I, § 16 of the Ohio Constitution have long been equated. *See State v. Aalim,* 2017-Ohio-2956, ¶ 14-15. In this regard, the Due Process Clause of the United States Constitution does not impose "on the police an undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance in a particular prosecution." *Youngblood*, 488 U.S. at 58.

{¶49} Finally, we note that the relief Mr. Laney sought below was dismissal of the indictment—the most drastic sanction available. Even had he shown that potentially useful evidence was negligently lost, dismissal would not follow as a matter of course. The mismatch between the violation asserted and the remedy requested is itself a reason for caution.

{¶50} Hence, the trial court did not err in overruling Mr. Laney's motion to dismiss for the State's alleged failure to preserve materially exculpatory evidence.

{¶51} Mr. Laney's first assignment of error lacks merit.

{¶52} Mr. Laney's second assignment of error provides:

{¶53} "The trial court erred when it denied appellant's motion to suppress evidence obtained in violation of his Fourth Amendment Right under the Fourth Amendment of the United States Constitution." (Sic.)

{¶54} Appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Burnside*, 2003-Ohio-5372, ¶ 8. At a hearing on a motion to suppress, the trial court, as the trier of fact, is in the best position to weigh the evidence by resolving

factual questions and evaluating the credibility of witnesses. *Id*.; *State v. Mills*, 62 Ohio St.3d 357, 366 (1992). As a result, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *Burnside* at ¶ 8. An appellate court reviews the trial court's application of the law to its factual findings de novo. *State v. Belton*, 2016-Ohio-1581, ¶ 100. Accepting the facts as true, the reviewing court then must independently determine, without deference to the trial court, whether the trial court properly applied the substantive law to the facts of the case. *Burnside* at ¶ 8.

{¶55} It is well established that a traffic stop is constitutionally valid where an officer has a reasonable and articulable suspicion that a motorist has committed, is committing, or is about to commit a crime. *State v. Mays*, 2008-Ohio-4539, ¶ 7-8, citing *Delaware v. Prouse*, 440 U.S. 648, 663 (1979). A stop supported by probable cause of a traffic violation is likewise reasonable. *Whren v. United States*, 517 U.S. 806, 810 (1996); *Dayton v. Erickson*, 1996-Ohio-431, syllabus. *See Terry v. Ohio*, 392 U.S. 1 (1968); *Navarette v. California*, 572 U.S. 393, 396 (2014); *see also State v. Tidwell*, 2021-Ohio-2072, ¶ 19.

{¶56} Further, if a traffic stop is lawful, officers may order the driver to exit the vehicle without violating the Fourth Amendment. *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977); *State v. Evans*, 1993-Ohio-186, ¶ 11; *State v. Jackson*, 2022-Ohio-4365, ¶ 13. No additional justification for the order to exit is required. *Jackson* at ¶ 13.

{¶57} We also point out that, in *State v. Fips*, 2026-Ohio-1207, the Supreme Court of Ohio recently held that "inquiring into a driver's license status is reasonable under the Fourth Amendment even though the reasonable suspicion that initially justified the stop has been dispelled." *Id.* at ¶ 16. The Court further held, consistent with the lead opinion

in *State v. Dunlap*, 2024-Ohio-4821, and the United States Supreme Court's precedent in *Rodriguez v. United States*, 575 U.S. 348 (2015), that "the mission of a lawful traffic stop includes confirming that a licensed driver is in the driver's seat of the car. . . . This remains true even if further investigation dispels the reasonable suspicion that prompted the stop." *Fips* at ¶ 24.

{¶58} Although *Fips* does not directly apply to this matter, it stands for the principle, especially in relation to *Mimms*, that a temporary, post-stop detention (ordering a detainee out of the vehicle) based upon a traffic violation is not per se unconstitutional. *See Mimms* at 111 ("We think this additional intrusion can only be described as de minimis. The driver is being asked to expose to view very little more of his person than is already exposed. The police have already lawfully decided that the driver shall be briefly detained; the only question is whether he shall spend that period sitting in the driver's seat of his car or standing alongside it."). Here, Mr. Laney was ordered out of the vehicle in the course of the stop. Before he exited, and at the officer's command, he dropped from his hand an item later determined to be contraband. The officer's order that Mr. Laney exit the vehicle was lawful, and the de minimis, post-stop detention was not unreasonable.

{¶59} That said, Mr. Laney asserts the trial court erred in denying his motion to suppress because Officer Carnahan's testimony regarding his pacing was controverted by Mr. Laney's testimony. Specifically, Mr. Laney argues his testimony that he was traveling within the speed limit *and* his assertion that the officer was gaining on him, not pacing him, undermines the trial court's decision. We disagree.

{¶60} The two accounts are not irreconcilable. Officer Carnahan testified that he was stationary when Mr. Laney passed him, that he pulled out and followed, that both vehicles stopped at the Longmere light, and that the pace occurred after that light, at a following distance of 30 to 45 yards. Mr. Laney's estimate of a 400- to 450-foot gap describes the interval at the outset, before the officer closed it. That the cruiser gained ground while catching up does not establish that it failed to hold a constant interval during the pace itself.

{¶61} Here, Officer Carnahan testified he paced Mr. Laney's vehicle traveling at 42 m.p.h. in a 35 m.p.h. zone. The officer testified his KPD cruiser speedometer was calibrated and certified. Officer Carnahan personally observed Mr. Laney and was accordingly able to testify from personal knowledge. Evid.R. 602. The officer's statement that he had no formal training devoted to pacing does not render his estimate incompetent; his estimate was confirmed by reference to a calibrated and certified speedometer, and an estimation aided by a mechanical device is an accepted basis for determining a vehicle's speed. *State v. Pullin*, 2020-Ohio-787, ¶ 15-17 (5th Dist.) (observing that an officer's observation of a speeding violation, aided by a separate, independent means of measurement, is not problematic). R.C. 4511.091(C)(1), which bars conviction based on an officer's "unaided visual estimation" of speed, does not bear on this case: the statute expressly preserves the use of mechanical devices, and in any event governs arrest and conviction rather than the reasonable-suspicion threshold for an investigatory stop.

{¶62} Mr. Laney testified he was driving 25 m.p.h. to 30 m.p.h. as he passed the officer, and 35 m.p.h. over the stretch on which he was paced. Mr. Laney emphasizes

that Officer Carnahan testified he paced him for 400 to 500 yards for five to seven seconds. However, defense counsel, on cross-examination, stated that "a vehicle traveling 42 miles an hour over one second will travel 61.6 feet per second." Defense counsel noted that "61.[6] feet per second over a five second period of time . . . would be 307 feet, 5 X 61.5."[3] Officer Carnahan did not disagree. Defense counsel then observed that if the officer was following for seven seconds, that would be approximately 430 feet. Counsel therefore argued that, because the officer had placed the pace at 400 to 500 yards, his testimony did not agree with the arithmetic and was not credible.

{¶63} We acknowledge the apparent tension between counsel's arithmetic and the officer's estimates. The officer, however, explained it: when asked to reconcile the two, he testified that his recollection was "on the distance covered" and that he felt "a lot stronger on my recollection for the distance covered rather than the time." The trial court expressly resolved the point, observing that the officer had not changed his testimony but was "more confident in his distance . . . than he is in his seconds," and defense counsel agreed with that characterization. Although the officer testified to his pacing, the amount of time, and the distance he estimated during the pacing, and defense counsel effectively cross-examined the officer on these points, the credibility of a witness's full testimony is a matter for the trial court to resolve. We cannot, in view of the competing testimony, conclude the trial court's factual findings regarding the officer's testimony are unsupported by competent, credible evidence.

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3. During cross-examination, defense counsel initially stated a vehicle traveling 42 m.p.h. will travel 61.6 feet per second. During follow up questioning, however, defense counsel used a 61.5 feet per second metric. If the officer was traveling for five seconds at 61.5 feet per second, he would have traveled approximately 307 feet. If the officer was traveling for seven seconds at 61.6 feet per second, he would have travelled approximately 430 feet.

{¶64} Moreover, this court has pointed out that "[p]acing" has been determined to be an acceptable manner for determining a vehicle's speed. *State v. Lewis*, 2020-Ohio-4633, ¶ 36 (11th Dist.), citing *State v. Ratliff*, 2020-Ohio-3315, ¶ 22 (12th Dist.); *Pullin*, 2020-Ohio-787, at ¶ 17 (5th Dist.). *Lewis* establishes pacing as an acceptable method of tracking a vehicle's speed. Whether the pace in this matter was credibly performed was a question of fact for the trial court to resolve. Given the officer's rendition of events, we cannot conclude the trial court erred in finding the officer's testimony credible and supported by competent, credible evidence. We therefore hold the officer had a reasonable and articulable suspicion to stop Mr. Laney for exceeding the posted speed limit.

{¶65} With this point in mind, in *Heien v. North Carolina*, 574 U.S. 54 (2014), the United States Supreme Court observed that an officer may make a mistake of fact or law in stopping and arresting a party, but such mistakes do not render the traffic stop unreasonable per se. The Court noted that the text of the Fourth Amendment underscores, "'the ultimate touchstone of the Fourth Amendment is "reasonableness."'" *Id.* at 60, quoting *Riley v. California,* 573 U.S. 373, 381 (2014). The Court emphasized that "[t]o be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials. . . ." *Heien* at ¶ 60-61. Consequently, neither a mistake of fact nor a mistake of law on the part of a law enforcement officer renders the grounds for a traffic stop unreasonable per se. *Id.* The Court explained:

> Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on

> either ground. Whether the facts turn out to be not what was thought, or the law turns out to be not what was thought, the result is the same: The facts are outside the scope of the law. There is no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable mistake of law.

Heien at ¶ 61.

{¶66} Prior to the observations set forth in *Heien*, the Supreme Court of the United States had held that, under certain circumstances, a law enforcement officer's reasonable mistake of fact will not vitiate a stop as long as it is reasonable. *See Hill v. California*, 401 U.S. 797 (1971) (concluding that when a police officer has probable cause to arrest one individual, and reasonably mistakes a second individual for the first individual, neither the seizure nor accompanying search was unlawful). Further, in *Illinois v. Rodriquez*, 497 U.S. 177, 183-86 (1990), the Supreme Court determined law enforcement could rely on a third party's consent to enter a home when a reasonable police officer would believe that the individual had authority over the residence. The *Rodriquez* court found the Fourth Amendment did not require officers to "always be correct, but that they always be reasonable." *Id.* at 185.

{¶67} In applying this standard, the question is if an officer has a mistaken belief, is that objectively reasonable. *See State v. Spellacy*, 2019-Ohio-785, ¶ 27-35 (8th Dist.). In this matter, the officer testified that his pacing speed was accurate due to the calibration and certification of his cruiser's speedometer. Under the circumstances, we conclude any possible mistake of fact was reasonable and the stop was valid.

{¶68} Given our analysis, we hold the stop was valid and therefore the trial court did not err in overruling Mr. Laney's motion to suppress.

{¶69} Mr. Laney's second assignment of error lacks merit.

{¶70} The judgment of the trial court is affirmed.

JOHN J. EKLUND, J.,

SCOTT LYNCH, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, appellant's assignments of error are without merit. It is the judgment and order of this court that the judgment of the Portage County Court of Common Pleas is affirmed.

Costs to be taxed against appellant.

JUDGE EUGENE A. LUCCI

JUDGE JOHN J. EKLUND,
concurs

JUDGE SCOTT LYNCH,
concurs

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

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