IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

STATE OF STETSON,

State,

v. Case No. 2023-CR-812

JAMIE LAWTON

Defendant.

DEFENDANT'S MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

/s/ 114
114
Counsel for the Defense

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INTRODUCTION

This Court should grant Defendant Lawton's Motion to Suppress. The State's evidence was obtained in violation of the Fourth Amendment and no exception to the warrant requirement applies.

Griffin's illegal intrusion into Lawton's home and subsequent search blatantly disregarded Lawton's Fourth Amendment expectation of privacy. Griffin lacked the requisite probable cause to make entry lawful, and exigent circumstances did not exist to otherwise purge the taint.

Further, Griffin's manipulation of the tarp-covered pallet does not comport with the Supreme Court's definition of a plain view search. Alternatively, the evidence at issue is highly mobile, forbidding any application by the State of the inevitable discovery doctrine. Therefore, any evidence obtained due to Officer Griffin's unlawful conduct cannot survive Defendant Lawton's Motion to Suppress.

STATEMENT OF FACTS

A. Griffin's Bias and Escalation of a Routine Patrol

Taylor Griffin ("Griffin") is a Rookie Patrol Officer with a personal bias against drunk drivers. Griffin Grand Jury Test. at 16. She works excessive overtime hoping to identify major cases in a self-proclaimed attempt to "make a name for [her]self." PPD Internal Affairs R. at 90; Griffin Grand Jury Test. at 16. To do so, Griffin admits she pursues DUIs in particular. *Id.*at 16. On June 28, 2023, Griffin was what she referred to as "DUI patrol" – actively hoping to find a DUI offense. PPD Police R. At 45.

B. Griffin's Misidentification of Jamie Lawton

On that day, Jamie Lawton ("Lawton") drank half a beer at a local bar before he began to feel sick, from what would be diagnosed as appendicitis in just a few hours, and decided to return home. Lawton Aff. at 62: 10, 12. Unknown to Lawton, Griffin spotted the truck he was driving at a red light and immediately assumed the driver was the truck's owner and previous DUI offender Kevin James ("James"). Griffin Grand Jury Test. at 19-20. Griffin's wrongful assumption was not shaken when she saw Lawton, who did not match James' description, lean out of the door and spit while at a red light. *Id.* at 22. Griffin, again, jumped to the conclusion that she was witnessing James drunkenly throw up. *Id.* at 27. What Griffin was actually witnessing was Lawton having a medical emergency that would land him in surgery before the end of the night. Lawton Aff. at 62, 63.

Griffin admitted to seeing Lawton's blonde hair pulled back in a bun, as opposed to James's brown, straight, and stringy hair that he wore in a shaggy haircut. Griffin Grand Jury Test. at 22-23. Instead of considering that the driver may not be the suspect Griffin was hoping for, Griffin decided to follow Lawton, someone with no criminal record. *Id.* at 24, 37. Even once Griffin noticed the truck had no license plate, which is a stoppable violation in Stetson, Griffin decided not to pull the vehicle over, but continued to follow, hoping for what she called a "bigtime arrest." *Id.* at 21, 27. While following him, Griffin never once observed Lawton accelerating over the speed limit or driving aggressively. *Id.* at 24. She did see the driver briefly drift into the emergency lane twice. Police R. at 46. Despite no clear indication of a DUI, Griffin turned on the police cruiser's lights. Griffin

Grand Jury Test. at 26. But she intentionally decided not to use the sirens, which would have also triggered the dashboard camera, because she "didn't think it was necessary." *Id.*

Lawton, focused on getting home to attend to his medical needs, never saw the lights and proceeded to cruise at a reasonable speed. Lawton Aff. at 63; Griffin Grandy Jury Test. at 27-28. Indeed, Griffin testified that Jamie "was not engaging [her] in pursuit or trying to elude [her]." *Id.* Nevertheless, in Griffin's own words, she "[got] ready for a chase." *Id.* at 27. At the end of this three-mile so-called "chase," Lawton turned into a public parking lot adjacent to a warehouse and Griffin followed. *Id.*

While Lawton rushed into the building unsure whether he was about to throw up, Griffin remained in her police cruiser and radioed for back up. Lawton Aff. at 63; Griffin Grand Jury Test. at 28. As Griffin waited, she received a call from Lieutenant Sammy Vann ("Vann"), the head of the narcotics division working with federal DEA agents on local drug cases. Griffin Grand Jury Test. at 28. Vann explicitly informed Griffin that the warehouse was the subject of a drug sting investigation, and Griffin, once again assuming, stated "that means a guy named Kevin James is your target!" Vann Grand Jury Test. at 54. Vann informed Griffin there was no Kevin James linked to the warehouse. *Id.* But, just as with the inconsistent physical appearances Griffin herself observed at the red light, Griffin ignored any evidence that did not support her forgone conclusion she was about to land the "big time arrest" of James. Griffin Grand Jury Test. at 22-23, 27. Even once Vann explicitly ordered Griffin to stay back and not enter the warehouse, Griffin decided she was not going to "miss [her] chance" and decided to enter the building anyway. *Id.* at 28-29.

C. Griffin's Illegal Entry into Lawton's Warehouse

After observing Lawton enter the warehouse, pausing to call for back up, and taking the phone call from Lieutenant Vann, Griffin exited her cruiser ready to enter the warehouse. *Id.* at 28, 32. She again stopped to take pictures. *Id.* at 31. Griffin ignored the no trespassing and private property signs and failed to knock and announce as she entered Lawton's home. *Id.* at 30, 32. Instead, she heard voices towards the back right and followed the voices without ever revealing her presence. *Id.* at 32-33. She overheard Lawton stating "I'm gonna puke, I'm so sick!" before entering Lawton's kitchen and finding him and his friend, Kell Halstead. *Id.* at 34. It was only then Griffin finally announced herself and, once Lawton and Halsted turned around, realized the driver was not Kevin James. *Id.*

Griffin informed Lawton she suspected him of a DUI offense, and Lawton immediately informed Griffin he was really sick and needed a doctor. *Id.* at 34-35. Griffin demanded both individuals' drivers' licenses and watched as Lawton wincing and doubling over in pain trying to get his wallet out. *Id.* at 35. Meanwhile, Halstead informed Griffin the warehouse was Lawton's home and asked her to leave. *Id.* But Griffin refused. *Id.* at 35. Lawton stated he was going to call an ambulance for himself. *Id.* at 36. Griffin admitted Lawton was pale, sweaty, and did not look good and decided to call the ambulance himself, and still refused to leave. *Id.* at 36. Additionally, Griffin noticed that Jamie's breath smelled of mint, consistent with the peppermint schnapps later found in the kitchen cabinets that Lawton admitted to drinking to dull the pain once he arrived home. Griffin Grand Jury Test. at 38; Lawton Aff. at 63.

D. Griffin's Warrantless Search of Lawton's Home

Instead of providing medical aid to Lawton while waiting on the ambulance to arrive, Griffin surveyed the warehouse and noticed a covered wooden pallet across the warehouse from her. Griffin Grand Jury Test. at 36. Soon after, the ambulance arrived, and paramedics began to tend to Jamie and determined he likely had acute appendicitis and needed to go to the hospital immediately. *Id.* at 38. While the paramedics were wheeling Lawton out, Griffin walked over to the pallet she had seen from across the room. *Id.* at 39. She pulled back a tarp and, only then, found what was later confirmed to be drugs. *Id.* at 40. Without waiting for the backup she called for, or putting on gloves, Griffin seized the packages and carried them out of the warehouse. *Id.* at 40-41. She turned the drugs over to Lieutenant Vann – who was waiting outside acknowledging they had no constitutional basis to be in the warehouse. *Id.* at 40; Vann Grand Jury Test. at 55.

E. Griffin's Unethical Blood Sample and Appendectomy and Griffin's Arrest

Sometime much later, Griffin finally arrived at the hospital that was only a five minutes' drive from the warehouse. Griffin Grand Jury Test. at 36, 38. Doctors informed Griffin that Lawton had been diagnosed with appendicitis. *Id.* at 42. Despite knowing much of the alleged DUI evidence was symptoms of a now-confirmed illness, Griffin proceeded to pressure Lawton into submitting a urine sample. *Id.* When he was unable to do so from the pain, it was Lawton himself that brought up a blood sample instead in an attempt to prove his innocence. *Id.* The nurse administered the blood draw of Jamie, which resulted in a blood alcohol content of only 0.04%, below the Stetson limit and consistent with the drinks Lawton had earlier in the day and once arriving home. *Id.* at 43; Stetson Statue 14-

227a(1)(a); Lawton Aff. at 62, 64. Nevertheless, Lawton was later charged with two counts related to the cocaine and one related to a DUI. Indict. 5-6.

ARGUMENT

I. THIS COURT SHOULD GRANT DEFENDANT'S MOTION TO SUPPRESS EVIDENCE OBTAINED FROM AN ILLEGAL FOURTH AMENDMENT ETNRY INTO HIS HOME.

The central issue of this case is Griffin's blatant disregard for the sanctity of Lawton's home. The sanctity of the home is first among equals when it comes to Fourth Amendment protection. *Lange v. California*, 141 S. Ct. 2011, 2018 (2021). To breach this sanctity, it is well established that the State must have (1) an exception to the warrant requirement; and (2) probable cause. *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1987); *Payton v. New York*, 445 U.S. 573, 588-589 (1980). Further, the illegal entry is only justified if exigent circumstances existed, and were not manufactured by the officer. *Kentucky v. King*, 563 U.S. 452, 462 (2011).

Because of these express protections, the Court expresses reluctancy to find exigent circumstances justifying warrantless entry into a home for minor offenses. *Welsh*, 466 U.S. at 750. Even in hot pursuits, the Court has held misdemeanors are not a categorical justification, but must be considered on a case-by-case basis based on the totality of the circumstances. *Lange*, 141 S. Ct. at 2018. In such cases, the outcome of that consideration depends heavily on the gravity of the underlying crime. *Welsh*. 466 U.S. at 753.

Here, Griffin clearly manufactured the circumstances as prohibited by *King*, when she unreasonably assumed a felony was taking place despite an abundance of evidence to the contrary. Griffin made up her mind as soon as she saw a red pickup truck, and did not

back down despite contradicting evidence and explicitly instruction from a superior officer. Instead, she decided to warrantlessly and unlawfully violate the sanctity of Lawton's home pointed for a misdemeanor DUI that has still failed to be established. Since neither probable cause nor exigent circumstances supported Griffin's entry, this Court should grant Defendant's Motion to Suppress evidence obtained pursuant to the constitutional violation.

A. Griffin's Objective Observations, Assumed True, Indicate a Minor Offense Without the Gravity Necessary to Support Warrantless Entry.

The gravity of Lawton's alleged-DUI did not rise to level necessary to justify Griffin's warrantless entry to Lawton's home. Warrantless entry into a person's home must be rare and used only in cases of emergency, urgency, or violent crimes. *Welsh*, 466 U.S. at 752-53. Indeed, the Supreme Court has recognized limited exigent circumstances that justify warrantless entry into a home, holding no exigency is created simply by probable cause, but by the gravity of the underlying offense. *Id*. at 752. Where there was no exigent circumstance to protect a government interest like protecting the public, the Court should deny the warrantless entry. *Id*.

In *Welsh*, the Court held that a warrantless entry to arrest a defendant who committed a minor traffic violation was not justified. *Id*. at 754. In that case, the defendant was driving erratically on the road while under the influence of alcohol. *Id.* at 742. After he returned home, the police were informed of the incident and went to the defendant's house. *Id*. at 743. The defendant's stepdaughter let the police in and they proceeded to arrest the defendant, who was in bed asleep. *Id.* Ultimately, the Court refused to find exigent

circumstances were present to justify the officer's illegal entry over a misdemeanor. *Id*. at 753-54.

Unlike *Welsh*, Lawton was never driving erratically nor was he under the influence. He was suffering from appendicitis and just trying to get home. But, even if Griffin's DUI suspicions had been correct, like in *Welsh*, it would only be a minor offense. A first time DUI in Stetson is only a misdemeanor. The only thing Jamie could have been cited for was for not having visible license plates, again, a simple penalty.

Griffin attempts to overcome this fact by alleging that Lawton looked like a previous offender in the commission of a felony in violation of Stetson Statute 14-227a(2)(b). But that is not what the facts show. When Griffin saw a red Chevy truck, she immediately concluded the driver was Kevin James. She did so despite differences in build and hair color and, again, when she arrived at the warehouse and Vann informed her there was no Kevin James linked to that location.

Jamie was not committing any sort of crime. He was experiencing a serious medical issue and attempting to make it home safely when he was unfairly and blatantly targeted by a police officer with a history of serious misrepresentations. Further, even if Lawton had been driving under the influence, the gravity of that offense does not justify the entry of his home here just as it did not in *Welsh*.

B. Griffin's Wantless Entry was Not Supported by Exigent Circumstances

The limited number of circumstances the Supreme Court has recognized to justify warrantless entry do not apply in this case. In *Welsh*, the Court specifically recognized

three exigent circumstances on which the Defense expects the State may rely – hot pursuit, preservation of evidence, and safety of the public. *Welsh*, 466 U.S. at 753.

The State fails to prove any of these exigencies were present. There was no hot pursuit because Griffin did not continuously pursue after Lawton; the situation was not one that amounted to the need to preserve evidence; and, there was nothing that put the public at risk. Any exigencies that State offers were manufactured by Griffin, and do not justify the illegal entry.

i. The Pursuit was Not Hot

In *Welsh*, the Court held that hot pursuit must be immediate and continuous for it to be justified. *Id*. The defendant in *Welsh* had already left the scene before the police arrived. *Id*. The time before the police located and arrested him in his home was only a short period. *Id*. at 743. Nevertheless, the Court found that this chase was not immediate since the defendant had already abandoned his car and was inside his home once the police arrived. *Id*. at 753. Further, the Court reasoned that it was not continuous due to the police first communicating with witnesses and examining the defendant's vehicle. *Id*. at 742, 753. So, the Court found that the hot pursuit exception was not applicable. *Id*. at 753.

Here, Griffin was not in immediate or continuous pursuit of Lawton. As in *Welsh*, Lawton had exited his car and gone inside his home before Griffin decided to pursue. Further, as in *Welsh*, Griffin communicated with another witness, Lieutenant Vann, before deciding to enter the warehouse. That witness, who happened to be Griffin's superior, ordered Griffin not to go into the warehouse, recognized the risk her warrantless entry posed to his entire investigation. Once Griffin decided to exit her vehicle and enter the

warehouse, she again paused to take pictures. Thus, Griffin's decision to follow Lawton into his home was neither immediate nor continuous. Lawton was experiencing an incredible amount of pain and discomfort due to appendicitis and could not move very quickly while trying to get inside. A fact supported by Lieutenant Vann's observation as he arrived on the scene. If Griffin had truly been in hot pursuit, Griffin would have promptly followed Lawton inside without hesitation or even used her sirens or voice to alert Lawton before she entered the warehouse. Since this "pursuit" was neither immediate nor continuous, the hot pursuit exception does not apply.

ii. Preserving BAC was Not a Legitimate Basis for Griffin's Entry in Pursuit of a Misdemeanor.

In *Welsh* the Supreme Court found that seeking to preserve BAC levels in a minor or non-criminal case is an unreasonable warrantless entry. *Welsh*, 466 U.S. at 754. In *McNeely*, the Court established cases seeking to preserve BAC levels should be considered on case-by-case analysis considering the totality of the circumstances. *Missouri v. McNeely*, 569 U.S. 141, 145 (2013).

Here, Griffin's basis for illegal entry was to preserve evidence of Lawton's BAC before it dropped. Under *Welsh*, this is not a legitimate reason for a warrant exception since Lawton, even if under the influence, would only have committed a misdemeanor offense. Again, Griffin attempts to overcome this failure to establish an exception to the warrant requirement. But, as discussed, Griffin's interpretation of the so-called evidence was simply biased, unreasonable, and did not rise to the level sufficient to establish probable

cause for a felony DUI. Therefore, as in *Welsh*, preserving Lawton's BAC was not a legitimate exception supporting Griffin's warrantless entry.

iii. Lawton Did Not Present a Public Danger from which Griffin Needed to Protect the Public

The Court in *Welsh* found that since the defendant had pulled his vehicle into the field, abandoned it, and went home, there was no longer danger or a threat to the public. *Welsh*, 466 U.S. at 754. This same reasoning should be applied in this case.

First, Lawton was not even driving under the influence, but was suffering from appendicitis. Even if he were under the influence, there was no danger present since Lawton had pulled his vehicle into the warehouse parking lot, abandoned it, and gone inside. With that, even Griffin's unreasonable belief that there was "danger" to the public had ceased. Since no danger was present to the public, there was no justification for Officer Griffin's illegal entry into Jamie's home.

II. GRIFFIN UNLAWFULLY SEARCHED THE WAREHOUSE WHEN SHE MOVED A TARP TO REVEAL DRUGS NOT OTHERWISE IN VIEW.

Griffin's search of the warehouse after her illegal intrusion violated Lawton's Fourth Amendment expectation of privacy. Officers may only seize evidence in plain view when they have not violated the Fourth Amendment in arriving at the spot from which the evidence was observed. *Horton v. California*, 496 U.S. 128, 136-40 (1990). To admit evidence obtained in violation of this constitutional protection, the state has the burden to prove the evidence would have been discovered independent of that violation. *Nix v. Williams*, 467 U.S. 431, 444 (1984).

Here, Griffin's manipulation of the tarp-covered pallet does not comport with the Supreme Court's definition of plain view search and seizure. Further, the mobility of the evidence at issue, coupled with the failure of law enforcement to procure a warrant–despite having ample time to do so–forbids the application of the inevitable discovery doctrine. Therefore, this Court should suppress the unconstitutionally obtained evidence.

A. Officer Griffin Unlawfully Conducted a Plain View Search and Seizure.

Griffin's actions to reveal the cocaine were in direct violation of plain view case law. The Supreme Court has explicitly held all warrantless search and seizures "are per se unreasonable under [the] Fourth Amendment, subject only to a few specially established and well delineated exceptions." *Horton*, 496 U.S. at 135. One of those exceptions is the plain view doctrine, which allows officers to seize evidence in plain view when they: (1) had probable cause, meaning a reasonable belief that a crime has been, is being, or will be committed; and (2) did not violate the Fourth Amendment in arriving at the spot from which the evidence was observed. *Id.* at 136-40; *Beck v. Ohio,* 379 U.S. 89, 91 (1964). Further, for the plain view doctrine to apply, the incriminatory nature of the evidence must be immediately apparent. *United States v. Brown*, 551 F. Supp. 2d 947, 950 (D. Ariz. 2008).

In *Hicks*, a bullet fired through the respondent's apartment, injuring a man on the floor below. *Arizona v. Hicks*, 480 U.S. 321, 325 (1987). Police entered the apartment in search of the shooter, potential victims, and weapons, and found three weapons and a stocking-cap mask. *Id.* Police also noticed high quality stereo equipment and, suspecting it was stolen, turned it around to see and record its serial numbers. *Id.* These serial numbers

were consistent with equipment stolen during an armed robbery. *Id.* Police seized the equipment, and the respondent was indicted for the robbery. *Id.*

The Supreme Court held the policeman's actions of recording the serial numbers did not constitute a "seizure" because there was no meaningful interference with the respondent's possessory interest in the serial numbers or equipment itself. *Id.* However, the Court did find that the officer's action of moving the equipment to view the serial numbers was considered a "search," separate and distinct from the lawful objective of the exigent circumstances permitting entry into the apartment. *Id.* at 324-25. In doing so, the Court held any action that (1) is unrelated to the exigent circumstances which made entry legal, and (2) exposed the apartment and its concealed contents, such as moving an item found in plain view to view a concealed portion of the same, violated the respondent's reasonable expectation of privacy. *Id.* The Court elaborated it does not matter that the search uncovered nothing of great personal value to the respondent, stating "a search is a search." *Id.*

Griffin's search failed to satisfy any of the requirements established by the Supreme Court in *Hicks*. First, as previously discussed, Griffin failed to be legally in the place where the evidence was searched and seized. Second, even if this Court does find exigent circumstances justified entry, the requirement that the incriminatory nature of the evidence be immediately apparent was also not met. Just as the officer in *Hicks* had to manipulate the stereo equipment to bring the serial numbers into plain view, Griffin had to manipulate the tarp to reveal the drugs.

Even if a small portion of the packaging was visible as Griffin alleges, she was still moving an item in plain view to reveal a concealed portion of that item, just as the officer in *Hicks*. Indeed, Griffin's inability to immediately determine the packages were drugs was evidenced by her exclamation of "exactly what I thought" only *after* lifting the tarp. Just as the officer in *Hicks*, Griffin manipulated the evidence already in plain view in such a manner that constituted an intrusion into Lawton's reasonable expectation of privacy

B. The Inevitable Discovery Doctrine is Inapplicable Since Griffin's Seizure Depended on Illegal Entry

To overcome a motion to suppress using the inevitable discovery doctrine, the State must establish "by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means." *Nix*, 467 U.S. at 431; *United States v. Garreau,* 735 F. Supp. 2d 1155, 1165 (D.S.D. 2010). The government must meet this burden of proof by relying on demonstrated historical facts capable of ready verification or impeachment, rather than speculation. *United States v. Lundin*, 47 F. Supp.3d 1003, 1020 (N.D. Cal. 2014), *aff'd,* 817 F.3d 1151 (9th Cir. 2016).

In *Lundin*, officers responded to a local emergency room where a kidnapping victim was being treated. *Id.* at 1007. After receiving information about the victim's kidnapper, a BOLO was issued for the defendant. *Id.* The responding deputy requested the defendant not only be arrested for kidnapping, but various other charges for which he believed there was probable cause. *Id.* After receiving the BOLO, another deputy drove to the defendant's home, noticed the lights in the home were on, and observed a vehicle matching the description of the defendant. *Id.* The officer called for backup and was soon joined by other

officers. *Id.* Shortly thereafter, the officers approached the front door, knocked, waited thirty seconds, and knocked again. *Id.* After the second knock, the officers heard loud crashes at the rear of the residence, prompting them to loudly identify themselves and instruct the defendant to come out slowly. *Id.* The defendant exited the backyard and was immediately arrested. *Id.* Two officers then searched the home and the backyard. *Id.* While exiting the home, one officer noticed a clear plastic freezer bag containing two firearms, which were then photographed and seized. *Id.* The next day, a search warrant was procured and executed, and officers seized numerous items from the home, including the guns. *Id.* The defendant brought a motion to suppress, arguing the officers conducted an unreasonable, warrantless search on both days. *Id.*

The district court compared the case to a Ninth Circuit case in which the defendant was staying in a hotel room and the government illegally entered. *United States v. Young*, 573 F.3d 711, 716-17 (9th Cir.2009). There, the government failed to show that the evidence in the hotel room would have been inevitably discovered because, but for the defendant's unlawful arrest, the defendant would have returned to his hotel room and removed the evidence when he left. *Id.* at 722. The *Lundin* court found *Young* was similar and that the government had a burden to prove not only that they had sufficient evidence to procure a warrant, but the evidence would have ultimately been found. 47 F.Supp.3d at 1021. Specifically, the guns seized would have remained in the same place and in the same condition or at least similar enough in location that they would have been inevitably discovered by subsequent legal searches. *Id.* The court found the government in *Lundin* did not meet this burden because the evidence seized was not sitting in one place and unlikely

to be moved during the time in which the investigators were likely to find it. *Id.* There, the evidence was "within Lundin's domain and control and easily movable." *Id.*

Here, just as in *Young* and *Lundin*, the evidence would not have remained sitting in one place, unlikely to be moved during the time in which Vann or the DEA hoped to discover it. Further, the evidence was within Lawton's domain and control, making it easily moveable. If State's allegations were assumed true, Lawton is involved in a drug smuggling operation with the cartel. By the very definition of the word "smuggling," Lawton would be constantly moving product within his domain and control, just as the defendant in *Lundin.* While the obvious distinction between a hotel and a warehouse is that one is used for sleeping and the other is used for storage, both are used on a short-term basis. Travelers stay in hotels, they do not live there. Product is placed in warehouses momentarily while waiting to be shipped to its final destination. Thus, the likelihood that the cocaine in question would still be there if and when Vann entered the warehouse was all but impossible.

Indeed, the likelihood this cocaine could or would be discovered by Vann or the DEA was highlighted by Vann's own express warnings to Griffin not to "jump the gun" and ruin his investigation and the decision to remain outside. Vann knew that doing so would compromise his ability to procure a warrant in the future. Nevertheless, Griffin focused on her own investigation, "jumped the gun," and unlawfully pursued Lawton. In doing so, she unlawfully entered his residence and illegally conducted a search and seizure.

The standard established in *Nix*, and the standard still used today, forces the State to prove by a preponderance of the evidence not that the cocaine *could* have been

discovered, but that it *would* have been discovered. Due to the mobility of the evidence, the State cannot meet that burden. Therefore, Defendant Lawton's Motion to Suppress should be granted.

CONCLUSION

This Court must grant Defendant Lawton's Motion to Suppress. The State's evidence was obtained in violation of the Fourth Amendment and no exception to the warrant requirement applies.

Griffin's illegal intrusion into Lawton's home and subsequent search blatantly disregarded Lawton's Fourth Amendment expectation of privacy. Griffin lacked probable cause and the presence of exigent circumstances required to make entry lawful. Griffin was not in hot pursuit of a felon. Rather, she was concerned with advancing her career by procuring a felony DUI charge on an individual she incorrectly identified.

Further, Griffin's manipulation of the tarp-covered pallet does not comport with the Supreme Court's definition of a plain view search. Alternatively, the evidence at issue is highly mobile, forbidding any application by the State of the inevitable discovery doctrine. Any evidence obtained due to Griffin's manipulative and unlawful conduct cannot survive Defendant Lawton's Motion to Suppress.

CERTIFICATE OF SERVICE

We, counsel for the Defense, do hereby certify that a true and correct copy of the foregoing memorandum of law has been served by electronic mail to all attorneys of record on this, the 1st day of September 2023.

Respectfully submitted,

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Counsel for the Defense