# United States Court of Appeals
## For the Eighth Circuit

No. 24-2617

United States of America

*Plaintiff - Appellee*

v.

Leonard James Tate

*Defendant - Appellant*

Appeal from United States District Court
for the District of North Dakota - Western

Submitted: March 20, 2025
Filed: June 5, 2025

Before GRUENDER, BENTON, and SHEPHERD, Circuit Judges.

SHEPHERD, Circuit Judge.

A police officer walked into a hotel, smelled marijuana, and tracked the scent door to door until he identified the room from which he believed the scent was emanating. After learning more about the occupant of the hotel room, the officer obtained a warrant to search the room and found fentanyl, cash, firearm parts, and more. The occupant of the hotel room, Leonard Tate, was charged with three drug-related crimes. He moved to suppress the evidence found in the hotel room.

The district court[1] denied the motion and Tate pled guilty to one count of conspiracy, preserving his right to appeal the district court's suppression order. He now exercises that right. Having jurisdiction under 28 U.S.C. § 1291, we affirm.

I.

One afternoon in August 2022, Bismarck Police Department Patrol Officer[2] Zachary Collins walked into a local hotel as part of his routine patrol and smelled marijuana in the front entrance. He then "smell[ed] room doors," going door to door until he "was able to detect an odor of marijuana emitting from [R]oom #118." After identifying the scent coming from Room 118, he continued down the hall, smelling a few more doors in the area to confirm the marijuana smell was not coming from a nearby room.

Confident that the smell was coming from Room 118, Collins asked a hotel employee to provide him with a guest list. The list showed that Room 118 was being rented to Tate, who had presented a Michigan ID when he had checked into the hotel. Collins had investigated Tate before and knew Tate had a criminal history involving drugs and weapons. Tate's name did not appear in North Dakota's identification systems, which meant he could not legally possess marijuana in the state. See generally N.D. Cent. Code § 19-24.1. Collins also learned that Tate had originally booked his room for just one night, but had extended his stay an additional night. Finally, hotel staff told Collins that Tate had specifically requested that he be given a room with a safe and that he had informed staff his safe was not working when he first checked in.

Based on what he had learned, Collins sought a warrant to search Room 118. In his affidavit in support of the search warrant, Collins stated that he had identified

[1]The Honorable Daniel M. Traynor, United States District Judge for the District of North Dakota.

[2]Collins has since been promoted to investigator.



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Room 118 based on smell—something he had been trained to do. He also included what he had learned about Tate and noted that "it is not uncommon for individuals to come from Michigan to North Dakota to sell illicit drugs," that "it is not uncommon for these individuals to stay at hotel rooms, extend[ing] their stay day to day," and that "[i]t is common for safes to be used to store cash, illicit drugs[,] and firearms." Finally, he briefly summarized Tate's applicable criminal history and stated his belief that there was probable cause to believe marijuana and related paraphernalia were present in Room 118.

The warrant was issued that evening and executed the following morning. Tate, who had been alone in Room 118, was detained in the hotel lobby prior to the search of the room. Inside Room 118, officers found 2,879 fentanyl pills and more than $15,000 in cash in the safe. They also discovered firearm parts and a postal service receipt of a package shipped to Michigan. Pursuant to department practice, Collins updated his affidavit to include the items discovered during the search and obtained an amended search warrant before seizing the items found.

Tate was charged with three drug-related crimes: (1) conspiracy to distribute and possess with intent to distribute controlled substances, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B), and 846, (2) possession with intent to distribute controlled substances, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B), and 18 U.S.C. § 2, and (3) possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. §§ 924(c)(1)(A) and 2. He filed a motion to suppress, arguing that the search warrant was not supported by probable cause or the good-faith exception[3] and

[3]While evidence obtained in the absence of a valid warrant must generally be excluded, "[u]nder the . . . good-faith exception, disputed evidence will be admitted if it was objectively reasonable for the officer executing a search warrant to have relied in good faith on the judge's determination that there was probable cause to issue the warrant." United States v. Norey, 31 F.4th 631, 635 (8th Cir. 2022) (citation omitted); see also United States v. Leon, 468 U.S. 897, 919-21 (1984) (establishing the good-faith exception). Here, Tate argues not only that the warrant was invalid, but also that Officer Collins's reliance on it was not objectively reasonable.

that the evidence obtained because of the warrant—the fentanyl, cash, firearm parts, and paraphernalia—should thus be excluded. He also argued the search exceeded the scope of the warrant. Following a hearing, the district court determined the warrant was supported by sufficient probable cause, its scope was not exceeded during the search, and the good-faith exception would apply even if probable cause were lacking. The court thus denied the motion. Pursuant to a plea agreement that preserved his right to appeal the denial of the motion to suppress, Tate pled guilty to the conspiracy charge in exchange for the dismissal of the other two charges. He was sentenced to 48 months' imprisonment and 4 years of supervised release and now appeals the denial of the motion to suppress.

II.

On appeal, Tate argues the district court erred in denying the motion to suppress because the search warrant was not supported by probable cause. He claims the good-faith exception to the search warrant requirement did not apply. He further argues that even if the search warrant were properly granted, the officers exceeded its scope while executing it. "In an appeal from a denial of a motion to suppress, we review the district court's factual findings for clear error and its legal conclusions de novo." United States v. Juneau, 73 F.4th 607, 613 (8th Cir. 2023) (citation omitted).

A.

We first consider Tate's argument that the search warrant was invalid because it was not supported by probable cause. We review de novo the district court's determination that probable cause existed. See United States v. Williams, 616 F.3d 760, 764 (8th Cir. 2010) (citation omitted); United States v. Oliver, 950 F.3d 556, 564 (8th Cir. 2020). "In reviewing whether a warrant was supported by probable cause, our role is to ensure that the issuing judge 'had a "substantial basis for concluding that probable cause existed."'" Juneau, 73 F.4th at 614 (citations omitted). Reviewing courts pay "great deference" to the issuing judge's initial determination of probable cause. Oliver, 950 F.3d at 564 (citation omitted).

Probable cause exists if, "under the totality of the circumstances, a showing of facts can be made 'sufficient to create a fair probability that evidence of a crime will be found in the place to be searched.'" United States v. Johnson, 848 F.3d 872, 876 (8th Cir. 2017) (citation omitted). Because the issuing judge relied solely on Collins's affidavit to determine whether probable cause existed, "only the information 'found within the four corners of the affidavit may be considered'" in our analysis. See Juneau, 73 F.4th at 614 (citation omitted).

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)).

Tate contends that Officer Collins did not have sufficient training to identify the marijuana scent with such specificity. Tate faults the officer's door-to-door



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smelling process for "lacking in corroboration or the indicia of reliability that would apply to the same scent tracking if conducted by a certified canine." But Tate has not pointed to—and we have not found—any case requiring *officers* be subject to the same training standards as *canines* for identifying a common scent such as marijuana. Compare United States v. Sundby, 186 F.3d 873, 876 (8th Cir. 1999) (noting that a dog's positive indication is sufficient to establish probable cause *if* the dog "has been trained and certified to detect drugs"), with Peltier, 217 F.3d at 610 (affirming determination of probable cause based on an officer smelling marijuana without any mention of the officer's training). But see also Walker, 840 F.3d at 482 (noting that officers who smelled marijuana "had been trained to detect [the odor of marijuana] during their training as police officers"). To the extent any training is necessary to track the scent of marijuana, Officer Collins met that requirement. He attested in his affidavit that he was a "trained and licensed" officer with about eight years of experience who had received training "in the recognition of illicit drugs and drug paraphernalia" and who was "familiar with the odor of marijuana because of [his] training and experience as a police officer." We are satisfied that nearly a decade of experience in law enforcement and some drug identification training sufficiently qualified Officer Collins to identify the scent of marijuana.

Tate further argues that our cases on the odor of marijuana lack persuasive force because *identifying* the smell of marijuana is different from *tracking* the smell door to door. This distinction is relevant but not dispositive. Human experience makes clear that a scent is generally strongest from the place it emanates. See Miller, 353 F.2d at 426-27 (affirming the existence of probable cause based in part on officer's statement that "he had made several trips to the described apartments and the odor of marijuana was readily apparent *outside the door of [the defendant]'s room*" (emphasis added)). While pinpointing a smell to a particular room may not always be possible, Officer Collins swore in his affidavit that he successfully identified which room was emitting the marijuana scent, and no reason is offered to doubt his veracity. See id. at 427 ("[W]hen an officer personally states that he detected the odor of marijuana from a particular room in an apartment dwelling,



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certainly this is sufficient probable cause to issue the requested warrant for a search of the room.").

Nor does the lack of marijuana in Tate's room during the search disprove probable cause. Officer Collins noticed the marijuana smell at Tate's hotel room door around 4:20 p.m. The officers did not search Tate's room until about 9:35 a.m. the following day. The marijuana may well have been consumed or removed during that time. Moreover, the probable cause determination was not made based on scent alone. Officer Collins further stated in the affidavit that Tate had come from Michigan, had specifically inquired about the safe in his room, had extended his stay day by day, had a criminal history involving drugs, and was not legally allowed to possess marijuana in North Dakota. 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, see Johnson, 848 F.3d at 876, and thus the district court did not err in denying Tate's motion to suppress.[4]

B.

Tate further argues that even if the warrant was valid, the officers exceeded its scope in executing the warrant. "We review *de novo* whether a seizure violated the scope of a warrant and, therefore, violated the Fourth Amendment." Oliver, 950 F.3d at 564.

Here, the officers' search was within the scope of the warrant. A lawful search warrant "extends to all areas and containers in which the object of the search may be found." United States v. Saddler, 19 F.4th 1035, 1042 (8th Cir. 2021) (citation omitted). Because the search warrant here authorized law enforcement to search for "marijuana" and "paraphernalia to ingest marijuana," it allowed officers "to search in any closet, container, or other closed compartment in the [hotel room] large

[4]Because we resolve this issue on the existence of probable cause, we need not consider whether the good-faith exception to the warrant requirement applied.



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enough to contain" marijuana or such paraphernalia. See United States v. McManaman, 673 F.3d 841, 848 (8th Cir. 2012). Officer Collins testified that the safe—which was about 12 inches wide, 12 inches long, and 6 inches tall—was large enough to hold marijuana. Once officers were lawfully in Tate's hotel room with lawful access to the items in the safe, the plain view doctrine permitted them to "seize . . . without a warrant" those items in which the "incriminating character [was] immediately apparent." See United States v. Class, 883 F.3d 734, 737 (8th Cir. 2018) (citation omitted). Thus, even if the officers had not sought a second search warrant,[5] they would not have exceeded the scope of the first search warrant in seizing items from Tate's hotel room because the incriminating character of the items seized—fentanyl, firearm parts, cash, and related accessories—was immediately apparent. See id. The district court therefore did not err in denying the motion to suppress on this basis as well.

III.

For the reasons stated above, we affirm the judgment of the district court.

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[5]The officers' decision to seek a second search warrant prior to seizing the items in Tate's hotel room was a permissible and commendable act of restraint but has no constitutional significance in this case.

## Appendix B – Court of Appeals Rehearing Order (July 14, 2025)

**UNITED STATES COURT OF APPEALS**
**FOR THE EIGHTH CIRCUIT**

No: 24-2617

United States of America

Appellee

v.

Leonard James Tate

Appellant

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Appeal from U.S. District Court for the District of North Dakota - Western
(1:22-cr-00194-DLH-1)

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**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Erickson did not participate in the consideration or decision of this matter.

July 14, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

Local AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 1

# UNITED STATES DISTRICT COURT

District of North Dakota

UNITED STATES OF AMERICA
v.
**Leonard James Tate**

**JUDGMENT IN A CRIMINAL CASE**

Case Number: **1:22-cr-194**

USM Number: **25517-510**

**Jesse Walstad**
Defendant's Attorney

## THE DEFENDANT:

☑ pleaded guilty to count(s) **1 of the Indictment**

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|---|---|---|---|
| 21 USC § 846 | **Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances (40 grams or more - fentanyl)** | 8/22/22 | 1 |

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☑ Count(s) **2 and 3 of the Indictment** ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

**July 24, 2024**
Date of Imposition of Judgment

Signature of Judge

**Daniel L. Hovland** **U.S. District Judge**
Name and Title of Judge

July 24, 2024
Date

Local AO 245B (Rev. 09/19) Judgment in Criminal Case
Sheet 2 — Imprisonment



DEFENDANT: **Leonard James Tate**
CASE NUMBER: **1:22-cr-194**

## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

**48 MONTHS, with credit for time served.**

☑ The court makes the following recommendations to the Bureau of Prisons:
**The Court recommends the defendant be placed at a correctional facility as close as possible to Detroit, MI to remain close to family. In addition, the Court recommends that the defendant be afforded the opportunity to participate in the Bureau of Prisons' 500-Hour Residential Drug Abuse Program (RDAP).**

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **Leonard James Tate**
CASE NUMBER: **1:22-cr-194**

## SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

**4 YEARS.**

## MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: **Leonard James Tate**
CASE NUMBER: **1:22-cr-194**

## STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

## U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

Local AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 3D — Supervised Release



DEFENDANT: **Leonard James Tate**
CASE NUMBER: **1:22-cr-194**

## SPECIAL CONDITIONS OF SUPERVISION

**1. You must participate in a drug/alcohol dependency treatment program as approved by the supervising probation officer.**

**2. You must totally abstain from the use of alcohol and illegal drugs or the possession of a controlled substance, as defined in 21 U.S.C. § 802 or state statute, unless prescribed by a licensed medical practitioner; and any use of inhalants or psychoactive substances (e.g., synthetic marijuana, bath salts, etc.) that impair your physical or mental functioning.**

**3. You must submit to drug/alcohol screening at the direction of the United States Probation Officer to verify compliance. Failure or refusal to submit to testing can result in mandatory revocation. Tampering with the collection process or specimen may be considered the same as a positive test result.**

**4. You must participate in a program aimed at addressing specific interpersonal or social areas, for example, domestic violence, anger management, marital counseling, financial counseling, cognitive skills, parenting, at the direction of your supervising probation officer.**

**5. You must participate in mental health treatment/counseling as directed by the supervising probation officer.**

**6. As directed by the Court, if during the period of supervised release the supervising probation officer determines you are in need of placement in a Residential Re-Entry Center (RRC), you must voluntarily report to such a facility as directed by the supervising probation officer, cooperate with all rules and regulations of the facility, participate in all recommended programming, and not withdraw from the facility without prior permission of the supervising probation officer. The Court retains and exercises ultimate responsibility in this delegation of authority to the probation officer.**

**7. You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)) other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.**

Local AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties



DEFENDANT: **Leonard James Tate**
CASE NUMBER: **1:22-cr-194**

## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

| | Assessment | Restitution | Fine | AVAA Assessment* | JVTA Assessment** |
|---|---|---|---|---|---|
| **TOTALS** | $ **100.00** | $ | $ | $ | $ |

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| Name of Payee | Total Loss*** | Restitution Ordered | Priority or Percentage |
|---|---|---|---|

| | | |
|---|---|---|
| **TOTALS** | $ **0.00** | $ **0.00** |

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Local AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 6 — Schedule of Payments



DEFENDANT: **Leonard James Tate**
CASE NUMBER: **1:22-cr-194**

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

**A** ☑ Lump sum payment of $ **100.00** due immediately, balance due

☐ not later than _____ , or
☑ in accordance with ☐ C, ☐ D, ☐ E, or ☑ F below; or

**B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

**C** ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

**D** ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

**E** ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

**F** ☑ Special instructions regarding the payment of criminal monetary penalties:
**All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, PO Box 1193, Bismarck, North Dakota, 58502-1193.**

**While on supervised release, the defendant shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

| Case Number<br>Defendant and Co-Defendant Names<br>*(including defendant number)* | Total Amount | Joint and Several Amount | Corresponding Payee, if appropriate |
|---|---|---|---|

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:
**Approximately $15,570.00 in United States currency.**

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NORTH DAKOTA**

| | |
|---|---|
| United States of America,<br><br>Plaintiff,<br><br>vs.<br><br>Leonard James Tate,<br><br>Defendant. | Case No. 1:22-cr-194 |

**ORDER DENYING MOTION TO SUPPRESS**

## INTRODUCTION

[¶ 1] THIS MATTER comes before the Court on a Motion to Suppress filed by the Defendant on August 14, 2023. Doc. No. 59. The United States filed a Response on September 5, 2023. Doc. No. 65. The Defendant filed a Reply brief on September 12, 2023. Doc. No. 68. A hearing was held on October 3, 2023. See Doc. No. 69. For the reasons set forth below, the Motion to Suppress is **DENIED**.

## BACKGROUND

[¶ 2] On August 21, 2022, Police Officer Zachary Collins ("Officer Collins") was on uniformed patrol and stopped at America's Best Value Inn on Interchange Avenue in Bismarck, North Dakota. Doc. No. 69-7. At the Suppression hearing, Officer Collins stated it was common for him while on patrol to visit hotels like the America's Best Value Inn. When he entered the lobby, Officer Collins immediately noticed the smell of marijuana. Id. Officer Collins went "sniffing" door to door to determine the odor's origin, ultimately leading him to room 118. Id.

After deciding room 118 was the most likely source of the marijuana odor, Officer Collins spoke with the front desk clerk and found out the Defendant was renting room 118. Id. Officer Collins also verified the Defendant's identity from his Michigan identification card and learned he was from Detroit Michigan. Id. Officer Collins learned from the clerk the Defendant specifically requested a room with a safe and contacted the clerk to ask his safe be fixed as it was not working. Id. The clerk also informed Officer Collins the Defendant extended his stay an additional night. Id. Officer Collins then ran a North Dakota records search of the Defendant. Id. Because the Defendant did not hold either a North Dakota identification card or a Driver's License, Officer Collins concluded the Defendant could not hold a North Dakota medical marijuana card. Id.

[¶ 3] Based on the foregoing, Officer Collins sought a search warrant for the Defendant's room to search for marijuana and paraphernalia to ingest marijuana. Doc. No. 69-1. In the affidavit of probable cause, Officer Collins stated he has training in recognizing illicit drugs and marijuana through in-house department training and academy training. Doc. No. 69-7. The affidavit also stated that Michigan is known as an illicit drug source state and based on his training and experience, it is not uncommon for these individuals to stay at hotel rooms and extend their stay. Id. Lastly, Officer Collins stated based upon his training and experience that it is not uncommon for individuals to use hotel safes to store cash, illicit drugs, and firearms. Id. The warrant was authorized on August 21, 2023. Doc. No. 69-1.

[¶ 4] On August 22, 2023, officers met and discussed when to execute the warrant. Doc. No. 65-1. After the officers developed a plan, they dispatched to the hotel where they subsequently apprehended the Defendant when he left his room 118. Id. The search of the Defendant's room

was executed thereafter and unearthed gun parts, shipping label receipts, and the locked safe which upon opening revealed fentanyl pills and cash. Doc. No. 69-11. Upon this discovery, officers terminated the search and sought an amended affidavit to include in the search warrant "fentanyl pills, United States Currency, firearm parts, paraphernalia to ingest controlled substances." Doc. No.69-2. When the amended warrant was issued, officers resumed the search and seized the above-mentioned items. Doc. No. 65-1.

## DISCUSSION

### I. Whether there was probable cause to issue the search warrant.

[¶ 5] The Defendant argues law enforcement did not establish the requisite probable cause to search the Defendant's room and thus the search was unlawful. Doc. No. 60. The United States argues the affidavit attested by Officer Collins was sufficient to meet the probable cause standard and the search was lawful. Doc. No. 65. The Court agrees with the United States that there was probable cause to issue the warrant.

[¶ 6] Under the Fourth Amendment of the Constitution,

> [t]he 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, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Const. amend. IV. Searches conducted pursuant to a warrant are reviewed to determine whether the information in the warrant application and supporting affidavit provided probable cause for the search. Illinois v. Gates, 462 U.S. 213, 236 (1983). "Probable cause exists when, given the totality of the circumstances, a reasonable person could believe there is a fair probability that contraband or evidence of a crime would be found in a particular place." United States v.

Fladten, 230 F.3d 1083, 1085 (8th Cir. 2000) (citing Gates, 462 U.S. at 236). When determining whether probable cause exists, a court does not evaluate each piece of information independently but, rather, considers all the facts for their cumulative meaning. United States v. Allen, 297 F.3d 790, 794 (8th Cir. 2002).

[¶ 7] Throughout history, the Supreme Court has noted that an odor emanating from a public place is sufficient for establishing probable cause. See, e.g., Taylor v. United States, 286 U.S. 1, 6 (1932) (holding officers may rely on a distinctive odor as "a physical fact indicative of a possible crime," but suppressed the evidence because a search warrant was not obtained); Johnson v. United States, 333 U.S. 10, 13-14 (1948) (finding the strong odor of burning opium outside a hotel room door "might very well be found to be evidence of most persuasive character," but suppressed the evidence because officers did not obtain a search warrant before searching the hotel room); see also Florida v. Jardines, 569 U.S. 1, 14 n. 2 (2013) (Kagan, J., concurring) ("If officers can smell drugs coming from a house, they can use that information; a human sniff is not a search, we can all agree.").

[¶ 8] Although the text of the Fourth Amendment does not specify when a search warrant must be obtained, the Supreme Court has inferred that a warrant must generally be secured. Kentucky v. King, 563 U.S. 452, 459 (2011). It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable. Brigham City v. Stuart, 547 U.S. 398, 403 (2006) (quoting Groh v. Ramirez, 540 U.S. 551, 559 (2004)) (cleaned up). A motel room can be the object of Fourth Amendment protections in much the same way as a home. Hoffa v. United States, 385 U.S. 293, 301 (1966). But the Supreme Court has also recognized this presumption may be overcome in some circumstances because "the ultimate

touchstone of the Fourth Amendment" is reasonableness." Michigan v. Fisher, 558 U.S. 45, 47 (2009) (per curiam) (citing Brigham City, supra, at 403).

[¶ 9] When considering the totality of the circumstances, Officer Collins affidavit in support of the search warrant provides sufficient grounds to establish probable cause. Fladten, 230 F.3d at 1085. Officer Collins attested to his training and experience with detecting marijuana odor. Doc. No. 69-1. The Supreme Court has found detecting the smell of marijuana and finding its origin is sufficient in finding probable cause, and it is sufficient in this case as Officer Collins noticed the smell of marijuana and found the source. Id.; see also Jardines, 569 U.S. at 14 n. 2 (noting if officers can smell drugs coming from a house, they can use that information); Taylor, 286 U.S. at 6 (holding a distinctive odor is a physical fact indicative of a possible crime and is useable in finding probable cause); Johnson, 333 U.S. at 13-14 (finding the strong odor of burning opium outside a hotel room door could be a basis in finding probable cause). Officer Collins knew the Defendant was not a North Dakota resident, and thus could not legally possess medical marijuana within the state. Doc. No. 69-1. That Officer Collins knew based on training and experience that; (1) it was not uncommon for individuals from Michigan to use safes in hotel rooms to store their illicit drugs, guns, and cash; (2) the Defendant requested a room with a safe; and (3) demanded the safe in his room be fixed, is all information at Officer Collins disposal to find probable cause. Id.; Fladten, 230 F.3d at 1085. With all this information, it was reasonable for Officer Collins and the state district judge to conclude there was a fair probability contraband or evidence of a crime to be found in the Defendant's hotel room. Id. (citing Gates, 462 U.S. at 236).

[¶ 10] Of significant importance here is Officer Collins sought and obtained a search warrant before performing a search of the Defendant's room, unlike the cases of Taylor and Johnson where the court found there was probable cause but still suppressed evidence because officers did not secure a search warrant. Taylor, 286 U.S. at 6; Johnson, 333 U.S. at 13-14. Officer Collins exercised caution that ultimately led to lawful search because he did not perform a warrantless search but followed proper procedure and obtained a warrant. The Court is satisfied Officer Collins had sufficient information at his disposal to seek a search warrant and have it granted. Doc. Nos 69-1, 69-2. Therefore, the warrant had sufficient probable cause to justify the search of the Defendant's hotel room.

**II. Whether the Warrant Exceeded its Scope.**

[¶ 11] The Defendant next argues the search warrant was unlawfully expanded beyond the scope permitted by the warrant. Doc. No. 60. The United States asserts the warrant was not impermissibly expanded and was issued with the utmost caution. Doc. No. 65. The Court agrees with the United States.

[¶ 12] "[A] lawful search includes all areas where the items listed in the warrant might be found." United States v. Darr, 661 F.3d 375, 379 (8th Cir. 2011); see also United States v. Johnson, 709 F.2d 515, 516 (8th Cir. 1983) ("A search warrant authorizing the search of defined premises also authorizes the search of containers found on that premises which reasonably might conceal items listed in the warrant."). If officers unlawfully expanded the search beyond the scope permitted by the warrant, then evidence obtained from the impermissible expansion may be suppressed. United States v. Alexander, 574 F.3d 484, 488 (8th Cir. 2009).

[¶ 13] Here, the search was not extended beyond the scope of the warrant. The search warrant clearly stated the Defendant's room was the premises to be searched, and that the premises was believed to conceal marijuana and paraphernalia to ingest marijuana. Doc. No. 65-2.[1] Thus, the warrant permitted a search of any area in the hotel room that would reasonably hide marijuana or marijuana paraphernalia. Darr, 661 F.3d at 379; Johnson, 709 F.2d at 516. Therefore, the officers were permitted to search the locked safe in the room because it could reasonably conceal the marijuana and paraphernalia listed in the warrant. Darr, 661 F.3d at 379; Johnson, 709 F.2d at 516. When officers opened the safe and discovered the fentanyl and cash, they exercised due care by immediately halting their search and requesting an amended search warrant to cover the contents of the safe and the gun parts found in the room. Doc. Nos. 65-1; 69-2.[2] This was not a ploy to skirt the Defendant's Constitutional rights, but a valid exercise of restraint by officers to ensure proper procedures were followed. For the above stated reasons, the warrant was not impermissibly expanded.

### III. The Good-Faith Exception Applies.

[¶ 14] The Defendant then argues the good-faith exception does not apply here because the warrant was based on an affidavit so lacking in indicia of probable cause that an officer's belief in its existence is entirely unreasonable because Officer Collins attested to nothing more than mere conclusions and bare bones assertions. Doc. No. 60. The Defendant also argues Supreme

[1] The search warrant reads Officer Collins "has reason to believe that on the premises known as 1505 Interchange Avenue, Room 118, Bismarck, Burleigh County, North Dakota, there is now being concealed property, namely: marijuana, paraphernalia to ingest marijuana . . . ."

[2] The amended search warrant reads Officer Collins "has reason to believe that on the premises known as 1505 Interchange Avenue, Room 118, Bismarck, Burleigh County, North Dakota, there is now being concealed property, namely: marijuana, paraphernalia to ingest marijuana; fentanyl pills, United States currency, firearm parts, paraphernalia to ingest controlled substances; . . . ."

Court and Eighth Circuit precedent support finding the good faith exception does not apply. Doc. No. 68. The United States argues the good-faith exception can and should apply. Doc. No. 65. The Court agrees with the United States that the good-faith exception applies, and finds precedent supports this conclusion.

**a. The Supporting Affidavit was not so Lacking in Indicia of Probable Cause as to Render Official Belief in its Existence Entirely Unreasonable.**

[¶ 15] Even if the search warrant lacked probable cause, the good faith exception to the exclusionary rule would apply. United States v. Lindsey, 43 F.4th 843, 848 (8th Cir. 2022) (the Court may "consider whether the good-faith exception applies without considering whether probable cause to support the issuance of the search warrant exists."). The purpose of the exclusionary rule is to deter unlawful police conduct. United States v. Leon, 468 U.S. 897, 919 (1984). The Supreme Court in Leon held, "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion." Id. at 922. Much like determining probable cause, the court looks to the totality of the circumstances to determine whether the officers acted in good faith in executing the search warrant. United States. v. Norey, 31 F.4th 631, 635-36 (8th Cir. 2022). In other words, if, in light of all the circumstances, "a reasonably well-trained officer would have known that the search was illegal," then the evidence must be excluded. Id. at 635 (quoting United States v. Williams, 976 F.3d 807, 809 (8th Cir. 2020)). If the opposite is true, then the evidence is not excluded. Id. "Where the alleged Fourth Amendment violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner." Messerschmidt v. Millender, 565 U.S. 535, 546 (2012).

[¶ 16] The Eighth Circuit has explained:

> Pursuant to the good faith exception, evidence is suppressed only if "(1) the affiant misl[ed] the issuing judge with a knowing or reckless false statement; (2) the issuing judge wholly abandoned her judicial role; (3) the supporting affidavit was 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable'; or (4) the warrant was 'so facially deficient' that the executing officer could not reasonably presume its validity."

United States v. Perez, 46 F.4th 691, 697 (8th Cir. 2022) (quoting United States v. Notman, 831 F.3d 1084, 1089 (8th Cir. 2016)). However, if an officer's conduct is clearly illegal, the good-faith exception does not apply. Id.

[¶ 17] Here, it was entirely reasonable for Officer Collins to find there was probable cause. As previously explained, Officer Collins provided factual information in his affidavit that was more than mere conclusory statements and "bare bones" assertions. The information provided in his affidavit was enough for a neutral magistrate[3] to find there was probable cause, a strong indicator Officer Collins acted in an objectively reasonable manner. Millender, 565 U.S. at 546. A reasonably well-trained officer in Officer Collins position would be commended for exercising the caution he exhibited by obtaining both warrants instead of performing warrantless searches. Norey, 31 F.4th at 635. Officer Collins proceeded by the book in seeking a warrant with sufficient information plead in his affidavit to have a search warrant issued. Accordingly, the Court finds even if the warrant lacked probable cause, the good-faith exception would apply under the circumstances.

[3] District Court Judge Daniel Borgen signed off on both the original and amended search warrants in this case.

**b. Supreme Court and Eighth Circuit Precedent Support Applying the Good Faith Exception.**

[¶ 18] The Defendant next argues Supreme Court and Eighth Circuit precedent support finding the good faith exception cannot apply because Officer Collins sniff at Defendant's door amounts to a search akin to a K9 which would require a warrant in this situation. Doc. No. 68. The Court holds Supreme Court and Eighth Circuit precedent supports applying the good faith exception in this case.

[¶ 19] The Defendant's argument may seem compelling but misapplies the holdings in his cited case law. At its core, the Fourth Amendment protects "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." Silverman v. United States, 365 U.S. 505, 511 (1961). The area "immediately surrounding and associated with the home," the curtilage, is "part of [the] home itself for Fourth Amendment purposes." Oliver v. United States, 466 U.S. 170, 180, (1984). However, "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." California v. Ciraolo, 476 U.S. 207, 213 (1986) (quoting Katz v. United States, 389 U.S. 347, 351 (1967)). This is because the purpose of Fourth Amendment analysis is "whether a person has a 'constitutionally protected reasonable expectation of privacy.'" Id. at 211 (quoting Katz, 389 U.S. at 360). Accordingly, it is unreasonable to expect law enforcement officers "to shield their eyes when passing by a home on public thoroughfares." Ciraolo, 476 U.S. at 213. Therefore, law enforcement officers' use of their unenhanced senses in publicly accessible spaces does not amount to a "search" under the Fourth Amendment. United States v. Mitchell, 720 F. App'x 146, 150 (4th Cir. 2018).

[¶ 20] Officer Collins' use of his nose in sniffing at the Defendant's door does not constitute a search. The case of United States v. Mitchell is instructive here. 720 F. App'x 146 (4th Cir. 2018). In Mitchell, the officers were trained and experienced in detecting marijuana. Id. at 148. While patrolling on their bicycles, officers detected a marijuana odor permeating from an apartment and used their unenhanced sense of smell to sniff the windows and doorframes of street level apartments to ascertain the source of the odor. Id. at 150. Officers "followed their nose" to the defendant's door where, upon opening, officers noted a strong marijuana odor wafting from the apartment. Id. Officers detained the defendant outside the apartment while they secured a search warrant. Id. Once the warrant was secured, officers executed the warrant and discovered marijuana and a firearm. Id. at 149. The Fourth Circuit Court of Appeals held the officers' sniffs of window and door frames was "decidedly not a search" because they only used their unenhanced sense of smell to investigate the source of marijuana odor wafting through a public space and thus did not require a warrant. Id. at 152.

[¶ 21] Here, just like how the officers in Mitchell were trained and experienced in detecting the odor of marijuana, Officer Collins is trained and experienced in recognizing illicit drugs, specifically marijuana. Mitchell, 720 F. App'x at 148; Doc. No. 65. Additionally, Officer Collins followed his nose through the public lobby and hallway to the Defendant's door and determined his room was the odor's source. 720 F. App'x at 150; Doc. No. 65. Officer Collins did not need to shield his senses simply because he is an officer in a public place because the Defendant knowingly exposed the marijuana odor to the public. Ciraolo, 476 U.S. at 213. Officer Collins use of his unenhanced senses in the hotel lobby and hallway does not amount to a search within the meaning of the Fourth Amendment because a "sniff is not a search" and thus, he did not need

a warrant. See Jardines, 569 U.S. at 14 n. 2 (noting if officers can smell drugs coming from a house, they can use that information); Mitchell, 720 F. App'x at 150.

[¶ 22] However, the Defendant asserts Jardines, United States v. Davis, and United States v. Burston are favorable authority finding Officer Collins sniff is a search. Jardines, 569 U.S. at 1; United States v. Davis, 760 F.3d 901, 902 (8th Cir. 2014) (decided before Jardines, but holding the use of a drug-sniffing dog on a homeowner's front porch was unlawful, but denied suppression because Leon applied due to officers having executed the search prior to Jardines); United States v. Burston, 806 F.3d 1123, 1129 (8th Cir. 2015) (noting an officer cannot invade a homeowner's curtilage by bringing a dog to sniff in an uncommon area of an apartment for the purpose of gathering evidence without a warrant). However, those cases are distinguishable from the case at hand.

[¶ 23] In Jardines, the Court was asked to determine whether "the government's use of *trained police dogs* to investigate [the exterior of] a home and its immediate surroundings is a search within the meaning of the Fourth Amendment." 569 U.S. at 11-12 (emphasis added). The Supreme Court answered in the affirmative because "the officers' investigation took place in a constitutionally protected area," and was accomplished by an "*unlicensed physical intrusion*" through the use of a narcotics canine. Id. at 7-9 (emphasis added). Indeed, the Supreme Court expressly noted an officer may do what "any private citizen might do" outside a home and be within constitutional limits. Id. at 8 (quoting King, 563 U.S. at 470). But using a "trained police dog to explore the area around the home in the hopes of discovering incriminating evidence" without a warrant is the very type of "unlicensed physical intrusion" prohibited under the Fourth Amendment. Id. at 9. It is in this context that the Supreme Court noted the constitutionality of an

officer's conduct was "limited not only to a particular area but also to a specific purpose." Id. The holdings of Davis and Burston similarly concern themselves with the legality of a dog sniff in the curtilage of a home, not the use of an officer's observations in a public thoroughfare.

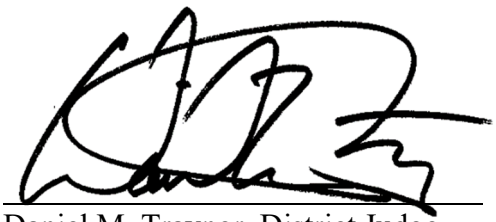
[¶ 24] Asking this Court to construe Jardines as the Defendant has requested would impermissibly extend its ruling to prohibit officers in public places from using their unenhanced senses to investigate criminal wrongdoing. Officer Collins attested he could smell marijuana upon entry to the hotel lobby. Doc. No. 69-1. Just as law enforcement officers are not compelled to "shield their eyes" from plainly visible criminal activity, Ciraolo, 476 U.S. at 213, Officer Collins was not required to plug his nose as he entered the hotel and passed by the Defendant's room through a common area. Because Officer Collins sniff outside Defendant's hotel room was not a search, the evidence obtained in this case cannot be suppressed on that ground. Therefore, this Court finds Officer Collins did not conduct a search by sniffing the Defendant's door.

## CONCLUSION

[¶ 25] For the reasons set forth above, the Defendant's Motion to Suppress is **DENIED**.

[¶ 26] **IT IS SO ORDERED.**

DATED October 31, 2023.



Daniel M. Traynor, District Judge
United States District Court