No. _____

IN THE
Supreme Court of the United States

LEONARD JAMES TATE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Whether a law enforcement officer's untrained and uncorroborated tracking of marijuana odor through a multi-unit hotel, without canine assistance or independent verification, provides sufficient reliability to establish probable cause under the Fourth Amendment.

LIST OF PARTIES

The only parties to the proceeding are those appearing in the caption to this petition.

RELATED PROCEEDINGS

United States v. Leonard James Tate, No. 1:22-CR-194, United States District Court for the District of North Dakota. Judgment signed and entered July 24, 2024.

United States v. Leonard James Tate, No. 24-2617, United States Court of Appeals for the Eighth Circuit. Judgment entered June 5, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Leonard James Tate respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App., *infra*, 1a-8a) is reported at *United States v. Tate*, 139 F.4th 678 (8th Cir. 2025).

JURISDICTION

The judgment of the court of appeals was entered on June 05, 2025. A petition for rehearing was denied on July 14, 2025 (App., *infra*, 9a). The jurisdiction of the United States Supreme Court is invoked under 28 U.S.C. § 1254(1).

RULES INVOLVED

U.S. Const. amend. IV:

> "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…"

STATEMENT OF THE CASE

Petitioner Leonard Tate was arrested after a search of his hotel room yielded fentanyl, cash, and firearm parts—but no marijuana. The search was authorized by a warrant based solely on a patrol officer's claim that he smelled marijuana and tracked the odor through hotel hallways to Tate's door. The officer had no training in scent tracking, did not use a canine, and offered no corroboration from other officers, hotel staff, or witnesses. Tate argues the untrained officer's uncorroborated allegation is insufficient to establish probable cause to search his temporary dwelling.

A. Officer Collins' Investigation

On August 10, 2022, Leonard Tate was in a trailer home belonging to Hannah Wells when the Metro Area Narcotics Task Force ("MANTF") executed a search warrant seeking evidence of a drug conspiracy, specifically fentanyl pills. Docket Entry No. 60 at 1 (August 14, 2023); Docket entry No. 103, Tr. 19:11-20 (August 8, 2024).[1] In a fifteen-page affidavit, Agents informed the court probable cause existed to believe evidence of a large fentanyl distribution conspiracy was in Wells' home. *Id.* at 2. They were wrong. The search produced only $760 in cash, a small baggie of

[1] Unless otherwise noted, references to the Transcript ("Tr.") are to the transcript of the hearing on Tate's Motion to Suppress Evidence conducted on October 3, 2023, found at Docket entry No. 103.

marijuana, and a foil with residue — none of which were in Tate's possession. *Id.* Agents interviewed Tate, seized his cellphones, and released him. He was not the target of the search, and no evidence suggested he committed a crime. *Id.*

On August 21, 2022, Bismarck Police Department ("BPD"), Officer Zachary Collins went to Americas Best Value Inn, where Tate was staying, and began "smelling room doors." Tr. 20:5-8. Off. Collins testified he was familiar with Tate because he assisted MANTF in the fruitless search of Ms. Wells' home eleven days earlier. Tr. 19:11-23. Off. Collins claims his visit to the hotel was "routine." Tr. 20:5-8. When the court asked for clarification, Off. Collins testified he was "being proactive" and he routinely goes to a "handful" of hotels to "obtain guest lists" because people "hangout there with warrants and/or sell drugs." Tr. 39:14-40:5.

Off. Collins claimed to smell the odor of marijuana at the front entrance of the hotel. Tr. 21:14-17. Following the alleged scent, in pantomime of a trained, tested, and certified canine, Off. Collins smelled his way through the lobby, around corners, and down hallways, "smelling room doors" until he miraculously stopped at Tate's door, room 118. Tr. 21:18-20. He described the hotel as having two floors, with a north wing and a south wing branching off the main lobby and dining area. Tr. 22:24-23:25. The north and south wings each have two floors of guest rooms down long hallways running east and west. Off. Collins followed his nose from the front door, through the lobby, passed the dining area, turned right and proceeded down the hall towards the south wing. Tr. 25:16-22. He followed that path, "[b]ecause that's the way that I was smelling the odor." Tr. 25:22. He walked the length of the hallway towards the south

wing. He then turned left and "began to go down that hallway and then you smell the seams of the door to see where it's emitting from." Tr. 26:11-14. Off. Collins confirmed his "technique" was not part of any formal training or recognized police procedure. Tr. 27:13-20.

Underscoring the dubious nature of his allegedly random discovery, after completing what canine handlers would characterize as a blind scent track through the hotel, Off. Collins did not contact his chain of command to report his alleged hunch to the BPD. He called MANTF Special Agent Stewart. Tr. 30:2-4. They decided not to request a canine because "they're loud and you don't want to try to make a big ruckus […] while you're doing your investigation." Allegedly, Off. Collins then spoke with the front desk clerk, Victoria Schneider, who confirmed Tate rented the room and presented a Michigan identification. Docket entry No.69-7 at 1 (October 3, 2023). Ms. Schneider also stated the safe did not work when he checked in and Tate asked for it to be repaired. *Id.* Corroboration of the odor of marijuana in the hotel that day is conspicuously absent or any other person in Off. Collins' affidavit. *Id.* No credible explanation for why the patrol officer's body worn camara was not activated at any point in this dubious process was ever provided.

B. Initial Warrant Application and Search Execution

Armed with this scant information, Off. Collins applied for a warrant, without any corroborating evidence or investigation, noting Tate was from Michigan and could not have a North Dakota medical marijuana card. *Id.* Off. Collins claimed, without support, that Michigan was an illicit drug source state. *Id*. He provided no

indication of marijuana being an illicit drug commonly sourced from Michigan. Off. Collins did not claim there was probable cause to find any substance or item other than marijuana. *Id.* The warrant was granted by Judge Daniel Borgen of the North Dakota South Central Judicial District based solely on Off. Collin's affidavit at 6:32 p.m. on August 21, 2022. Docket entry No.69-8 (October 3, 2023).

Despite the affidavit's dubious suggestion that this was nothing more than a search for infraction level marijuana possession, a full operations briefing was conducted by MANTF Det. Stewart early the following morning. Tr. 31:14-33:22. During the briefing Det. Stewart unveiled a plan to surveil Tate, which involved no less than five officers from the BPD and MANTF. *Id*.

At 9:35 a.m. on August 22, 2022, Tate was detained when the surveillance detail observed him exiting his room. MANTF searched the room, finding cash, firearms parts, fentanyl pills, and receipts for shipped boxes. Tr. 33:11-35:10; Docket entry No. 69-9 at 2 (October 3, 2023); Docket entry No. 69-11 (October 3, 2023). Confirming the unreliability of Off. Collins' untrained and uncorroborated human blind scent tracking, no marijuana or marijuana paraphernalia was found in the room or on Tate's person.

C. "Amended" Warrant Application and Tate's Arrest

Realizing they had a problem after the search was completed, Off. Collins created a new affidavit, asking the court's permission to search for firearm parts, currency, fentanyl pills, and drug paraphernalia that had already been seized. Docket entry No. 69-11 (October 3, 2023). While Off. Collins claims the search was halted

until the second warrant was obtained, it is of no consequence. His testimony confirmed that all evidence seized under the second warrant was obtained before the "amended" warrant was issued. Tr. 38:13-14. The "amended" search warrant was granted by the same judge at 10:50 a.m. on August 22, 2022, after the search it purported to authorize had been completed. Docket entry No. 69-10 (October 3, 2023). This search led officers in other districts to obtain warrants for the packages listed on the shipping receipts found in Tate's room, finding additional gun parts. Docket entry No. 69-11 (October 3, 2023).

Tate was indicted on three counts: (1) Conspiracy to Distribute and Possess with intent to Distribute (40 grams or more – fentanyl), (2) Possession with Intent to Distribute (40 grams or more – fentanyl), and (3) Possession of a Firearm in Furtherance of a Drug Trafficking Crime. Docket entry No. 15 (October 26, 2022).

D. Suppression Proceeding and Conditional Plea

On August 14, 2023, Tate moved to suppress evidence obtained during the unlawful search on the grounds that the warrant application did not establish probable cause, the scope was exceeded, and the good faith exception did not excuse the unlawful police conduct. Docket entry Nos. 59 & 60 (August 14, 2023). The Government resisted. Docket entry No. (September 5, 2023). On September 12, 2023, Tate replied, further articulating support for his motion. Docket entry No. 68 (September 12, 2023). On October 3, 2023, a record was made, including the testimony of Off. Collins which established a lack of training, reliability, and corroboration for the conclusory allegations in the warrant application. Docket entry

No. 69 (October 3, 2023); *see also* Docket entry No. 103 (August 8, 2024). The district court denied Tate's motion. App., *infra*, 17a-29a; Docket entry No. 70 (October 31, 2023). Tate entered a conditional plea expressly preserving his right to appeal the Order denying suppression. Docket entry No. 72, ¶ 25 (December 7, 2023). On July 24, 2024, Tate was sentenced to 48 months imprisonment, with credit for time served, and 4 years supervised release. App., *infra*, 10a-16a; Docket entry No. 99 (July 24, 2024). Tate timely filed his Notice of Appeal. Docket entry No. 101 (August 7, 2024).

E. Appeal to the Eighth Circuit

On appeal, Tate argued the district court erred in denying the motion to suppress, erred in finding the amended warrant cured the defective initial warrant, and erred in applying the good faith exception. In response, the government argued there was probable cause for issuance of the warrant, the scope of the search was lawful, and alternatively, that the good faith exception applied.

The court of appeals denied Tate's appeal. App., *infra*, 1a-8a. The court held that under the totality of the circumstances, the issuing judge had a substantial basis for determining that evidence of a crime would be found in Tate's hotel room and the officers' search was within the scope of the warrant. *Id.* The court declined to address whether the good faith exception applied. *Id*. The court of appeals later denied Tate's petition for rehearing *en banc*. App., *infra*, 9a

REASONS FOR GRANTING THE PETITION

This case presents a novel and exceptionally important Fourth Amendment question: whether an untrained officer's uncorroborated scent tracking through a

multi-unit building can establish probable cause to search a private residence. The operative question is whether reliability is sufficiently established to support probable cause in the absence of foundation for scent tracking qualification. The district court and Eighth Circuit's decisions conflict with this Court's precedents requiring reliability in probable cause determinations. The novel inquiry is whether an untrained law enforcement officer should be required to show some indicia of reliability similar to the foundational showing required of trained canines conducting the same blind scent tracking function.

In *Florida v. Harris*, 568 U.S. 237 (2013), the Supreme Court emphasized that even canine alerts must be supported by training and performance records. In stark conflict, the Eighth Circuit in *Tate* found probable cause was sufficiently based on a human officer's unsupported assertion—without any reliability benchmark. Alarmingly, the Eighth Circuit opinion creates an unprecedented inherent reliability for untrained officer scent tracking and a rebuttable presumption in their allegations. The unprecedented expansion of presumed police reliability in an area far outside their training and human sense perception carries a substantial potential for abuse and forms a question of exceptional importance meriting a grant of certiorari.

The opinion also conflicts with Fifth Circuit and United States Supreme Court decisions,[2] expands the holding in *Miller v. Sigler*, 353 F.2d 424 (8th Cir. 1965), and

[2] *See eg., Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470, 477 (5th Cir. 1982); *Beck v. Ohio*, 379 U.S. 89, 97, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964); *Illinois v. Gates*, 462 U.S. 213, 239, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); and *Florida. v. Harris*, 568 U.S. 237 (2013).

conflicts with the Eighth Circuit's own rationale in recent cases.[3] The Tate opinion diverges from *Illinois v. Gates*, 462 U.S. 213 (1983), which requires a "totality of the circumstances" analysis grounded in verifiable facts. The decision is also at odds with *Beck v. Ohio*, 379 U.S. 89 (1964), which presciently cautioned against judicial reliance on the subjective good faith of law enforcement. The Eighth Circuit's ruling creates a dangerous precedent where law enforcement may obtain warrants based solely on unverified claims of odor detection, without corroboration, training, or accountability.

The Eight Circuit's decision in Tate's case converts the inexpert proclamation of "I smell marijuana" into an un-rebuttable presumption that evidence of a crime will be found wherever the untrained law enforcement suggests. This creates a perverse incentive for government actors to utter the magic words to obtain access to a dwelling to search for evidence of any crime, regardless of probable cause. A *Franks* hearing cannot resolve this evidentiary dilemma. Due to the rebuttable presumption the Eighth Circuit creates in *Tate* a suppression motion challenging probable cause cannot succeed unless law enforcement admits under oath they lied. This result undermines the Fourth Amendment's gatekeeping function and invites tremendous abuse. This Court should grant certiorari to resolve the conflict, restore the reliability standard, and clarify the limits of olfactory-based probable cause.

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3 *See eg., United States v. Gilmore*, 111 F.4th 942, 945 (8th Cir. 2024); *United States v. Rodriguez*, 711 F.3d 928, 936 (8th Cir. 2013); *United States v. Valle Cruz*, 452 F.3d 698, 703 (8th Cir. 2006); *United States v. Perez*, 29 F.4th 975, 986 (8th Cir. 2022); *United States v. Petruk*, 929 F.3d 952, 959–60 (8th Cir. 2019), and *United States v. Stevens*, 530 F.3d 714, 718 (8th Cir. 2008).

I. The Eighth Circuit erred by endorsing the District Court's Order Denying Tate's Motion to Suppress on the grounds that probable cause to search Tate's hotel room was established by Officer Collins' woefully deficient affidavit evidenced by untrained human scent detection and tracking.

The District Court and Eighth Circuit erred in finding there was probable cause to support a search warrant. "[T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Payton v. New York*, 445 U.S. 573, 590 (1980). The same protection extends to temporary dwelling places such Tate's hotel room. *United States v. Conner*, 127 F.3d 663, 666 (8th Cir. 1997); *see also Hoffa v. United States*, 385 U.S. 293, 301 (1966). "Probable cause exists when there is a fair probability that contraband or evidence of a crime will be found in a particular place." *United States v. Mayo*, 97 F.4th 552, 555 (8th Cir. 2024) (quoting *United States v. Juneau*, 73 F.4th 607, 614 (8th Cir. 2023)). Probable cause determinations are reviewed de novo. *United States v. Norey*, 31 F.4th 631, 635 (8th Cir. 2022). On these facts, the Supreme Court should reverse the Eighth Circuit's opinion that probable cause was established by uncorroborated and untrained human scent detection.

Allegedly tracking a scent through a hotel is a suspect probable cause basis, demanding scrutiny for reliability. The warrant's only support was Off. Collins' bald allegation that he followed the scent of marijuana from the front door, across the lobby, through the corridors, all the way to Tate's room, in a process he described as "smelling room doors." This untrained "process" is entirely lacking in corroboration or the indicia of reliability that would apply to the same scent tracking if conducted

by a certified canine. *See Fla. v. Harris*, 568 U.S. 237, 250 (2013); *United States v. Burston*, 806 F.3d 1123, 1129 (8th Cir. 2015); *United States v. Thomas*, 726 F.3d 1086, 1097 (9th Cir. 2013); *United States v. Diaz*, 25 F.3d 392, 395-96 (6th Cir. 1994). The resulting affidavit lacked sufficient facts and reliability for a prudent person to believe that evidence of a crime would be found in Tate's hotel room. *See Gates,* 462 U.S. 213, 235 (1983).

The Eighth Circuit decision creates a new paradigm where law enforcement affidavits are presumed reliable even in the absence of foundation or a factual basis to support an uncorroborated hunch. Traditionally, the task of the issuing judge "is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge" of the individual supplying the information. *Gates*, 462 U.S. at 238; *see also United States v. Taylor*, 63 F.4th 637, 651 (7th Cir. 2023) (discussing *Gates* in the context of the warrant requirement). The Supreme Court has never held that law enforcement's statements are immune from reasonable scrutiny and the Fourth Amendment demands as much. Off. Collins knew Tate because he assisted MANTF with the search of Ms. Wells' home eleven days earlier. Tr. 19:11-23. Off. Collins dubiously testified that he simply stumbled upon the scent of marijuana at the front door and tracked the smell through the hotel to room 118—where Tate was coincidentally residing. However, Off. Collins testified that at no point in his law enforcement career did he receive any training in scent tracking. Tr. 17:14-17. He did not receive training on marijuana odor familiarization at the Law Enforcement

Training Academy. Tr. 16:16-20. At Fox Valley Technical College in 2014, Off. Collins and other students had a single opportunity to smell a controlled sample of marijuana during class for basic familiarity. Tr. 16:21-17:9. He had no training in the detection or tracking of the odor of marijuana. Tr. 17:21-24. Despite this, Off. Collins went on to suggest that he reliably followed the uncorroborated scent through the entire hotel to Tate's door, and only Tate's door. Tr. 21:15-21. Absent independent corroboration or verification of training, there is no way to evaluate the scent tracking procedure used by Off. Collins.

Following *Tate*, there is a perverse incentive for officers to claim they smelled an illegal substance whenever they would like to search a dwelling or residence. The Fourth Amendment "was the founding generation's response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity." *Riley v. California*, 573 U.S. 373, 403 (2014). If this precedent is allowed to stand, the Eighth Circuit has allowed general warrants by a different name.

The Eighth Circuit stated as follows:

> Here, the smell alone provided substantial support for the existence of probable cause. We have routinely allowed the scent of marijuana to provide a basis for probable cause in the vehicle context. *See, e.g., United States v. Williams*, 955 F.3d 734, 737 (8th Cir. 2020) (determining officers had probable cause to search a defendant's vehicle "because [an officer] smelled marijuana when [the defendant] opened the car door"); *United States v. Walker*, 840 F.3d 477, 484 (8th Cir. 2016) (noting that the smell of unburned marijuana in a vehicle "provided probable cause to search the car"); *United States v. Beard*, 708 F.3d 1062, 1065 (8th Cir. 2013) ("The smell of marijuana in a vehicle can establish probable cause . . . ."); *United States v. Peltier*, 217 F.3d 608, 610 (8th Cir. 2000) ("[T]he smell of marijuana gave the deputy probable cause to search Peltier's

> truck for drugs."). And we have applied the same analysis when the odor emits from an apartment. *See Miller v. Sigler*, 353 F.2d 424, 427 (8th Cir. 1965) (noting that an officer's statement that he detected the smell of marijuana coming from a particular room was sufficient to establish probable cause to search the room). This is consistent with the Supreme Court's longstanding guidance that the presence of odors "might very well be found to be evidence of most persuasive character." *See Johnson v. United States*, 333 U.S. 10, 13 (1948); *see also Arizona v. Gant*, 556 U.S. 332, 339 (2009) (noting that an officer who smelled burnt marijuana and saw an envelope marked "Supergold," a name associated with marijuana, had probable cause to conduct a search (citing *New York v. Belton*, 453 U.S. 454 (1981)).

United States v. Tate, 139 F.4th 678, 682 (8th Cir. 2025). Notably absent from any case relied upon by the Eighth Circuit is a law enforcement officer's scent tracking ability being afforded the same reliability as a trained and certified canine. But the Eighth Circuit goes a step farther and creates a rebuttable presumption of reliability, which is conspicuously absent in prior case law for good reason.

The Eighth Circuit reached this perplexing outcome by conflating the officer's general familiarity of the odor of marijuana, with the far more exacting process of tracking an odor to its source as Off. Collins dubiously claimed. Tate has never claimed that law enforcement officers cannot identify the smell of marijuana. Anyone can. But identifying an odor is radically different and far less prone to mistake than tracking an odor to its source. For that reason, cases where probable cause was based on an odor emanating from a vehicle or other readily identifiable isolated source are fundamentally misleading when applied to the facts of the instant case.

The Eight Circuit circumnavigates Tate's argument that nothing in the record indicates Off. Collins could reliably track the smell of marijuana by stating "[w]e are satisfied that nearly a decade of experience in law enforcement and <u>some drug</u>

identification training sufficiently qualified Officer Collins to identify the scent of marijuana." *Id.* at 683 (emphasis added). This again misstates Tate's argument and ultimate issue. Tate is not arguing a law enforcement officer cannot identify the scent of marijuana. They can. Identification of marijuana is meaningfully different than tracking the scent of marijuana throughout a building and identifying the precise door from which the scent is emanating. Without some indicia of reliability, a law enforcement officer's bald assertion that they tracked a scent through multi-unit building to one door among many cannot satisfy probable cause without accepting an intolerable risk of abuse. Tellingly, a probable cause finding based on the sensory perception of weak stimuli, such as an odor, is scientifically problematic. *See* Doty RL, Wudarski T, Marshall DA, Hastings L. *Marijuana odor perception: studies modeled from probable cause cases*. Law and Human Behavior. 223, 224 (2004). The only study looking at this precise issue establishes, "a blanket acceptance of testimony based upon reported detection of odors for probable cause is questionable." *Id.* at 232. Unfortunately, the district court and Eighth Circuit accepted Off. Collins's improbable sense of smell despite the record conclusively showing the officer had no training, no experience, applied no doctrine, and obtained no corroborating information. Even a canine unit must provide evidence of satisfactory performance and training for a court to trust the reliability of their alert. *See Harris*, 568 U.S. 237, 246 (2013). Off. Collins' sense of smell is certainly less accurate than a canine specifically bred and trained for scent detection and tracking. As discussed in *Harris*, "the question—similar to every inquiry into probable cause—is whether all the facts

surrounding [an] alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime. A sniff is up to snuff when it meets that test." *Id*. at 248. Off. Collins' uncorroborated assertion fails that test.

A trained, tested, and certified canine, having no ulterior motive or subjective intent, may under appropriate circumstance, with proper foundation for reliability, provide sufficient Fourth Amendment safeguards to establish probable cause by "smelling room doors." *Id*. However, an officer possesses subjective intent, no training, and inferior olfactory senses. The Eighth Circuit has effectively delegated the warrant requirement to the discretion of the police in situations where any officer states they tracked the scent of marijuana to a certain location. "If [an officer's] subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers, and effects,' only in the discretion of the police." *Beck v. Ohio*, 379 U.S. 89, 97 (1964). The Supreme Court's prescient warning in *Beck* rings true in *Tate*.

Off. Collins readily admitted under oath that he did not have any training, experience, or special ability to detect marijuana and track its odor. Docket entry No. 69 (October 3, 2023). The only evidence offered was that, despite a complete lack of training and experience, he tracked the scent of marijuana like a bloodhound throughout the hotel until it just happened to find the room of the person he and MANTF were investigating for a fentanyl related drug conspiracy. *Id.* Tellingly, no marijuana or marijuana smoking paraphernalia was found despite the dubious

inference Off. Collins invited the issuing court to draw. His conclusory statements are not enough to establish probable cause. *See Gates*, 462 U.S. at 239. Off. Collins' bare allegation that his olfactory sense for the odor of marijuana was so acute and directionally keen that it led him to Tate's door, to the exclusion of every other door and individual on the premises, is an unreliable conclusory statement. As *Beck* foretold, blind acceptance of the unreliable conclusory statement welcomes substantial abuses.

Harris counsels the Court to view law enforcement methods through the lens of a reasonably prudent person. 568 U.S. at 248. The Supreme Court has long held an expert's testimony must be based on "a reliable foundation" to determine whether the expert is qualified to provide a testimonial opinion. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 597 (1993). It erodes Fourth Amendment protections to credit a subjectively intended lay witness's scent tracking opinion as inherently reliable without a similar benchmark for foundation and qualification. A law enforcement opinion based on experience must still contain indica of reliability. *See United States v. Hermanek*, 289 F.3d 1076, 1096 (9th Cir. 2002) (error to credit law enforcement opinion without showing of reliable methodology). A reasonable and prudent person would conclude the alleged human scent tracking was improbable, and likely pretextual. Based on the scant information in the warrant application it is equally probable that Off. Collins saw Tate was on the guest list and supplied the scent of marijuana as pretext for a warrant to search the hotel room of an individual vaguely suspected of being part of a fentanyl conspiracy. It bears repeating—law

enforcement failed to find marijuana or marijuana paraphernalia—but found what they were actually looking for but lacked probable cause to seek — fentanyl.

Even if viewed in the light most favorable to Off. Collins, many options were available to reliably confirm or dispel his hunch. He testified to requesting canine support on past occasions, and that the BPD had four canine units available in its arsenal. Tr. 18:12-19:10. A reasonable inference could be drawn that Off. Collins knew Tate was in the room and wanted access to the room to search for the missing fentanyl on a hunch without drawing suspicion. But setting aside the risks posted by the officer's subjective intent, which is easily concealed, inherently unreliable human scent tracking alone cannot substitute for demonstrable probable cause.

A canine could have ferreted out the odor with sufficient reliability to protect our Fourth Amendment. Canine support was not requested. Witnesses could have been questioned concerning the odor. If they were, they did not corroborate the allegation and were excluded without disclosure. At least five other officers entered Tate's room. Not one corroborated Off. Collins' claim. In fact, the presence of <u>any</u> other witness to the odor was conspicuously absent from the application and the record. In a similar circumstance, smelling a 'strong' odor of marijuana over twenty feet from the source and another officer's inability to smell the odor were material omission from a warrant and suppression was granted. *See United States v. Yorgensen*, No. CR15-4043-MWB, 2015 WL 5787014, at *8 (N.D. Iowa Oct. 2, 2015). The same rationale must govern this case. "The affidavit presented in support of a search warrant must contain adequate supporting facts about the underlying circumstances

to show that probable cause exists for the issuance of the warrant." *United States v. Weaver*, 99 F.3d 1372, 1377 (6th Cir. 1996). "[F]rom whatever source, the information presented must be sufficient to allow the official to independently determine probable cause; 'his action cannot be a mere ratification of the bare conclusions of others.'" *Id.* (quoting *Gates*, 462 U.S. at 239). In addition to reliability and corroborating information, the distance from the hotel entrance to Tate's room was crucial information for the court to determine if probable cause existed. It was notably absent. If any other officers or witnesses did or did not smell the marijuana, this information would be crucial to a judicial determination of probable cause. This too was absent. It is not the duty of a law enforcement officer to make a probable cause determination, but for a magistrate to meaningfully evaluate the "crucial information" provided to determine whether probable cause exists to issue a warrant. *Gates*, 462 U.S. at 283 (1983). Here, Off. Collins failed to provide, and the magistrate failed to demand credible reliable information to establish probable cause.

Even if the Supreme Court were to overlook the inherent unreliability of Off. Collins' version of events, there was no information provided to determine who had been in or around room 118 and whether they were legally allowed to possess marijuana. The district court noted that Tate could not have possessed a state issued medical marijuana card (Docket entry No. 70 at 5 (October 31, 2023)) but ignored the real possibility that someone in the room did, or that marijuana had been consumed by an occupant or passerby and the scent lingered on their cloths or in the air of the enclosed space of the hallway. If Off. Collins' inherently unreliable human scent

tracking is condoned as sufficiently reliable, the Supreme Court must then address the issue of whether the smell of potentially legal marijuana alone can provide probable cause for a search warrant. Room occupancy was not brought to the attention of the issuing magistrate. If it had been, there would be no probable cause to believe that any crime was committed by the alleged presence of the smell alone.

The only other accusations against Tate in the warrant application are that he had a Michigan identification and wanted a working safe. *Id.* Neither of these facts would make a reasonably prudent person believe Tate's room contained evidence of a crime. *Reid v. Georgia* is instructive in this regard. 448 U.S. 438 (1980). In *Reid*, a DEA agent suspected an individual of criminality based on the individual fitting a "drug courier profile," namely: (1) he arrived from Fort Lauderdale, a place of origin for cocaine, (2) he arrived in the morning, (3) his companion tried to conceal the fact they were together, and (4) they had no luggage other than shoulder bags. *Id.* at 440. The Supreme Court concluded, as a matter of law, these facts did not rise to the level of reasonable suspicion, a far cry from probable cause. *Id.* at 441-42.

Tate's circumstance is analogous to *Reid*. Off. Collins swore Michigan was an illicit drug source state to North Dakota, without indicia of marijuana commonly originating from Michigan. It is a dubious claim given the fact that marijuana is legal in surrounding states and medical marijuana and legal hemp are widely available for purchase within walking distance of the hotel. In truth, it was not the alleged marijuana's source state, but Tate's source state, that formed the basis of Off. Collins' hunch. Officers believed Tate to fit a "drug courier profile" after finding him in Wells'

residence, which was conveniently omitted from the warrant application. This is evidenced by the over-the-top investigation briefing and large contingent of MANTF officers to execute a search warrant that merely alleged the minor infraction of ingesting marijuana. *See* N.D.C.C. §§ 19-03.1-22.3;19-03.1-23;12.1-32-01. Probable cause that someone committed a crime, even an infraction level offense, *i.e.* ingesting marijuana, is not the same as probable cause to search a home for evidence of that crime. To justify the search, there must be a temporal nexus between the house to be searched and the evidence sought. *See United States v. Green*, 634 F.2d 222 (5th Cir.1981). It is only necessary that the facts and circumstances described in the affidavit would warrant a person of reasonable caution to believe that the articles sought were located "at the place to be searched." *United States v. Maestas*, 546 F.2d 1177, 1180 (5th Cir.1977). Nothing in the affidavit reliably shows a reasonably prudent person there would be evidence of ingestion or possession of marijuana found in Tate's hotel room. As a result, the warrant lacked probable cause and a grant of certiorari is necessary to correct this injustice.

Because the initial warrant lacked probable cause, any evidence seized during the first or second search should have been subject to the exclusionary rule. In *Segura v. United States*, the Supreme Court held that when an illegal search is the "but for" cause of the discovery of the evidence, it must be suppressed. 468 U.S. 796, 815 (1984). Without the illegal search of Tate's hotel room, none of the evidence at issue would have been found and the amended warrant would not have been issued. Said another way, the initial taint of the defective warrant was not corrected. As such, all evidence

found, whether pursuant to the initial or amended warrant, should have been suppressed. A grant of certiorari is necessary to ensure this type of injustice does not continue to occur within the Eighth Circuit.

Additionally, the Good Faith Exception to the warrant requirement must not provide safe harbor for such abuse. The District Court found that the Good Faith Exception was applicable and Eighth Circuit declined to address the issue. *See Tate*, 139 F.4th at 683, Note 4. The purpose of the exclusionary rule is to deter unlawful police conduct. *United States v. Leon*, 468 U.S. 897, 919 (1984). "Without a valid warrant, or a recognized exception to the warrant requirement, a search violates the Fourth Amendment, and the evidence seized pursuant to the search should be excluded from a trial." *United States v. Farlee*, 757 F.3d 810, 818-19 (8th Cir. 2014). The good-faith exception refuses safe harbor in four circumstances: (1) when the issuing judge is misled by information in the affidavit the affiant knows or should know is false; (2) when the issuing judge completely abandons his judicial role; (3) when the affidavit includes so little indicia of probable cause that official belief in its existence is entirely unreasonable; and (4) when the warrant is so facially deficient that the executing officer cannot reasonably presume it to be valid. *Leon*, 468 U.S. 897, 923 (1984).

The inherently unreliable nature of Off. Collins' claims and conspicuous dearth of corroboration necessary to the magistrate's determination are not the only reason safe harbor must not apply. The affidavit also includes so little indicia of probable cause that belief in its existence is entirely unreasonable. *See Messerschmidt v.*

Millender, 565 U.S. 535, 547 (2012). For over a century, the accepted standard for complex olfactory detection and tracking in the courts and law enforcement community has been certified canines. Substantial state and federal resources are committed to establishing and maintaining these valuable tools, and for good reason, humans cannot detect and track scents with sufficient acuity, accuracy, and reliability. Accepting the Eight Circuit's invitation to lower the bar on scent detection investigations to zero would establish a dangerous precedent with high potential for abuse. It would create an absurd result under which trained and certified canines would be held to much higher evidentiary scrutiny than their ill-equipped and subjectively intended human colleagues. The clear and obvious lack of indicia of reliability contained in the supportive affidavit demonstrates that Off. Collins' claimed existence of probable cause was entirely unreasonable.

Officer Collins' unsupported scent-based claims, without corroboration, failed to meet the reliability standards long recognized in law enforcement, rendering the warrant constitutionally deficient and the resulting evidence inadmissible. These facts are so egregious that the good faith exception cannot apply. Without Supreme Court intervention, the law in the Eighth Circuit will be that law enforcement testimony regarding unverifiable opinions will be credited as true without any indicia of reliable investigative methodology. A grant of certiorari is necessary to correct this injustice and protect the Fourth Amendment rights of all citizens.

II. The Court Of Appeals' Opinion Conflicts With The Decisions Of Other Circuits.

The *Tate* opinion conflicts with published decisions in the Fifth Circuit and United States Supreme Court[4] warranting grant of certiorari. In *Horton*, the Fifth Circuit held that "the sniffing of a dog is no different [from an officer smelling an odor]." 690 F.2d at 477. A canine sniff must contain some indicia of reliability that the canine is a reliable detector of drugs. *Harris*, 568 U.S. at 249. Yet, in *Tate*, there was no indica of reliability to show Off. Collins could credibly track an odor. If a dog sniff is no different than a law enforcement sniff under *Horton* there must be a showing of reliability in the officer's ability to track the scent. *Tate* conflicts with *Horton* by assuming away any meaningful inquiry into the reliability of police scent tracking beyond a standard familiarization with the odor of marijuana.

In *Beck v. Ohio* the Unites States Supreme Court presciently warned, "[i]f [an officer's] subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers, and effects,' only in the discretion of the police." Accepting untrained human scent tracking as inherently reliable without other indicia of reliability or corroboration, would convert the objective reasonableness standard into a subjective honor system. Tate does not argue officers who smell marijuana should be required

[4] *See, e.g.*, *Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470, 477 (5th Cir. 1982); *Beck v. Ohio*, 379 U.S. 89, 97, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964); *Illinois v. Gates*, 462 U.S. 213, 239, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); and *Florida. v. Harris*, 568 U.S. 237 (2013).

to offer the foundation for reliability required of a canine. But there is one constant under the law, no matter who the witness is, their assertion must be reliable.

The Supreme Court outlines the rubric to assess canine tracking reliability in *Harris*, 568 U.S. 237 (2013). The Court indicated that whether or not probable cause exists from "a dog's alert should proceed much like any other [probable cause determination] […] If the State has produced proof from a controlled setting that a dog performs reliably in detecting drugs, and the defendant has not contested that showing, the court should find probable cause. But a defendant must have an opportunity to challenge such evidence of a dog's reliability[.]" *Id*. at 239. Here, the opinion assumes Off. Collin's reliability despite the proven absence of training or experience relevant to scent tracking. There is no precedent upon which to hold a carefully bred, trained, and certified canine to a much higher standard of reliability for olfactory investigations than their ill-equipped, subjectively intended, human colleagues. The *Tate* opinion assumes away the reliability requirement and creates a rebuttable presumption that cannot be meaningfully approached because the requisite training and experience remains a mystery. If this precedent stands, defendants in the Eighth Circuit will have no practical or meaningful opportunity to challenge the reliability of such assertions made by law enforcement. As a result, law enforcement will be incentivized to refrain from using reliable methods that can be challenged in favor of simply making it up as they go because their statements will be credited as true without any further analysis or meaningful confrontation. This new paradigm created by the Eighth Circuit conflicts with *Harris* and the well-

established Fourth Amendment requirements of reliability and objective reasonableness, meriting certiorari.

III. The question presented is recurring and important.

This case exists squarely at the intersection of Fourth Amendment rights, evolving cannabis laws, and public doubt in the credibility of law enforcement practices. Americans are increasingly concerns with expanding law enforcement power. Tate's case provides a unique opportunity for the United States Supreme Court to carefully consider and particularly define a reliability benchmark necessary for the government to gain access to a home. As many states legalize marijuana and allow it for medicinal purposes, courts are re-evaluating whether the odor of marijuana alone provides sufficient probable cause for a search, leading to new legal precedents that impact law enforcement practices and individual liberties.[5] Said another way, judicial deference to Off. Collins unsupported claims substantially erodes Fourth Amendment protections at a time in our history when credible probable cause determinations are of critical importance. It invites arbitrary unreasonable intrusions, undermines public trust, and disregards the growing body of legal precedent recognizing the diminished probative value of marijuana odor in jurisdictions where its possession is no longer inherently criminal.

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[5] *Ford v. State, 400 So. 3d 838, 844 (Fla. Dist. Ct. App. 2025)* (holding that odor of illicit substance alone does not provide probable cause); *Commonwealth v. Cruz*, 945 N.E.2d 899, 914 (2011) (holding that the smell of burnt marijuana alone does not justify a vehicle search following the decriminalization of small amounts of marijuana); *State v. Senna*, 79 A.3d 45, 52-53 (2013) (holding marijuana odor alone does not establish probable cause); *State v. Sisco,* P.3d 549, 554 (2016) (holding that marijuana odor must be evaluated under the totality of the circumstances and is not automatically sufficient for probable cause).

The Supreme Court now has an opportunity to reaffirm its commitment to the Fourth Amendment, reject a *de facto* general warrant, and clarify the limits of law enforcement power. Americans are increasingly aware of the expanding reach of law enforcement, and they deserve assurance that their rights will not be sacrificed to expedience or unverifiable claims. No court—state or federal—should endorse a standard that permits warrantless searches based on the untrained olfactory impressions of officers without corroboration or reliability. Such a standard is not only scientifically indefensible, it is constitutionally intolerable.

IV. This case is an ideal vehicle for the question presented.

This case squarely presents the issue of whether a law enforcement officer's untrained and uncorroborated tracking of marijuana odor through a multi-unit hotel, without canine assistance or independent verification, provides sufficient reliability to establish probable cause under the Fourth Amendment. There could be no better fact pattern for the United States Supreme Court to decide this important issue.

CONCLUSION

The Supreme Court has an opportunity to reaffirm the integrity of Fourth Amendment. As cannabis laws evolve, law enforcement practices adapt, and public confidence in institutions wanes the constitutional requirement of probable cause must remain firmly anchored in objective, reliable evidence—not subjective impressions and the unverifiable claims. The notion that an officer's untrained and uncorroborated claim of detecting and tracking marijuana odor, absent canine assistance or independent corroboration, could justify a warrantless search is an

untenable paradigm that invites substantial abuse. Accordingly, Tate respectfully requests a grant of certiorari.

Dated this 9th day of October, 2025.

Respectfully submitted,

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APPENDIX

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