CASE NO. 25-5078

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff/Appellee,

v.

LEE SCOTT HOLT,
Defendant/Appellant.

On Appeal from the United States District Court
for the Northern District of Oklahoma

The Honorable John F. Heil,
Chief United States District Judge
Case No. 24-CR-50-JFH-1

RESPONSE BRIEF OF THE UNITED STATES

Oral argument is not requested

There are no attachments to this brief

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Statement of Prior or Related Appeals

There are no prior or related appeals.

Statement of Jurisdiction

A federal grand jury charged Lee Scott Holt with federal drug and firearms offenses. (R. Vol. I at 421–23, 343–45, 385–90). The district court had subject matter jurisdiction under 18 U.S.C. § 3231. After a trial in which a jury found him guilty of all counts, the district court sentenced him to 180 months' imprisonment. (*Id*. at 421–24, 458). Holt appeals his convictions, and this Court has jurisdiction under 28 U.S.C. § 1291. (*Id.* at 17).

Issues Presented for Appeal

(1) Did a tribal warrant for a house where multiple types of drug paraphernalia were found in the trash and where an Indian resident had multiple convictions for drug and firearm offenses provide a substantial basis for a tribal judge's probable cause determination?

(2) Did the district court correctly hold that agents relied on the tribal warrant in good faith even though they also obtained a state court warrant that contained more information than the tribal warrant?

(3) Did the district court rightly deem a search not "federal in character" such that a federal warrant was unnecessary under Rule 41(b)(1)?

(4) Did the district court abuse its discretion in denying a motion for an informant's identity where the informant acted as a mere tipster and did not participate in or witness the charged crimes?

Statement of the Case

A. Officers developed information that drugs were being dealt out of a Collinsville house where an Indian and a non-Indian lived.

In June 2023, the Oklahoma Bureau of Narcotics began working with the Rogers County DA's office to investigate Michael Leach, a Claremore, Oklahoma resident who they suspected was dealing drugs. (R. Vol. I at 120). They used a confidential informant to buy methamphetamine from Leach. (*Id.*). Leach told the OBN informant that he was getting his drugs from a source located "up the hill." (R. Vol. I at 77).

In late June, the agents applied for and obtained a warrant from an Oklahoma magistrate judge to place a GPS tracking device on Leach's car. (*Id.* at 77, 120–21). They tracked the car traveling from Claremore to Collinsville nine times. (*Id.* at 77). Each time, Leach would drive to Collinsville by way of Keetonville Hill, a well-known landmark between the two towns. (*Id.*). He would stop at a house on North 21st Street in Collinsville, stay there a short time, and leave. (*Id.*).

One day in July, the informant told the agents that Leach was planning to meet his supplier that evening. (*Id.* at 78, 121). They tracked Leach making the trip from Claremore to the Collinsville house and back that night, following his usual route. (*Id.* at 78, 121). About a month later, OBN looked for evidence in

the trash on the curb outside the Collinsville house. (*Id.* at 122). They found drug paraphernalia, including syringes and two baggies that field-tested positive for methamphetamine. (*Id.* at 123). They sent the baggies to the Oklahoma State Bureau of Investigation crime lab for analysis. (*Id.* at 72). In the trash they also found mail addressed to Lee Holt and Jennifer Harrington at the North 21st Street address. (*Id.*).

When the agents checked Holt's and Harrington's criminal histories, they found that Holt had convictions from Oklahoma, Texas, and Missouri involving drugs and firearms. (*Id.* at 73, 124). A records check showed that Holt was a member of the Cherokee Nation and that Harrington was not a tribal member.[1] (*Id.* at 123). The Collinsville house sits within Tulsa County and the boundaries of the Cherokee Nation Reservation. (*Id.* at 67, 262).

B. Because one resident of the house was Indian and the other was non-Indian, the state agents sought both tribal and state search warrants.

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[1] There is no reliable way to prove that someone is *not* an Indian. *See United States v. Hebert*, --- F.4th ---, 2025 WL 3210787 at *10 n.12 (10th Cir. Nov. 18, 2025); *see also id.* at *11–12 (Hartz, J., concurring) ("Who can the government find to establish that Defendant's complete family tree contains no Indian blood whatsoever and that he has no ties to a recognized tribe anywhere in this country?"). However, below all parties and the district court agreed that OBN had been able to determine, at least for purposes of probable cause, that Harrington was "not" a tribal member. (*See* R. Vol. I at 123, 177, 303).

In mid-August, two days after searching the trash, the agents prepared to seek a search warrant for the Collinsville house. OBN Agent Tara Winter drafted the affidavit. (*Id.* at 75, 124). Because one of the residents was an Indian and the other one was not, Agent Winter submitted the warrant application to both the Tulsa County district court and the Cherokee Nation tribal court. (*Id.* at 124–25).

Agent Winter attached the same affidavit to each warrant. (*Id.*). It stated that in June, OBN agents had attached a GPS tracking device to a vehicle belonging to a known distributor of methamphetamine. (*Id.* at 71). It further stated that, based on the data from that tracking device, agents had developed the North 21st Street House as a possible "target source of supply for methamphetamine." (*Id.*). It described the drug-related evidence and residency information they found in the trash two days earlier. (*Id.* at 71–73). It also provided photographs of the mail, the baggies with the crystal-like substance, and the syringes. (*Id.* at 72–73).

The affidavit also stated that the agents had checked Holt's criminal records and discovered multiple felony convictions from Oklahoma, Texas, and Missouri involving firearms and drugs. (*Id.* at 73). It listed a 1989 Texas conviction for illegal transfer of a machine gun and 2019 convictions for

offenses including possessing methamphetamine with intent to distribute and illegal firearm possession. (*Id.*). The affidavit explained that, in Agent Winter's training and experience, drug dealers often store drugs, paraphernalia, proceeds, and records at their homes and often keep firearms at their homes for protection. (*Id.* at 74). The affidavit listed both Holt's and Harrington's names and did not state an opinion as to who in the house was dealing drugs. (*Id.*).

The Cherokee Nation magistrate judge approved the application and signed a tribal search warrant. (*Id.* at 124–25). The Tulsa County magistrate judge asked Agent Winter to include "more details regarding the GPS tracker data." (*Id.* at 125). After two sets of revisions adding information to the Tulsa County affidavit detailing how the GPS tracker data had led the agents to the Collinsville house, the Tulsa County magistrate judge approved the state search warrant. (*Id.* at 77–78, 125, 127).

The following week, OBN agents conducted the search. (*Id.* at 141). Three OBN agents participated in the search, including Agent Winter. (*Id.* at 135–36). They were assisted by officers from the Collinsville Police Department and the Cherokee Nation Marshals Service. (R. Vol. I at 62–63, 324). No federal agents participated in the search. (*Id.* at 126).

C. After agents found drugs and guns at the house, a federal grand jury charged Holt and Harrington with narcotics and firearms offenses.

At the Collinsville house, agents found marijuana, over 100 grams of methamphetamine, digital scales, a .357 Rossi revolver, ammunition, and over $4,000 in cash. (R. Vol. I at 285, 324; R. Vol. III at 87–90, 146, 150). They also found Holt's and Harrington's cell phones. (R. Vol. I at 20). The agents brought the evidence to the OBN Tulsa district office for safekeeping. (R. Vol. I at 126). To that point, no federal agents had been involved in the investigation. (*Id.*).

The next day, OBN decided to send the drug evidence to the DEA lab and to contact Homeland Security Investigations to join the investigation. (*Id.* at 126–27, 132–33). With HSI's assistance, the agents obtained federal search warrants and searched Holt's and Harrington's cell phones. (*Id.* at 325). In the phones, they found multiple conversations about drug distribution and about using coded language to conceal drug distribution. (*Id.* at 325, 327).

A federal grand jury charged Holt and Harrington with drug and firearms-related counts. (*Id.* at 326; 421–23; 385–90). The five-count indictment charged both Holt and Harrington with being felons in possession of a firearm, possessing methamphetamine with intent to distribute, maintaining a drug-

involved premises, and possessing a firearm in furtherance of a drug trafficking crime. (*Id.*).

D. Holt moved to suppress the evidence found at the Collinsville house.

Holt moved to suppress the evidence found during the search of the house. (R. Vol. I at 59–69). In the motion, Holt alleged that neither warrant authorized the search and that the good-faith exception did not apply. (*Id.* at 59). The government responded that the Cherokee Nation warrant was supported by probable cause and that the officers applied for and relied on the warrants in good faith. (*Id.* at 95–102). In a reply, Holt added that the search was "federal in character" and that the agents had not complied with Rule 41(b)(1) when they obtained warrants from state and tribal magistrates. (*Id.* at 104–09).

The district court referred the motion to a federal magistrate judge, who held an evidentiary hearing. (*Id.* at 110). At the hearing, Agent Winter testified about the investigation leading to the search of the Collinsville house. (*Id.* at 119). She testified that this was the first time in her career she had had to get search warrants from judges in two different jurisdictions for the same house. (*Id.* at 130–31). She explained that she got the two warrants because Holt was

an Indian and Harrington was not, and she did not know where the case would end up being prosecuted. (*Id.* at 125, 131).

When asked if she would agree that the state magistrate's initial rejection of the warrant application meant that that judge didn't believe it was supported by probable cause, Agent Winter did not agree. (*Id.* at 127–28). She explained she did not know why the state magistrate had asked for more information and that the magistrate "would have to answer that." (*Id.* at 127–28).

Agent Winter testified that no federal agents took part in the investigation until the day after the search, when OBN decided to send the drugs to the DEA lab. (*Id.* at 131). Although she and the other OBN agents who executed the warrant are cross-deputized with the state of Oklahoma and the Cherokee Nation, none of them is cross-deputized with the federal government. (*Id.* at 135–36).

In closing, government counsel argued that the agent "ultimately was trying to do the right thing and cover her bases by getting both warrants knowing there were two, I guess, different sovereigns that have jurisdiction over the same property to a certain extent." (*Id.* at 160). When asked, government counsel agreed with defense counsel that "the Tulsa County warrant would not be valid for Mr. Holt" and that "there wouldn't have been jurisdiction over

him." (*Id.* at 155). He also agreed with the magistrate judge that the court could restrict its review to whether the Cherokee Nation warrant authorized the search. (*Id.* at 158–59).

E. Upon the magistrate judge's report and recommendation, the district court denied the motion to suppress.

In a report and recommendation, the federal magistrate judge recommended that Holt's motion to suppress be denied. (R. Vol. I at 174–204). She recommended a finding that the Cherokee Nation warrant lacked probable cause. (*Id.* at 195). In so doing, the magistrate judge analyzed (1) the allegations about the GPS tracker data, (2) Holt's criminal history, and (3) the evidence found in the trash pull one by one, concluding that none of those categories of evidence established probable cause individually. (*Id.* at 185–95). She found that the GPS tracker data did not establish probable cause because it was too conclusory (*id.* at 187), that Holt's criminal history did not establish probable cause because it was too stale (*id.* at 190), and that the drug evidence in the trash did not establish probable cause because it evidenced merely personal use (*id.* at 195).

Nonetheless, the magistrate judge found that the officers who executed the Cherokee Nation warrant relied on it in good faith. (*Id.* at 198). She found that the existence of two warrants with varying levels of factual support did not

diminish the agents' good faith in relying on the Cherokee Nation warrant. (*Id.*). She noted that, "While the state court judge requested more information before issuing a warrant the following day, it was objectively reasonable for Agent Winter to rely upon two warrants that she obtained from two different judges to 'cover her bases' for the residence of one occupant with tribal citizenship and one without. . . ." (*Id.*). As to the Tulsa County warrant, the federal magistrate judge noted that it was unclear "whether the search was purportedly executed in reliance on that Warrant, in addition to the Cherokee Nation Warrant." (*Id.* at 182).

As to the alleged Rule 41(b)(1) violation, the magistrate judge found that the search was not "federal in character," and therefore the agents were not obligated to obtain a federal warrant. (*Id.* at 201). She found that "the only record evidence" is "unequivocal that there was not any federal involvement in the investigation prior to the execution of the search at the defendants' residence." (*Id.*).

Holt and Harrington objected to the report and recommendation. (*Id.* at 228–40). The district court overruled the objection, holding that the officers executing the Cherokee Nation warrant relied on that warrant in good faith. (*Id.* at 307–08). The district court noted that "Holt's criminal history,"

combined with the "discovery of plastic baggies containing methamphetamine residue" in the trash, "provided sufficient indicia of probable cause" such that Agent Winter "could have reasonably believed that probable cause existed," and that the Tulsa County magistrate's request for more information did not diminish the reasonableness of Agent Winter's reliance on the Cherokee Nation warrant. (*Id.* at 308).

Because the good-faith exception applied, the district court declined to rule on whether the Cherokee Nation warrant was supported by probable cause. (*Id.* at 307–08). However, the district court observed that "[a]rguably, the evidence uncovered by OBN agents in searching Defendants' trash was sufficient, of itself, to justify issuance of the challenged warrant." (*Id.* at 307). It added that "Holt's criminal history . . . in combination with the trash pull evidence," could also "conceivabl[y]" amount to probable cause. (*Id.*).

F. Holt filed a motion for the government to turn over the identity of its confidential informant.

Holt moved for disclosure of the government's informant, arguing "it could be likely that the confidential informant would have personal knowledge as to whether Mr. Holt was in fact involved in illegal drug trades." (*Id.* at 38–46). The government responded that the informant "never participated in or

witnessed the Defendants' charged crimes" and that Holt's proffered reasons for needing the informant's identity were speculative. (*Id.* at 92, 93).

At a motions hearing, Holt's counsel argued that Mr. Leach was the only person referenced in the affidavits "who could have been purchasing drugs from Mr. Holt." (*Id.* at 164). The government responded that although the informant bought drugs from Mr. Leach, there was "no indication that the confidential informant even knew Mr. Holt outside of his connection to Mr. Leach." (*Id.* at 166–67).

G. The district court initially granted the motion to turn over the informant's identity, then denied that motion after reconsideration.

The magistrate judge found that the motion to compel disclosure should be granted. (*Id.* at 219–27). She found that "the original information leading the OBN agents to the defendants' residence came from the CI." (*Id.* at 224). She further found that "[t]he undersigned is unaware of any evidence of *any* instance of distribution or intended distribution by the defendants, except for the plaintiff's inference that Mr. Leach was purchasing from the defendants at their Collinsville residence the methamphetamine that Leach then sold to the CI." (*Id.* at 224). She noted that the government had failed to deny that it would "call the CI as a witness or attempt to introduce through a case agent information obtained from the CI." (*Id.*). Finally, she noted that the

government had described the early stages of the investigation, including its work with the informant, in its trial brief. (*Id.* at 225).

The government appealed the magistrate judge's order to the district court. (*Id.* at 241–53). It argued that "the confidential informant did not participate in or witness the defendants' crimes" and "did not ever buy drugs from Holt or Harrington or go to their house." (*Id.* at 247). It noted that the "informant's involvement in the investigation ended on July 17 – over a month before the defendants' alleged crimes." (*Id.*). It also explained that the charges were not based on distribution to Mr. Leach or the informant but entirely on the evidence found during the search of the Collinsville house. (*Id.* at 250).

The district court overruled the government's appeal, holding it had failed to demonstrate that the Magistrate Judge's order was contrary to law or clearly erroneous. (*Id.* at 279–83). The order noted that the magistrate judge's "conclusions regarding the role played by the confidential informant were permissible and consistent with the record before the Court." (*Id.* at 282).

The government sought reconsideration, clarifying that it would not present at trial any evidence about Leach or the pre-search investigation, or any testimony from Leach or the informant. (*Id.* at 284–93). It conceded that its trial brief had unartfully included descriptions about the pre-search

investigation, and it had failed to clarify that it would not present any such evidence at trial. (*Id.* at 288). It argued that its inartful briefing should not compromise the safety of its informant, where the informant's identity was not relevant or helpful to the defense. (*Id.*).

The district court granted the motion to reconsider. (*Id.* at 312–20). It credited the government's representation that it would not introduce evidence about the informant or the pre-search investigation, and it agreed that the government's prior briefing had created confusion by suggesting that it might seek to introduce such evidence. (*Id.* at 317). However, it held that granting the defendants' motion would not be an appropriate sanction for the government's lack of clarity, given that revealing the informant's identity would compromise that person's safety. (*Id.*). Further, it held, "The issues in this case depend upon the nature of the evidence seized from Defendants' home; there is simply nothing that the informant could say that would affect this evidence in any way." (*Id.* at 318). The court stated that it would not permit the government to present at trial any evidence about Leach, the informant, or the pre-search investigation before the earliest date referenced in the indictment. (*Id.* at 317).

H. After a jury convicted Holt, the district court sentenced him to 180 months' imprisonment.

After the court denied the pretrial motions, Harrington pleaded guilty to possessing methamphetamine with intent to distribute and maintaining a drug-involved premises. (R. Vol. II at 30). Holt proceeded to trial, where the jury heard evidence about what agents had found at his house and on his phone. (R. Vol. III at 146, 195, 352, 458). The jury found him guilty on all counts.

At sentencing, the district court varied downward and sentenced Holt to 180 months' imprisonment. (R. Vol. I at 458; R. Vol. II at 41). The court entered judgment, and this appeal followed. (R. Vol. I at 17, 457–63).

Summary of the Argument

The affidavit submitted to the Cherokee Nation magistrate judge provided a substantial basis to support that judge's probable cause determination, because it stated that a person with a drug- and firearm-related criminal history lived at a house where, two days earlier, agents had found drug paraphernalia in the trash. This Court can and should affirm the denial of the motion to suppress on this basis, even though the district court declined to rule on this question.

Even if the affidavit submitted to the Cherokee Nation magistrate judge did not provide a substantial basis for that judge's probable cause determination, the district court correctly held that suppression was unwarranted because the

OBN agents relied on the warrant in good faith, especially given that decisions of this Court have approved of warrants containing similar levels of information in support of probable cause.

The district court correctly held that Rule 41(b)(1) did not apply to the warrant because the search was not "federal in character." Further, the district court did not err in holding, based primarily on its unreviewable credibility determination, that any violation of Rule 41(b)(1) was unintentional.

The district court did not abuse its discretion in denying Holt's motion to obtain the identity of the government's informant where the informant never met or identified Holt and was not involved in the events charged in the indictment and where Holt provided only speculative reasons for needing the informant's identity.

Argument

I. This Court should affirm the denial of the motion to suppress because the tribal court affidavit provided a "substantial basis" to support the tribal judge's probable cause determination and because the trial court correctly held that the officers relied on the tribal warrant in good faith.

A. Record Reference

Holt moved to suppress the evidence found during a search of his home. (R. Vol. I at 59–69). After an evidentiary hearing, a federal magistrate judge

recommended denial because the agents relied in good faith on a Cherokee Nation tribal court search warrant. (R. Vol. I at 174–204). The district court overruled Holt's objection to the magistrate judge's recommendation and denied the motion to suppress. (R. Vol. I at 301–11). The district court also denied Holt's motion to reconsider its denial. (R. Vol. II at 15–24).

B. Standard of Review

In reviewing the denial of a motion to suppress, this Court "view[s] the evidence in the light most favorable to the determination of the district court." *United States v. Johnson*, 43 F.4th 1100, 1107 (10th Cir. 2022) (quotations omitted). The Court "accept[s] the district court's factual findings unless clearly erroneous," *United States v. Hammond*, 890 F.3d 901, 905 (10th Cir. 2018), and it reviews de novo whether the district court correctly applied the good-faith exception. *United States v. Workman*, 863 F.3d 1313, 1317 (10th Cir. 2017).

C. Agent Winter's affidavit provided a "substantial basis" to support the Cherokee Nation magistrate judge's probable cause determination.

Scrutiny of a magistrate judge's decision that a warrant was supported by probable cause "should not take the form of *de novo* review"; rather, the magistrate judge's decision "should be paid great deference" by a reviewing

court. *Illinois v. Gates*, 462 U.S. 213, 238 (1983); *see United States v. Biglow*, 562 F.3d 1272, 1280 (10th Cir. 2009) ("After-the-fact, de novo scrutiny of a magistrate's probable-cause determination is forbidden."). The reviewing court should simply "ensure that the magistrate had a substantial basis for concluding that probable cause existed." *Gates*, 462 U.S. at 238–39. In a "doubtful or marginal case," courts should defer to the issuing judge's probable cause finding. *United States v. Pulliam*, 748 F.3d 967, 971 (10th Cir. 2014).

This Court can affirm on any basis apparent from the record. *United States v. Margheim*, 770 F.3d 1312, 1325 (10th Cir. 2014). Here, although the district court declined to rule on whether the Cherokee Nation magistrate judge had a substantial basis for determining that the warrant was supported by probable cause, this Court can and should hold that the Cherokee Nation magistrate judge did have a substantial basis for that determination.

Probable cause requires "only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Gates*, 462 U.S. at 243 n.13. A magistrate judge analyzing an affidavit and considering whether to issue a warrant "is entitled to go beyond the averred facts and draw upon common sense in making reasonable inferences from those facts." *United States v. Grimmett*, 439 F.3d 1263, 1270 (10th Cir. 2006); *see Biglow*, 562 F.3d at 1280

("[M]agistrate judges may draw their own reasonable conclusions, based on the Government's affidavit and the 'practical considerations of everyday life,' as to the likelihood that certain evidence will be found at a particular place.").

Finally, courts must view the representations in an affidavit as a whole, asking whether the affidavit in totality supported probable cause. *See District of Columbia v. Wesby*, 583 U.S. 48, 60–61 (2018) (where probable cause is concerned, "the whole is often greater than the sum of its parts – especially when the parts are viewed in isolation") (citing *United States v. Arvizu*, 534 U.S. 266, 277–78 (2002)); *United States v. Ledesma*, 447 F.3d 1307, 1316 (10th Cir. 2006) ("Even where a particular factor, considered in isolation, is of 'limited significance' and must be 'discount[ed],' it nonetheless may affect the Fourth Amendment analysis when combined with other indicia of probable cause[.]"); *United States v. Christian*, 925 F.3d 305, 311 (6th Cir. 2019) (en banc) (even if an allegation "would not suffice to establish probable cause on its own, each factual allegation – whether ultimately deficient or not – is still a relevant data point in the 'totality of the circumstances' constellation, rather than an independent thing to be lined up and shot down one by one").

Read as a whole, the affidavit gave the Cherokee Nation magistrate judge a substantial basis for finding probable cause based on (1) the affidavit's

representations about GPS tracker data; (2) Holt's drug- and firearm-related criminal history; (3) the narcotics-related evidence found in the trash just two days before the affiant submitted the affidavit; (4) Agent Winter's descriptions of the likelihood that drug dealers would keep evidence, instrumentalities, and proceeds of drug dealing in their home; and (5) "reasonable inferences" drawn from those facts based on the "practical considerations of everyday life." *Biglow*, 562 F.3d at 1280; *Grimmett*, 439 F.3d at 1270.

The federal magistrate judge's report and recommendation erred by analyzing the representations in the affidavit in isolation, rather than as a whole. (R. Vol. I at 187 (concluding "there was no substantial basis for finding probable cause on the conclusory allegations regarding the tracker and any allegedly known methamphetamine distributor"); *id.* at 190 (finding that "[g]iven the passage of several years [since the prior convictions], there was not a substantial basis for finding probable cause"); *id.* at 195 (finding that "the single trash pull in this case did not establish probable cause for the search").

Although the GPS tracker data representations in the Cherokee Nation warrant lacked the detail of the representations in the Tulsa County warrant, those representations must be viewed in the context of the entire affidavit. *See Wesby*, 583 U.S. at 60–61 (chastising appellate court for "view[ing] each fact

'in isolation, rather than as a factor in the totality of the circumstances,'" when analyzing probable cause); *Ledesma*, 447 F.3d at 1319; *United States v. Schenck*, 3 F.4th 943, 946–47 (7th Cir. 2021).

In *Schenck*, an agent listed a 2016 birth date for a child exploitation victim but did not provide a source for the information. The defendant argued that the court should ignore the factual allegation because it "relie[d] entirely on the conclusory statement of the affiant." *Id.* at 947. The Seventh Circuit disagreed, holding that the magistrate judge could make reasonable inferences about the facts underlying the assertion "considering the totality of the circumstances, and applying common sense." *Id.* The court also noted, "We have never required an application for a search warrant to have an explicit, separate citation for every piece of information in all circumstances." *Id.*; *see Christian*, 925 F.3d at 310 (affidavit "need not have definitively stated that Thomas was leaving 618 Grandville" – one of the facts that contributed to probable cause – rather, "it need only have 'allege[d] facts that create a reasonable probability' that he did").

Here, the Cherokee Nation affidavit stated, "In the month of June 2023, [OBN] Agents had a GPS tracking device attached to a vehicle of a known distributor of methamphetamine. Based on the GPS tracker data, investigators

developed this location, [the Collinsville address], as a possible target source of supply for methamphetamine." Read in context, and applying common sense, the Cherokee Nation magistrate was entitled to infer that the officers had used a GPS tracking device to monitor the drug dealer's car as it traveled to and from the Collinsville house in a manner that suggested that whoever lived at the house was supplying the dealer methamphetamine, either because the dealer drove there frequently, made short-term visits there, or traveled there around the times when OBN observed him dealing drugs. *See Schenck*, 3 F.4th at 946–47. That the GPS tracker data representation was insufficient on its own to amount to probable cause does not mean it should be ignored as "a relevant data point." *Christian*, 925 F.3d at 311.

The district court, reviewing de novo the report and recommendation's probable cause determination (contrasted with its substantial-basis review of the Cherokee Nation magistrate judge's probable cause determination) (*id.* at 307 n.3), could have corrected the magistrate judge's divide-and-conquer approach. However, because the district court determined that the good-faith exception applied, it declined to rule on whether probable cause supported the Cherokee Nation warrant. (*Id.* at 308).

If the district court had ruled on the issue, it would have had to conclude that the Cherokee Nation magistrate judge had a substantial basis for finding probable cause. As the district court noted, "[a]rguably, the evidence uncovered by OBN agents in searching Defendants' trash was sufficient, of itself, to justify issuance of the challenged warrant." (*Id.*); *see United States v. Colonna*, 360 F.3d 1169, 1175 (10th Cir. 2004), *overruled on other grounds by United States v. Little*, 829 F.3d 1177 (10th Cir. 2016); *United States v. Jenkins*, 819 F. App'x 651, 660 (10th Cir. 2020).

In *Colonna*, an affidavit asserted that agents had found "two burnt roach ends of suspected marijuana cigarettes, a 'twist torn from the corner of a plastic baggie, a plastic baggie with a corner torn from it, and an empty container of Zig Zag cigarette papers" in the trash outside the defendant's home. 360 F.3d at 1173. The affidavit asserted other facts, but after a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978), the district court found that one of the other factual assertions was "a deliberate falsehood" and three others were inaccurate or misleading, and it refused to consider them. *Id.* at 1174. Nonetheless, striking the false assertions did not deprive the warrant of probable cause because "the assertions concerning the evidence obtained from the trash cover support probable cause." *Id.* The Court also held that the

warrant established probable cause that a crime had been committed even though it established "only personal use" of marijuana. *Id.* at 1175.

In *Jenkins*, a panel of this Court held that probable cause supported a search warrant based on the affidavit's assertion that an officer "found a small baggie containing methamphetamine residue in the trash outside" a Jenkins's ongoing prosecution for possessing, the previous year, various drugs and drug paraphernalia. 819 F. App'x at 660. The *Jenkins* panel noted, "If an amount of marijuana consistent with 'only personal use' was sufficient for a search warrant in *Colonna*, the methamphetamine residue in this case, along with Jenkins's ongoing prosecution for drug crimes, was more than enough." *Id.*

Here, the affidavit provided a stronger basis for the magistrate judge's probable cause determination than the representations underlying the *Colonna* and *Jenkins* warrants. In addition to detailing Holt's criminal history, which spanned nearly forty years and at least three jurisdictions and included a 2019 drug and firearm conviction, the affidavit noted that just two days before applying for the warrant agents had found baggies with methamphetamine residue and multiple syringes consistent with drug use in the trash outside the house. *See United States v. Artez*, 389 F.3d 1106, 1114–15 (10th Cir. 2004)

(noting that although "[c]riminal history alone is not enough" to show probable cause, it can suffice when "combined with other factors").

As noted, even though the GPS tracker data representations in the Cherokee Nation warrant were conclusory, they still contributed weight to the analysis. *See Christian*, 925 F.3d at 311; *Ledesma*, 447 F.3d at 1316. Even if the weight they contributed was slight, the failure to explain *how* the agents knew the driver was a drug-dealer or *how* his travel to and from the Collinsville house was consistent with getting drugs did not warrant ignoring those assertions entirely. However, even if the GPS data representations are afforded no weight, the affidavit still provided a substantial basis for the tribal magistrate's probable cause determination. *See Colonna*, 360 F.3d at 1174–75; *Jenkins*, 819 F. App'x at 660.

D. The district court was right to apply the good-faith exception.

The district court correctly held that the officers relied in good faith on the Cherokee Nation warrant when they executed the search. *See Workman*, 863 F.3d at 1317. The exclusionary rule is a "judicially created remedy designed to safeguard against future violations of Fourth Amendment rights through the rule's general deterrent effect." *Arizona v. Evans*, 514 U.S. 1, 10 (1995). The rule is applicable only "where its deterrence benefits outweigh its 'substantial social

costs.'" *Pennsylvania Bd. Of Probation and Parole v. Scott*, 524 U.S. 357, 363 (1998); *see Herring v. United States*, 555 U.S. 135, 144 (2009) ("To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system.").

The good-faith exception to the warrant requirement holds that evidence should not be excluded "when an officer acting with objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope," even if the warrant was in fact defective. *United States v. Leon*, 468 U.S. 897, 920 (1984). "The rationale behind the exception is that when an officer acts in good-faith reliance on a search warrant, the deterrence rationale of the exclusionary rule is no longer applicable." *United States v. Pacheco*, 884 F.3d 1031, 1045 (10th Cir. 2018).

An officer is presumed to have acted in good faith when she searches pursuant to a warrant. *United States v. Henderson*, 595 F.3d 1198, 1201 (10th Cir. 2010). For evidence to be excluded despite the existence of a warrant, the warrant must be "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Leon*, 468 U.S. at 923.

Here, the warrant was not "so lacking in indicia of probable cause" that reasonable officers could not rely on it in good faith. *See United States v. Roach*, 582 F.3d 1192, 1204 (10th Cir. 2009) (officers relied on warrant in good faith despite that information linking defendant to gang activity "was quite old" and that officers did not support with specific facts their conclusory allegation that defendant lived at place to be searched); *United States v. Brown*, 586 F. Supp. 3d 1075, 1085 (D. Kan. 2022) (eight-year-old juvenile conviction coupled with drug-related evidence from two trash pulls failed to establish probable cause but supported officer's good-faith reliance on warrant).

As the magistrate judge observed, Agent Winter's reliance on the Cherokee Nation warrant was objectively reasonable "given the state of the law, including some Tenth Circuit authorities [holding] that a single trash pull indicative of personal drug use by a targeted defendant, combined with a resident's criminal history, can provide probable cause for a residential search." (R. Vol. I at 198) (citing *Colonna* and *Jenkins*); *see Roach*, 582 F.3d at 1204 (citing state of law in Tenth Circuit as a factor in finding good faith). And as the district court observed, based on Holt's criminal history and the trash-pull evidence, "[I]t is conceivable how the tribal court"—let alone OBN Agents—"could determine there was probable cause for the issuance of the

warrant." (*Id.* at 307). Moreover, Agent Winter could have reasonably believed that the GPS tracker data representations would contribute some weight to the analysis, even if that weight was slight. *See Wesby*, 583 U.S. at 60–61; *Christian*, 925 F.3d at 311.

Despite Holt's arguments to the contrary, the existence of a second warrant that contained *more* information than the Cherokee Nation warrant does not defeat the application of the good-faith exception to execution of the tribal warrant. (Aplt. Br. at 14–17). "[P]robable cause 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 legal rules." *Gates*, 462 U.S. at 232. To quote the district court, "That two judges may make different probable cause determinations upon the same set of circumstances is neither surprising nor particularly meaningful; it certainly does not mean that the more exacting judge must necessarily be correct and the other, incorrect." (R. Vol. I at 308).

Although Holt contends that "Agent Winter was put on notice of the [Cherokee Nation] affidavit's deficiencies" when the Tulsa County magistrate judge asked for more information, Agent Winter did not see it that way, nor was she required to. (Aplt. Br. at 17). She testified that she did not conclude that the Tulsa County magistrate judge's decision to ask for more details

necessarily meant that that jurist believed that the initial affidavit lacked probable cause. (R. Vol. I at 127–28). Even if Agent Winter had believed that the Tulsa County magistrate judge thought that the affidavit lacked probable cause, nothing in law or logic required her to conclude that that judge's opinion meant that the Cherokee Nation magistrate was wrong in reaching a different conclusion. *See Leon*, 468 U.S. at 914 ("Reasonable minds frequently may differ on the question whether a particular affidavit establishes probable cause. . . .").

Holt argues alternatively that Agent Winter could not have been acting in good faith because she sought "a warrant she knew to be illegal," i.e., the state search warrant. (Aplt. Br. at 19). However, the state warrant was legal and was issued by a judge who had jurisdiction to issue it. First, the state warrant was plainly supported by probable cause, because it contained the same facts as the Cherokee Nation warrant and additional details about the GPS tracker data, including Leach's frequent short-term visits to the house. (R. Vol. I at 54–58).

Second, Holt's Indian status did not invalidate the state warrant. Contrary to his assertion (Aplt. Br. at 14), the affidavit listed Harrington's name in addition to Holt's. (R. Vol. I at 56). More importantly, "Search warrants are not directed at persons; they authorize the search of places and the seizure of

things . . . .” *Zurcher v. Stanford Daily*, 436 U.S. 547, 555 (1978). Agent Winter understood that principle. When Holt’s counsel asked why Holt, and not Harrington, was “the subject of the warrant” (i.e., why his name appeared in the warrant’s caption), Agent Winter responded, “I don’t exactly have a reason. The warrant is for the address itself.” (*Id.* at 133–34).

Whoever the agents subjectively suspected, the state court had jurisdiction because Harrington’s residing at the property meant there was probable cause that an Oklahoma state drug offense was being committed and that evidence of that offense would be found at the house. *See* Okla. Stat. tit. 22, §§ 1222, 1223, 1225 (requirements for Oklahoma search warrants); *see also Kaul v. Stephan*, 83 F.3d 1208, 1218 (10th Cir. 1996) (“[S]tates possess criminal jurisdiction over crimes committed on Indian reservations by non-Indians against non-Indians” and therefore state officers had “jurisdiction to execute search warrants against a non-Indian . . . .”). The state court had jurisdiction notwithstanding that Holt’s residing at the property supplied probable cause of a tribal offense. *See Zurcher*, 436 U.S. at 555 (“[A]s a constitutional matter [warrants] need not even name the person from whom the things will be seized.”).

United States v. Baker, which invalidated a state search warrant for tribal property in which the only occupant was an Indian, does not compel a

different conclusion. 894 F.2d 1144, 1146 n.1 (10th Cir. 1990) (explicitly declining to reach the question of "whether an Indian's property within Indian country may be searched on state authority for evidence of a non-Indian's so-called 'victimless crime'").

The record also does not support Holt's assertion that the tribal warrant was "the only search warrant that was executed." (Aplt. Br. at 14). Although the district court found that "the record is unclear whether law enforcement *also relied upon* the Tulsa County warrant in addition to the Cherokee Nation warrant" (R. Vol. I at 303–04), the officers' subjective intentions are irrelevant in determining whether a search was objectively reasonable. *United States v. King*, 222 F.3d 1280, 1284 n.3 (10th Cir. 2000). Nor does the officers' apparent failure to file the state warrant return invalidate the warrant for purposes of federal law. *See United States v. Jones*, 701 F.3d 1300, 1309 (10th Cir. 2012) ("[I]n federal prosecutions the test of reasonableness in relation to the Fourth Amendment protected rights must be determined by federal law even though the police actions are those of state police officers."); *United States v. Mikulski*, 317 F.3d 1228, 1232 (10th Cir. 2003) ("The officers' violation of state law is not, without more, necessarily a federal constitutional violation.").

The objective validity of the state court warrant should have mooted any discussion about whether the less-detailed Cherokee Nation warrant justified the search. The government is foreclosed from arguing in this appeal that the state court warrant justified the search because it conceded below that only the Cherokee Nation warrant could be considered in determining the lawfulness of the search. (R. Vol. I at 158–59). *See United States v. Villagrana-Flores*, 467 F.3d 1269, 1278 (10th Cir. 2006) ("[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position.").

Nevertheless, Holt is wrong as a matter of law to contend that the state court warrant was "illegal" and that Agent Winter "was aware" of any such illegality. Because Agent Winter knew that a non-Indian lived at the house and that therefore there was probable cause that the house would contain evidence of a state offense, her decision to seek a Tulsa County warrant in addition to a Cherokee Nation warrant does not show bad faith.

D. The district court correctly held that no Rule 41(b)(1) violation occurred because the investigation was not "federal in character."

The district court correctly determined that the Oklahoma Bureau of Narcotics agents did not violate Rule 41(b)(1) by obtaining tribal and state

search warrants. *See United States v. Krueger*, 809 F.3d 1109, 1113 (10th Cir. 2015) (analyzing de novo whether search violated Rule 41 and whether any such violation justified suppression). As a general matter, federal magistrate judges "with authority in the district" may issue search warrants for property in that district. Fed. R. Crim. P. 41(b)(1). However, Rule 41(b)(1) only applies to searches that are "federal in character." *United States v. Millar*, 543 F.2d 1280, 1283 (10th Cir. 1976). A search is federal in character when "federal officers are directly involved in carrying out the search itself and in taking immediate custody of the fruits of the search." *United States v. Bookout*, 810 F.2d 965, 967 (10th Cir. 1987); *see United States v. Gibbons*, 607 F.2d 1320, 1325 (10th Cir. 1979) (warrant and search were state in character, rather than federal, where "[f]ederal agents did not instigate or assist in obtaining the state warrant and were not present during the search").

Here, the record supports the district court's determination that a federal warrant was not required because the search, and the investigation that led to it, were not "federal in character." (R. Vol. I at 309). Agent Winter provided undisputed testimony that no federal agents took part in the search and that she and the other OBN agents are cross-deputized with the Cherokee Nation but not with the federal government. Although the agents submitted the drug

evidence to the DEA and contacted HSI *after* the search, the record evidence is "unequivocal that there was not any federal involvement in the investigation prior to the execution of the search." (R. Vol. I at 201).

Even if the search had been "federal in character," the record also supports the district court's determination that no Rule 41(b)(1) violation was intentional, prejudicial, or of "constitutional import," as to require suppression. *Krueger*, 809 F.3d at 1113–14; (*see* R. Vol. I at 310). Holt's contention that Agent Winter intentionally violated Rule 41(b)(1) fails because it is premised on a challenge to her credibility. Agent Winter testified at the suppression hearing that she did not know where the case would be prosecuted and that she sought a state warrant because Harrington was not an Indian and a Cherokee Nation warrant because Holt is tribal. (R. Vol. I at 125, 131). The district court credited Agent Winter's testimony that "she was 'not sure' where prosecution would take place when she sought and executed the warrant at issue." (*Id.* at 310). It found "no reason to disbelieve Agent Winter's testimony" and that it was "entirely understandable that Agent Winter would be unsure whether the case would ultimately be prosecuted by the State of Oklahoma, the Cherokee Nation, or the federal government." (*Id.* at 310–11).

The district court's credibility finding as to Agent Winter is not subject to review by this Court. *See United States v. McGregor*, — F.4th —, 2025 WL 3012035, at *4 (10th Cir. Oct. 28, 2025) ("[I]t is the province of the trial court to assess the credibility of witnesses at the suppression hearing and to determine the weight to be given to the evidence presented[.]"). Thus, Holt's assertion that Agent Winter intentionally violated Rule 41(b)(1) would require overturning the district court's credibility determination, which this Court may not do. *Id*.

Holt's principal argument as to why Agent Winter *must have* known the case would be prosecuted in federal court is that Agent Winter would have been "aware that any warrant issued by [the Tulsa County court] would not be valid as to Mr. Holt" and that "Agent Winter never identified Ms. Harrington as the target in the Tulsa County warrant." (Aplt. Br. at 19, 20). Thus, Holt argues, "the only logical conclusion" is that Agent Winter sought to circumvent Rule 41(b)(1) by obtaining a state court warrant, even though she knew that the only target of that warrant couldn't be prosecuted in state court. (*Id.* at 20). This argument suffers from two fatal flaws.

First, it overlooks entirely the existence of the Cherokee Nation warrant and the fact that Holt could have been prosecuted in tribal court, consistent

with Agent Winter's stated basis for obtaining that warrant. Second, for the reasons stated in section I.D, *supra*, the state search warrant was valid because Harrington lived at the house and thus probable cause existed that the house would contain evidence of state drug offenses, even though there was also probable cause that it would contain evidence of tribal offenses.

Holt's confusion as to how search warrants interact with Indian Country jurisdiction lends credibility to Agent Winter's testimony that she did not ultimately know where the case would be prosecuted. *See Workman*, 863 F.3d at 1317 (this Court did "not expect [agents] to understand [the] legal nuances" of a magistrate judge's jurisdiction, especially where "the executing agents lacked precedents on these issues"); *United States v. Pemberton*, 94 F.4th 1130, 1138 (10th Cir. 2024) ("[A]fter their objectively reasonable choice to apply for a warrant issued by a state court judge, the police officers could reasonably rely on the judge's authority to issue the warrant."). Because Holt fails to establish any intentional violation of Rule 41(b)(1), the district court correctly declined to suppress the evidence.

II. The district court did not abuse its discretion in declining to order the government to disclose its confidential informant's identity.

A. Record Reference

Holt filed a motion to require the government to turn over the identity of its confidential informant. (R. Vol. I at 38–46). After a hearing, the magistrate judge ordered the government to turn over the informant's identity. (*Id.* at 219–27). When the government appealed the magistrate judge's determination, the district court initially overruled the appeal. (*Id.* at 241–53; 279–83). The government moved for reconsideration and the district court reconsidered its ruling and denied Holt's motion for the informant's identity. (*Id.* at 312–20).

B. Standard of Review

This Court reviews rulings on motions to disclose informants' identities for abuse of discretion. *United States v. Robinson*, 993 F.3d 839, 847 (10th Cir. 2021). The Court must "'balance' the public interest in protecting informants and the defendant's right to mount a defense. Resolving these interests turns on the 'particular circumstances of each case,' like 'the crime charged, the possible defenses, [and] the possible significance of the informer's testimony.'" *United States v. Cruz*, 680 F.3d 1261, 1262 (10th Cir. 2012) (quoting *Roviaro v. United States*, 353 U.S. 53, 62 (1957)).

C. The district court did not abuse its discretion in denying Holt's motion for the informant's identity, where the identity was neither relevant nor helpful to the defense.

The "informant privilege" allows the government to withhold "the identity of persons who furnish information of violations of law to officers charged with enforcement of that law." *Roviaro*, 353 U.S. at 60–61. Disclosure is required only "[w]here the disclosure of an informer's identity, or the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause." *Id.* Disclosure is not required when the informant acts as a "mere tipster" and "is not a participant in, or a witness to, the crimes charged." *United States v. Moralez*, 908 F.2d 565, 567 (10th Cir. 1990); *see United States v. Mendoza-Salgado*, 964 F.2d 992, 1000–01 (10th Cir. 1992) (disclosure not required where informant did not participate in the illegal transaction charged in the case). Further, "mere speculation about the usefulness of an informant's testimony is not sufficient" to establish entitlement to the identity. *United States v. Scafe*, 822 F.2d 928, 933 (10th Cir. 1987).

Here, although the government's district court briefing initially failed to make this point clear, the confidential informant was not involved in the crimes charged in the indictment. *See Mendoza-Salgado*, 964 F.2d at 1000–01. The indictment charged crimes that occurred, at the earliest, on August 21 (the date of the trash pull), which was more than one month after the informant last

provided information to the agents investigating the case. (R. Vol. I at 247, 385–90). As the district court held, after the government clarified the nature of its trial evidence, "The issues in this case depend upon the nature of the evidence seized from Defendants' home; there is simply nothing that the informant could say that would affect this evidence in any way." (R. Vol. I at 318).

Notably, Holt does not allege that the government presented any evidence at trial about the informant or the pre-search investigation before August 21. (Aplt. Br. at 21–25). The informant's role in the case was that of a mere tipster, who was not offered as a witness, did not know Holt, had never been to his house, and could not have provided information relevant to the charges. (R. Vol. I at 248, 250). *See Moralez*, 908 F.2d at 567.

At the district court, Holt argued that he needed the informant's identity to learn about the role the informant played in the pre-search investigation and about conversations between the informant and Michael Leach. (R. Vol. I at 319). However, as the district court noted, "to presume that the confidential informant would have useful information in this regard *is* speculative . . . ." (*Id.*) (emphasis in original). Moreover, because the evidence at trial focused entirely on the evidence found during the August 29 search, even if the

informant were to "testify that Michael Leach actually told him that Leach's methamphetamine supplier was a completely different person who had nothing to do with either Defendant, the Defendants would be in an identical position." (*Id.* at 318).

Holt now argues, for the first time, that the informant's identity would have been relevant and helpful because it would have helped him explore the "factual basis of the affidavits" in support of the search warrants "and the veracity of the affiant, Agent Winter." (Aplt. Br. at 24). First, because he failed to present this argument below, this Court need not consider it. *See United States v. Bacon*, 950 F.3d 1286, 1292 (10th Cir. 2020) ("This court has 'repeatedly declined to allow parties to assert for the first time on appeal legal theories not raised before the district court, even when they fall under the same general rubric as an argument presented to the district court.'").

Second, like the argument about the conversation between Leach and the informant, Holt's new argument is supported by nothing more than speculation. *See Scafe*, 822 F.2d at 933. He provides no basis to believe that the informant would supply information helpful to the defense as to Agent Winter's veracity or credibility. Additionally, as the magistrate judge found, "Neither Mr. Leach nor the CI [is] mentioned in the [Cherokee Nation]

Affidavit whatsoever." (R. Vol. I at 186). Thus, not only does Holt rely on speculation, he also fails to show that the informant would be able to shed light on the representations that supported the Cherokee Nation warrant, the only warrant the magistrate judge or the district court considered in ruling on Holt's motion to suppress. (*Id.* at 303–04). Holt's new argument fails to demonstrate that the district court abused its discretion in denying his motion for disclosure of the informant's identity.

Conclusion

This Court should affirm the district court's denial of the motion to suppress because the Cherokee Nation warrant supplied a substantial basis for the tribal magistrate's probable cause determination; the district court correctly determined that the agents relied on the Cherokee Nation warrant in good faith; and the district court rightly held that the agents did not violate Rule 41(b)(1). The Court should affirm the district court's denial of the motion to disclose the informant's identity because the informant acted as a mere tipster and disclosure would have been neither relevant nor helpful to the defense.

Statement Regarding Oral Argument

The United States does not request oral argument.

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I certify that on December 3, 2025, I electronically transmitted the foregoing to the Clerk of the Court using the ECF System for filing, which will send notification of that filing to the following ECF registrant:

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