
In The
Supreme Court of the United States

STATE OF FLORIDA,

Petitioner,

v.

CLAYTON HARRIS,

Respondent.

On Writ of Certiorari to the
Supreme Court of Florida

**BRIEF OF *AMICUS CURIAE* THE RUTHERFORD
INSTITUTE IN SUPPORT OF RESPONDENT**

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QUESTION PRESENTED

1. Whether a dog alert can establish probable cause where there is “scarce” evidence of the dog’s training and no evidence of the dog’s prior track record for alerting with accuracy.

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
INTEREST OF <i>AMICUS</i>	1
SUMMARY OF THE ARGUMENT.....	2
ARGUMENT	4
I. The Fourth Amendment Requires Probable Cause to Be Established by Reliable Evidence	6
II. Serious Questions Exist Regarding the Reliability of Canine Detection Dogs	7
A. Recent Studies Demonstrate the High Error Rates of Canine Detection Dogs..	8
B. No Uniformity or Minimum Standards Exist for Training or Certifying Drug Detection Dogs	12
III. Requiring the Government to Establish the Reliability of the Canine Search Will Not Overburden Law Enforcement	15
CONCLUSION.....	18

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Alabama v. White</i> , 496 U.S. 325, 330 (1990).....	6, 14
<i>Daubert v. Merrell Dow Pharm., Inc.</i> , 509 U.S. 579 (1993).....	16
<i>Florida v. J.L.</i> , 529 U.S. 266, 274 (2000)	16
<i>Florida v. Royer</i> , 460 U.S. 491 (1983)	4
<i>Harris v. State</i> , 71 So. 3d 756, 772 (Fla. 2011).	4, 12, 13
<i>Hernandez v. New York</i> , 500 U.S. 352, 366 (1991) ...	2
<i>Hilton v. State</i> , 961 So. 2d 284, 296 (Fla. 2007).....	6
<i>Illinois v. Caballes</i> , 543 U.S. 405 (2005)	4, 8, 11
<i>Illinois v. Gates</i> , 462 U.S. 213, 230-31 (1983)	6, 7
<i>Jones v. Commonwealth</i> , 670 S.E.2d 727, 733 (Va. 2009)	13
<i>Laimé v. State</i> , 347 Ark. 142, 159 (2001)	10
<i>Maryland v. Pringle</i> , 540 U.S. 366, 371 (2003).....	4, 6
<i>State v. Foster</i> , 390 So. 2d 469, 470 (Fla. Dist. Ct. App. 1980)	13
<i>State v. Foster</i> , 252 P.3d 292, 296 (Ore. 2011) ..	13, 14
<i>Time, Inc. v. Firestone</i> , 424 U.S. 448, 463 (1976).....	2
<i>United States v. \$242,484.00</i> , 351 F.3d 499, 511 (11th Cir. 2003).....	10
<i>United States v. Clarkson</i> , 551 F.3d 1196, 1200 (10th Cir. 2009).....	13
<i>United States v. Diaz</i> , 25 F.3d 392, 394 (6th Cir. 1994).....	5, 7

<i>United States v. Florez</i> , 871 F. Supp. 1411, 1420 (D.N.M. 1994).....	5, 17
<i>United States v. Fontenette</i> , No. 07-60028, 2008 WL 4547507, at *11 (W.D. La. Oct. 10, 2008)	7
<i>United States v. Ho</i> , 94 F.3d 932, 936 (5th Cir. 1996).....	6
<i>United States v. Kennedy</i> , 131 F.3d 1371, 1378 (10th Cir. 1997).....	10
<i>United States v. Limares</i> , 269 F.3d 794, 797 (7th Cir. 2001).....	10
<i>United States v. Lingenfelter</i> , 997 F.2d 632, 639 (9th Cir. 1993).....	5
<i>United States v. Longmire</i> , 761 F.2d 411, 417-18 (7th Cir. 1985).....	6
<i>United States v. Place</i> , 462 U.S. 696, 702 (1983)	4
<i>United States v. Scarborough</i> , 128 F.3d 1373, 1378 & n.3 (10th Cir. 1997).....	10
<i>United States v. Trayer</i> , 898 F.2d 805, 809 (D.C. Cir. 1990).....	11

TABLE OF AUTHORITIES—Continued

	Page(s)
Rules	
Fed. R. Evid. 702	16
Other Authorities	
Anna Patty, <i>Sniffer Dogs Get It Wrong Four out of Five Times</i> , Sydney Morning Herald, Dec. 12, 2011, available at http://www.smh.com.au/environment/animals/sniffer-dogs-get-it-wrong-four-out-of-five-times-20111211-1opr.html	9
Code Blue Designs, <i>Managing K9 Sniff Reliability in Your KANINE Records</i> , http://www.kaninesoftware.com/help/videos/k95/Reliability/Reliability.html (last visited Aug. 27, 2012)	15
Code Blue Designs, <i>Our Customers</i> , http://www.codebluedesigns.com/customers.htm (last visited Aug. 27, 2012)	16
Code Blue Designs, <i>Screen Videos: Watch Our Capture Videos to See Just How Easy KANINE 5.0 Is to Use</i> , http://www.codebluedesigns.com/videos.htm (last visited Aug. 27, 2012)	15
Dan Hinkel & Joe Mahr, <i>Drug Dogs Often Wrong: Police Canines Can Fall Short, But Observers Cite Residue and Poor Training As Factors</i> , Chi. Tribune, Jan. 6, 2011, available at 2011 WLNR 3183913 (Westlaw)	8, 13, 14

Eden Consulting Grp., <i>KATS™ Generation 4 K9 Activity Tracking System: Client List & Testimonials</i> , http://www.kats.ca/clients.html (last visited Aug. 27, 2012)	16
Fed. Aviation Admin., Kelly J. Garner et al., <i>Duty Cycle of the Detector Dog: A Baseline Study</i> , at 12 fig. 3 (Apr. 2001), <i>available at</i> http://info.dsiiti.com/Portals/40565/docs/6-8-09duty-cycle-of-police-dog.pdf	8
Laurence Hammack, <i>Drug Dog's Nose Is Good Enough, Judge Rules in Cocaine Case</i> , <i>Roanoke Times</i> , June 30, 2012	10
Lawrence Mower & Brian Haynes, <i>Legal Challenge Questions Reliability of Police Dogs</i> , <i>Las Vegas Rev.-J.</i> (July 9, 2012), <i>available at</i> http://www.lvrj.com/news/legal-challenge-questions-reliability-of-police-dogs-161759505.html	11
Lisa Lit et al., <i>Handler Beliefs Affect Scent Dog Detection Outcomes</i> , 14 <i>Animal Cognition</i> 387 (2011)	9, 10
Nat'l Pub. Radio, <i>Report: Drug-Sniffing Dogs Are Wrong More Often Than Right</i> (Jan. 7, 2011)	8
Nicole Benson, <i>NHP Troopers Sue Department over K-9 Program</i> , <i>KLAS-TV News Las Vegas</i> (June 26, 2012), <i>available at</i> http://www.8newsnow.com/story/18886948/2012/06/26/nhp-troopers-sue-department-over-k-9-program	11
Richard E. Myers II, <i>Detector Dogs and Probable Cause</i> , 14 <i>Geo. Mason L. Rev.</i> 1, 22 (2006)	11

Robert C. Bird, *An Examination of the Training and
Reliability of the Narcotics Detection Dog*, 85 Ky.
L.J. 405, 432 (1997)..... 11, 13, 14

INTEREST OF *AMICUS*¹

The Rutherford Institute is an international nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute specializes in providing *pro bono* legal representation to individuals whose civil liberties are threatened and in educating the public about constitutional and human rights issues. At every opportunity, The Rutherford Institute will resist the erosion of fundamental civil liberties that many would ignore in a desire to increase the power and authority of law enforcement. The Rutherford Institute believes that where such increased power is offered at the expense of civil liberties, it achieves only a false sense of security while creating the greater dangers to society inherent in totalitarian regimes.

The Rutherford Institute is interested in the instant case because it is committed to ensuring the continued vitality of the Fourth Amendment. A decision reversing the Florida Supreme Court would constitute a major step toward police discretion to conduct intrusive vehicle searches based on nothing more than an alert by a dog with undemonstrated training and detection skills. This would erode the

¹ No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Letters from the parties consenting to the filing of this *amicus* brief have been filed with the Clerk of the Court.

bedrock requirement of probable cause and would jeopardize all citizens' Fourth Amendment rights.

SUMMARY OF THE ARGUMENT

An alert by a purported “drug detection” dog does not, by itself, provide probable cause to search.² To have meaning, the alert must be supported by evidence suggesting that it provides a reasonable basis for belief in guilt. Because the government bears the burden of making that showing, the Florida Supreme Court correctly held that a reasonable basis can come only from records

² Petitioner and the United States mischaracterize the record in asserting that this case involves a “well-trained” or “certified” detection dog. See Br. for Pet’r, at i, 8, 9, 11, 15, 16, 19, 20, 21, 22, 23, 24, 25, 27, 28, 30, 33, 34, 36, 37, 39, *Florida v. Harris*, No. 11-817 (hereinafter “Pet’r’s Br.”) (characterizing the case as involving a “well-trained” narcotics dog); Br. for the United States as Amicus Curiae Supp. Pet’r, at i, 1, 2, 5, 7, 8, 10, 12, 13, 23, 24, 26, 28, *Florida v. Harris*, No. 11-817 (characterizing the case as involving a “trained” detection dog). In fact, the Florida Supreme Court expressly found the record “scarce on the details of Aldo’s training, including whether the trainer was aware of the location of the drugs and whether the training simulated a variety of environments and distractions.” *Harris v. State*, 71 So. 3d 756, 772 (Fla. 2011).

The Florida Supreme Court’s conclusion that there was little evidence establishing that the dog was well- or adequately trained is entitled deference. *Hernandez v. New York*, 500 U.S. 352, 366 (1991) (“[I]n the absence of exceptional circumstances, we should defer to state-court factual findings, even when those findings relate to a constitutional issue.”) (citations omitted); *Time, Inc. v. Firestone*, 424 U.S. 448, 463 (1976) (“Even where a question of fact may have constitutional significance, we normally accord findings of state courts deference in reviewing constitutional claims here.”) (citations omitted).

explaining the dog's training and its real-world track record.

Dog alerts are not inherently reliable. One recent study concluded that officers found drugs or other paraphernalia in only 44 percent of cases in which dogs had alerted and just 27 percent of the time when the driver was Latino.³ Mistaken alerts can be attributed to the dog's ability and training, or to how the dog is handled by the law enforcement officer.

Nor is an unexplained "certification" sufficient by itself to ensure the dog's reliability. Because there are no uniform standards governing certification, the fact that a dog holds a certification—a piece of paper—is meaningless without an accompanying explanation of what went into the certification.

The Florida Supreme Court simply required the State to provide a meaningful basis for assessing whether a particular dog has the training and performance history to make its alert a reliable indicator of the presence of contraband. That requirement comports with established Fourth Amendment principles.

In this case, the State offered *no evidence* that the canine was reliable: the dog was not certified and trained to detect the kind of drugs found during the illegal search, there was no testimony explaining the dog's "satisfactory" rating in training sessions, and there were no field performance records

³ See *infra* note 6 and accompanying text.

documenting the dog’s rate of false-positives. *Harris*, 771 So. 3d at 760, 772. In fact, the same dog alerted to the same car and against the same defendant two months after the stop-in-question, and *no illegal contraband was found*. *Id.* at 761.

ARGUMENT

The Florida Supreme Court held that to establish probable cause based on a canine alert, the State must provide sufficient evidence of the dog’s training and performance to show the “dog’s reliability in being able to detect the presence of illegal substances within the vehicle.” *Harris*, 71 So. 3d at 759. This common sense approach is consistent with this Court’s long-standing rule that probable cause “depends on the totality of the circumstances.” *Maryland v. Pringle*, 540 U.S. 366, 371 (2003).⁴

Standing alone, the simple fact that “a dog is certified should not be sufficient in and of itself to

⁴ Petitioner admits that this Court’s prior decisions do not address the circumstances in which a dog alert can provide probable cause. Pet’r’s Br., at 20. The case, *Florida v. Royer*, 460 U.S. 491 (1983), did not involve a drug detection dog. *United States v. Place* addressed only the “reasonableness under the Fourth Amendment of warrantless seizures of personal luggage from the custody of the owner on the basis of *less than probable cause*” *United States v. Place*, 462 U.S. 696, 702 (1983) (emphasis added). The subsequent opinion in *Illinois v. Caballes*, 543 U.S. 405 (2005), was limited to whether use of a drug detection dog during a routine traffic stop—without more—constituted a search. Indeed, the Court has not previously addressed the issue here, *i.e.*, whether an alert by a “certified” narcotics detection dog provides probable cause to conduct a warrantless search absent sufficient evidence that the dog’s certification was provided under circumstances suggesting that the dog’s alert was likely to be reliable.

establish probable cause.” *United States v. Florez*, 871 F. Supp. 1411, 1420 (D.N.M. 1994) (citation omitted). There is no uniform standard for training and certification for narcotics detection dogs, and therefore no basis that prequalify alerts by such dogs as reliable. Moreover, recent studies have demonstrated that these dogs are prone to high error rates.

Rather, for “a positive dog reaction to support a determination of probable cause, the training and reliability of the dog must be established” through evidence of a dog’s training and performance records. *United States v. Diaz*, 25 F.3d 392, 394 (6th Cir. 1994) (citing *United States v. \$67,220 in U.S. Currency*, 957 F.2d 280, 285 (6th Cir. 1992), which considered dog alert evidence “weak” because “the government did not obtain testimony from the dog’s handler or anyone else familiar with the performance or reliability of the dog”); *United States v. Lingenfelter*, 997 F.2d 632, 639 (9th Cir. 1993) (“A canine sniff alone can supply the probable cause necessary for issuing a search warrant *if the application for the warrant establishes the dog’s reliability.*”) (emphasis added; citation omitted).

Reversal of the Florida Supreme Court’s decision would jeopardize the Fourth Amendment’s constitutional safeguards by permitting searches based on unknown and unsubstantiated training and standards.

I. The Fourth Amendment Requires Probable Cause to Be Established by Reliable Evidence

The government “bears the ultimate burden of proving that the officer had probable cause.” *United States v. Ho*, 94 F.3d 932, 936 (5th Cir. 1996) (citation omitted); *Hilton v. State*, 961 So. 2d 284, 296 (Fla. 2007) (“When a search or seizure is conducted without a warrant, the government bears the burden of demonstrating that the search or seizure was reasonable.”) (citation omitted). *See also* Pet’r’s Br., at 24 (recognizing that “the State has the burden to establish probable cause”). Requiring the opposite—*i.e.*, forcing the defendant to prove the absence of a reasonable suspicion—without knowledge of what the officer based his assessment of reasonable suspicion imposes an “impossible burden.” *United States v. Longmire*, 761 F.2d 411, 417-18 (7th Cir. 1985) (rejecting conclusion that burden of proof was on defendant to show a lack of reasonable suspicion).

Probable cause is established only when there is a “*reasonable* ground for belief of guilt, and [] the belief of guilt [is] particularized with respect to the person to be searched or seized.” *Pringle*, 540 U.S. at 371 (emphasis added; quotation marks and citations omitted). It is, therefore, “dependent upon both the content of information possessed by police and its degree of reliability . . . and [is] considered in the totality of the circumstances—[it is] the whole picture, that must be taken into account” *Alabama v. White*, 496 U.S. 325, 330 (1990) (quotation marks and citations omitted). *See also Illinois v. Gates*, 462 U.S. 213, 230-31 (1983) (“This totality-of-the-circumstances approach is far more

consistent with our prior treatment of probable cause than is any rigid demand that specific ‘tests’ be satisfied by every informant’s tip.”). Although outlining the broad contours of probable cause, this Court repeatedly has emphasized that probable cause cannot be based on “finely-tuned standards” and is a “fluid concept turning on the assessment of probabilities in particular factual contexts—not readily or even usefully, reduced to a neat set of rules.” *Id.* at 232, 235. In other words, the Fourth Amendment requires an assessment of *all* pertinent facts in assessing whether probable cause exists.

When certain evidence—like a dog’s alert—is the linchpin in the probable cause analysis, the government must demonstrate that the information used in making the probable cause determination was reliable and, therefore, reasonable. *See, e.g., Diaz*, 25 F.3d at 393 (“For a positive dog reaction to support a determination of probable cause, the training and reliability of the dog must be established.”) (citation omitted); *United States v. Fontenette*, No. 07-60028, 2008 WL 4547507, at *11 (W.D. La. Oct. 10, 2008) (finding lack of probable cause where officer testified to smelling cocaine but acknowledged he had “no training in detecting the odor of cocaine” and was “not certified as an expert in detecting the odor of cocaine”). The State failed to do so here.

II. Serious Questions Exist Regarding the Reliability of Canine Detection Dogs

Petitioner inappropriately assumes that a certified dog must necessarily be reliable, citing to fictional literature and news articles that do not

directly address the accuracy of canine olfactory senses. *Pet'r's Br.*, at 16-19. Quite to the contrary, sniffs by a trained dog are not inherently reliable. The concept of the “infallible dog . . . is a creature of legal fiction.” *Caballes*, 543 U.S. at 411 (Souter, J., dissenting).

A. Recent Studies Demonstrate the High Error Rates of Canine Detection Dogs

Studies have shown that even well-trained drug detection dogs have a significant false-positive alert rate.⁵ For instance, the Chicago Tribune searched cases spanning a period of three years involving canine sniffs of automobiles.⁶ Dan Hinkel & Joe Mahr, *Drug Dogs Often Wrong: Police Canines Can Fall Short, But Observers Cite Residue and Poor Training As Factors*, Chi. Tribune, Jan. 6, 2011, available at 2011 WLNR 3183913 (Westlaw) (hereinafter “Chicago Tribune Study”). Its analysis found that officers found drugs or other paraphernalia in only 44 percent of cases in which dogs had alerted and just 27 percent of the time when the driver was Latino. *Id.*⁷

⁵ The record below is devoid of evidence on whether Aldo, the dog in question here, would even qualify as a “well-trained” drug detection dog. See *supra* note 2.

⁶ See also Nat'l Pub. Radio, *Report: Drug-Sniffing Dogs Are Wrong More Often Than Right* (Jan. 7, 2011), <http://www.npr.org/blogs/thetwo-way/2011/01/07/132738250/report-drug-sniffing-dogs-are-wrong-more-often-than-right>.

⁷ See also Fed. Aviation Admin., Kelly J. Garner et al., *Duty Cycle of the Detector Dog: A Baseline Study*, at 12 fig. 3 (Apr. 2001), available at http://info.dsiiti.com/Portals/40565/docs/6-8-09_dutycycle_of_police_dog.pdf (finding dogs in

Recently, the double-blind “UC Davis Study” likewise shook pre-existing beliefs that dog alerts are generally reliable. Lisa Lit et al., *Handler Beliefs Affect Scent Dog Detection Outcomes*, 14 *Animal Cognition* 387 (2011) (hereinafter “UC Davis Study”). Over the span of two days, 18 trained and certified drug detection canines and their handlers took part in a meticulously prepared experiment to study the influence of handler bias on narcotics detection dogs’ performance. *Id.* at 389-90.

Experimenters told the human handlers that drugs might be present at the testing site, but in fact, there were no contraband drugs in any of the test areas. Thus, any alerts would be false alerts, and zero alerts would be considered a perfect score. *Id.* at 389. Each team completed two five-minute searches in each of four search areas. *Id.* The results were astonishing: the correct response rate was only 15% (21 clean runs), and the error rate was 85% (123 runs). *Id.* at 390. Only one dog of the 18 trained drug detection dogs did not falsely alert. *Id.* at 390 fig. 1, team 6. The UC Davis Study concluded that the enormous number of false alerts confirmed the hypothesis that handler beliefs influenced the reliability of the trained drug detection dogs. *Id.* at 391, 394.

artificial testing situations return false positives anywhere from 12.5 to 60 percent); Anna Patty, *Sniffer Dogs Get It Wrong Four out of Five Times*, *Sydney Morning Herald*, Dec. 12, 2011, available at <http://www.smh.com.au/environment/animals/sniffer-dogs-get-it-wrong-four-out-of-five-times-20111211-1opr.html> (study demonstrating that 80% of canine searches (11,248 of 14,102 searches) resulted in false positives).

Many courts similarly have recognized that well-trained detection dogs are not infallible and provide false alerts at an alarming rate. *See, e.g., United States v. Kennedy*, 131 F.3d 1371, 1378 (10th Cir. 1997) (describing a dog that had a 71% accuracy rate); *United States v. Scarborough*, 128 F.3d 1373, 1378 & n.3 (10th Cir. 1997) (describing a dog that erroneously alerted 4 times out of 19 while working for the postal service and 8% of the time over its entire career); *United States v. Limares*, 269 F.3d 794, 797 (7th Cir. 2001) (describing a dog that gave false positives between 7% and 38% of the time); *Laipe v. State*, 347 Ark. 142, 159 (2001) (describing a dog that made between 10 and 50 errors); *United States v. \$242,484.00*, 351 F.3d 499, 511 (11th Cir. 2003) (noting that because as much as 80% of all currency in circulation contains drug residue, a dog alert “is of little value”), *vacated on other grounds by rehearing en banc*, 357 F.3d 1225 (11th Cir. 2004).⁸

Even more troubling is that some of the errors are due to potential handler cuing. Three handlers in the UC Davis Study admitted to *intentionally* overly cueing their dogs to alert at certain locations. UC Davis Study, at 392. Two months ago, a group of Nevada Highway Patrol troopers filed a complaint alleging that drug detection dogs were purposely “being trained to operate as so-called trick ponies, or dogs that provide officers false alerts for the

⁸ *See also* Laurence Hammack, *Drug Dog’s Nose Is Good Enough, Judge Rules in Cocaine Case*, Roanoke Times, June 30, 2012 (describing one drug detection dog’s 74% error rate—alerting correctly only 22 of 85 times).

presence of drugs.”⁹ Handler cuing can result in “a search based on the dog’s response to the handler’s emotions rather than its response to the presence of contraband.” Richard E. Myers II, *Detector Dogs and Probable Cause*, 14 Geo. Mason L. Rev. 1, 22 (2006). At least one federal circuit has become “mindful” that “the possibility of unconscious ‘cuing’, may well jeopardize the reliability of dog sniffs.” *United States v. Trayer*, 898 F.2d 805, 809 (D.C. Cir. 1990). If true—that a handler’s errors account for nearly every false alert—an “examination of a handler’s qualifications should receive particular judicial scrutiny.” See also Robert C. Bird, *An Examination of the Training and Reliability of the Narcotics Detection Dog*, 85 Ky. L.J. 405, 432 (1997).

But whether the false positive rate is due to “errors by their handlers [or] the limitations of the dogs themselves,” the bottom line is that an alert by a drug detection dog is not alone sufficiently reliable to establish probable cause. *Caballes*, 543 U.S. at 411 (Souter, J., dissenting). Allowing the State to establish probable cause on nothing more than an

⁹ Nicole Benson, *NHP Troopers Sue Department over K-9 Program*, KLAS-TV News Las Vegas (June 26, 2012), available at <http://www.8newsnow.com/story/18886948/2012/06/26/nhp-troopers-sue-department-over-k-9-program>; Lawrence Mower & Brian Haynes, *Legal Challenge Questions Reliability of Police Dogs*, Las Vegas Rev.-J. (July 9, 2012), available at <http://www.lvrj.com/news/legal-challenge-questions-reliability-of-police-dogs-161759505.html> (discussing Nevada trooper lawsuit and noting that the “American Civil Liberties Union of Nevada has received complaints from people concerned about the reliability of drug dogs . . . [but] the office doesn’t have the expertise to independently verify the claims.”). See also Compl. & Jury Demand, *Moonin v. State*, No. 3:12-cv-00353 (D. Nev. June 26, 2012).

alert by a trained dog, given the error rate and the potential for handler cuing, essentially provides the police with unfettered discretion to conduct a search.

An inquiry that does not look beyond the fact of training and certification ignores “the potential for false alerts, the potential for handler error, and the possibility of alerts to residual odors.” *Harris*, 71 So. 3d at 768. For this reason, the Florida Supreme Court concluded that judges must evaluate probable cause in canine sniff cases based on the totality of the circumstances—including the training and performance record of the dog—and cannot be assessed by looking only to whether someone has been willing to “certify” the dog as trained.

B. No Uniformity or Minimum Standards Exist for Training or Certifying Drug Detection Dogs

In the “the absence of a uniform standard, the reliability of the dog cannot be established by demonstrating only that a canine is trained and certified” because it “imparts scant information about what the dog has been conditioned to do or not to do, or how successfully.” *Harris*, 71 So. 3d at 756 (citing *Matheson v. State*, 870 So. 2d 8, 14 (Fla. Dist. Ct. App. 2003)) (quotation marks omitted). The Florida Supreme Court observed:

[I]f the court relies only on training and certification records and fails to consider other factors concerning the dog’s performance, then the court does not have a complete picture of the numerous circumstances that

necessarily bear on the reasonableness of the officer's belief in the dog's reliability and whether the dog's alert in a particular case indicates a fair probability that there were drugs present inside the vehicle.

Id. at 771.

Training and maintenance programs vary across the country. *Compare United States v. Clarkson*, 551 F.3d 1196, 1200 (10th Cir. 2009) (ten hours a week of maintenance training in K–9 narcotics), *with Jones v. Commonwealth*, 670 S.E.2d 727, 733 (Va. 2009) (training for eight hours every two weeks for both narcotics and utility work), *with State v. Foster*, 252 P.3d 292, 296 (Ore. 2011) (300 total hours of training), *with State v. Foster*, 390 So. 2d 469, 470 (Fla. Dist. Ct. App. 1980) (100 hours training and practice), *with Bird, supra*, at 412 (canine training lasts “only two to six weeks”).

There is similarly little, if any, oversight in most jurisdictions for certification and recertification of narcotics detection dogs. *See, e.g.*, Chicago Tribune Study, *supra* (“The dog teams are not held to any statutory standard of performance in Illinois or most other states . . .”). Florida, for example, does not have certification standards for drug detection dogs.¹⁰ Some courts have acknowledged that because of “the lack of any statutory standards for or official state oversight of the certification process,” certification alone cannot

¹⁰ Br. for Resp't, at 45, *Florida v. Harris*, No. 11-817 (hereinafter “Resp't's Br.”).

possibly establish a dog's reliability. *Foster*, 252 P.3d at 298 n.6.

A bright-line rule that the State can establish probable cause with nothing more than a “certification”—as suggested by Petitioner—would thus dispense with this Court's long-standing requirement that probable cause be justified on consideration of the “totality of the circumstances.” *White*, 496 U.S. at 330. The State would satisfy its probable cause burden simply by representing that the dog had been “certified” by *any* dog training school without *any* obligation to show that the certifying entity was reliable, had used appropriate and accepted training methods, or had in any other way taken steps to assure the sort of real-world reliability that the Fourth Amendment demands.

Further, “[i]nadequate handler training may inhibit the dog's ability to detect narcotics and trigger erroneous alerts.” *Bird*, *supra*, at 424.¹¹ As such, a dog's training and certification says nothing about a dog handler's reliability—both in terms of training or the possibility of cuing. Given “handler error accounts for almost all false detections,” *Bird*, *supra*, at 425, finding probable cause solely on the basis of the dog's training and certification flouts the well-established precedent of reasonableness being established by a totality of the circumstances.

¹¹ See also Chicago Tribune Study, *supra* (“[E]ven advocates for the use of drug-sniffing dogs agree with experts who say many dog-and-officer teams are poorly trained and prone to false alerts that lead to unjustified searches. Leading a dog around a car too many times or spending too long examining a vehicle, for example, can cause a dog to give a signal for drugs where there are none, experts said.”).

Because there are no uniform standards for a drug detection dog's training and certification, this Court should uphold the Florida Supreme Court's ruling and resist Petitioner's attempt to lower the bar for establishing probable cause by creating a new bright-line requirement that training and certification that pre-qualifies detection dogs as reliable.

III. Requiring the Government to Establish the Reliability of the Canine Search Will Not Overburden Law Enforcement

Requiring the State to establish the reliability of a drug detection dog is not overly burdensome. Thousands of local police departments across the country already use software programs to record the reliability of canine searches. For example, Code Blue Designs manufactures the "KANINE" record-keeping software, which allows officers to "properly enter records so that your K9's reliability is accurately recorded" and to "enter a K9 training record."¹² Code Blue Designs lists over 650 law

¹² Code Blue Designs, *Screen Videos: Watch Our Capture Videos to See Just How Easy KANINE 5.0 Is to Use*, <http://www.codebluedesigns.com/videos.htm> (last visited Aug. 27, 2012). See also Code Blue Designs, *Managing K9 Sniff Reliability in Your KANINE Records*, <http://www.kaninesoftware.com/help/videos/k95/Reliability/Reliability.html> (last visited Aug. 27, 2012) (video tutorial on the Kanine 5.0 program boasts that "KANINE enables you to accurately depict your dog's reliability, with *minimal* effort by you") (emphasis added); *id.* (the software program includes a dropdown bar to record "overall proficiency" of the dog, including categories for alert only, alert with remeter and indication, alert-substantiated by find, alert-substantiated by other, alert-unsubstantiated, did not alert

enforcement agencies that use the Kanine 5.0 program.¹³ For the vast majority of cases, therefore, the State need only print out these records and bring them to court. In local jurisdictions that choose not to purchase these software programs, the handler can keep the same basic information—*e.g.*, duration of the stop, type of seizure, no alert/false alert/positive alert—in a log-book for each stop where a canine is deployed.¹⁴

Nor is establishing reliability of evidence a foreign concept. Courts, for example, require anonymous tips from human informants to have an “indicia of reliability” to establish probable cause for a warrantless stop. *Florida v. J.L.*, 529 U.S. 266, 274 (2000).¹⁵ There is no reason to treat drug detection

or indicate, failed to locate person, handler assisted find, handler miss, or K-9 miss).

¹³ Code Blue Designs, *Our Customers*, <http://www.codebluedesigns.com/customers.htm> (last visited Aug. 27, 2012). See also Eden Consulting Grp., *KATS™ Generation 4 K9 Activity Tracking System: Client List & Testimonials*, <http://www.kats.ca/clients.html> (last visited Aug. 27, 2012) (listing hundreds of police departments using the KATS™ record-keeping software for K9 training).

¹⁴ See also Resp’t’s Br., at 37 (noting that “[l]aw enforcement agencies already generate, maintain, and disclose field performance data”).

¹⁵ Similarly, courts require evidence to be reliable in other contexts. In allowing an expert witness to testify, courts make a preliminary determination whether the expert is qualified, considering the expert’s education, training, and experience. Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). The same reasoning applies with equal force for drug detection dogs and probable cause. *Diaz*, 25 F.3d at 394 (finding “principles [of expert witness qualification] to be useful

dogs any differently. *Florez*, 871 F. Supp. at 1424 (“[W]here records are not kept or are insufficient to establish the dog’s reliability, an alert by such a dog is much like hearsay from an anonymous informant, and corroboration is necessary to support the unproven reliability of the alerting dog and establish probable cause.”); *Jones*, 670 S.E.2d at 732.¹⁶

* * *

This Court has long held that determining probable cause requires a careful weighing of the totality of the circumstances. In the context of drug detection dogs in automobile searches, this necessarily requires a showing that the dog’s alert is reliable. Because of the inherent unreliability of drug detection dogs and the lack of uniformity and minimal standards in training and certification, however, training and certification alone cannot satisfy even minimum requirements of reliability. The government has the ultimate burden of establishing probable cause, and therefore, should be required to present more—field records or any other evidence that demonstrates an indicia of reliability.

guides in evaluating the training and reliability of a drug detection dog for the purpose of determining if probable cause exists based on the results of the dog’s sniff”).

¹⁶ Petitioner argues that trained dogs are nothing like anonymous informants because dogs have no “hidden motivation” in alerting. Pet’r’s Br., at 27-28. This ignores, of course, that the dog’s handlers may have just such a hidden motivation. *See supra* Part II.A (discussing handler mis-cueing). Absent evidence establishing the reliability of the dog’s detection ability, in any event, any statement about the dog’s motivation is pure speculation.

CONCLUSION

For the reasons set forth above, the decision below should be affirmed.

Respectfully submitted,

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