UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF STETSON

UNITED STATES OF AMERICA

Prosecution,

v. Case No. 2023-CR-812

JAMIE LAWTON

Defendant.

THE GOVERNMENT'S MEMORANDUM IN OPPOSITION TO THE DEFENDANT'S MOTION TO SUPPRESS

/s/104
104

Attorneys for the United States

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION 1

STATEMENT OF FACTS 2

ARGUMENT 5

I. Defendant's Motion to Suppress Should be Denied Because Griffin Entered the Building Pursuant to a Lawful Warrantless Entry. 5

A. Griffin's belief that the warehouse was abandoned was objectively reasonable.

.... 5

B. Griffin entered the warehouse under exigent circumstances. 7

1. Griffin reasonably believed he was in hot pursuit of a felon. 8

2. Griffin reasonably believed he was in hot pursuit of a misdemeanant. 9

3. Griffin reasonably believed Defendant was destroying evidence. 11

II. Defendant's Motion to Suppress Should be Denied Because Griffin's Search and Seizure of the Cocaine was Lawful Under the Plain View and Inevitable Discovery Doctrines. 12

A. Griffin's search and seizure of the cocaine was lawful under the plain view doctrine. 13

B. Even if the cocaine is found to be illegally obtained, it is admissible under the inevitable discovery doctrine. 15

CONCLUSION 17

SIGNATURE BLOCK 18

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

U.S. CONST. amend. IV 5

U.S. SUPREME COURT CASES

Harris v. United States, 390 U.S. 234 (1968) 13

Horton v. California, 496 U.S. 128, 136-37 (1990).. 13,14

Murray v. United States, 487 U.S. 533, 108 (1988).. 13,16

Nix v. Williams, 467 U.S. 431, 104 (1984).. 13,16

Kentucky v. King, 563 U.S. 452, 463 (2011) 5,7,11,14,15

Carroll v. United States, 267 U.S. 132, 162 (1925).. 14

Minnesota v. Dickerson 508 U.S. 366, 113 S. Ct. 2130 (1993) 14

United States v. Santana, 427 U.S. 38, 43 (1976) 8,9,11

Lange v California 141 S. Ct. 2011, 2024 (2021) 9

Ker v. California, 374 U.S. 23, 42 (1963) 11

U.S. COURT OF APPEALS CASES

McKenney v Harrison, 635 F.3d 354, 359 (8th Cir. 2011).. 6

U.S. v. Grossman, 400 F.3d 212, 217 (4th Cir. 2005) 15

Hogan v. Kelley, 826 F.3d 1025, 1028-29 (8th Cir. 2016).. 17

Olvera v. City of Modesto, 38 F. Supp. 3d 1162, 1170 (E.D. Cal. 2014) 17

U.S. v. Wilson, 36 F.3d 205, 210 (1st Cir. 1994) 17

FEDERAL STATUTES

21 U.S.C. § 841(a)(1), (b)(1)(A) 1

21 U.S.C. § 846, 841(a)(1), (b)(1)(A) 1

18 U.S.C. § 342(b) 1

STATE OF STETSON STATUTES

§ 14-227a 8

§ 14-223 9

§ 14-147 10

SECONDARY SOURCES

Investigations and Police Practices, 46 GEO. L.J. ANN. REV. CRIM. PROC. 3, 50 (2017) 5

///

///

///

///

///

INTRODUCTION

The Grand Jury indicted Defendant Jamie Lawton on one count of Possession with Intent to Distribute 5 Kilograms or More of Cocaine under 21 U.S.C. § 841(a)(1), (b)(1)(a), one count of Conspiracy to Distribute 5 Kilograms or More of Cocaine under 21 U.S.C. § 846, 841(a)(1), (b)(1)(a), and one count of Operation of a Motor Vehicle While Under the Influence of Alcohol and/or Drugs by a Person who Holds a Federally Issued Common Carrier License under 18 U.S.C. § 342(b). In response to the indictment, Defendant has filed a Motion to Suppress.

The Court has requested a memorandum of law addressing two Fourth Amendment issues. First, the Court has inquired as to the constitutionality of Officer Griffin's entry into the building at 900 49th Street in Petersburg, Stetson. Defendant Jamie Lawton had no expectation of privacy under the Fourth Amendment in a building that appeared abandoned. Furthermore, Officer Griffin's entry into the building fell under multiple exigent circumstance exceptions to the warrant requirement.

Second, the Court asked whether Officer Griffin's discovery and seizure of the cocaine within the building was lawful under the Fourth Amendment. Officer Griffin's search of the building and seizure of the cocaine, like his entry, was pursuant to exigent circumstances. Additionally, Officer Griffin spotted the cocaine in question in plain sight. Therefore, Officer Griffins' actions constituted a lawful warrantless search and seizure. Even if this Court finds the evidence to be illegally obtained, it falls under the inevitable discovery doctrine and is thus still admissible. Accordingly, the United States respectfully asks the Court to deny the Defendant's Motion to Suppress.

STATEMENT OF FACTS

On or about June 8, 2023, Patrol Officer Taylor Griffin ("Griffin") was engaged in uniformed patrol, traveling southbound on 49th Street around 4:00 p.m. Griffin Tran. 17: 20–23. Officer Griffin was driving a marked SUV police cruiser. *Id*. at 19: 20-21.

As Griffin approached 49th Street and Raymond, he observed a red four-door truck with after-market suspension, a distinctive bumper sticker, and no back license plate also stopped at the intersection. *Id*. at 19: 9–23, 20:1–13. While the light was red, Defendant Jamie Lawton ("Defendant") opened the driver's side door of the truck and heaved. *Id*. at 21: 9–23, 21: 20–24. Griffin observed a small amount of vomit leaving Defendant's mouth. *Id*. at 22: 1–2. Griffin could not see Defendant's face but recognized the truck as belonging to one Kevin James, whom he had arrested on multiple occasions for alcohol-related crimes. *Id*. at 20: 17–23.

Griffin, having ample training in drunk driving prevention, decided to follow Defendant down 49th Street, believing him to be under the influence of alcohol. *Id*. at 17: 1–14. Griffin noted that Defendant's speed fluctuated as he drove, he avoided braking, and he engaged in "furtive movements" such as reaching around to the passenger compartment, which Griffin suspected to be for the purpose of hiding contraband. *Id*. at 25: 16–24. Furthermore, Griffin observed Defendant drift into the emergency lane multiple times, causing him to turn on the patrol car's lights to initiate a traffic stop. *Id*. at 26: 11.

Griffin pursued Defendant with his lights on for three miles until Defendant turned into a parking lot for a warehouse at 900 49th Street North. *Id*. at 28: 5-7. Defendant

stumbled out of the truck and walked fast toward a metal door, which he unlocked and ran inside, moving so fast that he left the door swinging wide open in the wind. *Id*. at 30: 32, 31: 1-13. The warehouse that Defendant entered appeared abandoned, with visibly broken windows and peeling paint. *Id*. at 28: 5–7.

Griffin radioed for backup after witnessing Defendant enter the building. *Id*. at 28: 9–12. While on the radio, Griffin received a call from Lieutenant Samy Vann ("Vann"), the head of the narcotics division and a Task Force Officer deputized by the DEA. *Id*. at 28: 9–12. Vann informed Griffin that the building was under surveillance by a joint state and federal task force and asked him not to enter, for fear of causing the suspected narcotics traffickers to move their illegal substances before Vann could make an arrest and seizure. *Id*. at 28: 18–25. Vann, who per Confidential Informant (CI) intel had been independently investigating Defendant for months as part of an extensive drug-trafficking investigation, also told Griffin that the building was likely a stash house for large quantities of cocaine. *Id*.

Griffin pursued Defendant inside, believing him to be evading law enforcement while intoxicated and knowing that a suspect's Blood Alcohol Content (BAC) will decrease continually from the point the suspect stops drinking. *Id*. at 29: 1–22. Furthermore, Griffin thought that Defendant was aware of police presence and any drugs in the building were at risk of being hidden or destroyed. *Id*. The door to the building was open, so Griffin walked straight in. *Id*. at 32: 1–5.

After entering the warehouse, Griffin heard voices out of sight about 30 yards away discussing feeling sick, needing cash, and having work to do that night. *Id*. at 32:

16–28, 34: 9–12. Defendant eventually asked Griffin to leave, but Griffin feared that Defendant's BAC would drop, and knew that the Defendant and would have an opportunity to hide or destroy any drugs on the premise. *Id*. at 36: 1–16. Thus, Griffin stayed and telephoned an ambulance on the Defendant's behalf. *Id*.

While talking with Defendant, Griffin noticed Kell Halstead ("Halstead") frequently glancing toward a pallet by the side of the room. *Id*. at 36: 19–23. While exiting the building, Griffin naturally came within 6–8 feet of the location where Kell Halstead had been looking. *Id*. at 39: 25–26. Griffin spotted around 12 square inches of something "light-colored wrapped in plastic" partially covered by a tarp. *Id*. at 39: 18–33. Based on Griffin's drug training and the information from Vann, he knew before lifting the tarp back that the packages contained drugs packaged for distribution. *Id*. at 40: 12–20. Griffin pulled back the tarp, exclaiming, "Exactly what I thought!" Vann Tran. 58: 1–5. Griffin then seized the cocaine and immediately passed it to Vann for testing to ensure Halstead would not have the opportunity to destroy or hide the evidence. *Id*. at 58: 7–15.

Griffin traveled to the hospital where Defendant was diagnosed with appendicitis and was awaiting surgery. Griffin Tran. at 42: 1-2. Griffin informed Defendant that he was not under arrest but asked that he submit to a urine sample. *Id*. at 42: 13-26. Defendant told Griffin he could not pee, but voluntarily offered to take a blood sample. *Id*. Griffin checked that Defendant was not administered pain medications and had signed a consent form before the nurse drew Defendant's blood, revealing a BAC of .04. *Id*. at 43: 3-15.

///

ARGUMENT

I. Defendant's Motion to Suppress Should be Denied Because Griffin Entered the Building Pursuant to a Lawful Warrantless Entry.

The Fourth Amendment requires that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . ." U.S. CONST. amend. IV. However, the "ultimate touchstone" of the Fourth Amendment is reasonableness, a constitutional prerequisite which overcomes the warrant requirement in some circumstances. *Kentucky v. King*, 563 U.S. 452, 459 (2011). Such circumstances include situations where an individual has no reasonable expectation of privacy or exigent circumstances justify the warrantless search and seizure. *Investigations and Police Practices*, 46 GEO. L.J. ANN. REV. CRIM. PROC. 3, 50 (2017). This Court should deny Defendant's Motion to Suppress because Officer Griffin had a reasonably objective belief that the building he entered was abandoned, and exigent circumstances justified pursuing Defendant inside.

A. Griffin's belief that the warehouse was abandoned was objectively reasonable.

Griffin did not violate the Fourth Amendment by entering the building because it reasonably appeared abandoned, negating Defendant's privacy rights. A person has Fourth Amendment privacy rights only in places with an "expectation of privacy that society is prepared to consider reasonable." *Olvera v. City of Modesto*, 38 F. Supp. 3d 1162, 1170 (E.D. Cal. 2014). Accordingly, no warrant is required when the government's conduct "does not violate a person's reasonable expectation of privacy." 38 F. Supp. 3d

1162, 1170 (E.D. Cal. 2014). To determine whether a person's expectation of privacy is reasonable and legitimate, the Supreme Court has devised a two-part test. "First, the individual must have a manifested subjective expectation of privacy, and second, society must recognize that expectation as objectively reasonable." *Katz v. United States*, 389 U.S. 347, 361, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).

In *McKenney v. Harrison*, officers found a house in disrepair, with an unkempt yard and dilapidated fence. 635 F.3d 354, 359 (8th Cir. 2011). No vehicles were parked outside, and no response was heard when officers knocked on the front door. *Id.* The back door was open, and the officers saw that the kitchen, all the cabinets, and the refrigerator were empty. *Id.* The officers saw no lights, no sounds from appliances, nor other indications of electrical power. *Id.* The 8th Circuit held that it was reasonable for officers to conclude the house was abandoned and, therefore, not subject to Fourth Amendment protection from a warrantless search. *Id.* The 8th Circuit also found that it was reasonable for the officers to enter without knocking or announcing, as that requirement does not apply to abandoned property. *McKenney*, 635 F.3d at 358.

To apply the test from *Katz*, Defendant manifested some subjective expectation of privacy after deciding to purchase this warehouse and live out of it, having installed keys and a bed. However, Defendant's outward manifestations of privacy fall short of what would be deemed reasonable. He made no effort to renovate the warehouse or communicate to passersby that the warehouse was, in fact, residential property.

Mr. Lawton's warehouse was visibly deteriorating from the outside, with missing windows, a lack of insulation, and peeling paint. These issues are consistent with

abandoned property, and the lack of upkeep indicates a lack of human presence on the premises. Like the property in *McKenney,* Defendant's warehouse showed no outward signs of residence, neither had lights on nor indications of running electricity. In both cases, the door to the property was left open, and officers determined the inside to be largely empty. The "No Trespassing" signs on the Defendant's warehouse are also consistent with abandoned property; these signs are neglected, much like the building, and do not tend to show that a person was living there.

Officer Griffin was mistaken about whether the warehouse belonging to Mr. Lawton was abandoned, but based on the totality of the circumstances, that conclusion about abandonment was objectively reasonable. Considering the reasonableness of that conclusion, this Court should find that Officer Griffin's entry into the warehouse did not violate Defendant's reasonable expectation of privacy under the Fourth Amendment.

B. Griffin entered the warehouse under exigent circumstances.

If this Court finds that Defendant had a reasonable expectation of privacy in the warehouse, Defendant's Motion to Suppress should be denied because Griffin's entry into the building is lawful due to urgent exigent circumstances. It is well-recognized by the Supreme Court that no warrant is needed when exigent circumstances make "make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable." *Kentucky*, 563 U.S. at 460. The Supreme Court expressly identified "hot pursuit" of a fleeing suspect and preventing the "imminent destruction of evidence" as two such exigencies that may justify a warrantless search. *Id*.

1. Griffin reasonably believed he was in hot pursuit of a felon.

The first situation that forms an exigency to justify the warrantless entry into a home is the hot pursuit of a fleeing felon. Defendants who flee into their homes do not gain the privacy protections of the Fourth Amendment. *United States v. Santana*, 427 U.S. 38, 43 (1976). In *Santana*, police had probable cause to arrest the defendant for a felony drug sale when they observed her standing in the public space in front her home. 427 U.S. 38, 40, 96 S. Ct. 2406, 2408 (1976). Upon seeing the police, the defendant retreated into her home, prompting the police to enter after her and make an arrest. 427 U.S. 38, 41, 96 S. Ct. 2406, 2409 (1976). The Supreme Court held this was not in violation of the Fourth Amendment, and an individual cannot thwart an arrest that began in public by simply retreating into their house. *Id*. at 43 (1976).

Like the police in *Santana,* who had probable cause to arrest the suspect for a felony, Griffin initiated a lawful traffic stop with the reasonable belief that the crime committed was a third-degree felony DUI. The identifiers that Griffin observed on Defendant's red truck, the aftermarket suspension, unique bumper sticker, and lack of rear license plates, were consistent with a vehicle belonging to Kevin James. Griffin knew Kevin James's history of committing DUI's and formed the conclusion that Kevin James was engaged in his second DUI violation in three years, which classified the offense as a third-degree felony. Stet. Stat. § 14-227a(2)(b). This rational suspicion was strengthened by Griffin's years of DUI-prevention training and his firsthand view of Defendant vomiting from the driver-side door. Thus, Griffin had an objectively

reasonable belief that he was observing a felony and needed to pursue Defendant to initiate a traffic stop.

When Defendant failed to slow down and pull over in response to Griffin's patrol lights, Griffin believed that Defendant was attempting to evade or elude law enforcement, escalating an already hot pursuit. Stet. Stat. § 14-223. Defendant's variations in speed and failure to brake while being pursued by Officer Griffin's car was consistent with an attempt to evade law enforcement. Like the suspect in *Santana*, who quickly retreated into her home upon arrival of police, Defendant wasted no time upon arrival at the warehouse in jumping out of the truck and walking quickly inside while pursued by Griffin. And like the police in *Santana*, who promptly entered the suspect's house behind her, Griffin waited only to call for backup before he entered the warehouse in chase of Defendant. Considering Defendant's evasive behavior and Griffin's belief that he had observed a felony, entry into the building in hot pursuit was objectively reasonable.

2. Griffin reasonably believed he was in hot pursuit of a misdemeanant.

If this Court finds Griffin's belief that he was in pursuit of a fleeing felon unreasonable, suppression of the evidence should still be denied because Griffin's entry in hot pursuit of a misdemeanant similarly constitutes a lawful warrantless search. In *Lange v California*, the Supreme Court differentiated between suspects fleeing felonies and those fleeing misdemeanors, choosing not to apply a categorical warrant exception to the latter. 141 S. Ct. 2011, 2024 (2021). The Court held that searches and seizures in hot pursuit of misdemeanants must be assessed case-by-case to see if an exigency allows

insufficient time to get a warrant. *Id*. at 2018. In making that determination, the Court provides examples of when hot pursuit of a fleeing misdemeanant may validate a warrantless entry, such as "to prevent imminent harms of violence, destruction of evidence, or escape from the home" *Id*. at 2024.

Officer Griffin was presented with multiple factors to consider in a short period of time to determine if entering the warehouse was justified based on the exigent circumstances. Griffin observed a possible DUI in progress, with a significant possibility of a repeat offender who the state would classify as a felon. Defendant failed to display plates, an infraction that weighs in favor of Griffin's belief that Defendant was attempting to evade law enforcement. Stat. Stet. § 14-147. Defendant did not slow down or pull over when faced with a traffic stop and then exited their vehicle to quickly flee into a building without acknowledging the officer. The building the suspect fled into appeared abandoned and had multiple points of ingress and egress. These facts show that Defendant willingly disregarded a lawful traffic stop and was in a position to successfully evade and elude law enforcement. To prevent Defendant's escape from justice, Griffin reasonably believed a warrantless entry was justified. Additionally, before entering, Griffin was informed that the suspect was under surveillance for felony narcotics trafficking and that police presence could likely trigger the destruction of evidence.

Officer Griffin had only a few moments to come to a reasonable conclusion and determined that he was in hot pursuit of a fleeing misdemeanant, justifying a lawful warrantless entry of the warehouse.

3. Griffin reasonably believed Defendant was destroying evidence.

In cases involving narcotics, the Supreme Court has reiterated the validity of law enforcement fears that evidence may be destroyed or removed unless an immediate warrantless search occurs. *See Ker v. California*, 374 U.S. 23, 42 (1963) ("The officers had reason to act quickly because of [the suspect's] furtive conduct and the likelihood that the marijuana would be distributed or hidden before a warrant could be obtained at that time of night.)"; *Santana*, 427 U.S. at 43 (finding that any delay may result in the destruction of evidence once a suspect is aware they are being pursued). Federal Courts have continuously upheld this exigency in cases where narcotics evidence is in imminent risk of being destroyed. *See, e.g.*, *U.S. v. Wilson*, 36 F.3d 205, 210 (1st Cir. 1994) (finding a warrantless search valid because the potential that the suspects were aware of the officer's presence created a risk that evidence would be destroyed).

The need to prevent the destruction of evidence is "well established" as an exigent circumstance permitting police officers to conduct a warrantless entry. *Kentucky v. King*, 563 U.S. 452, 455 (2011). Police officers may foresee when their conduct will prompt suspects to attempt to destroy evidence and take reasonable actions to prevent that destruction. *Kentucky*, 563 U.S. at 455.

Before entering the building, Griffin was informed by Vann that there were likely drugs within. Combined with the fact that, to Griffin's knowledge, Defendant was aware he was being pursued, Griffin had a strong and reasonable fear that Defendant may hide or destroy evidence within the building. As such, Griffin was afforded inadequate time to obtain a warrant when he and Defendant reached the building. Like the officers in *Ker*,

who had to act quickly and without a warrant to search a residence and seize drugs to prevent evidence being destroyed, Griffin needed to search the residence expeditiously to ensure that no drugs were destroyed, given the risk that the Defendant was aware of police presence. Furthermore, with every minute wasted, the Defendant's blood alcohol levels decreased. The totality of the circumstances demonstrates that by attempting to apprehend a suspect and prevent evidence destruction, Griffin's search of the building and seizure of the cocaine was lawful pursuant to exigencies laid out by the Supreme Court that validate a lawful warrantless search and seizure.

Griffin's DUI training included the concept of "BAC drop," a phenomenon in which a person's blood alcohol level decreases over time. Officers must obtain a prompt BAC reading from suspects believed to have committed a DUI. Otherwise, a suspect may commit a DUI and then retreat into their home until their BAC drops below the legal limit. Griffin reasonably believed that the evidence necessary to prosecute the third-degree felony DUI was being destroyed through the process of BAC drop and determined it necessary to enter the premises to prevent that destruction of evidence. As BAC drop constitutes the destruction of evidence sufficient to constitute exigent circumstances, Officer Griffin was justified in his warrantless entry of the building.

II. Defendant's Motion to Suppress Should be Denied Because Griffin's Search and Seizure of the Cocaine was Lawful Under the Plain View and Inevitable Discovery Doctrines.

Even in cases where law enforcement has no warrant, the Supreme Court has found it reasonable for police to search and seize evidence left in plain view. *See, e.g.*, *Harris v. United States*, 390 U.S. 234 (1968). A search and seizure is lawful under the plain view

doctrine if (1) the officers lawfully entered the area where the items could be plainly viewed, and (2) the incriminating nature of the items was immediately apparent. *Horton v. California*, 496 U.S. 128, 136-37 (1990). After lawfully entering the warehouse pursuant to the previously mentioned exigent circumstances, Griffin observed exposed white material enclosed in plastic wrap. The incriminating nature of the packages was immediately apparent to Griffin, who knew them to be drugs based on his trainings, and intel from Vann. Because the search and seizure of the cocaine met both requirements of the plain view doctrine, this Court should deny Defendant's Motion to Suppress.

However, even if this Court finds that Griffin illegally obtained the evidence, the Supreme Court has carved out an inevitable discovery doctrine for evidence that an independent source would have lawfully discovered. *See Murray v. United States*, 487 U.S. 533, 108 (1988*); Nix v. Williams*, 467 U.S. 431, 104 (1984). When Griffin seized the cocaine, Vann already had an independent DEA investigation into Defendant's drug trafficking involvement. Vann independently surveilled Defendant for months, and testified that he planned to get a warrant to search the warehouse. Because the discovery of the cocaine was inevitable, this Court should deny the Defendant's Motion to Suppress even if the evidence is found to be illegally obtained.

A. Griffin's search and seizure of the cocaine was lawful under the plain view doctrine.

The Supreme Court has held that the search and seizure of evidence in plain view does not violate the Fourth Amendment if the police arrived at the location in question via a lawful, warrantless search. *Kentucky v. King*, 563 U.S. 452, 463 (2011). In

Kentucky, police officers pursued a suspected drug dealer to an apartment complex. *Id*. at 456. Not knowing which apartment the suspect entered, the police kicked in the door of a unit where they smelled a strong odor of marijuana and heard suspicious noises. *Id*. The officers searched the apartment and found marijuana and cocaine in plain view. *Id*. at 457. The Court reasoned that if the police had lawfully entered the apartment due to exigencies like pursuing a suspect, they could seize evidence in plain view. *Id*. The Court further articulated that even if the police arrived with the hope of being able to view and seize the evidence, the plain view doctrine could still apply. *Id*.

Another requirement of the plain view doctrine is that the incriminating nature of the evidence must be immediately apparent. *Horton v. California*, 496 U.S. 128, 136 (1990). In *Minnesota v. Dickerson*, the Supreme Court found that the incriminating nature of an object in plain view is immediately apparent if police have probable cause to believe it is contraband without conducting further investigation. 508 U.S. 366, 113 S. Ct. 2130 (1993). Probable cause exists when the information within the arresting officer's knowledge is sufficient "to warrant a man of reasonable caution in the belief" that an offense has been committed. *Carroll v. United States*, 267 U.S. 132, 162 (1925). Receiving information from a reliable informant, especially when corroborated by an officer's observation of suspicious and erratic behavior, is one method of establishing probable cause. *See U.S. v. Grossman*, 400 F.3d 212, 217 (4th Cir. 2005) (finding that information from the reliable informant and defendant's suspicious and evasive behavior supported the search of a residence).

Here, Griffin satisfied the first requirement of the plain view doctrine because Griffin arrived at the evidence without violating the Fourth Amendment. Griffin entered the building to pursue a fleeing suspect and prevent the destruction of evidence, thus constituting a lawful warrantless search based on exigencies. Griffin's chase of Defendant continued inside the warehouse, where he had to walk to the back of the building to find Defendant. Like the police in *Kentucky* whose suspicions about drugs were raised by noises and smells, Griffin's attention was drawn to the contraband after noticing Halstead glancing towards the cocaine. When Griffin started to exit the building, he naturally came within ten feet of the evidence. As emphasized by *Kentucky*, the fact that Griffin may have expected to find the evidence at hand, does not remove the search from the purview of the plain view doctrine. Therefore, Griffin's arrival at the location where he viewed the evidence satisfied the first element of plain view doctrine.

The incriminating nature of the cocaine was immediately apparent to Griffin as soon as he neared its location. Like the reliable informant in *Grossman*, Vann informed Griffin of the trafficking operation and likelihood of contraband within the building. As such, when Griffin saw 12 square inches of exposed, white substance wrapped in plastic, he had probable cause to know it contained drugs. The fact that Griffin's preliminary view of the cocaine was enough to expose its incriminating nature is evidenced by Vann hearing Griffin exclaim, "Exactly what I thought!" after lifting the tarp to further reveal the drugs. Because Griffin was legally on the premise, had probable cause to know of the cocaine, and saw its incriminating nature before investigating, the cocaine is admissible evidence under the plain view doctrine.

B. Even if the cocaine is found to be illegally obtained, it is admissible under the inevitable discovery doctrine.

Even if this Court finds the evidence of the cocaine to be illegally obtained, it is still admissible under the inevitable discovery doctrine. Under this admissibility exception, courts can admit evidence discovered unlawfully if it would inevitably have been discovered through a lawful, independent source. *Murray v. United States*, 487 U.S. 533, 539 (1988). In *Murray*, police unlawfully forced their way into a warehouse where they discovered bales of drugs. *Id*. at 535. The officers left, but later returned with a warrant to seize the drugs. *Id*. The Court stressed that the key question to applying the inevitable discovery doctrine is whether the evidence would have been discovered independently by another source. *Id*. at 539. The Court then reasoned that suppressing such evidence "would put the police (and society) not in the same position they would have occupied if no violation occurred, but in a worse one." *Id*. at 541; *see also Nix v. Williams*, 467 U.S., at 443.

Federal courts have broadly applied the inevitable discovery exception in cases where there was an independent ongoing investigation into the crime, or an independent search warrant that had not yet been executed. *See e.g.*, *Hogan v. Kelley*, 826 F.3d 1025, 1028-29 (8th Cir. 2016). In *Hogan*, police looking for a prohibited shotgun illegally searched the inside of a Crown Royal bag on a suspect's property, finding marijuana and methamphetamines. *Id*. at 1028. The police department, independent of the illegal search, had an ongoing drug-trafficking investigation into the same suspect through a confidential informant. *Id*. at 1029. The court held that the inevitable discovery doctrine

justified the denial of a Motion to Suppress. *Id*. In reaching the holding, the court reasoned that the independent investigation into the suspect supported a finding that the evidence would inevitably have been discovered by lawful means. *Id*.

Here, like the police in *Hogan*, Vann would inevitably have legally searched the warehouse to effectuate his independent DEA investigation into Defendant. Similar to the police in *Hogan* who received intel from a CI in a separate drug-trafficking investigation, Vann had a CI working at the railroad who informed him that Defendant was moving large packages onto trains at odd hours. Vann had furthered the investigation by surveilling Defendant for months, conducting a background check on Defendant, and searching the title search of the warehouse. Vann "knew there was likely a large amount of cocaine in the building" but was trying to identify whether the warehouse was merely being used to hold drugs, or also to cut and package. Like *Hogan*, where the drugs would inevitably have been discovered independent of the illegal search, had Griffin not interfered, Vann would have legally discovered the drugs as part of the DEA's investigation. As such, suppressing the evidence would do nothing more than slow the wheels of justice. Because both the plain view and inevitable discovery doctrines support the admission of this evidence, Defendant's Motion to Suppress should be denied.

CONCLUSION

Officer Griffin's entry of the warehouse and seizure of the evidence did not violate the Fourth Amendment because it was a lawful, warrantless search pursuant to exigent circumstances and plain view exceptions to the warrant requirement. However, even if this Court finds the evidence to be illegally obtained, it should still be admissible because

Lieutenant Vann would inevitably and independently have discovered it. Accordingly, this Court should deny Defendant's Motion to Suppress.

Dated: September 4, 2023

Respectfully submitted,

/s/104
104

Attorneys for the United States