
IN THE UNITED STATES DISTRICT COURT FOR THE FOURTEENTH CIRCUIT
MIDDLE DISTRICT OF STETSON

UNITED STATES OF AMERICA,

Prosecution

vs. CRIMINAL NO: 2023-CR-812

JAMIE LAWTON

Defendant.

JAMIE LAWTON'S MEMORANDUM OF LAW IN SUPPORT OF MOVANT'S MOTION TO SUPPRESS

/s/ 112
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INTRODUCTION

The "chief evil" against which the Fourth Amendment protects is government invasion of the home—the "center of the lives" of the American people. *United States v. U.S. Dist. Ct.*, 407 U.S. 297, 313 (1972); *Georgia v. Randolph*, 547 U.S. 103, 115 (2006). It is a "shocking proposition" that private homes could be invaded "at the discretion of any suspicious officer." *McDonald v. United States*, 335 U.S. 451, 459 (1948) (Jackson, J., concurring). Officer Taylor Griffin unconstitutionally violated Jamie Lawton's privacy when she entered and searched his home. Griffin disregarded common sense, the commands of a federal agent, and the guarantees of the Fourth Amendment. This Court should grant Lawton's Motion to Suppress because the evidence was illegally seized.

STATEMENT OF FACTS

Jamie Lawton (he/him) dreamed of converting a warehouse into a combined home and business, and, on February 13, 2023, he took the first step to realize his dream. R. at 92. Lawton purchased a warehouse, kicked out squatters, and moved in around April 2023. R. at 61. He funded his dream by working two jobs—as a railway conductor and a bartender. R. at 61. He set up a bed, stocked his refrigerator and pantry, and called the place home. R. at 59-61. Even though he worked a demanding schedule, Lawton spent most nights at the warehouse. R. at 53.

On June 8, 2023, Lawton drove home in his cousin Kevin's red truck. R. at 18, 62. About five minutes into his drive, he began feeling "awful." R. at 62. A sharp pain stabbed his stomach, and he threw up in his mouth. R. at 62. He stopped the vehicle at a red light, opened the driver's door, and spat. R. at 62. The pain on Lawton's right side suddenly worsened, nearly "[taking his] breath away" and making him feel like throwing up or passing out. R. at 63. Doubled over, Lawton gripped the steering wheel and focused on getting home. R. at 63. Lawton was experiencing acute appendicitis. R. at 38, 65.

Unbeknownst to Lawton, Officer Taylor Griffin (she/her) had observed Lawton driving. R. at 18, 64. Griffin, a young officer not three years out of the academy, saw the red Chevy S10 truck and assumed that Kevin James (he/him)

drove it. R. at 15, 17, 20-21. Although the truck had no back license plate, Griffin thought she recognized the truck as James's; she had arrested James for Driving Under the Influence ("DUI") in 2021. R. at 20-21. Although the driver's build roughly matched James's, Griffin neither saw the driver's face nor determined if the driver was a man or woman. R. at 22-23. The driver's description did not match James's appearance from only six months earlier: James had brown hair in a shaggy cut; the driver had blonde hair in a "man bun." R. at 22-23. Instead of attempting to identify the driver, Griffin assumed that James had bleached his hair and grown it out. R. at 23.

Griffin observed the truck's driver stop at a red light, spit a "small amount" of liquid on the ground, and drive away, travelling under the speed limit. R. at 21-22, 24. Griffin saw him drift into the emergency lane twice in three miles. R at 25. Griffin assumed the driver was a drunk Kevin James and activated her emergency lights to pull him over. R. at 26-27.

Lawton, hunched over in pain from appendicitis, did not see Griffin's lights. R. at 63-64. Griffin never turned on her sirens, saying that doing so "slipped [her] mind." R. at 27. Because Griffin's dashcam only saves recordings when she turns on her sirens, no recording of the incident exists. R. at 26-27. Griffin is not unfamiliar with significant administrative oversights; in 2022, she logged and

received payment for one-hundred hours of overtime that she did not work. R. at 44.

Lawton arrived at the warehouse with Griffin still following behind. R. at 28. Three posted signs read, "PRIVATE PROPERTY," and "NO TRESPASSING." R. at 30, 47, 86-87. Griffin admits to disregarding two of the signs. R. at 30-31, 47. Still in pain, Lawton quickly walked to the door, unlocked it with a key, and shut it behind him. R. at 47, 64, 69. He "always" closed and locked the door. R. at 64.

Outside, Griffin radioed for backup and stated she planned to enter. R. at 28, 47, 54. The federal Drug Enforcement Agency's ("DEA") Lieutenant Samy Vann (he/him) called Griffin's cellphone. R. at 54. Vann considered Lawton a subject in a narcotics-trafficking investigation and communicated that Kevin James was not associated with the warehouse. R. at 51, 54. Vann instructed Griffin not to enter, saying, "[L]eave [the warehouse] alone." R. at 47, 54. Griffin ignored Vann's commands, pushed the door open, and entered. R. at 54-55.

Griffin smelled Spaghetti-o's and found two individuals in the kitchen—the driver and a friend, Kell Halstead (she/her), whom Lawton allowed to store items at the warehouse. R. at 34, 65, 69. Griffin announced her presence and "quickly realized" Lawton, not James, was the driver. R. at 34, 48. Halstead told Griffin to "beat it,"; Lawton said he wanted to call an ambulance for himself and wanted Griffin to leave. R. at 35-36. Griffin remained. R. at 36.

Against Lawton's wishes, Griffin called an ambulance. R. at 36, 64. Paramedics arrived quickly, determined that Lawton likely suffered from appendicitis, and transported him to a local hospital. R. at 36, 38, 49, 64.

Griffin did not accompany Lawton. R. at 38. Instead, Griffin walked towards another area in the warehouse where a tarp covered a pallet. R. at 38-39. Griffin saw Halstead glance towards the tarp and claimed to notice a small, three-by-four-inch corner of plastic packaging, wrapped in tape; Halstead, who later gave a statement in exchange for a potential deal, says the tarp fully covered the packages. R. at 36, 66, 70. Griffin lifted the tarp and saw packages of cocaine. R. at 39-40. Griffin delivered the bags to Vann and his team but did not photograph the bags inside the warehouse. R. at 40-41. The cocaine weighed thirty-one pounds. R. at 58. Griffin's only prior experience with narcotics identification came from looking at pictures of packaged drugs in police academy training. R. at 40.

Griffin left through a different door than she entered. R. at 38-39. She went to the hospital, and a nurse collected a blood sample from Lawton. R. at 42-43. The sample came back with a BAC of 0.04—well below the statutory definition of DUI. R. at 11, 43. Griffin placed a police hold on Lawton. R. at 43.

ARGUMENT

I. GRIFFIN VIOLATED LAWTON'S FOURTH AMENDMENT RIGHTS BY ENTERING LAWTON'S WAREHOUSE WITHOUT A WARRANT.

The Fourth Amendment protects the right of the people "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Warrantless searches are "per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). Unless one of those limited exceptions justifies a search, the exclusionary rule and the fruit of the poisonous tree doctrine bar introduction of any evidence so obtained. *United States v. Calandra*, 414 U.S. 338, 347 (1974); *Wong Sun v. United States*, 371 U.S. 471, 486 (1963). In a motion to suppress a warrantless search, the Government bears the heavy burden of proving, by a preponderance of the evidence, that an exception justifies the search. R. at 9-10; *United States v. Matlock*, 415 U.S. 164, 177 n.14 (1974) (stating the burden of proof in a motion to suppress is preponderance of the evidence); *United States v. Zubia-Melendez*, 263 F.3d 1155, 1160 (10th Cir. 2001) ("The government bears the burden of proof to justify warrantless searches and seizures."). Here, the Government fails to prove that any exception justified Griffin's search.

A. Lawton had a reasonable expectation of privacy in his warehouse because it was his home, and he properly exercised control over it.

A government agent "searches" under the Fourth Amendment when she invades an individual's reasonable expectation of privacy. *Katz*, 389 U.S. at 360 (Harlan, J., concurring); *United States v. Jones*, 565 U.S. 400, 406 (2012). An individual has a reasonable expectation of privacy when he has a (1) subjective expectation of privacy that (2) society is willing to recognize as reasonable. *California v. Ciraolo*, 476 U.S. 207, 211 (1986). An individual has a well-protected, reasonable expectation of privacy in his home. U.S. Const. amend. IV; *Payton v. New York*, 445 U.S. 573, 589-90 (1980).

Numerous circuits define a home according to *Black's Law Dictionary*: "[A] building or portion thereof, a tent, a mobile home, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence." *Dwelling-House*, *Black's Law Dictionary* (11th ed. 2019); *United States v. Graham*, 982 F.2d 315, 316 (8th Cir. 1992); *United States v. McClenton*, 53 F.3d 584, 587 (3d Cir. 1995). A homeowner does not waive constitutional protection of his home by simply leaving a door open. *McClish v. Nugent*, 483 F.3d 1231, 1248 (11th Cir. 2007).

An individual also possesses a reasonable expectation of privacy in a property by exercising control, regardless of whether it is his home. *Lyall v. City of Los Angeles*, 807 F.3d 1178, 1187 (9th Cir. 2015), *overruled on other grounds by*

Reese v. Sacramento, 888 F.3d 1030 (2018); *Minnesota v. Olson*, 495 U.S. 91, 96 (1990). An individual who (1) owns or (2) lawfully possesses or controls a property "will in all likelihood have a legitimate expectation of privacy by virtue of [his] right to exclude." *Rakas v. Illinois*, 439 U.S. 128, 143 n.12 (1978), *abrogated in part on other grounds by* Minnesota v. Carter, 525 U.S. 83 (1998).

Lawton had a reasonable expectation of privacy in the warehouse because he lived there. From April to June 2023, he lived in the warehouse as he fixed it up. He kept a kitchen there. Finally, Vann observed that Lawton spends most nights at the warehouse.

Lawton established his reasonable expectation of privacy in the warehouse by living there, but, in addition, he established it by exercising control over the property. Lawton's situation differs from that in *United States v. Garcia-Rodriguez*. 558 F.2d 956 (9th Cir. 1977). There, no reasonable expectation of privacy existed when officers warrantlessly searched a warehouse used as a drug storehouse. *Id.* at 960. The court in *Garcia-Rodriguez* considered that (1) the defendant knew that others had keys to the warehouse; (2) the occupants left one gate and several doors open; and (3) no signs were posted to prohibit access. *Id.* For these reasons, the court concluded that the defendant had no reasonable expectation of privacy in the warehouse.

In Lawton's case, the opposite facts hold true: (1) Lawton had a key, and no evidence exists indicating that anyone else had one; (2) he generally kept the door closed and locked; and (3) at least three "NO TRESPASSING" and "PRIVATE PROPERTY" signs were posted. Further, Lawton owned the property and exercised his right to exclude others. He kicked out squatters when he purchased the warehouse, and he explicitly permitted Halstead to store items in the warehouse. Finally, Lawton kept personal items in the warehouse, including his bed, a refrigerator, and food. This information apparently persuaded Vann that Lawton had a reasonable expectation of privacy because Vann believed he could not enter the building without a warrant.

Lawton had a reasonable expectation of privacy in his warehouse because (1) he lived there; and (2) he exercised possession and control over the premises. Only one of the above is required to establish a reasonable expectation of privacy, but Lawton demonstrates both. Because Lawton holds a reasonable expectation of privacy, the Government bears the burden of justifying Griffin's searches.

B. No exigent circumstances permitted Griffin to pursue Lawton into his residence.

The exigent circumstances doctrine creates a limited exception to the Fourth Amendment's warrant requirement. *Missouri v. McNeely*, 569 U.S. 141, 148-49 (2013). This exception only permits a warrantless search when the officer has probable cause, and exigent circumstances exist. *Welsh v. Wisconsin*, 466 U.S. 740,

741 (1984). Courts use a totality of the circumstances approach and have enumerated several exigencies. *Id.* at 750 (listing enumerated exigencies); *Lange v. California*, 141 S. Ct. 2011, 2018 (2021) (providing "totality of the circumstances" for exigent circumstances). "Hot pursuit" of a fleeing criminal constitutes one such exigency. *United States v. Santana*, 427 U.S. 38, 43 (1976).

1. The Government cannot prove the probable cause element because the facts available to Griffin lead to other conclusions.

Probable cause is a totality of the circumstances standard which asks whether the "facts available to the officer at the moment [would] 'warrant a man of reasonable caution'" believing those facts. *Illinois v. Rodriguez*, 497 U.S. 177, 189 (1990) (quoting *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)).

Griffin did not have probable cause to believe the driver she observed committed a DUI. Griffin saw the driver spit only a small amount of liquid, and she admitted the driver could have been rinsing his mouth. Even if the liquid was vomit, the reasonable conclusion would be the driver was sick, not intoxicated. In the three miles Griffin followed Lawton, Griffin only observed Lawton cross the lane line twice—a mistake easily explainable by distraction from an officer tailing him. Griffin only saw the driver spit, drift across the lane line twice, and drive below the speed limit—not nearly enough evidence for probable cause for a DUI offense.

2. The Government cannot prove the exigent circumstances element as Griffin was not pursuing for a "serious" crime.

Hot pursuit of a fleeing criminal only creates an exigent circumstance when the pursuit is "immediate" and "continuous." *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984). Most courts permit hot pursuit for "serious" offenses, which are generally violent felonies. *Id.* at 752 (referencing armed robbery and murder as serious offenses). "Minor," or "nonfelonious" crimes, on the other hand, almost never give rise to exigent circumstances. *Id.* at 752-53 (referencing burglary without weapons and distribution of a controlled substance). In Stetson, a DUI, first offense is a misdemeanor, while a DUI, second offense is a third-degree felony. Stet. Rev. Stat. Ann. § 14-227a(2)(b).

When an officer makes a factual mistake, reliance on that mistake to conduct a warrantless search is unconstitutional unless the mistake is objectively reasonable. *Illinois v. Rodriguez*, 497 U.S. 177, 189 (1990). Whether a mistake is reasonable is a probable cause analysis limited to the facts "available to the officer at the moment." *Id.* at 189 (quoting *Terry*, 392 U.S. at 21-22).

Griffin unreasonably believed that she pursued James because she disregarded numerous inconsistencies between James's and Lawton's appearances. The court in *Bell v. Neukirch* concluded a similar mistake was unreasonable when the defendant looked notably different from the suspect. 979 F.3d 594, 606 (8th Cir. 2020). In *Bell*, officers arrested an individual, mistakenly believing him to be a

suspect they had caught on dashcam video seven minutes prior. The court concluded the officers made an unreasonable mistake because the suspect and Bell had different (1) hair style; (2) hair color; (3) height; and (4) clothing.

Likewise, Griffin unreasonably misidentified Lawton. Lawton's hair color and style differed significantly from James's, and Griffin could not see Lawton's face; she could not even tell if Lawton was a man or woman. She had not seen James in months, so she assumed without justification that James had grown out his hair and changed its style. Therefore, Griffin made an unreasonable mistake of fact in assuming that Lawton was James.

Because Griffin made an unreasonable mistake of fact, she pursued Lawton for, at most, a nonviolent misdemeanor. Likewise, by the same logic, Griffin's unreasonable assumption that James drove the truck led to the unreasonable assumptions that the driver drove on a suspended license and had violated probation.

The Government's interest in prosecuting minor crimes did not justify Griffin's intrusion on Lawton's personal life and property. In *Welsh v. Wisconsin*, the Supreme Court concluded no exigent circumstances permitted warrantless entry to pursue a DUI suspect. 466 U.S. 740, 754 (1984). A bystander observed a vehicle swerve around the road and stop in the middle of the field, and the driver got out and stumbled to his home. *Id.* at 742. A responding officer entered the

driver's home and arrested him, but the Court held that the offense was so minor that the possibility that the defendant's blood-alcohol concentration would decrease did not create exigent circumstances. *Id.* at 743, 753-55.

Lawton's case is nearly identical in relevant aspects. Griffin suspected Lawton of a non-violent, misdemeanor DUI offense, and no aggravating factors required immediate action. The possibility that blood-alcohol concentration might drop was insufficient to create exigent circumstances.

Even if this Court finds that Griffin reasonably misidentified Lawton as James, the alleged crime was not serious. DUI, second offense is a nonviolent, third-degree felony. This offense did not warrant the invasion of Lawton's reasonable expectation of privacy.

This Court should follow *Welsh* and conclude that Griffin's warrantless entry was unconstitutional. As the Supreme Court in *Welsh* held, "[I]t is difficult to conceive of a warrantless home arrest that would not be unreasonable under the Fourth Amendment when the underlying offense is extremely minor." *Id.* at 753.

II. GRIFFIN VIOLATED LAWTON'S FOURTH AMENDMENT RIGHTS BY UNCONSTITUTIONALLY SEARCHING HIS WAREHOUSE AND SEIZING EVIDENCE.

The plain view doctrine, in limited circumstances, creates an exception to the Fourth Amendment's warrant requirement. *Horton v. California*, 496 U.S. 128, 136-37 (1990). The plain view doctrine permits warrantless seizures only if any

underlying searches are otherwise justified. *Id.* at 135-36. To invoke the plain view doctrine, the Government must prove each of four elements: (1) Plain view, (2) lawful position, (3) immediately apparent, and (4) lawful access. *Id.* at 136-37; *United States v. Loines*, 56 F.4th 1099, 1106 (6th Cir. 2023) (citing *United States v. Mathis*, 738 F.3d 719, 732 (6th Cir. 2013)).

A. The Government cannot prove the plain view element because no photograph exists of the bags before Griffin moved them and the Government's witness lacks credibility.

The first element requires that the Government prove that an officer could see the seized objects. *Horton*, 496 U.S. at 136-37. In *United States v. Loines*, the court found that the Government failed to prove that an officer could plainly view narcotics inside a vehicle. 56 F.4th at 1107. The Government presented (1) statements from an officer who said he viewed the narcotics from outside the vehicle and (2) photographs taken from the inside of the vehicle. *Id.* The Court found that the Government failed its burden under this element. *Id.*

In *Loines*, the photographs depicted a vantagepoint that differed from the officer's vantagepoint—rendering the photographs unhelpful to the Government. Similarly, here, the only photographs of the warehouse do not show Griffin's vantagepoint at she approached the tarp-covered pallet. Furthermore, Halstead testifies that she fully covered the plastic bags with tarp. Halstead's testimony on this point is believable because her self-interest lies in telling the truth. She gave

statements in this case in exchange for a deal. If anything, lying in favor of the Government benefits Halstead.

Griffin, on the other hand, has a history of convenient mistakes. She forgot to turn on her sirens—so no footage of this incident exists. She incorrectly submitted a timesheet, so she received payment for one-hundred hours that she did not work. Griffin, having just disregarded a federal agent's commands by entering Lawton's warehouse, needed to legitimize her search. At best, she misremembers the details of the search; at worst, she misrepresents them.

In *Loines*, a stand-alone statement and unhelpful photographs did not meet the Government's burden. Here, a contradicted statement and photographs from the wrong vantagepoint do not meet that burden either.

B. The Government cannot prove the lawful position element because Griffin exceeded the scope of her search.

The second element requires that Griffin lawfully stood in the position from which she identified the object as contraband. *Horton*, 496 U.S. at 137. Usually, an officer only stands lawfully when she has a prior justification for being present. *Id*. at 135-36.

Hot pursuit of a fleeing criminal may provide that justification but only for the limited scope provided by the underlying probable cause—either to detain or to arrest. *Welsh v. Wisconsin*, 466 U.S. 740, 750 (1984).

The scope of Griffin's search extended only to her DUI investigation of James. Any exigencies ended the moment that Griffin realized Lawton was not James. Griffin should have left immediately, as the court found in *United States v. Jackson*, 188 F. App'x 403, 411 (6th Cir. 2006). There, officers received a "be on the lookout" for a bald, Black man wearing a gray or white t-shirt. *Id.* 404-05. Officers instead stopped a Black man with a full head of hair wearing a black t-shirt and discovered narcotics in his possession. *Id.* at 406. The court held that the officers should have released the defendant "immediately" when they realized he did not match the suspect's description. *Id.* at 410.

Likewise, if Griffin lawfully could enter the building, she could do so only in furtherance of her DUI investigation of James. As discussed above, unless Griffin chased James, whose DUI offense would have constituted a felony, the crime for which Griffin pursued Lawton was "extremely minor" and did not justify her warrantless entry. *Welsh*, 466 U.S. at 753.

Griffin admitted she "quickly realized" after entering the warehouse that Lawton was not James. When she had this realization, her justification for entry ended, and her search violated the Fourth Amendment. Therefore, the Government fails the lawful position element.

C. The Government cannot prove the immediately apparent element because Griffin saw, at most, a few square inches of packaging and had little-to-no narcotics experience.

Courts do not permit "general, exploratory rummaging in a person's belongings." *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971) (modified on other grounds by *Horton*, 496 U.S. at 130). To seize an object without a warrant, an object's incriminating nature must be "immediately apparent." *Horton*, 496 U.S. at 129. If an officer must move the object by even a few inches to ascertain its nature, the Government fails this element. *Arizona v. Hicks*, 480 U.S. 321, 325 (1987). A court will only find the object was immediately apparent if the officer had probable cause to believe the object was contraband. *Horton*, 496 U.S. at 136-37.

At most, Griffin glimpsed a few square inches of packaging. Considering Griffin's minimal narcotics experience, this glimpse did not give Griffin probable cause to believe she saw contraband. By contrast, the agent in *United States v. Williams* reasonably concluded that packages contained contraband, based on his ten years of narcotics experience. 41 F.3d 192, 197 (4th Cir. 1994). There, an airport baggage service agent opened an item of luggage and found five packages wrapped in cellophane and brown material. *Id.* at 194. Suspicious, she showed the packages to a narcotics detective with ten years of experience who "immediately" identified them as narcotics. *Id.* The court concluded that the detective had

probable cause because his ten years of practical experience with narcotics supported his identification. *Id.* at 196-97.

Unlike the detective in *Williams*, Griffin's only narcotics experience comes from her police academy training three years ago. In that training, she saw photographs—not real materials—of narcotics packaging. She works exclusively in traffic enforcement and does not testify to any direct interaction with narcotics enforcement. Griffin's experience falls far short of the *Williams* detective's ten years of narcotics experience. Griffin did not have probable cause because she relied only on photographs last viewed years prior, instead of practical experience, to identify the narcotics.

Furthermore, the detective in *Williams* saw the packages in their entirety and in the context of airplane luggage. Griffin lacked both these supporting facts. The detective in *Williams* reasonably concluded that packages wrapped in cellophane inside a suitcase looked suspicious. Individuals do not often fly with multiple packages wrapped in cellophane. Unlike the detective in *Williams*, Griffin did not see the packages in entirety until she moved the tarp. At most, she glimpsed a few square inches of packaging. Unlike the suspicious context in *Williams*, if Griffin saw packaging, she saw it in the context of a warehouse. Warehouses hold any number of packaged items—cloth, flour, and even discarded packaging. Griffin's lack of practical experience and inability to see the packages meant that she lacked

probable cause to believe the packages contained contraband. Therefore, the Government fails the immediately apparent element.

D. The Government cannot prove the lawful access element because Griffin took an indirect path and walked out of her way to seize the narcotics.

Whereas lawful position requires the officer to be lawfully positioned when she sees the object, lawful access requires the officer to be lawfully positioned when she seizes the object. *Boone v. Spurgess*, 385 F.3d 923, 928 (6th Cir. 2004). Like lawful position, lawful access requires independent justification if the officer stands in a private place when she seizes the contraband. *Horton*, 496 U.S. at 137. Even plainly visible contraband cannot be seized if it is effectuated "by unlawful trespass." *Soldal v. Cook County*, 506 U.S. 56, 66 (1992).

1. Griffin conducted a separate search when she walked out of her way to lift the tarp.

Griffin lacked a lawful position to seize the narcotics because, when the ambulance took Lawton to the hospital, Griffin had no authority to continue searching. In *United States v. Mallory*, the court considered an officer's actions to be an additional search when he continued looking for contraband after the suspect had been secured. 765 F.3d 373, 386 (3d Cir. 2014). Officers in hot pursuit followed an armed individual into a residence, detained him, then continued to search for the gun after realizing the defendant no-longer possessed it. *Id.* at 387. The court held this comprised a separate search not justified by the hot pursuit,

because the pursuit—and the accompanying threat to officers—had ended. Further, the Government presented no evidence that the other family members present posed a threat to the officers, and the defendant did not exhibit any signs of violence after entering police custody. Therefore, any further search needed to be justified by a warrant or warrant exception. Because it was not so justified, the court found the subsequent search to be unconstitutional.

Like in *Mallory*, any alleged danger to Griffin left before she searched the pallet area and seized the narcotics. Lawton and the paramedics left before Griffin approached the tarp and lifted it up. No threat to Griffin's safety existed—Halstead did not exhibit threatening behavior, and Griffin had no reason to believe the tarp hid anything dangerous. Even if Griffin had the authority to stand inside the warehouse when the ambulance arrived, her actions after Lawton left constituted a separate search for which she had no authority.

2. The Government cannot meet its high burden of proving imminent destruction of evidence to justify Griffin's additional search.

An officer must obtain a warrant before conducting a search "whenever practicable." *Terry v. Ohio*, 392 U.S. 1, 19 (1968). The imminent destruction of evidence may create exigent circumstances, permitting a warrantless search. One form of exigent circumstances is the imminent destruction of evidence. *Kentucky v. King*, 563 U.S. 452, 460 (2011). As with all exigent circumstances, the

Government must prove that exigent circumstances and probable cause exist. *Welsh v. Wisconsin*, 466 U.S. 740, 741 (1984).

Griffin lacked justification to search the warehouse. First, Griffin did not know contraband existed inside the warehouse when she began her additional search. Mere suspicion that the warehouse could contain narcotics, based only on a phone conversation with another agent, failed to give Griffin probable cause to search. Suspicion alone does not meet the high burden of probable cause. *See Terry v. Ohio*, 392 U.S. 1, 27 (1968). Second, Griffin had no basis for believing that, if the warehouse housed any narcotics, those narcotics would be destroyed or removed. The paramedics had removed Lawton from the premises, and Halstead did not act like she planned to destroy any evidence present. Griffin did not attempt to apply for a warrant; instead, she searched the warehouse without probable cause that an exigent circumstance justified her actions.

CONCLUSION

Griffin violated Lawton's right to freedom from unreasonable government intrusion by entering and searching Lawton's residence. First, Griffin violated Lawton's Fourth Amendment rights when she entered the warehouse without justification. Second, Griffin violated Lawton's Fourth Amendment rights when she searched the warehouse after realizing she misidentified Lawton, after Lawton left the premises, and when no other justification permitted the search. Therefore,

the Defense respectfully requests that the Court grant Lawton's Motion to Suppress.

Respectfully submitted,

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Counsel for Defendant