

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellant, :
 : No. 112272
 v. :
 :
 CHRISTOPHER KUMUHONE, :
 :
 Defendant-Appellee. :

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: July 27, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-22-672829-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Frank Romeo Zeleznikar, Samantha Sohl, and Omar Siddiq, Assistant Prosecuting Attorneys, *for appellant.*

Cullen Sweeney, Cuyahoga County Public Defender, and Jonathan Sidney, Assistant Public Defender, *for appellee.*

FRANK DANIEL CELEBREZZE, III, J.:

{¶ 1} This is an appeal by the state of Ohio challenging the decision of the Cuyahoga County Court of Common Pleas granting appellee Christopher

Kumuhone’s (“Kumuhone”) motion to suppress evidence. After a thorough review of the applicable law and facts, we reverse the judgment of the trial court and remand for further proceedings.

I. Factual and Procedural History

{¶ 1} On May 15, 2022, Middleburg Heights Police Officer Joshua Porter was working in his capacity as a patrol officer along with K-9 officer Zeke. Ofc. Porter conducted a traffic stop on Pearl Road in Middleburg Heights. The traffic stop occurred near Kumuhone’s residence, which was known to Ofc. Porter for drug activity. He believed that the vehicle was returning to this residence.

{¶ 2} The vehicle was driven by Michael Meyers (“Meyers”), and Kumuhone was a passenger. Ofc. Porter stopped the vehicle because he was aware from prior interactions that Meyers had a suspended driver’s license. Prior to effectuating the stop, Ofc. Porter confirmed through LEADS that Meyers’s license was, in fact, still suspended.

{¶ 3} Patrolman Holderbaum also arrived on scene. Ofc. Porter approached the vehicle on the passenger side. He advised Meyers that he had stopped him for driving with a suspended license. Meyers appeared nervous; while Ofc. Porter spoke to him, Meyers’s hands were shaking and he was sweating.

{¶ 4} Based upon prior incidents and the drug history at the residence, Ofc. Porter advised Meyers and Kumuhone that he was going to have K-9 Zeke perform an exterior vehicle sniff, smelling for the odor of narcotics. Meyers and Kumuhone

were advised to step out of the vehicle and were patted down. Meyers had an outstanding traffic warrant, so he was placed in Ptl. Holderbaum's patrol vehicle.

{¶ 5} Ofc. Porter had Zeke start on the driver's side of the vehicle. When Zeke got to the driver's door, which was open, he jumped on the door in the seat area and started sniffing. From the change in Zeke's breathing pattern, Ofc. Porter knew that Zeke was in a "scent cone" of narcotics and was trying to pinpoint exactly where the items were.

{¶ 6} Zeke sniffed further along the rear door, then returned to the driver's door. Zeke smelled the driver's seat area and sat down, which is his final indication of the odor of narcotics.

{¶ 7} Ofc. Porter then began a probable cause search of the vehicle. In the backseat on the floor behind the driver's seat, he located a backpack that had a combination lock connecting two of the zippers. Ofc. Porter opened the compartments of the backpack that he was able to before realizing that the two smaller ones would not open because of the lock on the zippers.

{¶ 8} Ofc. Porter had searched the vehicle and had not located the narcotics that had caused Zeke to indicate. Ofc. Porter then placed the backpack on the ground five to ten feet away from the vehicle and deployed Zeke again. He intentionally moved the backpack away from the vehicle so that he could obtain an individualized indication on the backpack. Zeke sniffed the bag and indicated again, this time by lying down on the bag.

{¶ 9} Ofc. Porter discussed the lock on the backpack with his supervisor and Ptl. Holderbaum. They were able to open the bag using a pair of lock cutters that Ptl. Holderbaum had in his patrol vehicle.

{¶ 10} Inside the bag, Ofc. Porter located a plastic sandwich baggy containing a substance that he suspected was methamphetamine. There was also a small circular rubber container with a lid that had a clear crystal-like substance inside.

{¶ 11} Ofc. Porter seized the evidence and detained Kumuhone by placing him in the back of Ptl. Holderbaum's patrol vehicle. Kumuhone confirmed that the backpack belonged to him.

{¶ 12} Pursuant to department policy, Ofc. Porter advised his supervisor of Kumuhone's detainment. Department procedure provided that narcotics were sent out to be tested prior to arresting a suspect, so Kumuhone was released at the scene.

{¶ 13} Kumuhone was subsequently charged with trafficking, in violation of R.C. 2925.03(A)(2), a felony of the second degree, and drug possession, in violation of R.C. 2925.11(A), a felony of the second degree.

{¶ 14} Kumuhone moved to suppress the evidence obtained from the warrantless search of the backpack. The court held a hearing on the motion, where the state presented the testimony of Ofc. Porter.

{¶ 15} Following the hearing, the court granted Kumuhone's motion to suppress, finding:

Defendant's motion to supress [sic] is granted.

The testimony of Officer Joshua Porter together with his canine partner Zeke's hit on the backpack would easily support probable cause for a search warrant to be issued. While the court finds the testimony offered by the state credible, there has been no evidence or suggestion that exigent circumstances required a warrantless search be conducted. Furthermore no credible evidence that the backpack would satisfy the single purpose container exception to the warrant requirement was offered.

{¶ 16} The state then filed the instant appeal, raising one assignment of error for our review:

The trial court erred in granting appellee's motion to suppress.

II. Law and Discussion

{¶ 17} In its sole assignment of error, the state argues that the trial court erred in finding that the officers were required to obtain a warrant prior to searching the backpack.

{¶ 18} The Fourth Amendment of the United States Constitution, which is enforceable against the states through the Due Process Clause of the Fourteenth Amendment, provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause." *State v. Stewart*, 8th Dist. Cuyahoga Nos. 109867 and 109868, 2022-Ohio-199, ¶ 13, quoting *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). Article I, Section 14 of the Ohio Constitution contains nearly identical language and affords Ohio citizens the same protections. *State v. Robinette*, 80 Ohio St.3d 234, 245, 685 N.E.2d 762 (1997).

{¶ 19} Appellate review of a motion to suppress “presents a mixed question of law and fact; we accept the trial court’s findings of fact if they are supported by competent, credible evidence but must independently determine whether the facts satisfy the applicable legal standard.” *Cleveland v. Jones*, 8th Dist. Cuyahoga No. 107257, 2019-Ohio-1525, ¶ 8, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. “[W]hen there is substantial evidence to support the factual findings of the trial court, the decision on the motion to suppress will not be disturbed on appeal absent an error of law.” *Id.*, quoting *State v. Bates*, 8th Dist. Cuyahoga No. 92323, 2009-Ohio-5819, ¶ 36, citing *State v. Depew*, 38 Ohio St.3d 275, 528 N.E.2d 542 (1988).

{¶ 20} In granting Kumuhone’s motion, the trial court determined that the single-purpose-container exception did not apply in this matter, seemingly relying upon *State v. Burroughs*, 169 Ohio St.3d 79, 2022-Ohio-2146, 202 N.E.3d 611. In *Burroughs*, the police executed an arrest warrant at a residence, during which they discovered a closed bookbag with a plastic baggie stuck in its zipper. Without first obtaining a search warrant, they opened the bookbag and discovered illegal drugs.

{¶ 21} The state in *Burroughs* argued that a warrant was not required under the “single-purpose-container exception” to the warrant requirement. This exception arises when the nature of a container makes its contents clear. In such a situation, the owner of the container can have no expectation of privacy in the contents. *Id.* at ¶ 22.

{¶ 22} The Supreme Court of Ohio determined that the single-purpose-container exception was not applicable because it is a narrow exception that “applies only when the illegal nature of the contents of a package are readily apparent because of the distinctive characteristics of the package.” *Id.* at ¶ 1. The contents of the container must be sufficiently obvious to essentially be in plain view. *Id.* at ¶ 18. The court noted that a bookbag is not a single-purpose container because it can carry many different types of items and its contents could not be discerned without opening it. *Id.* at ¶ 20.

{¶ 23} While there was a similar container in the instant matter, under Ohio case law, a bookbag found in a residence is distinguishable from a backpack found in an automobile. Under the “automobile exception,” police may search an automobile without a warrant, as long as they have probable cause to believe the vehicle contains evidence of criminal activity. The rationale behind the automobile exception is two-fold: (1) vehicles are mobile, and (2) there exists a lesser expectation of privacy in a vehicle. *California v. Carney*, 471 U.S. 386, 391, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985).

{¶ 24} Ohio courts, including this court, have held that once a trained drug dog alerts to the odor of drugs from a lawfully detained vehicle, there is probable cause to justify a warrantless search of the vehicle for contraband. *State v. Davis*, 8th Dist. Cuyahoga No. 87964, 2007-Ohio-408, ¶ 40; *see also State v. Carlson*, 102 Ohio App.3d 585, 600, 657 N.E.2d 591 (9th Dist.1995) (holding the same).

{¶ 25} We agree with the state that Zeke’s indication during his sniff of the vehicle constituted probable cause to search the vehicle. The justification for the search of the vehicle also extended to the backpack found inside. “If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.” *In re \$75,000.00 United States Currency (Katz)*, 2017-Ohio-9158, 101 N.E.3d 1209, ¶ 31 (8th Dist.), quoting *United States v. Ross*, 456 U.S. 798, 825, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982).

{¶ 26} “When there is probable cause to search for contraband in a car, it is reasonable for police officers * * * to examine packages and containers without a showing of individualized probable cause for each one.” *State v. Vega*, 154 Ohio St.3d 569, 2018-Ohio-4002, 116 N.E.3d 1262, ¶ 14, quoting *Wyoming v. Houghton*, 526 U.S. 295, 302, 119 S.Ct. 1297, 143 L.Ed.2d 408 (1999). *See also State v. Sullivan*, 12th Dist. Preble No. CA2018-10-016, 2019-Ohio-2279 (warrantless search of a locked tool box in the vehicle was legally permissible where probable cause existed based on K-9 officer’s alert to the odor of narcotics and officer’s suspicion of defendant’s activity in drug trafficking); *State v. Fritz*, 12th Dist. Clermont Nos. CA2019-12-094 and CA2019-12-095, 2020-Ohio-5231 (probable cause existed for search of the vehicle and the backpack found therein).

{¶ 27} Furthermore, while individualized probable cause was not necessary to permit the search of the backpack, there was, in fact, separate probable cause to

justify the search. K-9 Zeke performed an isolated sniff of the backpack away from the vehicle and specifically alerted by lying down on the backpack.

{¶ 28} Based on the foregoing, probable cause existed to search the backpack, and the search was not improper. The trial court therefore erred in granting Kumuhone's motion to suppress evidence. We reverse the decision of the trial court and remand this matter for further proceedings.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

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

FRANK DANIEL CELEBREZZE, III, JUDGE

ANITA LASTER MAYS, A.J., and
MICHELLE J. SHEEHAN, J., CONCUR