TEAM: 102

Criminal No. 2023-CR-812

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
Sept. 4, 2023

UNITED STATES OF AMERICA,

Prosecution,

vs.

JAMIE LAWTON,

Defendant.

PROSECUTION'S MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

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INTRODUCTION

The United States, by and through the United States Attorney for the District of Stetson, hereby responds to Defendant's Motion to Suppress Evidence. Defendant's motion is meritless and should be denied. The officer's conduct in this case was lawful, and Defendant's constitutional rights were not violated. Specifically, (1) Defendant's right to privacy was not violated because they had no reasonable expectation of privacy in the warehouse. Alternatively, if this Court finds that there was a reasonable expectation of privacy, then exigent circumstances justify the entry. Secondly, (2) the cocaine was lawfully seized under the plain view doctrine. In the alternative, exigent circumstances and the inevitable discovery doctrine justify seizure. For the reasons set forth below, Defendant's motion to suppress should be denied.

STATEMENT OF FACTS

Taylor Griffin ("Officer Griffin") is a Patrol Officer in the Traffic Enforcement Division for the Petersburg Police Department ("PPD"). R. at 15–16. She worked for the PPD for three years and received Driving Under the Influence ("DUI") investigation training. R. at 17. Officer Griffin was on duty on June 8, 2023, driving her marked police car on 49th street, when she observed Jamie Lawton ("Defendant") throwing up out of the driver's door of a red Chevrolet S10 pick-up truck. R. at 17–20. Based on the car model, the after-market suspension, a distinct bumper sticker, and the driver's physical build, Officer Griffin mistakenly believed the driver was Kevin James ("James"), a repeat offender she previously arrested for DUI in 2021. R. at 20–21. Officer Griffin was unable to verify the car's owner because the car did not have a license plate in the back. R. at 21.

She could not see Defendant's face, because she was a car length behind the truck. R. at 19, 22. Concerned that Defendant was drunk, Officer Griffin decided to keep an eye on the truck. R. at 24. While following the truck, Officer Griffin observed further suspicious behavior: Defendant's speed fluctuated, and they drifted into the emergency lane. R. at 25. Between these strong indications that Defendant was drunk, and the missing license plate, Officer Griffin decided to pull Defendant over and activated her police lights. R. at 26. Defendant did not respond, maintaining a pace of 45–50 mph, and turned into the parking lot of an abandoned looking warehouse. R. at 28. Defendant quickly got out of the car, hastily opened the door to the warehouse marked with "No Trespass" signs and walked inside. R. at 28, 56.

When Officer Griffin radioed for backup, she received a call from Lieutenant Samy Vann ("Vann"), head of the PPD narcotics division and agent for the Drug Enforcement Agency ("DEA"), informing her the warehouse was under surveillance, large quantities of cocaine were likely stored inside, a person purportedly lived in the warehouse, and that this was likely a pretext to make it harder for law enforcement to obtain search warrants. R. at 53–54. The DEA previously observed Defendant clock in early and clock out late from work on multiple occasions, meet up with a truck, and load duffle bags onto the side of a train. R. at 52. Tracking Defendant back to the warehouse, the DEA maintained surveillance in hopes of securing and executing a warrant in the future. R. at 53–54. Vann did not want Officer Griffin going into the warehouse and "blowing" the DEA's case. R. at 54.

Unbeknownst to Officer Griffin, Defendant bought the warehouse three months prior to this incident, after Defendant had started to store drugs in their warehouse and on trains in return for payment from Kell Halstead ("Halstead"). R. at 66–67. According to Halstead, Defendant let them store the packages without asking any questions. R. at 67. Defendant claims they bought the warehouse to turn it into a storage facility and live in a small part of it but "hardly spent much time in the warehouse" since they bought it. R. 61–62. According to Defendant, the warehouse is uninhabitable except for their bedroom on the second floor. R. at 61.

Prior to entering the warehouse, Officer Griffin still believed she was pursuing James, who Vann confirmed was not connected with the warehouse. R. at 54. She feared that Defendant's Blood Alcohol Content ("BAC") level would dissipate if she waited any longer. R. at 29. She followed Defendant through the door that they left "wide open." R. at 31, 56.

Officer Griffin entered into a giant open space where she saw Defendant and immediately announced and introduced herself stating, "Good evening, Petersburg Police. I want to speak to you." R. at 32, 34. Defendant and Halstead turned to Officer Griffin with wide eyes, appearing "fearful" and "frazzled." *Id*. Officer Griffin noticed Halstead repeatedly looking toward a wooden pallet towards the right side of the warehouse near the exit. *Id*. Officer Griffin became suspicious, but she calmly stated that she did not want any trouble, and informed Defendant that she was just investigating a DUI. R. at 34–37.

As she exited the building, Officer Griffin walked past the wooden pallet that Halstead had been looking at earlier. *Id*. She immediately observed a white, powdery substance wrapped in saran wrap and duct tape. R. at 48. Though partially covered by a tarp, at least three-by-four inches of the object were plainly visible. R. at 40. Having received drug training from the Petersburg Police Academy, Officer Griffin was immediately suspicious. *Id*. She lifted the tarp for further examination, at which point she observed and seized three large packages of cocaine. *Id*. Defendant was subsequently arrested and charged with DUI, conspiracy to distribute, and possession with intent to distribute cocaine. R. at 5–6.

ARGUMENT

I. THIS COURT SHOULD DENY DEFENDANT'S MOTION TO SUPPRESS BECAUSE OFFICER GRIFFIN'S WARRANTLESS ENTRY WAS LAWFUL AND DID NOT VIOLATE DEFENDANT'S FOURTH AMENDMENT RIGHTS.

Officer Griffin's warrantless entry did not violate Defendant's Fourth Amendment rights because Defendant had no reasonable expectation of privacy in the warehouse. If this Court should find such a privacy interest, Officer Griffin's entry was justified under the exigent circumstances doctrine.

A. The Warrantless Entry Was Legal Because Defendant Had No Reasonable Expectation of Privacy in The Warehouse.

The Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated …." U.S. Const. amend. IV, § 1. Under the reasonable expectation of privacy test established in *Katz v. United States*, Fourth Amendment protections only apply where

a defendant has exhibited an "actual (subjective) expectation of privacy" which society is prepared to recognize as "reasonable." 389 U.S. 347 (1967).

1. Defendant Did Not Exhibit an Actual, Subjective Expectation of Privacy in the Warehouse.

The conditions of the premises refute the assertion that the warehouse was Defendant's home and that they exhibited an actual, subjective expectation of privacy there. *See generally Katz;* Exhibits 5, 5a, 7, 7a, 7b, 7c,8, 8a.

Defendant claims that they bought the warehouse to convert it into a mixed-use facility, where they live in one part of the building and use the rest as commercial storage space. R. at 61. However, Defendant stated in their sworn statement that they hardly spent any time in the warehouse. *Id.* This is consistent with Officer Griffin's impression that the property looked abandoned. R. at 28. Officer Griffin only learned from Vann that a person purported to live in the building. *Id.* Defendant may argue that this knowledge establishes that Officer Griffin knew the warehouse was Defendant's home and that her warrantless entry was therefore unlawful. However, at that time, Officer Griffin still reasonably believed she was pursuing James who, based on her conversation with Vann, was not connected to the warehouse. R. at 20, 56. Therefore, she was merely pursuing a suspect who fled inside an abandoned looking warehouse. R. at 28.

Defendant may further argue that they established a subjective expectation of privacy because they own the warehouse and marked the premises with "No Trespass" signs. However, Defendant owning the warehouse is insufficient to prove an actual expectation of privacy. Fourth Amendment protections do not "depend upon a property

right in the invaded place, but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place." *Rakas v. Illinois,* 439 U.S. 128, 143 (1978). Furthermore, in *Oliver v. United States* the Court rejected the idea that "No Trespassing" signs *per se* establish a legitimate expectation of privacy. 466 U.S. 170, 171 (1984).

Furthermore, Defendant has not established an expectation of privacy in the area where Officer Griffin entered the warehouse. Upon entry, Officer Griffin had no information regarding which part of the warehouse was used as a home. Defendant admitted that the warehouse is uninhabitable except for the bedroom on the second floor, which Officer Griffin never entered. R. at 61. The mere fact that part of a building is inhabited is insufficient to establish a reasonable expectation of privacy for the entire building. *See e.g. United States v. Barrios-Moriera*, 872 F.2d 12, 14–15 (2d Cir. 1989); *United States v. Nohara,* 3 F.3d 1239, 1241–42 (9th Cir. 1993); *United States v. Concepcion*, 942 F.2d 1170, 1172 (7th Cir. 1991). Moreover, courts have held that the failure to lock a door shows a failure to establish an expectation of privacy. *See U.S. v. Dillard,* 438 F.3d 675, 682 (6th Cir. 2006) ("By not locking the duplex's doors, the defendant did nothing to indicate to the officers that they were not welcome in the common areas."); *United States v. Mendoza,* 281 F.3d 712, 715 (8th Cir. 2002) ("[Defendant] did nothing that would lead the officers to believe he had a protectable interest in the common area of his duplex. He made no efforts to secure the outer door.")

Here, Officer Griffin followed Defendant inside after Defendant left the door wide open. R. at 31, 56. She entered into a giant, empty space, without any signs of visible

occupancy. The area where Officer Griffin entered was mainly used by Halstead for storage. R. at 35, 67–68. Allegedly, Defendant did not know what Halstead was storing, further demonstrating Defendant's failure to establish an actual expectation of privacy in the space. R. at 67. Defendant only "lived" in the sole inhabitable room on the second floor, which Officer Griffin never entered. R. at 61.

Therefore, the totality of the circumstances demonstrate that Defendant did not exhibit an actual, subjective expectation of privacy in the warehouse.

2. <u>Society is Not Prepared To Recognize an Expectation of Privacy in This Warehouse as Reasonable.</u>

Even if Defendant had a subjective expectation of privacy in the warehouse, it was not one that society is prepared to recognize as reasonable. *See generally Katz*.

Courts have found that the test of legitimacy regarding an expectation of privacy is not "whether the individual chooses to conceal assertedly 'private' activity, but whether the government's intrusion infringes upon the personal and societal values protected by the Amendment." *Oliver* at 171. Facts here strongly indicate the sole purpose of the warehouse is to conceal drug trafficking activities. Vann confirmed this is a common drug trafficker practice to make it harder for law enforcement to obtain search warrants, and concluded, based on the investigation, that this was a "sham residence" with the sole purpose of "keep[ing] law enforcement at bay." R. at 53–54. The condition of the premises, barely furnished and mostly uninhabitable, supports this conclusion. R. at 61. Furthermore, it was only purchased after Defendant and Halstead already started moving and storing the drugs. R. at 66–67. Moreover, Defendant admitted that they hardly spent

any time in the warehouse, further rebutting a legitimate expectation of privacy in the space. *See United States v. Renteria*, 2 F. App'x 855, 856 (9th Cir. 2001) (holding that "[a] defendant who uses an apartment for a few hours to package cocaine and demonstrates no personal connection to the residence does not have a legitimate expectation of privacy there."). It is therefore unlikely that a privacy interest in a warehouse primarily used for illegal drug trafficking is one society would recognize as reasonable.

Lastly, this Court should not find an expectation of privacy in this type of "storefront" home as a matter of policy. If this Court holds that Defendant has standing, it opens the door for drug traffickers and cartels to securely engage in this practice and creates further difficulty for law enforcement to keep drugs off the streets.

Therefore, in the totality of the circumstances, this Court should find Defendant did not establish a reasonable expectation of privacy in the warehouse.

B. Assuming, Arguendo, That Defendant Had a Reasonable Expectation of Privacy in The Warehouse, The Warrantless Entry Was Lawful Under the Exigent Circumstances Doctrine.

Warrantless entry is reasonable when it falls within a well-defined exception to the warrant requirement, such as the exigent circumstances doctrine. *Missouri v. McNeely*, 569 U.S. 141 (2013). This exception applies when (1) officers have probable cause and (2) exigent circumstances require immediate action. *Id.* at 142. Whether an officer has probable cause is to be determined according to the factual and practical considerations on which a reasonable person would act. *Brinegar v. United States*, 338 U.S. 160, 175 (1949). A well-established exigency is the hot pursuit doctrine. *U.S. v. Santana,* 427 U.S.

38, 43 (1976). Furthermore, the Court has consistently held that an exigency exists when destruction of evidence is at risk. *United States v. Banks*, 540 U.S. 31, 38 (2003); *Schmerber v. California*, 384 U.S. 757, 770–72 (1966).

Here, the exigency exception applies under two theories: (1) Officer Griffin was in hot pursuit of Defendant; and (2) the metabolization of Defendant's BAC constituted the destruction of evidence.

1. Officer Griffin was in Hot Pursuit of Defendant and Therefore Her Warrantless Entry into The Warehouse is Justified.

The Supreme Court held that "a suspect may not defeat an arrest which has been set in motion in a public place ... by the expedient of escaping to a private place." *Santana* at 43. In *Santana* the Court explained that hot pursuit means some sort of a chase but need "not be an extended hue and cry in and about the public streets." *Id.* at 42–43 (holding that officers were in hot pursuit of a defendant who was standing in the doorway of a house and retreated inside the vestibule upon the officers' arrival).

Here, Officer Griffin was in hot pursuit of Defendant for a suspected DUI. Officer Griffin recognized the car model and the very distinct bumper sticker on James' car. R. at 20–21. Based on prior encounters with James, she assumed that James had changed his appearance to evade charges for driving without a license. R. at 21. Additionally, a DUI charge would be a violation of probation, and the second DUI charge within three years, which constitutes a third-degree felony pursuant to 14-227a(2)(b). Furthermore, the vehicle lacked a license plate. R. at 20–23. Accordingly, Officer Griffin followed Defendant for three miles, flashed her lights, and Defendant failed to make any attempt to

stop. Additionally, when Officer Griffin parked her recognizable police car behind Defendant, Defendant ran inside. Both Vann, who witnessed the scene from her car, and Officer Griffin state that they saw Defendant hurry inside, alluding to the idea that Defendant was evading a potential arrest. R. at 28, 56.

The Court has held that, "because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part." *Brinegar at 176*. *See also Hill v. California,* 401 U.S. 797, 803–04 (1971) (upholding a search incident to an arrest, even though the arrest was made of the wrong person, because "the officers' mistake was understandable and the arrest a reasonable response to the situation facing them at the time."). Therefore, Officer Griffin's mistaken belief that she was pursuing James was reasonable.

If this Court determines that Officer Griffin's mistaken belief was unreasonable, she nevertheless had probable cause to pursue Defendant based on her suspicion that Defendant was driving while intoxicated. Defendant may argue that the hot pursuit doctrine does not apply to misdemeanors. However, a misdemeanor does not preclude the existence of an exigency and depends on the totality of the circumstances. *Lange v. California*, 141 S. Ct. 2011, 2016 (2021). Here, Defendant exhibited clear signs of intoxication: they vomited while stopped at a traffic light and swerved between lanes, actions that could pose grave danger to the public. *See Welsh v. Wisconsin*, 466 U.S. 740, 76–64 (1984) (White, J., dissenting) (rejecting the distinction between misdemeanors and felonies as unworkable in the context of drunk driving because liability in those cases

often turns on aggravating factors, such as prior convictions, but the severity and danger to the public remain the same).

Based on Defendant's erratic driving style, the throwing up while stopped at a traffic light, and the missing license plate, Officer Griffin had probable cause to pull Defendant over. Defendant's failure to stop when signaled, and Defendant's hurried "escape" into the warehouse, justified Officer Griffin's assumption that Defendant was trying to defeat an arrest that was set in motion while driving on 49th street, and therefore invokes the hot pursuit doctrine.

2. The Potential Metabolization of Defendant's BAC Level Justifies the Warrantless Entry Under the Exigent Circumstances Doctrine.

The exigent circumstances doctrine applies because Officer Griffin had probable cause to believe that Defendant was driving under the influence, and waiting for a warrant would have diminished the BAC, destroying the evidence. In *Missouri v. McNeely* the Court held that an exigency in the context of drunk driving cases should be determined on a case-by-case basis based on the totality of the circumstances. *McNeely* at 141. In *Schmerber* the Court held that an officer in a DUI case was justified in believing that he was confronted with an emergency when he ordered a warrantless blood draw because the delay necessary to obtain a warrant threatened "the destruction of evidence." *Schmerber* at 770–71.

Here, the circumstances likewise support a finding that Officer Griffin's warrantless entry was justified to test Defendant's BAC. First, Officer Griffin had probable cause because it was reasonable for her to suspect that the driver was driving

under the influence. She witnessed Defendant throwing up while driving, Defendant's reactions were delayed, and Defendant was driving erratically and swerving between lanes. Based on her extensive training and experience, Officer Griffin is well equipped to identify potential DUI violations. R. at 17. Moreover, Officer Griffin reasonably believed the driver to be James, who already has a DUI conviction. Therefore, Officer Griffin believed she was pursuing a suspect for a third-degree felony, pursuant to 14-227a(2)(b), a far more severe charge than a simple DUI. This made measuring the BAC even more necessary. Therefore, Officer Griffin was justified in entering the warehouse to test Defendant's BAC and prevent the metabolization of alcohol to preserve the evidence.

II. THIS COURT SHOULD DENY DEFENDANT'S MOTION TO SUPPRESS BECAUSE THE SEIZURE OF THE COCAINE WAS LAWFUL.

The Court has stated that "the ultimate touchstone of the Fourth Amendment is 'reasonableness,'" and has thus recognized several circumstances in which officers may conduct lawful searches and seizures without a warrant. *See Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006); *Kentucky v. King*, 563 U.S. 452, 459 (2011). Here, Officer Griffin's warrantless conduct is justified under the plain view doctrine and, alternatively, the exigent circumstance doctrine. Furthermore, the cocaine would have inevitably been discovered, and should thus be admitted under the inevitable discovery doctrine.

A. Since the Cocaine was in Plain View, Defendant Had No Reasonable Expectation of Privacy and No Search Occurred.

When an officer has lawful access to an object, through a warrant or some exception, the "plain view" doctrine serves as an extension of that lawful access, and

legitimizes the warrantless seizure of said object. *Texas v. Brown*, 460 U.S. 730, 739 (1983); *Coolidge v. New Hampshire*, 403 U.S. 443, 465 (1971). There is no privacy interest to be violated in an object observed in plain view, and therefore no search. *Brown*, 460 U.S. 730 at 739. The plain view doctrine is invoked when: (1) there is probable cause for the seizure; (2) initial intrusion was lawful, either by warrant or some exception; and (3) the incriminating character of the object is immediately apparent. *Arizona v. Hicks*, 480 U.S. 321, 326 (1987). In *Brown,* the Court stated that an officer need only have "probable cause to associate the property with criminal activity." *Brown*, 460 U.S. at 741–42. This was reaffirmed in *Minnesota v. Dickerson* when the Court used the probable cause standard and "immediately apparent" standard interchangeably. 508 U.S. 366, 375 (1993). Assuming that Officer Griffin's initial entry into the warehouse was lawful, the government need only prove that there was probable cause to associate the object with criminal activity.

The facts available to Officer Griffin when she observed the cocaine coupled with her professional experience justify the seizure. Before entering the warehouse, Officer Griffin was notified by Vann of the suspected criminal activity occurring in the warehouse. R. at 28. Once inside, Officer Griffin observed and identified three-by-four inches of a light powdery substance covered in saran wrap and duct tape. R. at 48. As a seasoned patrol officer with extensive drug training, Officer Griffin knows how to identify cocaine packaged for transport. R. at 39–40. The information from Vann along with Officer Griffin's professional drug training are sufficient to establish probable cause for her to associate the object with criminal activity, therefore justifying seizure under the

plain view doctrine. *See Brown*, 460 U.S. at 742 (holding that an officer's previous experiences and discussions with other officers established probable cause to believe that the defendant possessed an illicit substance).

Defendant may argue that there was a reasonable expectation of privacy regarding the cocaine because it was partially covered by a tarp, and that under *Arizona v. Hicks* Officer Griffin conducted an unlawful search by lifting the tarp. Assuming, arguendo, that a search was conducted here, it should be justified due to the incriminating character of the cocaine. The *Hicks* court found an officer's warrantless search unreasonable due to his lack of probable cause. 480 U.S. 321, 326. He observed expensive stereos which looked "out of place" in the apartment and moved them for closer examination under suspicion that they had been stolen. *Id*. at 323. He lacked probable cause to believe that the equipment was contraband because, on its face, a stereo lacks incriminating character. *Id*. at 326. Here, Officer Griffin, trained to identify drugs, knew that there were likely large quantities of cocaine in the warehouse and observed an object that looked like cocaine. Unlike the officer in *Hicks*, Officer Griffin had probable cause to believe that the object she saw was contraband, and unlike the stereos in *Hicks*, the light powdery substance here was facially incriminating. Should this Court find that Officer Griffin conducted a warrantless search, such search should be justified because Officer Griffin had probable cause to lift the tarp due to the incriminating character of the object.

B. Even if Defendant Had A Privacy Interest Requiring A Warrant, Officer Griffin's Search Was Lawful Due to Exigent Circumstances.

Should this Court find that Officer Griffin conducted a search, the warrantless search was justified under the exigent circumstances doctrine. Exigency is "particularly compelling in narcotics cases" due to how quickly and easily contraband can be removed from an area or destroyed altogether. *United States v. Young*, 909 F.2d 442, 446 (11th Cir. 1990). A warrantless search is justified under the exigency doctrine where the facts, "as they appeared at the moment of entry, would lead a reasonable, experienced agent to believe that evidence might be destroyed before a warrant could be secured." *See United States v. Rivera*, 825 F.2d 152, 156 (7th Cir. 1987).

The facts available to Officer Griffin at the time of entry would lead a reasonable and experienced officer to believe that evidence may be destroyed in the time taken to secure a warrant. Here, Officer Griffin was aware that the warehouse likely contained large quantities of cocaine. Additionally, Officer Griffin observed suspicious behavior from Defendant, alerting her to the possibility of evidence being destroyed. R. at 34. Defendant and Halstead's "frazzled" and "fearful" behavior after Officer Griffin stated her presence coupled with Halstead's repetitive glances toward the wooden pallets created an exigent circumstance. *See Young*, 909 F.2d at 446 (finding that law enforcement reasonably feared the destruction of evidence when the defendant acted in a suspicious manner and moved in a hurry).

Defendant may argue that Officer Griffin created the exigency, therefore barring the exception. As stated in Kentucky v. *King*, evidence is often destroyed out of fear that

contraband will fall into the hands of police. 563 U.S. at 461. To keep this rule from "unreasonably shrinking the reach of this well-established exception to the warrant requirement," mere fear of police detection will be insufficient to invoke the "police-created exigency" doctrine. *Id*. This doctrine only applies where an officer engages, or threatens to engage, in conduct that violates the Fourth Amendment; otherwise, the exigency permits warrantless action. *Id*. at 462, 469. In *King*, the Supreme Court found no police-created exigency where officers banged on the defendant's door and announced their presence. *Id*. at 471.

Similarly, Officer Griffin merely entered the warehouse, announced her presence, and maintained a calm disposition throughout the interaction with intentions of deescalating the situation. R. at 34, 37. Such behavior does not qualify as a police-created exigency, and thus Officer Griffin's conduct was justified.

C. Even if Officer Griffin Had Engaged in Unlawful Conduct, This Court Should Deny Defendant's Motion to Suppress and Admit the Evidence Under the Inevitable Discovery Doctrine.

Should this Court find that the evidence was the result of an unlawful entry and seizure, the evidence should still be admitted under the inevitable discovery doctrine. Aiming to deter police misconduct, the exclusionary rule prohibits evidence which is the "fruit of unlawful police conduct." *Nix v. Williams*, 467 U.S. 431, 442 (1984). In *Nix,* the Court adopted and applied the inevitable discovery doctrine as an exception to the exclusionary rule. *Id.* at 441. When the government proves by a preponderance of the evidence that the evidence would have inevitably been discovered through lawful means, it should be admitted. *Id*. at 444.

In *Nix*, evidence unlawfully obtained was nonetheless admitted because it would have inevitably been discovered "without reference to the police error." *Id*. at 448. There, testimony from the CIA showing that a search party would have found the victim's body without the unlawful conduct was sufficient to meet the government's burden. *Id*. Similarly, Vann's sworn statement regarding the ongoing DEA surveillance of both Defendant and the warehouse suffices to show the inevitable discovery of cocaine through lawful means. The agency was suspicious that there was cocaine in the warehouse, and had no plans of halting the investigation. R. at 51–54. "Suppression, in these circumstances … would inflict a wholly unacceptable burden on the administration of criminal justice." *Id*. at 447.

Furthermore, the DEA was working towards securing a search warrant which likely would have been granted. R. at 53. In applying the inevitable discovery doctrine, the court in *United States v. Rosario* used a two-part test to apply this exception to the exclusionary rule. 5 F.4th 706 (7th Cir. 2021). The exception should be applied when the government shows that it: (1) would have obtained an independent, legal justification for the search; and (2) would have conducted a lawful search regardless of the unlawful conduct. *Rosario*, 5 F.4th 706 at 713 quoting *United States v. Marrocco*, 578 F.3d 627, 637–38 (7th Cir. 2009).

It is evident from Vann's sworn statement that the *Rosario* elements are met here. The DEA was "building a case strong enough to get a search warrant." R. at 53. The DEA observed Defendant move suspicious packages three times and tracked their location back to the warehouse. R. at 52. It maintained surveillance and planned to have a

Confidential Informant confirm that there were drugs inside the warehouse. R. at 53. This evidence would establish probable cause for a search warrant to be granted. Furthermore, Vann asking Officer Griffin not to enter the warehouse to not “blow” the DEA’s case would lead a reasonable mind to conclude that a lawful search would have been conducted following the receipt of a warrant. This Court should adopt *Rosario*’s two-part test and find the evidence here admissible under the inevitable discovery doctrine.

CONCLUSION

For the foregoing reasons, the Government respectfully requests this Court deny Defense’s Motion to Suppress the evidence.

DATED this 4th day of September, 2023.

____

Respectfully Submitted,

/s/ TEAM 102

Attorneys for Prosecution

Team 102