

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
HARRISON COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

CODY D. WESLEY,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY **Case No. 26 HA 0002**

Criminal Appeal from the
Harrison County Court of Harrison County, Ohio
Case No. TRC-25-00020

BEFORE:

Katelyn Dickey, Cheryl L. Waite, Mark A. Hanni, Judges.

JUDGMENT:

Affirmed.

Atty. Lauren E. Knight, Harrison County Prosecutor and *Atty. Jack L. Felgenhauer*,
Assistant Prosecuting Attorney, for Plaintiff-Appellee and

Atty. Christopher P. Lacich, Roth Blair, for Defendant-Appellant.

Dated: August 25, 2026

DICKEY, J.

{¶1} Appellant, Cody D. Wesley, appeals from the December 12, 2025 and February 11, 2026 judgments of the Harrison County Court denying in part his motion to suppress and sentencing him for driving while under the influence of alcohol or drugs (“OVI”) and improper passing. On appeal, Appellant raises five assignments of error challenging the denial of his motion to suppress and arguing: (1) there was insufficient evidence for the trial court to find the arresting officer had reasonable, articulable suspicion to stop Appellant’s vehicle; (2) there was insufficient evidence to detain and have Appellant complete field sobriety tests; (3) there was no probable cause to arrest Appellant; (4) there was insufficient evidence to find that the Intoxilyzer 8000 met the “traceable to NIST” (National Institute of Standards and Technology) requirement; and (5) all evidence collected constituted fruits of the poisonous tree. Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

{¶2} On January 5, 2025, Appellant was charged by way of a uniform traffic citation with one count of OVI, a misdemeanor of the first degree in violation of R.C. 4511.19(A)(1)(a); one count of OVI, a misdemeanor of the first degree in violation of R.C. 4511.19(A)(1)(d); and one count of improper passing, a minor misdemeanor in violation of R.C. 4511.27. An administrative license suspension (“ALS”) was also imposed. The next day, Appellant pled not guilty to all charges.

{¶3} On January 24, 2025, Appellant retained counsel and filed a motion to appeal the ALS. Appellee, the State of Ohio, filed a response five days later. On March 12, 2025, Appellant filed a motion to suppress, arguing the following:

1. The arresting officer lacked probable cause to perform a traffic stop of Defendant’s vehicle.

2. The arresting officer unjustifiably expanded his investigative stop of Defendant to require Defendant to perform a battery of field sobriety tests, in violation of Defendant’s rights under the Fourth and Fourteenth

Amendment, to the United States Constitution and Article 1, Section 14 of the Ohio Constitution, without having a reasonable, articulable suspicion to order Defendant to complete the same.

3. The SFSTs [standardized field sobriety tests] administered were not done so in substantial compliance with NHTSA [National Highway Traffic Safety Administration] Guidelines as required pursuant to R.C. 4511.19(D)(4)(b).

4. Based upon the totality of the circumstances, the arresting officer lacked probable cause to arrest Defendant for a violation of R.C. 4511.19.

5. The Intoxilyzer 8000, serial number 80-004287, as used in this matter, fails to meet the “traceable to NIST” requirement as set forth in the Ohio Administrative Code 3701-53-05, as defined in 3701-53-01.

...

[6]. [A]ll additional evidence obtained as fruits of the poisonous tree.

(3/12/2025 Motion to Suppress, p. 1-2).

{¶4} A combined hearing on Appellant’s ALS and motion to suppress was held on May 8, 2025 and June 18, 2025. The State presented testimony from two witnesses: (1) Jeanna Walock, Program Administrator and Forensic Toxicologist with the Ohio Department of Health, Alcohol, and Drug Testing Program (“Walock”); and (2) Tyler Redish, a deputy with the Harrison County Sheriff’s Office (“Deputy Redish”). Five State Exhibits were admitted: (1) NIST Special Publication; (2) Certificates of Analysis and Reports from ILMO Products Company; (3) Appellant’s Alcohol and Drug Testing Report, revealing a breath test of .137; (4) flash drive, NHTSA manual; and (5) body cam video. One Defendant Exhibit was admitted: Ohio BMV (Bureau of Motor Vehicles) Form 2255.

{¶5} Walock discussed the Intoxilyzer 8000 and the Ohio Administrative Code. She described the dry gas control used by the instrument as a known concentration of ethanol and nitrogen installed annually by her staff during certification. Walock stated the

instrument measures that standard during test steps as an accuracy check and will not continue a breath test if the measurement falls outside the accepted range. She explained the dry gas control cylinder is housed in a locked base cabinet and that “NIST” refers to the National Institute of Standards and Technology. When the Ohio Administrative Code requires the gas standard to be traceable to NIST, the manufacturer must provide documentation of traceability, which her office maintains in its regular records.

{¶6} Walock outlined a three-link traceability chain from the instrument gas, to the reference material, to the NIST ethanol standard. She described the contents of the manufacturer’s documentation, including: lot identification; expiration; components; concentration; target value; methodology for determining the target; and associated uncertainty. Walock testified that the records were produced in response to a subpoena and kept in the ordinary course of business. Walock identified a copy of the subject test report generated at the time of testing. She noted that it bore Appellant’s name and was dated January 5, 2025.

{¶7} Walock stated the instrument will not proceed if the dry gas control measurement is not within plus or minus 0.005 of the target concentration. Walock further explained the instrument reports the lower of two breath samples if no exceptions occur. She affirmed the subject test was valid. She also identified the gas lot number as 21523100A1, referenced a February 2, 2024 date associated with the certification materials, and stated the instrument’s serial number was 80-004287.

{¶8} Regarding the night at issue, Deputy Redish was working a scheduled midnight shift from 12:00 a.m. to 8:00 a.m. on January 5, 2025. At approximately 1:41 a.m. (Saturday night/Sunday morning), he was positioned at a stop sign at the three-way intersection of State Routes 9 and 151. Deputy Redish observed a red Chevrolet pass, which drew his attention because the rear license plate light appeared too dim for him to read from “roughly forty feet.” (5/8/2025 Suppression Hearing Tr., p. 34). He pulled eastbound onto Route 151 and initially lost sight of the vehicle’s taillights. The posted speed limit is 50 miles per hour. He accelerated to about 65 miles per hour until he could again see taillights. Deputy Redish then accelerated to roughly 80 miles per hour when he closed to about five car lengths and observed the red car passing another vehicle on

a two-lane, double-yellow no-passing roadway. He testified the vehicle used its turn signal to begin the pass, but because the maneuver occurred on an incline and crested a hill, he could not see whether a signal was used to return to the proper lane. Based on his speed, Deputy Redish estimated the red car was traveling 85 to 90 miles per hour. He activated his cruiser's overhead lights and audible siren to initiate a traffic stop. The vehicle eventually stopped abruptly after about a half mile.

{¶9} Deputy Redish testified that as he approached within three feet of the vehicle, he immediately smelled burnt marijuana and an odor of an alcoholic beverage from inside the vehicle. This led him to believe the driver, later identified as Appellant, had been drinking and appeared intoxicated based on his observations. Appellant was the sole occupant of the vehicle. Deputy Redish also noted bloodshot, glassy eyes and slurred speech. He observed empty beer cans in the vehicle and a pipe commonly used for smoking marijuana.

{¶10} Deputy Redish told Appellant that Appellant was drunk and asked him at least five times to step out of the vehicle. Appellant demonstrated difficulty complying with Deputy Redish's order. He recounted that Appellant responded, "Give me a second. Give me a second[.]" (*Id.* at p. 44). Appellant finally exited his car and admitted to consuming three beers. Appellant said he was coming from a local bar and that he needed to rush home to speak with his mother who was in the hospital. Appellant consented to field sobriety testing.

{¶11} Regarding the horizontal gaze nystagmus test ("HGN"), Deputy Redish observed clues in each eye at maximum deviation, with both eyes jerking. He later acknowledged that he did not perform certain required pauses and checks. Deputy Redish agreed that the NHTSA standard instructs holding the stimulus at maximum deviation for about four seconds and conceded he did not do so. He confirmed not pausing to check for distinct and sustained nystagmus at maximum deviation. Deputy Redish agreed that his reported clues at maximum deviation and onset prior to 45 degrees were not accurate as set forth in his report and acknowledged that the HGN test was compromised. He also agreed that, prior to Appellant exiting the vehicle, he radioed dispatch stating the male was "a point 19 (.19)," i.e., code for OVI. (*Id.* at p. 86).

{¶12} Deputy Redish then described the walk-and-turn test. He stated that during the instruction phase, Appellant swayed. During the walking phase, Appellant made it only to the seventh step in one direction. Deputy Redish stopped the test after Appellant attempted it three or four more times, advising him to quit for safety. Deputy Redish agreed that he did not instruct Appellant to remain in the instructional position until told to do so and conceded the walk-and-turn test was compromised.

{¶13} Regarding the one-leg stand test, Deputy Redish instructed Appellant to raise a foot approximately six inches off the ground, keep his eyes on the raised foot, and count to 30. Appellant counted to about six, put his foot down, and restarted at one. Deputy Redish clarified Appellant did not actually fall over but stumbled by putting his foot down. He agreed that the one-leg stand was compromised. He also noted Appellant claimed the testing area was on an incline.

{¶14} Following the field sobriety tests, Deputy Redish advised Appellant he was under arrest for OVI. He placed Appellant in handcuffs and read him his *Miranda* rights. Appellant submitted to a breath test which was .137, over the .08 legal limit. Deputy Redish identified exhibits associated with the incident, including a body camera video which was played for the court. He also discussed the Ohio BMV Form 2255, on which he had listed reasonable grounds as an odor of an alcoholic beverage and bloodshot, glassy eyes. Deputy Redish acknowledged a portion of the form remained blank and confirmed he did not appear before a notary or clerk to have the form certified.

{¶15} On December 12, 2025, the trial court ordered:

1. MOTION TO SUPPRESS - The Defendant's Motion to Suppress is SUSTAINED in part and OVERRULED in part. All results of standardized field sobriety testing (SFTS), including HGN, Walk-and-Turn, and One-Leg Stand, are hereby SUPPRESSED and are inadmissible at any hearing or trial in this matter. All other matters challenged in the Motion to Suppress are OVERRULED.

2. ALS APPEAL - The Defendant's Appeal of the Administrative License Suspension is hereby OVERRULED.

(12/12/2025 Judgment Entry, p. 11).

{¶16} On February 11, 2026, Appellant withdrew his former not guilty plea and entered a no contest plea to the charges as contained in the citation. The trial court found Appellant guilty, merged the OVI charges, and sentenced him as follows: on the merged OVI charges, 90 days in jail, with 87 days suspended; a fine of \$1,075, with \$700 suspended; a one year license suspension, which merged with the ALS and dated back to the date of the offense; supervised probation for 12 months; a substance abuse assessment, which Appellant is to follow any recommendations; and Appellant is to complete the Driver Intervention Program; and on the improper passing count, the court fined Appellant \$50. The ALS-Positive was adjudicated as terminated upon the OVI conviction.

{¶17} Appellant filed a timely appeal and raises five assignments of error.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION TO SUPPRESS BECAUSE THERE WAS INSUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT A FINDING THAT THE ARRESTING OFFICER HAD A REASONABLE, ARTICULABLE SUSPICION TO TRAFFIC STOP THE APPELLANT.

{¶18} In his first assignment of error, Appellant argues the trial court erred in denying in part his motion to suppress because there was insufficient evidence to support a finding that Deputy Redish had a reasonable, articulable suspicion to stop his vehicle.

{¶19} In response, the State claims that “although Appellant raises the issue of whether the Deputy had ‘reasonable articulable suspicion to stop and detain the Appellant’ in his appeal brief, that issue was never raised or argued before the trial court.” (5/29/2026 Appellee’s Brief, p. 4).

{¶20} As stated, Appellant filed a motion to suppress, inter alia, the following: “1. The arresting officer lacked probable cause to perform a traffic stop of Defendant’s vehicle.” (3/12/2025 Motion to Suppress, p. 1). Concluding that an officer may validly stop a vehicle for a traffic violation, the trial court overruled Appellant’s challenge. Thus,

contrary to the State’s claim, because the traffic stop was argued and decided below, we will consider it.

A trial court’s decision to deny a motion to suppress involves a mixed question of law and fact: legal questions are reviewed de novo, but factual issues are rarely disturbed as the trial court is the fact-finder at the suppression hearing and occupies the best position to evaluate witness credibility. *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665, 850 N.E.2d 1168, ¶ 100. In other words, an appellate court must accept the trial court’s findings of fact if they are supported by competent, credible evidence; upon accepting the facts as true, the appellate court independently determines, without deferring to the trial court’s conclusion, whether the facts satisfy the applicable legal standard. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8.

State v. Bugno, 2022-Ohio-2008, ¶ 32 (7th Dist.), quoting *State v. Smith*, 2021-Ohio-3330, ¶ 30 (7th Dist.).

There are two types of valid traffic stops: (1) where police have probable cause that a traffic violation has occurred or was occurring and (2) where police have reasonable articulable suspicion that criminal activity has occurred. *State v. Ward*, 7th Dist. Columbiana No. 10 CO 28, 2011-Ohio-3183, ¶ 35, citing *Dayton v. Erickson*, 76 Ohio St.3d 3, 11, 665 N.E.2d 1091 (1996); *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

State v. Sargent, 2020-Ohio-5464, ¶ 14 (7th Dist.), quoting *State v. McMillon*, 2019-Ohio-2716, ¶ 10-11 (7th Dist.).

“Although the probable cause standard is a more stringent standard than reasonable suspicion, the two standards often exist together when a traffic stop is made.” *Ward* at ¶ 37. “[A]n officer who witnesses a traffic violation possesses probable cause, and a reasonable articulable

suspicion, to conduct a traffic stop.” *Id.*, quoting *State v. Jenkins*, 3d Dist. Union No. 14-10-10, 2010-Ohio-5943, ¶ 12.

State v. Christian, 2023-Ohio-1692, ¶ 15 (7th Dist.).

{¶21} In this case, Deputy Redish possessed probable cause, and a reasonable, articulable suspicion, to conduct a stop based on witnessing traffic violations. *Id.* First, regarding Appellant’s license plate, R.C. 4513.05(A), “Tail lights and illumination of rear license plate,” states in part:

Either a tail light or a separate light shall be so constructed and placed as to illuminate with a white light the rear registration plate, when such registration plate is required, and render it legible from a distance of fifty feet to the rear. Any tail light, together with any separate light for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlights or auxiliary driving lights are lighted, except where separate lighting systems are provided for trailers for the purpose of illuminating such registration plate.

R.C. 4513.05(A).

{¶22} As stated, at approximately 1:41 a.m. on the night at issue, Deputy Redish was positioned at a stop sign at the three-way intersection of State Routes 9 and 151. He observed a red Chevrolet, driven by Appellant, pass by. Deputy Redish testified his attention was drawn because the rear license plate light appeared too dim for him to read from “roughly forty feet.” The statute provides that the rear license plate shall be illuminated with a white light that makes it legible to read from a distance of 50 feet. See *Id.* Thus, there is evidence of a traffic violation as Appellant’s vehicle was not in compliance with R.C. 4513.05(A). See also *State v. Kepler*, 2026-Ohio-223, ¶ 9 (12th Dist.) (the appellant’s motion to suppress was properly denied; the traffic stop was valid based on probable cause because the appellant’s rear license plate was not properly illuminated; and there was probable cause to arrest the appellant for OVI).

{¶23} In addition, there is evidence of two other traffic violations justifying the stop of Appellant’s vehicle: speeding and an improper passing violation. See *State v. Dixon*,

2023-Ohio-23, ¶ 13, 20 (2d Dist.) (speeding constitutes a traffic violation giving an officer probable cause to stop a vehicle); *State v. Pfeiffer*, 2004-Ohio-4981, ¶ 24 (12th Dist.) (an officer's observation of a vehicle crossing a double yellow centerline to pass another vehicle gave the officer probable cause to initiate a traffic stop).

{¶24} Again, Deputy Redish testified the posted speed limit in the vicinity at issue is 50 miles per hour. After Appellant's vehicle passed through the intersection, Deputy Redish followed the car. Deputy Redish accelerated to about 65 miles per hour until he could again see taillights. Deputy Redish then accelerated to roughly 80 miles per hour when he closed to about five car lengths and observed Appellant's car passing another vehicle on a two-lane, double-yellow no-passing roadway. Deputy Redish estimated Appellant's vehicle was traveling 85 to 90 miles per hour, well over the posted 50 miles per hour speed limit.

{¶25} Based on the facts presented, the trial court did not err in denying in part Appellant's motion to suppress because there was sufficient evidence to support a finding that Deputy Redish had probable cause, and a reasonable, articulable suspicion, to stop Appellant's vehicle based on the traffic violations. See *Christian*, 2023-Ohio-1692, at ¶ 15 (7th Dist.).

{¶26} Appellant's first assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS BECAUSE THERE WAS INSUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT A FINDING THAT THE ARRESTING OFFICER HAD A REASONABLE, ARTICULABLE SUSPICION IN ORDER TO DETAIN APPELLANT TO COMPLETE FIELD SOBRIETY TESTS IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE FOURTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 14 OF THE OHIO CONSTITUTION.

{¶27} In his second assignment of error, Appellant contends the trial court erred in denying in part his motion to suppress because there was insufficient evidence to support a finding that Deputy Redish had a reasonable, articulable suspicion to detain him to complete field sobriety tests.

In *State v. Reed*, 7th Dist. Belmont No. 05 BE 31, 2006-Ohio-7075, 2006 WL 3849267, we adopted a list of factors first compiled by the Eleventh District that may be considered by a court in viewing the totality of circumstances whether there exists reasonable suspicion to administer a field sobriety test:

(1) the time of day of the stop (Friday or Saturday night as opposed to, e.g., Tuesday morning); (2) the location of the stop (whether near establishments selling alcohol); (3) any indicia of erratic driving before the stop that may indicate a lack of coordination (speeding, weaving, unusual braking, etc.); (4) whether there is a cognizable report that the driver may be intoxicated; (5) the condition of the suspect's eyes (bloodshot, glassy, glazed, etc.); (6) impairments of the suspect's ability to speak (slurred speech, overly deliberate speech, etc.); (7) the odor of alcohol coming from the interior of the car, or, more significantly, on the suspect's person or breath; (8) the intensity of that odor as described by the officer ('very strong,[]' 'strong,' 'moderate,' 'slight,' etc.); [(9)] any actions by the suspect after the stop that might indicate a lack of coordination (dropping keys, falling over, fumbling for a wallet, etc.); and [(10)] the suspect's admission of alcohol consumption, the number of drinks had, and the amount of time in which they were consumed, if given. All of these factors, together with the officer's previous experience in dealing with drunken drivers, may be taken into account by a reviewing court in determining whether the officer acted reasonably.

Id. at ¶ 11, citing *State v. Evans*, 127 Ohio App.3d 56, 711 N.E.2d 761 (1998).

State v. Lopez, 2024-Ohio-2394, ¶ 35 (7th Dist.).

{¶28} Applying the *Reed* factors to this case, the record before us reveals the following occurred prior to Appellant being asked to submit to field sobriety tests: (1) the time of day of the stop (1:41 a.m. on a Saturday night/Sunday morning); (2) the location of the stop (State Routes 9 and 151, after Appellant admitted to leaving a local bar); (3) any indicia of erratic driving before the stop that may indicate a lack of coordination (speeding at 85 to 90 miles per hour in a 50 miles per hour zone and a double yellow line improper passing); (4) whether there is a cognizable report that the driver, Appellant, may be intoxicated (n/a); (5) the condition of Appellant's eyes (bloodshot and glassy); (6) impairments of Appellant's ability to speak (slurred speech); (7) the odor of alcohol coming from the interior of the car (Deputy Redish testified that as he approached within three feet of the vehicle, he immediately smelled burnt marijuana and an odor of an alcoholic beverage from inside the vehicle); (8) the intensity of that odor as described by Deputy Redish (within three feet, strong); (9) any actions by Appellant after the stop that might indicate a lack of coordination (n/a); and (10) Appellant's admission of alcohol consumption and the number of drinks had (Appellant admitted to consuming three beers and there were open containers and a pipe used for smoking marijuana in the vehicle). See *Reed*, 2006-Ohio-7075, at ¶ 11 (7th Dist.).

{¶29} Based on the foregoing, the trial court properly determined there was sufficient evidence to support a finding that Deputy Redish had a reasonable, articulable suspicion to detain Appellant to complete field sobriety tests.

{¶30} Appellant's second assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 3

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS BECAUSE THE DEPUTY HAD NO PROBABLE CAUSE TO ARREST APPELLANT FOR A VIOLATION OF R.C. 4511.19.

{¶31} In his third assignment of error, Appellant maintains the trial court erred in denying in part his motion to suppress because Deputy Redish did not have probable cause to arrest him for OVI.

{¶32} R.C. 4511.19 states in part:

(A)(1) No person shall operate any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply:

(a) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

. . .

(d) The person has a concentration of eight-hundredths of one gram or more but less than seventeen-hundredths of one gram by weight of alcohol per two hundred ten liters of the person's breath.

R.C. 4511.19(A)(1)(a) and (d).

Probable cause to arrest someone for OVI may exist without the administration of any field sobriety tests based on the totality of the circumstances. *State v. Bish*, 7th Dist. No. 09 MA 145, 191 Ohio App.3d 661, 2010-Ohio-6604, 947 N.E.2d 257, ¶ 2; *State v. Brungs*, 4th Dist. Pickaway No. 05CA18, 2005-Ohio-5776, ¶ 31. "Probable cause to arrest does not have to be based upon a suspect's poor performance on field sobriety tests alone. Rather, the totality of the facts and circumstances can support a finding of probable cause to arrest even when no field sobriety tests were given, or when the test results must be excluded because of failure to comply with standardized testing procedures." *State v. Hall*, 2d Dist. Greene No. 04CA86, 2005-Ohio-4526, ¶ 21 (citations omitted).

. . .

Probable cause is not a prohibitively high standard. *State v. Taylor*, 10th Dist. No. 19AP-396, 2022-Ohio-2877, 194 N.E.3d 867, ¶ 15. "Probable cause is a flexible common sense standard, and requires only a showing that a probability rather than an actual showing of criminal activity existed."

State v. Osorio, 8th Dist. Cuyahoga No. 72147, 1998 WL 23829, *4. This helps to explain why there is such a wide range and variation of facts supporting probable cause to arrest for OVI.

State v. Walker, 2023-Ohio-3586, ¶ 27-29 (7th Dist.).

{¶33} As stated, the results of the field sobriety tests were excluded because of a failure to comply with standardized testing procedures. However, the record contains many indicators that Appellant committed the crime of OVI: the time/day of the incident, 1:41 a.m. (Saturday night/Sunday morning); traffic violation - rear license plate light appeared too dim in violation of R.C. 4513.05(A); traffic violation – speeding (85 to 90 miles per hour in a posted 50 miles per hour zone); traffic violation – improper passing on a two-lane, double-yellow no-passing roadway; Appellant eventually stopped his vehicle after about a half mile while being chased by Deputy Redish who activated his cruiser’s overhead lights and audible siren; as Deputy Redish approached within three feet of the vehicle, he immediately smelled burnt marijuana and an odor of an alcoholic beverage from inside the vehicle; this led Deputy Redish to believe that Appellant, the sole occupant of the vehicle, had been drinking and appeared intoxicated based on his observations; Deputy Redish also noted bloodshot, glassy eyes and slurred speech; he observed empty beer cans in the vehicle and a pipe commonly used for smoking marijuana; Deputy Redish told Appellant that Appellant was drunk and asked him at least five times to step out of the vehicle; Appellant demonstrated difficulty complying with Deputy Redish’s order; Appellant finally exited his car and admitted to consuming three beers; and Appellant said he was coming from a local bar.

{¶34} The trial court did not err in denying in part Appellant’s motion to suppress because the totality of the facts and circumstances supports a finding of probable cause to arrest Appellant for OVI.

{¶35} Appellant’s third assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 4

**THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION TO
SUPPRESS BECAUSE THERE WAS INSUFFICIENT EVIDENCE IN THE**

RECORD TO SUPPORT A FINDING THAT THE INTOXILYZER 8000 MET THE “TRACEABLE TO NIST” REQUIREMENT AND NOT IN SUBSTANTIAL COMPLIANCE WITH THE OHIO ADMINISTRATIVE CODE 3701-53.

{¶36} In his fourth assignment of error, Appellant alleges the trial court erred in denying in part his motion to suppress because there was insufficient evidence to support a finding that the Intoxilyzer 8000 met the “traceable to NIST” requirement and not in substantial compliance with Ohio Administrative Code 3701-53-05.

{¶37} Appellant argues the wording of “traceable to NIST” versus the wording “capable of being traceable to NIST” are not the same wording so there was not substantial compliance with Ohio Administrative Code 3701-53-05. In support, Appellant cites to two Sixth District cases where that court found that NMI traceability was not the same as NIST traceability. See (5/4/2026 Appellant’s Brief, p. 12). Again, NIST stands for National Institute of Standards and Technology (for the United States of America). NMI stands for National Metrology Institute (for any country). Here, NIST traceability was the standard used for the certified reference material, not NMI, therefore NIST traceability was used.

R.C. 4511.19(D) governs the admissibility of alcohol-test results and states, in relevant part, that a defendant’s blood, breath, or urine “shall be analyzed in accordance with methods approved by the director of health by an individual possessing a valid permit issued by the director of health pursuant to section 3701.143 of the Revised Code.” Further, R.C. 3701.143 requires the director of health to “determine, or cause to be determined, techniques or methods for chemically analyzing a person’s blood.”

Instruments approved by the Ohio Department of Health for breath testing are listed in Adm.Code 3701-53-03 and lists the Intoxilyzer model 8000 as an approved instrument. . . . Guidelines for breath-instrument checks, controls and certifications are set forth in Adm.Code 3701-53-05. The guidelines for the Intoxilyzer model 8000 are as follows:

(B) For the instrument listed under paragraph (A)(3) of rule 3701-53-03 of the Administrative Code:

(1) The instrument shall perform a dry gas control using a dry gas standard traceable to the national institute of standards and technology (NIST) before and after every subject test.

(2) A subject test shall include the collection of two breath samples. A dry gas control is not required between the two breath samples.

(3) Dry gas control results are valid when the results are at or within five one-thousandths (0.005) grams per two hundred ten liters of the alcohol concentration on the manufacturer's certificate of analysis for that dry gas standard.

(4) A dry gas control result which is outside the range specified in paragraph (B)(3) of this rule will abort the subject test or instrument certification in progress.

(5) A representative of the director will perform an instrument certification according to the instrument display using a solution containing ethyl alcohol approved by the director. *A dry gas control using a dry gas standard traceable to the national institute of standards and technology (NIST) shall also be used when a certification is performed.* An instrument in service shall be certified no less frequently than once every calendar year or when the dry gas standard on the instrument is replaced, whichever comes first. A calendar year means the period of twelve consecutive months, as indicated in section 1.44 of the Revised Code, beginning on the first day of January, and ending on the thirty-first day of December. Instrument certifications are valid when the certification results are at or within five one-thousandths (0.005) grams per two hundred ten liters of the target value for that approved solution. Instruments with certification results outside the range specified in this paragraph will require the issue to be

remediated and a successful certification completed, or the instrument be removed from service until the instrument is serviced or repaired.

(Emphasis added.)

Rigid compliance with the Ohio Department of Health regulations is not required. *State v. Plummer*, 22 Ohio St.3d 292, 294 (1986). When the admissibility of alcohol-test results is challenged, the City bears the burden of showing substantial compliance with R.C. 4511.19(D)(1) and Adm.Code 3701-53. See *Burnside*, 2003-Ohio-5372, at ¶ 24-27. The alcohol-test result is presumed admissible if the City meets the burden of going forward with evidence demonstrating substantial compliance, and the burden shifts to the defendant “to rebut the presumption by demonstrating prejudice from the state’s failure to strictly comply with the applicable regulations in the Ohio Administrative Code.” *State v. Baker*, 2016-Ohio-451, ¶ 23.

Cleveland v. Glover, 2026-Ohio-1039, ¶ 13-15 (8th Dist.).

{¶38} Like in *Glover*, the Intoxilyzer 8000 was used in this case. Also, like the appellant in *Glover*, Appellant in the case sub judice believes that this court should follow *State v. Farrell*, 2021-Ohio-1554 (6th Dist.), and *State v. Dye*, 2021-Ohio-3513 (6th Dist.).

In both *Farrell* and *Dye*, the court found that the city failed to meet its burden of showing substantial compliance with the administrative code where the certificate of analysis presented as evidence of compliance showed that the certification was traceable to National Metrology Institute Traceable Standards (“NMI”). The question before the court was “whether traceability to (NMI) is substantially the same as traceability to NIST standards.” *Farrell* at ¶ 26. The court found that traceability to an unnamed NMI’s standard does not establish traceability to NIST standards and thus the City failed to meet its burden to show substantial compliance.

Glover at ¶ 16.

{¶39} The Certificate of Analysis in *Glover* as in the case at bar reveal the dry-gas analysis standards capable of producing results traceable to NIST. *Id.* Thus, *Farrell* and *Dye* were not applicable to *Glover* nor are they applicable to this case.

{¶40} Here, the trial court heard testimony from Walock, Program Administrator and Forensic Toxicologist with the Ohio Department of Health, Alcohol, and Drug Testing Program, as addressed. Walock testified as to the methods used for traceability to NIST. Walock affirmed the subject test was valid. The court noted that Walock’s testimony “established that the Certificate of Analysis for the certified reference material the subject of this [motion] identifies the NIST report where that certified reference material identifies the NIST report where that certified reference material is traceable to NIST.” (12/12/2025 Judgment Entry, p. 2). Because there is “an unbroken chain of traceability back to NIST standards” the court found the dry gas control was “traceable to NIST” and met the requirements of the Ohio Administrative Code. (*Id.*).

{¶41} Thus, the State presented testimony to establish that the dry gas used was not only capable of being traceable to NIST, it was traceable to NIST. Therefore, the trial court did not err in finding that there was substantial compliance with Ohio Administrative Code 3701-53-05 resulting in a presumption of admissibility for the Intoxilyzer 8000 test results. Further, it is also not alleged or disputed that Appellant failed to present evidence to rebut that presumption.

{¶42} Accordingly, the trial court did not err in denying in part Appellant’s motion to suppress and admitting the breath-test results.

{¶43} Appellant’s fourth assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 5

THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION TO SUPPRESS BECAUSE ALL EVIDENCE COLLECTED WAS FRUIT OF THE POISONOUS TREE.

{¶44} In his fifth assignment of error, Appellant asserts the trial court erred in denying in part his motion to suppress because all evidence collected was fruits of the poisonous tree.

{¶45} Crim.R. 47, “Motions,” states:

An application to the court for an order shall be by motion. A motion, other than one made during trial or hearing, shall be in writing unless the court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It shall be supported by a memorandum containing citations of authority, and may also be supported by an affidavit.

Crim.R. 47.

{¶46} In his motion to suppress, Appellant did not state with particularity what specific evidence should be suppressed. Rather, Appellant generally concluded in his motion that “all additional evidence obtained [was] fruits of the poisonous tree.” (3/12/2025 Motion to Suppress, p. 2). On appeal, Appellant asserts “[t]he trial court correctly suppressed the field sobriety tests . . . [but] erred in concluding that the deputy possessed probable cause to stop, detain, and ultimately arrest [him].” (5/4/2026 Appellant’s Brief, p. 14). Appellant believes “[b]ecause the arrest itself was unlawful, all evidence obtained as a result – including the breath test – must be excluded under the well-settled doctrine prohibiting the use of fruits of the poisonous tree.” (*Id.* at p. 15).

{¶47} “Evidence obtained by the exploitation of an illegal search must be suppressed as the ‘fruits of the poisonous tree.’” *State v. Rapp*, 2013-Ohio-5384, ¶ 43 (7th Dist.), quoting *State v. Haslam*, 2009-Ohio-696, ¶ 25 (7th Dist.).

{¶48} As addressed, Deputy Redish had probable cause, and a reasonable, articulable suspicion, to stop Appellant’s vehicle based on the traffic violations; Deputy Redish had a reasonable, articulable suspicion to detain Appellant to complete field sobriety tests; the totality of the facts and circumstances supports a finding of probable cause to arrest Appellant for OVI; and the trial court committed no error in admitting the breath-test results. Thus, in light of our conclusion that the stop, detainment, arrest, and admission of the breath-test results were valid, we reject Appellant’s fruits of the poisonous tree argument. See *State v. Henderson*, 51 Ohio St.3d 54, 57 (1990); *State v. Thompson*, 2006-Ohio-1836, ¶ 21, fn. 1 (8th Dist.); *State v. Dunlap*, 2018-Ohio-3658, ¶ 12 (9th Dist.).

{¶49} Appellant's fifth assignment of error is overruled.

CONCLUSION

{¶50} For the foregoing reasons, Appellant's assignments of error are not well-taken. The December 12, 2025 and February 11, 2026 judgments of the Harrison County Court denying in part Appellant's motion to suppress and sentencing him for OVI and improper passing are affirmed.

Waite, P.J., concurs.

Hanni, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgments of the Harrison County Court of Harrison County, Ohio, are affirmed. Costs to be waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.