IN THE UNITED STATES DISTIRCT COURT
FOR THE MIDDLE DISTRICT OF STETSON

Case No. 2023-CR-812

UNITED STATES OF AMERICA,

v.

JAMIE LAWTON

Defendant.

NON-MOVANT'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

/s/ 111
Attorneys for the United States of America

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INTRODUCTION

This Court should deny Jamie Lawton's Motion to Suppress on Fourth Amendment grounds. The defendant maintained no reasonable expectation of privacy in a rundown warehouse, and, even if he did, exigent circumstances permitted the entry. Moreover, once inside, Officer Griffin observed the cocaine in plain view, permitting the seizure.

First, no reasonable expectation of privacy exists in a rundown warehouse. Even if the defendant maintained a subjective expectation of privacy, despite failing to close the door behind him, society is not prepared to accept that a beatdown warehouse confers the protections of a home. And even if it does, exigent circumstances—hot pursuit of a fleeing offender and destruction of evidence—permitted Officer Griffin's entry.

Next, once lawfully present in the warehouse, Officer Griffin is entitled to seize evidence in plain view. Given his training, experience, and understanding of the situation pursuant to a phone call with the narcotics division, probable cause existed for Officer Griffin to seize what he immediately identified as cocaine.

STATEMENT OF FACTS

A suspected felon. On June 8, 2023, Officer Taylor Griffin, a Patrol Officer in the Traffic Enforcement Division, observed the driver of a red, jacked-up Chevrolet S10 pickup truck open the driver's side door and throw up while at a stop light. R. at 19. The truck's bumper brandished a unique bumper sticker—a stick figure urinating on a Ford logo. R. at 20. On this information, Officer Griffin concluded that Kevin James—an individual Officer Griffin had previously cited for driving under the influence (DUI)—drove the vehicle. R. at 20–21. Once the traffic light turned green, the defendant closed the door and resumed driving—continually fluctuating speed and swerving in and out of the emergency lane. R. at 24–25. So, with reason to believe the driver was under the influence of alcohol, Officer Griffin turned on his vehicle's light, signaling for the defendant to pull over. R. at 26–27. However, the defendant ignored the signals, and continued driving for three miles before pulling into an abandoned-looking warehouse. R. at 28.

A necessary entry. Instead of pulling over and waiting for Officer Griffin, the defendant fled inside the warehouse, leaving the door wide open behind him. R. at 28. After radioing for backup, Officer Griffin received a call from Lieutenant Samy Vann, head of the narcotics division, informing him that the warehouse was under surveillance in connection with the sale of cocaine. R. at 28. Fearful that the

defendant's blood alcohol content (BAC) might drop, Officer Griffin followed the fleeing suspect into the warehouse. R. at 29.

An abandoned warehouse. The warehouse was old and in bad shape. R. at 61. While two doors displayed "No Trespassing" signs, nothing else indicated it was private property. R. at 30. Not only was the warehouse large, but it was mostly empty. R. at 32. Inside, it contained a makeshift kitchen and bedroom. R. at 33, 59.

A suspected misdemeanant. After entering the rundown warehouse, Officer Griffin followed two voices until he found the defendant. R. at 34. Upon seeing two men, Officer Griffin realized the defendant was Jamie Lawton, not Kevin James. R. at 34. The defendant apologized for not pulling over and asked for a doctor. R. at 34. Continuing to investigate the situation, Officer Griffin asked for the other man's name, but the man refused and told him to leave. R. at 35. Because it was not that man's property, and Officer Griffin was conducting an investigation, he did not leave. R. at 35. Then, the defendant, still in pain, told Officer Griffin to leave, but he stayed to investigate the DUI and called an ambulance. R. at 36. As Officer Griffin questioned the defendant, the other man nervously looked away at a wooden pallet. R. at 36–37.

An apparent discovery. When the ambulance arrived, EMTs determined that the defendant suffered from acute appendicitis and transported him to the ER.

R. at 38. Shortly after the EMTs left, Officer Griffin followed them out of the building to continue the investigation at the hospital. R. at 38–39. As he approached the exit, he walked by and observed a light-colored plastic package wrapped with packing tape. R. at 39. Although a tarp partially covered it, Officer Griffin—given his training and experience—immediately recognized the package as cocaine. R. at 40.

ARGUMENT

I. This Court should deny the defendant's motion to suppress—no reasonable expectation of privacy exists when one retreats into a warehouse, regardless of whether they consider it a home.

The Fourth Amendment ensures that people are "secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures." U.S. Const. Amend. IV. (emphasis added). Indeed, the Supreme Court of the United States clearly establishes that "the touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). So, if a search is reasonable, it does not violate the Fourth Amendment. *Id.* And while the Supreme Court has long acknowledged that "the very core" of the Fourth Amendment's protection is "the right of a man to retreat into his own home," *Silverman v. United States*, 365 U.S. 505, 511 (1961), it routinely upholds reasonable searches of the home. *See e.g.*, *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973) (search with consent); *Kentucky v. King*, 563 U.S. 452, 460 (2011) (search pursuant to exigent circumstances); *Chimel v. California*, 395 U.S. 752, 743 (1969) (search incident to arrest); *see also*

Ric Simmons, *Lange, Caniglia, and the Myth of Home Exceptionalism*, 54 Ariz. St. L.J. 145, 156 (2022) (explaining that, while society might associate privacy with the home, the home is not free from reasonable searches).

A. No reasonable expectation of privacy—subjective or objective—existed, so Officer Griffin permissibly pursued the defendant into the warehouse.

The defendant maintained no expectation of privacy—subjective or objective—when he fled from Officer Griffin into a warehouse. To determine whether a search occurs, courts apply the *Katz* test, asking whether an individual maintains a subjective expectation of privacy, and whether that expectation is one that society views as reasonable. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring); *see Smith v. Maryland*, 442 U.S. 735, 741 (1979) (adopting Justice Harlan's concurrence as the standard for Foruth Amendment inquiries). So, even for a home, the expectation of privacy must be subjectively and objectively reasonable. *See Florida v. Jardines*, 569 U.S. 1, 9 (2013) (contemplating societal expectations regarding the home).

1. The defendant lacked a subjective expectation of privacy because he chose not to close the warehouse door as he fled from Officer Griffin.

First, no subjective expectation of privacy exists in what is knowingly displayed to the public. *See Smith*, 442 U.S. at 744. For example, in *Smith v. Maryland*, the United States Supreme Court held that an individual does not maintain a reasonable expectation of privacy in phone numbers dialed. *Id.* at 745. There, the Court

evaluated whether the installation of a pen register (a device capable of conveying phone numbers) constituted an unreasonable search. *Id.* at 736. Notably, it explained that "all telephone users realize that they must 'convey' phone numbers to [a] telephone company" when they make a phone call. *Id.* at 742. In essence, the defendant "assumed the risk" that what he conveyed might be "divulged to the police." *Id.* at 745. So, if one knowingly displays information, no expectation of privacy exists. *Id.*; *see also California v. Greenwood*, 486 U.S. 35, 39 (1988) (rejecting a subjective expectation of privacy in garbage cans placed on the curb); *but see Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018) (declining to apply *Smith* to the collection of Cell-Site Location Information only because it encapsulated novel information, including an individual's past movements).

Next, typically, affirmative action is necessary to secure a subjective expectation of privacy. *See Katz*, 389 U.S. at 361–62 (Harlan, J., concurring). For example, in *Katz v. United States*, the United States Supreme Court held that an individual maintains a reasonable expectation of privacy while making a call in a phone booth. *Id.* at 352 (majority opinion). There, Justice Harlan (whose concurrence later became the governing Fourth Amendment test) emphasized that "the critical fact" is that the individual shut the door behind him and paid to use the telephone. *Id.* at 516–17 (Harlan, J., concurring). Those actions, Justice Harlan explained, transformed the telephone booth from a public place to a temporary private place. *Id.* at

17; *see also Rawlings v. Kentucky*, 448 U.S. 98, 105 (1980) (highlighting a lack of "normal precautions to maintain . . . privacy" while holding no subjective expectation of privacy existed).

Here, the defendant knowingly revealed the entrance to the warehouse by leaving the door open, indicating no subjective expectation of privacy. Per Officer Griffin's testimony, the defendant opened the warehouse door and left it wide open. R. at 31–32. So, like in *Smith*, where the individual affirmatively revealed a phone number by dialing a number, the defendant knowingly revealed the entrance to the warehouse by leaving the door open. He, like *Smith*, "assumed the risk" that a police officer might follow him through the door—especially because an actual police officer had been tailing him with lights on.

Further, here, the defendant took no affirmative action to secure a subjective expectation of privacy. After opening the warehouse door, the defendant left it open behind him. R. at 31. So, unlike *Katz*, where the individual took the time to shut the door behind him—ensuring a subjective expectation of privacy—the defendant exposed the entrance to the warehouse. And like *Rawlings*, where no normal precaution took place, the defendant failed to take the most basic of precautions—closing a door.

While the defendant might assert that the failure to close the door was mere oversight or mistake, courts have never acknowledged such a defense. Indeed, one

could easily argue that the individual in *Smith* did not know that the number would be revealed, or that the individual in *Greenwood* lacked awareness that his trash could be discovered. The dispositive fact is that, whether actively acknowledged or not, the defendant assumed the risk by failing to take simple precautions to ensure an expectation of privacy. As for the "No Trespassing" signs that the defendant decorated the warehouse with, the United States Supreme Court has squarely held that those signs do not automatically confer a reasonable expectation of privacy. *See Oliver v. United States*, 466 U.S. 170, 182 (1984) (holding no reasonable expectation of privacy existed in an open field despite the presence of a fence and "No Trespassing" signs).

2. The defendant lacked an objective expectation of privacy—society is not prepared to accept that a warehouse functions as a home.

Even if a subjective expectation of privacy exists, the expectation must be one that society is prepared to recognize as reasonable—society is not prepared to accept that a rundown warehouse confers the protections of a home. *See Katz*, 389 U.S. at 361 (Harlan, J., concurring). The question amounts to whether, under the circumstances, the expectation is "justifiable." *Smith v. Maryland*, 442 U.S. 735, 740 (1979). In other words, "it is whether, if the particular form of surveillance practiced by the police is permitted to go unregulated by constitutional restraints, the amount of privacy and freedom remaining to citizens would be diminished to a compass

inconsistent with the aims of a free and open society." Anthony G. Amsterdam, *Perspectives on the Fourth Amendment*, 58 Minn. L. Rev. 349, 403 (1974).

First, a place of dwelling does not automatically confer the protections of a home. *See California v. Carney*, 471 U.S. 386, 395 (1985). For example, in *California v. Carney*, the United States Supreme Court upheld the search of a mobile home. *Id.* There, even though the mobile home "possessed some, if not many of the attributes of a home" the Court applied the automobile exception, permitting the search. *Id.* at 393. So, the mere fact that one resides at a location does not automatically render the area protected. *See id.* at 395.

Next, courts routinely hold that police officers do not conduct a search by entering commercial locations. *See generally e.g., United States v. Ealy*, 363 F.3d 292 (4th Cir. 2004); *Dep't of Env't Quality v. Gibson*, 461 P.3d 706 (Idaho 2020); *Cantizano v. United States*, 614 A.2d 870 (D.C. App. 1992). For example, in *United States v. Barrett*, the First Circuit Court of Appeals considered whether officers lawfully entered a defendant's garage before seizing equipment. *United States v. Berrett*, 513 F.2d 154, 155 (1st Cir. 1975) (per curiam). There, agents observed the defendant's truck and walked into an open garage. *Id.* The court explained that "law enforcement officials may accept a general public invitation to enter commercial premises." *Id.* at 156; *see also State v. Albaugh*, 732 N.W.2d 712, 718 (N.D. 2007)

(explaining that "no individual could reasonably expect a great amount of privacy in a commercial business location").

Here, the defendant's mere assertion that the warehouse is his residence should not confer the Fourth Amendment protections of a home. While the defendant asserts that he has a bedroom in the warehouse, he admits that "the rest of the place isn't yet habitable." R. at 61. In fact, the defendant admits that he intends to use the warehouse for commercial purposes, stating that he "want[s] to eventually set up a storage facility in the warehouse where people can rent units." R. at 61. So, like *Carney*, where individuals dwelling in a mobile home was not dispositive, the defendant's "bedroom" should not convert a rundown warehouse into a home. And unlike *Carney*, where the mobile home possessed many characteristics of a home, the warehouse here was mostly abandoned and, from the outside, resembled a typical warehouse. *See* R. at 61, 74–75, 77–78.

Moreover, here, the warehouse in question more closely resembles a commercial—if not abandoned—location, which is not subject to heightened Fourth Amendment protection. Again, while the defendant might assert that the warehouse is his residence, it does not present as such, and he has commercial plans. The warehouse, as the defendant admitted, was "old" and in "bad shape," despite the defendant having been there for three months. R. at 61. Further, in this instance, the defendant left the door wide open. R. at 28. So, like *Barrett*, where agents permissibly entered

an open garage, Officer Griffin properly followed the defendant through an open door into a building that in no way resembled a home. While the defendant might contend that the "No Trespass" signs transformed the otherwise non-residential building into a private home, that step does not magically alter the classification of the building. *See United States v. Edmonds*, 611 F.2d 1386, 1388 (5th Cir. 1980) (holding no search occurred upon the entrance of a dock, despite the presence of a "no trespassing" sign).

B. Even if the defendant maintained a reasonable expectation of privacy, exigent circumstances permitted Officer Griffin's entry of the warehouse.

Even if this Court determines that the warehouse is a home and the defendant maintained a reasonable expectation of privacy, Officer Griffin's entry was permissible due to exigent circumstances. Although the home is subject to heightened protection, the "exigencies of a situation" can make law enforcement's needs so compelling that a warrantless search is objectively reasonable. *Kentucky v. King*, 563 U.S. 452, 460 (2011) (citing *Mincey v. Arizona*, 437 U.S. 385, 394 (1978)). Specifically, two exigent circumstances routinely withstand Fourth Amendment scrutiny—hot pursuit of a fleeing suspect and preventing destruction of evidence. *Id.* (citing *United States v. Santana*, 427 U.S. 38, 42–43 (1976); *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)).

1. The defendant—a suspected felon—refused to pull over and fled from Officer Griffin, justifying the entry on the basis of hot pursuit.

First, warrantless entries are permitted when officers are in pursuit of a fleeing felon. *See United States v. Santana*, 427 U.S. 38, 42–43 (1976). For example, in *United States v. Santana*, the United States Supreme Court held that an individual cannot thwart an otherwise proper arrest by fleeing into their home. *Id.* at 43. There, police officers were informed that an individual possessed marked money used to purchase heroin. *Id.* at 40–41. After the police announced their presence, the individual fled into a house, and the officers followed to conduct the arrest. *Id.* The Court explained that the individual lacked an expectation of privacy in the information she revealed while standing outside the house. *Id.* at 42. Further, the suspect's flight created "a realistic expectation that any delay would result in destruction of evidence." *Id.* at 43. So, because the police officers had probable cause—based on conduct that occurred in public—the officers properly entered. *Id.*; *see also Brinegar v. United States*, 338 U.S. 160, 175–76 (1949) (noting that probable cause exists if the facts and circumstances known to the officer would warrant a person of reasonable caution to believe that a crime has been or is being committed).

Next, even when in pursuit of a suspected misdemeanant, a warrantless entry is typically permissible. *Lange v. California*, 141 S. Ct. 2011, 2021 (2021). To illustrate, in *Lange v. California*, although the United States Supreme Court rejected that a categorical rule permits such a search, it acknowledged that "many, if not most, cases allow a warrantless home entry." *Id.* at 2021. Specifically, it prescribed

a totality of the circumstances test to determine whether hot pursuit of a misdemeanant justifies entering a home without a warrant. *Id.* at 2024. It emphasized that, while some misdemeanors are minor (such as littering), many misdemeanors present grave danger (domestic violence and assault). *Id.* at 2020. Further, a suspect's flight increases the danger, and the Court explained that the risk of escape might give reason to enter. *Id.* at 2021, 2024. So, in the context of misdemeanors, "when the totality of circumstances shows an emergency . . . the police may act without waiting." *Id.* Indeed, on remand, the California Court of Appeal for the First District denied the motion to suppress. *People v. Lange*, 72 Cal. App. 5th 1114, 1125 (2021), reh'g denied (Jan. 6, 2022); *but see Welsh v. Wisconsin*, 466 U.S. 740 (1984) (disallowing—under the circumstances—the search of a home for a "minor" DUI because it was a "minor" offense).

Here, Officer Griffin had probable cause to believe he was in hot pursuit of a felon. In Stetson, driving under the influence is classified as a first-degree misdemeanor; however, it becomes a third-degree felony when a person is twice convicted within three years. *See* R. at 11. While testifying before the grand jury, Officer Griffin explained that he reasonably believed the suspected drunk driver was Kevin James—a man convicted of a DUI within the last three years—because he recognized the red, jacked-up truck with a crude bumper sticker as belonging to James. R. at 20. So, like *Santana*, where officers had probable cause to pursue a felon based

on public conduct, Officer Griffin had probable cause to pursue an individual he reasonably believed to be a fleeing felon. Although he was ultimately mistaken, his actions were reasonable—reasonable people associate individuals with their respective automobiles.

Moreover, even if this Court rejects that Officer Griffin reasonably pursued a fleeing felon, his pursuit of a fleeing misdemeanant is justified. Here, the defendant ignored Officer Griffin's signal to pull over, parked at a run-down warehouse, and ran into the building. R. at 26–28. These facts undoubtedly create a risk of escape, which is precisely what the Supreme Court hinted in *Lange* would justify a warrantless entry of a home. Unlike *Welsh*, where the individual retreated into a residential home, the large warehouse where the defendant fled presents a greater risk for flight. So, because the defendant's actions reasonably led to a fear of escape, Officer Griffin permissibly pursued him into the warehouse.

2. Officer Griffin's entrance was necessary to prevent the destruction of evidence.

Further, the defendant's opportunity to destroy evidence entitled Officer Griffin to enter the warehouse. It is "well established" that preventing the destruction of evidence is an exception to the Fourth Amendment's warrant requirement. *King*, 563 U.S. at 455.

First, DUI cases inherently implicate the destruction of evidence. *See Schmerber v. California*, 384 U.S. 757, 772 (1966). For example, in *Schmerber v.*

California, the Supreme Court held that a police officer can warrantlessly conduct a blood test to prevent the destruction of evidence. *Id.* There, a man was in a car crash and transported to a hospital before the officer arrived to seek a blood test. *Id.* at 768–69. The Court emphasized that, under these circumstances, where nearly two hours elapsed, the officer reasonably concluded that he faced an emergency, permitting the warrantless search. *Id.* at 770; *see also Missouri v. McNeely*, 569 U.S. 141, 145 (2013) (affirming that, while no categorical rule permits warrantless blood tests in DUI cases, a warrantless search to prevent natural dissipation is permissible, depending on the circumstances).

Here, the circumstances indicate that Officer Griffin acted reasonably to prevent the destruction of evidence. Notably, the defendant's flight increased the risk that evidence might be destroyed. Unlike *McNeely*, where the officer pulled over the individual and presumably had time to secure a warrant, Officer Griffin did not have eyes on the suspect. R. at 31. So, even if he quickly secured a warrant, additional time would lapse before he could apprehend the defendant and perform a test. This is similar to *Schmerber*, where legitimate time constraints rendered the search reasonable. Further, because the defendant was on the loose, he had the opportunity to consume alcohol, effectively destroying the evidence necessary to charge him with a DUI. Allowing a fleeing DUI suspect to retreat into a building to create an alibi for the alcohol in their system inherently encourages flight and that cannot

stand. Ultimately, because the defendant escaped the presence of Officer Griffin, a problematic opportunity to destroy evidence existed, permitting the warrantless entry.

II. This Court should deny the defendant's motion to suppress because the cocaine was in plain view.

It is well established that "police may seize evidence in plain view without a warrant." *Coolidge v. New Hampshire*, 403 U.S. 443, 465 (1971) (plurality opinion). Initially, for the plain view doctrine to apply, three elements had to be met: (1) there must have been "prior justification" for the intrusion; (2) it must have been "immediately apparent" that the seized object is evidence; and (3) the officer must have discovered the evidence "inadvertently." *Id.* at 466; *see also* Grover D. Merritt, *Criminal Procedure - Fourth Amendment Searches and Seizures - Plain View Doctrine. Texas v. Brown, 103 S. Ct. 1535 (1983).*, 67 Marq. L. Rev. 366, 371 (1984) (noting that "the vast majority of jurisdictions" consider *Coolidge*—or at least its test—binding law). However, the United States Supreme Court has since rejected the requirement for inadvertent discovery. *Horton v. California*, 496 U.S. 128, 130 (1990).

A. Officer Griffin had prior justification to enter the warehouse because—at the very least—exigent circumstances permitted the entry.

In all plain view cases, an officer must have a prior justification—"whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or some other legitimate reason for being present"—to enter the area. *Coolidge*, 403 U.S. at 466.

Hot pursuit qualifies as a valid prior intrusion. *Id.* To illustrate, in *Warden v. Hayden*, the United States Supreme Court upheld a plain view seizure during hot pursuit. *See Warden v. Hayden*, 387 U.S. 294, 296–97 (1967). There, while police officers were validly searching for weapons, they discovered incriminating clothing. *Id.* at 298. Ultimately, the Court concluded there was "no viable reason to distinguish intrusions to secure 'mere evidence' from intrusions to secure fruits, instrumentalities, or contraband." *Id.* at 310. While *Hayden* predated *Coolidge* and the explicit crafting of the plain view test, *Coolidge* relied on it in the plain view context. *See Coolidge*, 403 U.S. at 465.

Here, as explained above, prior justification existed for Officer Griffin's intrusion. *See supra* Part I (detailing the justification for the warrantless entry). Officer Griffin was in hot pursuit of a fleeing suspect, and he faced an exigent circumstance of preventing the destruction of evidence. So, like *Hayden*, where officers were lawfully present pursuant to exigent circumstances, Officer Griffin had prior justification to enter the building. And, like *Hayden*, where the ultimate evidence

differed from the evidence originally searched for, Officer Griffin's discovery of cocaine differed from his search for evidence of a DUI. The Supreme Court of the United States upheld the search in *Hayden*, and this Court should too.

B. The discovery of cocaine was immediately apparent—Officer Griffin's training and experience enabled him to recognize the substance.

Based on his training, experience, and the surrounding circumstances, Officer Griffin immediately recognized the evidence as cocaine. When "it is immediately apparent to the police that they have evidence before them," they are entitled to seize that evidence. *Coolidge*, 403 U.S. at 466. While an exact standard for immediate apparency has not been laid out, most courts require that the standard of certainty is probable cause. Charles A. Moylan, *The Plain View Doctrine: Unexpected Child of the Great "Search Incident" Geography Battle*, 26 Mercer L. Rev. 1047, 1084 (1975); *but see e.g.*, *United States v. White*, 463 F.2d 18, 21 (9th Cir. 1972) (utilizing a "mere suspicion" standard).

First, an officer's training and experience is relevant to determine whether probable cause exists. *See Johnson v. United States*, 333 U.S. 10, 12 (1948); *State v. Jackson*, 269 So.2d 465, 466 (La. 1972). For example, in *State v. Jackson*, the Louisiana Supreme Court upheld a seizure, explicitly referencing an officer's experience. *Jackson*, 269 So.2d at 466. Specifically, the seized package "was the same length and width as the envelopes in which heroin is usually packed." *Id.* And even

though the package was not fully in the officer's sight—it partially protruded from the suspect's shirt—the Court concluded that probable cause existed. *Id.* at 468.

Moreover, in the context of cocaine, the drug itself need not be seen. *See United States v. Pacheco*, 841 F.3d 384, 395 (6th Cir. 2016). To illustrate, in *United States v. Pacheco*, the Sixth Circuit upheld the denial of a motion to suppress when a police officer seized a brown bag that contained cocaine. *Id.* There, the officer "noticed the top of a brick-like object, wrapped in brown paper and tape" protruding just one inch out of the suspect's cargo pocket. *Id.* at 388. Again, based on the officer's training and experience, the motion to suppress was properly denied. *Id.* at 395–96. Additionally, the United States Supreme Court has held that "observations of fellow officers of the Government engaged in a common investigation are plainly a reliable basis" for purposes of probable cause. *United States v. Ventresca*, 380 U.S. 102, 111 (1965).

Here, Officer Griffin's training and experience equipped him to recognize the cocaine immediately. At the grand jury, Officer Griffin testified that his training and experience enabled him to make the determination. R. at 40. Specifically, the Petersburg Police Academy addressed the identification of cocaine, showing "a number of pictures of cocaine and other drugs packaged for transport and sale." R. at 40. So, when he identified a three-to-four-inch package wrapped with packing tape, he immediately recognized it as cocaine. Like *Pacheco*, where a one-inch protrusion

of a brown bag permitted a search, Officer Griffin's observation of a clear package three times that size should be reasonable. While the defendant might contend that partial coverage of a tarp removed the package from plain view, both *Pacheco* and *Jackson* establish that partial view still constitutes plain view. Even further, as permitted in *Ventresca*, Officer Griffin had independent information from an ongoing narcotics investigation that cocaine might be in the building, enabling him to recognize the evidence as cocaine. R. at 28. Accordingly, this Court should determine that the cocaine was in plain view, and Officer Griffin permissibly seized it.

CONCLUSION

This Court should deny the Defendant's Motion to Suppress. The defendant maintained no expectation of privacy in his rundown warehouse, and, even if he did, the opportunity to escape and dissipation—or consumption—of alcohol established exigent circumstances. Once lawfully inside the warehouse, Officer Griffin permissibly seized the cocaine given his training and experience.

Respectfully submitted,

/s/ 111

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