Criminal Case No: 2023-CR-812

IN THE

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF STETSON

SEPTEMBER 1, 2023

THE UNITED STATES OF AMERICA,

Prosecution,

-against

JAMIE LAWTON,

Defendant.

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

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INTRODUCTION

Respondent files this response to Petitioner's motion to suppress evidence gathered by Petersburg Patrol Officer Griffin ("Griffin") on June 8, 2023. Griffin did not violate the Fourth Amendment. Griffin had probable cause to follow, arrest, and search Petitioner's warehouse. Probable cause existed to arrest Petitioner under §14-227a(2)(b), §14-215(c) and 18 U.S.C. §342. R.11-13, 23. Probable cause also permitted the warehouse entry and search without a warrant because the standards for exigent circumstances, plain view doctrine, and search incident to a lawful arrest were all met. Moreover, if there was an illegal entry, the exclusionary rule is not mandated because the evidence seized is supported by an independent source.

Accordingly, this Court should deny Petitioner's Motion to Suppress because Griffin acted within accordance of the law.

STATEMENT OF FACTS

On June 8, 2023, Griffin patrolled Petersburg County in a marked police vehicle when he saw a red truck at the intersection of 49th Street and Raymond Street. (Tr. of Grand Jury Proceeding - Taylor Griffin, dated July 6, 2023 ("Tr. Griffin") at ¶¶ 23, 27, 43). Griffin, an officer for three years for Petersburg County, received extensive training, including a six week "Driving Under the Influence" ("DUI") course. (Griffin Tr. ¶¶ 7-13, 19). He was assigned to the front line of the traffic enforcement and DUI protection division. (Griffin Tr. ¶¶ 7-15). His assignment required that he lookout for suspicious or illegal activity, particularly DUIs, and investigate and stop any criminal activity. (Griffin Tr. ¶ 15). He patrolled the assigned area for DUIs solo for about two years. (Griffin Tr. ¶ 21).

At approximately 4:00pm, Griffin observed a driver in a red truck in the far-right lane get out of the vehicle and vomit onto the ground. (Griffin Tr. ¶¶ 43, 65). He recognized the vehicle to belong to Kevin James ("James"). (Griffin Tr. ¶ 67). Griffin recently arrested James for a DUI. (Griffin Tr. ¶¶ 69-71). Griffin knew that James was out after failing his rehabilitation treatment six months after his DUI conviction and that another DUI conviction within three years was a felony with mandatory imprisonment. (Griffin Tr. ¶¶ 99, 101). The red truck was jacked up and had a bumper sticker of a stick figure peeing on the Ford logo. (Griffin Tr. ¶ 79). Griffin knew James' vehicle had both features. (Griffin Tr. ¶ 91). Griffin could not verify if it was James' truck because the back license plate was missing, however he believed the license was unique to James' truck. (Griffin Tr. ¶ 81). The driver also appeared to have a similar physical stature to James, but with longer dyed

blonde hair. (Griffin Tr. ¶¶ 91, 101). The driver got back into the truck after the stoplight turned green. (Griffin Tr. ¶¶ 106-11). Griffin followed the truck because he suspected the driver was under the influence. (Griffin Tr. ¶¶ 115, 147).

During Griffin's investigation, he observed the red truck drift into the emergency lane multiple times. (Griffin Tr. ¶ 127). While the driver wasn't speeding, his speed frequently fluctuated and often drove excessively below the speed limit. (Griffin Tr. ¶¶ 119-25). After the second drift into the emergency lane, Griffin turned on his headlights to pursue. (Griffin Tr. ¶¶ 138-39). He didn't turn on his sirens because he did't believe it was necessary. (Griffin Tr. ¶ 141). No video of the interaction was obtained because video footage is only saved when the sirens are on. (Griffin Tr. ¶ 145).

Griffin followed the driver with flashing lights for approximately three miles, who failed to pull over. (Griffin Tr. ¶¶ 154-55, 159, 171). The driver drove straight to a parking lot of an abandoned-looking warehouse with a "No Trespassing" sign. (Griffin Tr. ¶ 161-63). Griffin parked directly behind him with his lights still flashing. (Griffin Tr. ¶ 171) The driver exited the vehicle and quickly walked into the warehouse. (Griffin Tr. ¶ 161). Griffin believed the driver was fleeing because he never pulled over, thus Griffin prepared for a chase. (Griffin Tr. ¶ 147). He radioed in for back-up before following the driver into the warehouse to arrest him. (Tr. of Grand Jury Proceeding – Samy Vann, dated July 6, 2023 ("Tr. Vann") at ¶ 43) While he radioed in, DEA Agent Sammy Vann ("Vann") called Griffin's cellphone. (Griffin Tr. ¶¶163-65). He told Griffin not to enter the warehouse because the DEA discovered that it was an illegal drug distribution center and at least one drug dealer was inside. (Griffin Tr. ¶¶163-65). Vann received this information from a

confidential informant who observed a coworker assisting drug activity at the railroad. (Griffin Tr. ¶¶ 163-65; Vann Tr. ¶ 15). Vann observed Petitioner aiding others load packages onto a train outside of the normal work hours in the early morning and late evening. (Vann Tr. ¶ 15). Vann's investigation confirmed the informant's information and led Vann to the warehouse. (Vann Tr. ¶ 17). Based on Vann's information, Griffin feared that the driver refused to pull over and entered the warehouse to destroy drug evidence. (Griffin Tr. ¶ 169). Griffin entered the warehouse through a door left open by Petitioner, after knocking, to prevent the destruction of evidence. (Griffin Tr. ¶¶ 169, 189, 198-99)

The warehouse was large and appeared empty and uninhabitable when Griffin first walked inside. (Griffin Tr. ¶; Vann Tr. ¶ 21). He heard someone say, "We got a good deal going down tonight and need the cash-get yourself together!" (Griffin Tr. ¶ 219). Griffin found the two suspects in a makeshift kitchen. (Griffin Tr. ¶ 211). He identified himself as a police officer and began speaking to Petitioner. (Griffin Tr. ¶ 221). Petitioner's eyes widened and appeared frazzled. (Griffin Tr. ¶ 223). He asked Petitioner for his license, which stated he was James' cousin, Jamie Lawton ("Lawton.") (Griffin Tr. ¶¶ 225-27). Lawton appeared pale and sweaty, which prompted Griffin to ask if he was alright. (Griffin Tr. ¶ 241). Lawton responded that he felt sick and needed an ambulance and requested Griffin to leave. (Griffin Tr. ¶ 235). Griffin radioed for an ambulance but stayed, worried that Lawton was faking his illness to avoid arrest. (Griffin Tr. ¶ 239). Griffin also wanted to ensure Lawton receive medical treatment if he was truly sick. (Griffin Tr. ¶ 241). Griffin noticed that the other individual kept looking at a wooden pallet behind the shelf. (Griffin Tr. ¶ 243). Griffin feared that a weapon was stashed over there, and that the individual

considered grabbing it. (Griffin Tr. ¶ 247). Despite his concern, Griffin remained calm. Id. The other individual was uncooperative when Griffin asked him for his license. (Griffin Tr. ¶ 229).

Before the ambulance arrived, Griffin asked Lawton if he had been drinking. (Griffin Tr. ¶ 249). Lawton admitted that he drank half a beer at Right on Cue. (Griffin Tr. ¶ 249). A receipt later obtained indicated that Lawton bought several more drinks, but allegedly for his friends. (Griffin Tr. ¶ 249). The EMTs arrived about ten minutes after Griffin entered the warehouse. (Griffin Tr. ¶¶ 256-57). The EMTs believed Lawton may have appendicitis and took him to the hospital. (Griffin Tr. ¶ 255). Griffin began following the EMTs out when he noticed an object sticking out where the other individual had been looking earlier. (Griffin Tr. ¶ 261, 285). Once he got closer, he recognized the light-colored plastic wrap and packing tape as the method used to conceal drugs from his police training. (Griffin Tr. ¶ 271). Griffin then confiscated the suspected drugs because he didn't want to leave the drugs with the other individual. (Griffin Tr. ¶ 281). After seizing the evidence, the other individual fled the warehouse, but back-up personnel captured him. (Griffin Tr. ¶ 289). Griffin went to the hospital to see Lawton. (Griffin Tr. ¶ 259). He passed Vann on his way out, who was parked in the parking lot watching the whole interaction through the open warehouse door. Following the confiscation of drugs, Vann applied for a search warrant, which was granted about an hour later. (Griffin Tr. ¶29; Vann Tr. ¶ 21).

ARGUMENT

I. THIS COURT SHOULD NOT SUPPRESS THE EVIDENCE BECAUSE GRIFFIN DID NOT ILLEGALLY ENTER THE WAREHOUSE.

A. The warehouse is not a home that falls under Fourth Amendment protection against warrantless entry.

Griffin's entry into the warehouse is not a Fourth Amendment violation. The Fourth Amendment imposes a "right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures" that "shall not be violated, and no warrants shall issue, but upon probable cause." U.S. Const., amend. IV. The Fourth Amendment does not prohibit all unwelcome intrusion on private property so long as the unwelcome intrusion is reasonable. Caniglia v. Strom, 141 S. Ct. 1596, 1599 (2021). The Fourth Amendment's protection over private property extends to the property's "curtilage," which is the area immediately surrounding the house that is used for intimate activities closely related to those activities of the house itself. U.S. v. Dunn, 107 S. Ct. 1134, 1139 (1987).

For public property, the Fourth Amendment may extend to public places, but only when the person exhibits a "subjective expectation of privacy that society is prepared to objectively recognize as reasonable." Katz v. U.S., 88 S. Ct. 507, 516–17 (1967). Overall, "the government's ability to conduct searches of these properties, like warehouses, is far broader than its ability to search a home." U.S. v. Chaves, 169 F.3d 687, 691 (11th Cir. 1999) Further, in Heien v. N.C., the Supreme Court held that search or seizure is

reasonable under the Fourth Amendment when an officer has made a reasonable factual or legal mistake. 135 S. Ct. 530, 534 (2014).

Any public property that does not exhibit a reasonable expectation of privacy is an "open field." U.S. v. Rey, 663 F. Supp. 2d 1086, 1106 (D.N.M. 2009). Police entry onto an "open field" is not a violation of the Fourth Amendment because the area is public, or open to all, and therefore there is no privacy expectation to protect. Id. "Open fields" includes "any unoccupied or undeveloped area that does not fall under the Fourth Amendment's definition of a house or curtilage." Id. The area can be neither "open" nor a "field" but still qualify as an "open field." Id. To challenge a Fourth Amendment search, a defendant seeking suppression bears the burden to demonstrate that he had legitimate expectation of privacy in the place searched. U.S. v. Lingenfelter, 997 F.2d 632, 636 (9th Cir. 1993).

Griffin did not violate the Fourth Amendment because Lawton's warehouse is not a home to the reasonable objective observer. It is uncontested that Lawton "lives" in the warehouse. (Vann Tr. ¶ 31-37). A warehouse is not reasonably considered a home to the average person, and Griffin "definitely didn't think this was anyone's personal residence" when he saw Lawton's "home." (Griffin Tr. ¶ 199). After chasing Lawton for three miles without stopping, Griffin observed "an abandoned-looking warehouse" and parked in the adjacent parking lot. (Griffin Tr. ¶ 161-63). The property externally appeared as an "open field" to Griffin. Lawton claims the warehouse was his home, however the only external factor that indicated the warehouse may not be abandoned was the "No Trespass" sign. (Griffin Tr. ¶ 179). "No Trespass" signs alone do not prevent police from approaching

property when the property otherwise appears as an open field. Oliver v. U.S., 104 S. Ct. 1735, 1744 (1984).

Griffin entered the warehouse because he believed the warehouse was an open field. (Griffin Tr. ¶ 199). Upon his entry, Griffin found no signs that it was a residence. (Griffin Tr. ¶ 199-201). The warehouse appeared like a warehouse: a giant space that was mostly empty. (Griffin Tr. ¶ 201). The warehouse had only two factors like a home: a makeshift kitchen and a bed on the second floor. (Griffin Tr. ¶ 211; Vann Tr. ¶ 67). Both were not immediately apparent in the warehouse, which would not lead a reasonable person to believe the warehouse was a home. Further, Lawton admitted that he had not started renovating the warehouse into a home. (Sworn Statement – Jamie Lawton, dated July 20, 2023 ("Lawton") at ¶ 3-5). Lawton stated that he wanted to use the property as a business warehouse. (Lawton at ¶ 3-5). Thus, Griffin wasn't mistaken for believing that the warehouse wasn't a home because the abandoned warehouse wasn't altered in any way. His mistake is also not unreasonable given the factual appearance of the warehouse and officers do not violate the Fourth Amendment when they make reasonable mistakes of fact. Therefore, Griffin's entry didn't violate the Fourth Amendment because a reasonable observer would not believe the warehouse was a home.

B. The Fourth Amendment permits Griffin to enter the home because Griffin was in hot pursuit.

Searches and seizures inside a home without a warrant are presumptively unreasonable, unless police can show that it falls within one of the "exigent circumstances" exceptions. Payton v. N.Y., 100 S. Ct. 1371, 1380 (1980). Hot pursuit is an exigent circumstance where

the police do not need a warrant if the suspected crime is a jailable offense. Warden, Md. Penitentiary v. Hayden, 87 S. Ct. 1642, 1652 (1967). The Court explained in Hoffa v. U.S., that faulting the police for failing to apply for a search warrant at the earliest possible time after obtaining probable cause imposes a duty that is nowhere to be found in the Constitution. 87 S. Ct. 408, 417 (1966).

Probable cause to arrest exists when the officer's factual knowledge or reasonably trustworthy information is sufficient to make a reasonable person believe that an offense has been or is being committed by the suspect. Ill. v. Gates, 103 S. Ct. 2317, 2332 (1983). "When the totality of circumstances, including a misdemeanor suspect's flight, shows an emergency, the police may make a warrantless entry of a home to prevent the imminent destruction of evidence, imminent harm to others especially police officers, or to prevent a suspect's escape" under the "exigent-circumstances exception." Lange v. Cal., 141 S. Ct. 2011, 2021 (2021).

When the police believe a suspect is in the home, it doesn't violate the Fourth Amendment to make a warrantless entry to apprehend the suspect. Id. at 2020. For example, in U.S. v. Dart, officer's initial warrantless entry into mini-warehouse unit did't violate the Fourth Amendment because the warehouse was burglarized, and the perpetrators were still inside. 747 F.2d 263, 267 (4th Cir. 1984).

A warrantless entry into a home only violates the Fourth Amendment when the offense isn't imprisonment. Welsh v. Wis., 104 S. Ct. 2091, 2099 (1984). For example, in U.S. v. Santana, police attempted to arrest the defendant in the doorway of her home for heroin possession with intent to distribute, but the defendant fled into her home to avoid

the arrest. 96 S. Ct. 2406, 2407 (1976). The Supreme Court held that "a suspect cannot defeat an arrest that was set in motion in a public place by the expedient escape into a private place." Id. at 2410.

Griffin was in hot pursuit of Lawton when he entered the warehouse. (Griffin Tr. ¶¶ 197-99). He mistook Lawton for his cousin, James, who Griffin knew had a suspended license from a DUI conviction. (Griffin Tr. ¶¶ 67-71). Griffin knew that James was released after failing treatment. (Griffin Tr. ¶ 151). Lawton's vomiting out of the vehicle and erratic driving made Griffin reasonably infer that he was under the influence. (Griffin Tr. ¶ 147). Lawton has a familial and physical resemblance to James. (Griffin Tr. ¶ 67-73). Lawton also drove James' truck, which Griffin recognized because of the truck's unique bumper sticker. (Griffin Tr. ¶ 79). Griffin knew driving with DUI Suspension is mandatory imprisonment under §14-215(c) because it is considered a felony under §14-227a(2)(b). (Griffin Tr. ¶ 147, Stetson Stat. §14-227). He didn't realize that the suspect was Lawton until Griffin was inside the warehouse. (Griffin Tr. ¶ 221). However, Griffin reasonably believed he was in hot pursuit of a felony suspect and police's mistakes of facts, such as confusing two similar individuals, is not a Fourth Amendment violation. Additionally, 18 U.S.C. §342 mandates imprisonment for any motor vehicle operator with a common carrier license under the influence of drugs or alcohol. Griffin reasonably believed Lawton was under the influence because he vomited out of the vehicle and drifted into the emergency lane numerous times. (Griffin Tr. ¶ 147). Despite Griffin mistaking Lawton's identity, he had probable cause to pursue Lawton because he is a railroad employee with a common

carrier license who reasonably appeared as driving intoxicated. Therefore, Griffin could enter the warehouse under the reasonable belief that he was in hot pursuit.

Griffin followed Lawton in his marked police vehicle for three miles with his lights flashing. (Griffin Tr. ¶ 141). Rather than pulling over, Lawton drove straight to the warehouse and rushed inside. (Vann Tr. ¶¶ 43-45; Griffin Tr. ¶¶ 161, 187). Before entering the warehouse, Vann told Griffin that the warehouse was a drug distribution center and at least one person inside was a drug dealer. (Griffin Tr. ¶¶ 165, 247). Griffin reasonably believed that Lawton refused to stop and rushed into the warehouse because he knew the police were following him and needed to destroy drug evidence. (Griffin Tr. ¶¶ 167, 169, 171). Given Lawton's elusive behavior and Vann's drug information, Griffin believed Lawton was about to destroy evidence and could enter the warehouse to prevent the destruction under the "emergent circumstances" exception. (Griffin Tr. ¶¶ 167-169, 171).

C. The Fourth Amendment allows Griffin to enter the home to render emergency aid.

Exigent circumstances may excuse a warrantless search. Coolidge v. N.H., 91 S. Ct. 2022, 2034–35 (1971). In Brigham City, Utah v. Stuart, the Supreme Court held that police may enter a home without a warrant when they have "an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury." 126 S. Ct. 1943, 1949 (2006). An action is "reasonable" regardless of the individual police officer's state of mind. 126 S. Ct. 1943, 1948 (2006)(quoting Bond v. U.S., 120 S. Ct. 1462 (2000)). Officers do not need "ironclad proof of 'a likely serious,

life-threatening' injury" to meet the warrant exception. Mich. v. Fisher, 130 S. Ct. 546, 549 (2009).

Many circumstances satisfy an exigency to justify a warrantless search, including emergency assistance to home occupant. Miss. v. McNeely, 133 S. Ct. 1552, 1558 (2013). In Fisher, the Supreme Court held the police officers' warrantless entry following a disturbance complaint was permitted because the officers found blood on a pickup truck's hood in the driveway and noticed through a window that the defendant's hand was bleeding. 130 S. Ct. 546, 549. The officers entered the home and asked him whether he needed medical attention, but the defendant demanded, with profanity, that the officers get a search warrant. Id. at 547. The Court must assess officers' actions from the perspective of a reasonable officer on scene, not with 20/20 hindsight or depending on the seriousness of the crime. In People v. Smith, 46 Cal. App. 5th 375, 389 (D.Ca. 2020), the court held that facts involving "blood or vomit near the vehicle or residence" satisfy the emergency aid exception. Lastly, while responding to an emergency, any evidence an officer discovers "is admissible even if there was no probable cause to believe that such evidence would be found." U.S. v. Snipe, 515 F.3d 947, 952 (9th Cir. 2008).

Griffin may enter the warehouse under the emergency aid exception. Griffin witnessed Lawton vomiting outside the vehicle in the middle of traffic and hunched over while he drove. (Griffin Tr. ¶¶ 83, 87, 129). In the warehouse, Griffin watched Lawton lean against a wall grabbing his stomach. (Griffin Tr. ¶ 233). Griffin immediately radioed for an ambulance following Lawton's request. (Griffin Tr. ¶¶ 235, 241). Lawton needed medical attention because he had appendicitis requiring immediate surgery. (Griffin Tr. ¶ 255).

Griffin entered and stayed despite Lawton's request to leave because he witnessed his illness. Therefore, Griffin didn't violate the Fourth Amendment when he entered Lawton's warehouse under the emergency aid exception.

II. GRIFFIN DID NOT ILLEGALLY SEARCH THE DEFENDANT'S WAREHOUSE RESULTING IN THE SEIZURE OF COCAINE.

A. Griffin can seize the cocaine under the plain view doctrine.

The police may seize evidence without a warrant under the plain view doctrine. Horton v. Cal, 110 S. Ct. 2301, 2304 (1990). The police satisfy the doctrine when they are in a permissible location, the evidence is in "plain view," the evidence's incriminating character is "readily apparent," and the police have "lawful access to the evidence." Horton v. Cal., 110 S. Ct. 2301, 2308 (1990)(citing Coolidge v. N.H., 91 S. Ct. 2022, 2038 (1971)). The evidence doesn't have to be "inadvertent." Id. Therefore, it is presumptively reasonable to seize it without a warrant if there is probable cause to associate property with criminal activity, such as weapons or contraband. Payton v. N.Y., 100 S. Ct. 1371, 1380 (1980).

The probable cause cannot be a hunch and the evidence cannot be manipulated to reveal its incriminating character. Ariz. v. Hicks, 107 S. Ct. 1149, 1154 (1987). In Hicks, evidence didn't fall under the plain view doctrine when the officer moved the turntable a few inches to access the serial number label. Id. However, in Ky. v. King, the Supreme Court held an officer can move around a spot to better view evidence to seize. 131 S. Ct. 1849, 1858 (2011).

Evidence seized at the warehouse is automatically admissible because no reasonable observer would believe the warehouse is a home, thus there was no reasonable expectation of privacy. However, if the warehouse was Lawton's "home," Griffin could enter the warehouse under the "hot pursuit" and emergency aid warrant exceptions, which satisfy the "permissible location" and "lawful access" plain view elements. Any visible incriminating item has no privacy protection attached to it; thus, Griffin can seize it. Griffin saw drugs partially sticking out of a tarp on his way out of the warehouse, thus being in Griffin's plain view. (Griffin Tr. ¶¶ 271, 275-77). Further, the drugs were placed in drug-specific packaging, which Griffin knew from his training, making the incriminating nature immediately apparent. (Griffin Tr. ¶¶ 277, 285). He didn't open or manipulate the evidence, but merely seized it, as permitted under the plain view doctrine. Id., (Griffin Tr. ¶ 279). Therefore, the plain view elements were satisfied, and Griffin's seizure of the cocaine didn't violate Lawton's Fourth Amendment rights.

B. Griffin may seize the cocaine as a search incident to a lawful arrest.

The Fourth Amendment permits a warrantless contemporaneous search of an area in the suspect's possession and immediate control as a search incident to an arrest ("SIL"). Chimel v. Cal., 89 S. Ct. 2034, 2036 (1969). The Court extended the scope to protect the officer's safety. Id. at 2042. Further, the search protects the judicial system's integrity by preventing evidence destruction. Id. at 2045. A SIL includes closets and spaces immediately adjoining the place of arrest. Id. at 2037. During hot pursuit, the Supreme Court held that all evidence found is admissible. Hayden, 87 S. Ct. 1642.

Griffin entered the warehouse to arrest Lawton because the officer had probable cause for a DUI. The probable cause existed because Lawton vomited out of his truck in the middle of an intersection and drifted multiple times into the emergency lane. (Griffin Tr. ¶¶ 83, 87, 147). Unlike an indictment, Griffin only needed probable cause to arrest him because an arrest only needs probable cause. (Griffin Tr. ¶ 277). It does not have to be enough to warrant an indictment. Therefore, Griffin was making a lawful arrest of Lawton.

Lawton refused to pull over after Griffin followed him for several miles with his lights flashing and failed to stop after Griffin parked directly behind him. (Griffin Tr. ¶¶ 155, 171, 187-91). Griffin was left with no choice but to follow him into the warehouse. (Griffin Tr. ¶ 199). Griffin could then search the warehouse because he was making an arrest inside. Griffin knew from the DEA that the warehouse was a drug distribution center and a drug dealer was inside. (Griffin Tr. ¶ 247). By entering a drug lair, Griffin entered a highly dangerous situation that the Supreme Court described as the purpose for this exception. While he did radio for back-up, Griffin entered the warehouse alone. He was vulnerable to an attack and thus the SIL was necessary to protect his safety. (Griffin Tr. ¶ 247).

Griffin noticed Kell Halstead ("Halstead"), the other suspect inside, eyeing an area suspiciously, glancing over nervously numerous times. (Griffin Tr. ¶ 243). Griffin suspected criminal activity or that Halstead considered grabbing a weapon to attack Griffin. (Griffin Tr. ¶ 243, 247). Griffin had a right to search the warehouse since that's where the arrest began. (Griffin Tr. ¶ 299). Griffin noticed the cocaine as he left with the EMTs. (Griffin Tr. ¶¶ 269-71, 287). The cocaine was in plain view, but Griffin could lift the tarp

to seize it because a SIL includes the immediate grabbable area. Id., (Griffin Tr. ¶ 271). He suspected that he was in a dangerous situation between the DEA's information and Halstead's suspicious behavior. (Griffin Tr. ¶ 247). Lastly, although Griffin found drugs, not a weapon, Griffin could seize the evidence because any evidence is admissible during a SIL.

C. The remedy is not exclusion of the evidence.

The Fourth Amendment does not require evidence suppression from a warrantless entry. Murray v. U.S., 108 S. Ct. 2529, 2532 (1988). The exclusionary rule excludes evidence from the illegal search or seizure as "fruit of the poisonous tree." Nardone v. U.S., 60 S. Ct. 266, 268 (1939). However, the evidence is not "fruit of the poisonous tree" when the evidence is "so attenuated as to dissipate the taint," such as when the police had an "independent source" for discovery of the evidence. Silverthorne Lumber Co. v. U.S., 40 S. Ct. 182, 182–83 (1920).

Courts issue search warrants when "there is a fair probability that contraband, evidence or a person will be found in a particular place based on the totality of the circumstances." Gates, 103 S. Ct. 2317, 2332 (1983). Courts consider the police officer's personal observations, information from an informant, evidence discovered in plain view, corroborating evidence, and the officer's experience. Id. at 2334.

In Chaves, a search warrant issued after illegal warrantless entry into a warehouse contained sufficient information from independent sources to establish probable cause. Chaves, 169 F.3d 693. The police didn't seek a search warrant based exclusively on observations from the illegal entry. Id. at 692-3. The police also had an independent source

to support the warrant, including a confidential informant that provided police with information relating to drug trafficking, thus the evidence wasn't suppressed. Id. at 691-3.

Griffin's initial entry into the warehouse wasn't an illegal warrantless entry. However, if it was, the evidence shouldn't be suppressed because there is an independent source. Vann saw the drugs through the open warehouse. (Vann Tr. ¶¶ 59-61). Lawton left the door open, which allowed Griffin to enter and Vann to see the drugs in plain view. (Griffin Tr. ¶ 189 ; Vann Tr. ¶¶ 49, 61, 67). Vann stood in the city-owned parking lot, therefore Vann's viewpoint is permissible under the plain view doctrine because he was on public property. (Vann Tr. ¶ 33). Vann didn't manipulate anything to view the drugs, but merely stood outside and saw the drugs through the open door. (Vann Tr. ¶¶ 59, 61, 63). Therefore, Vann's personal observation of the drugs should prevent the evidence's exclusion because there was separate plain view evidence to support the seizure.

Vann investigated the warehouse for drug activity for six months. (Griffin Tr. ¶ 165). A confidential informant informed Vann after he observed Lawton's drug criminal activity at the railway. (Griffin Tr. ¶ 165; Vann Tr. ¶ 15). Vann investigated and corroborated the informant's information, which led him to the warehouse. (Vann Tr. ¶ 19). From his investigation, Vann learned that drugs were in the warehouse. Vann Tr. ¶ 19, 27). Vann admitted that before Griffin's entry, the DEA had enough to obtain a warrant. (Vann Tr. ¶ 67). They waited to get a warrant to see if there were more drugs. (Vann Tr. ¶ 67). Vann's plain view and independent investigation prior to Griffin's entry would – and did- suffice to secure a warrant, thus making the exclusionary rule inapplicable. (Vann Tr. ¶ 67).

CONCLUSION

For the foregoing reasons, the Prosecution respectfully requests that this court not suppress all evidence obtained during or as a result of Griffin's entry into the warehouse. In the alternative, this Court should order an evidentiary hearing to determine whether to grant this Motion to Suppress.

Dated: September 1, 2023

Respectfully Submitted,

/s/ TEAM 107

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