APPENDIX

APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 20-3054

United States of America
Plaintiff - Appellee
v.
Christin Campbell-Martin
Defendant - Appellant

No. 20-3181

United States of America
Plaintiff - Appellee
v.
Adam Scott Leiva
Defendant - Appellee

Appeal from United States District Court
for the Northern District of Iowa - Cedar Rapids

Submitted: September 24, 2021
Filed: November 8, 2021

Before SMITH, Chief Judge, GRUENDER and STRAS, Circuit Judges.

GRUENDER, Circuit Judge.

Christin Campbell-Martin and Adam Leiva conditionally pleaded guilty to possession with intent to distribute a controlled substance near a protected location and aiding and abetting the possession with intent to distribute after the district court[1] denied their motions to suppress methamphetamine discovered during a warrantless search of a vehicle. *See* 18 U.S.C. § 2; 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 860(a). Campbell-Martin and Leiva appeal, challenging the denial of their suppression motion and the district court's sentencing guidelines calculations. We affirm.

I.

On May 25, 2018, at 10:27 p.m., Officer Nicole Hotz was patrolling a school parking lot and asking people to leave because suspicious activity had been occurring there overnight. Officer Hotz noticed a vehicle pull into the lot. She pulled up near the vehicle and parked two spots away from it so that she could ask the occupants to leave. A woman later identified as Christin Campbell-Martin was sitting in the driver's seat and seemed to be hiding her face with her hands. Officer Hotz shined a spotlight on the driver's side window to get the woman's attention and then walked up to the window. The woman rolled down the window and Officer Hotz noticed that "she

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[1] The Honorable C.J. Williams, United States District Judge for the Northern District of Iowa.

was very nervous and fidgety"; "[h]er speech was quick"; and "her pupils were constricted," which Officer Hotz thought was unusual in the dark. Officer Hotz also noticed that the woman "kept pulling her knees to her chest and breathing really heavy." Officer Hotz thought that the woman might be under the influence of drugs. Officer Hotz also thought it was strange that the two male passengers were very quiet and did not look toward her.

When Officer Hotz requested everyone's identification, the woman in the driver's seat and the man in the front passenger seat stated that their names were "Shannon Mckelvy" and "Favian Estrada" but denied having identification. Officer Hotz then asked, "What's going on? Run me through. Something's going on right now." The woman said that the two passengers picked her up because her boyfriend was "beating the crap out of" her, causing Officer Hotz to ask her if she was okay. Neither knew the last four digits of their social-security number, which Officer Hotz thought was strange. Officer Hotz ran "Estrada's" name and discovered that it was false and that his real name was Adam Leiva, so she arrested him for providing false identification information. *See* Iowa Code § 719.1A (2018).

Sergeant Richard Holland arrived to assist Officer Hotz and asked "Mckelvy" if a purse in the back seat belonged to her. She said it did not and refused to give Sergeant Holland permission to search it. Because the man in the back seat said he was the one who had been lent the car, Officer Hotz asked him to look for identification in the purse. When he found "Mckelvy's" identification stating that her real name

was Christin Campbell-Martin, the officers arrested her for providing false identification information.

Sergeant Holland decided to impound the car and asked the man in the back seat to exit the vehicle. After the man got out of the car, Officer Holland started to search the vehicle and found a backpack on the floor of the front-seat passenger area. Inside of the backpack he found a bag of what he thought was methamphetamine. He also found $2,850.10 in cash, a small scoop, paperwork addressed to Leiva and Campbell-Martin, and smaller baggies. In the center console he found Leiva's identification. After he finished searching, the car was impounded.

A federal grand jury indicted Campbell-Martin and Leiva on one count of possession with intent to distribute a controlled substance near a protected location and aiding and abetting the possession with intent to distribute. *See* 18 U.S.C. § 2; 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 860(a). Campbell-Martin and Leiva moved to suppress the methamphetamine found in the car, arguing that the initial encounter was an unconstitutional seizure because Officer Hotz did not have probable cause or reasonable suspicion and that the warrantless search of the vehicle and its contents was an unconstitutional search. The district court denied the motion, concluding that the defendants were not seized when Officer Hotz first approached them, Officer Hotz had probable cause to command them to exit the car and arrest them, and the search of the car was a valid inventory search and search incident to arrest.

Campbell-Martin and Leiva conditionally pleaded guilty, preserving their right to appeal the denial of

their suppression motion. *See* Fed. R. Crim. P. 11(a)(2). At sentencing, the district court denied Campbell-Martin's motion for a two-level minor-role reduction in her offense level, *see* U.S.S.G. § 3B1.2(b), applied a twolevel enhancement to Leiva's offense level because the drug offense directly involved a protected location, *see* U.S.S.G. § 2D1.2(a)(1), and assessed three criminal-history points for Leiva's prior methamphetamine-possession offense. The district court sentenced Campbell-Martin to 200 months' imprisonment and 10 years' supervised release and Leiva to 235 months' imprisonment and 10 years' supervised release. Campbell-Martin and Leiva appeal, challenging the district court's denial of their suppression motion and its sentencing guidelines calculations.

II.

First, the defendants challenge the district court's denial of the suppression motion. "In reviewing a denial of a motion to suppress, we review the district court's findings of fact for clear error, giving due weight to the inferences police drew from those facts. We review de novo the district court's legal conclusion that reasonable suspicion or probable cause existed." *United States v. Pacheco*, 996 F.3d 508, 511 (8th Cir. 2021).

The defendants challenge the district court's suppression denial on two grounds. First, Campbell-Martin argues that the initial stop was an unconstitutional seizure because it was conducted without reasonable suspicion and thus the methamphetamine must be suppressed as "fruit of the poisonous tree." *See United States v. Tuton*, 893 F.3d

562, 568 (8th Cir. 2018). Second, Campbell-Martin and Leiva argue that the warrantless search of the car was unconstitutional because neither the inventory exception nor the search-incident-to-arrest exception to the warrant requirement applies.

A.

We first consider whether Officer Hotz's approach to the car constituted an unconstitutional seizure. A Fourth Amendment seizure occurs when an officer "by means of physical force or show of authority[] has in some way restrained the liberty of a citizen." *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968). "[T]he crucial test is whether, taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'" *Florida v. Bostick*, 501 U.S. 429, 437 (1991) (quoting *Michigan v. Chesternut*, 486 U.S. 567, 569 (1988)). To determine whether an encounter is a seizure, we must consider all the relevant circumstances. *United States v. Mabery*, 686 F.3d 591, 596 (8th Cir. 2012). Circumstances that suggest a seizure occurred are "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Id.*

Officers must obtain a warrant to conduct a seizure unless an exception to the warrant requirement applies. *Terry*, 392 U.S. at 20. Under one exception, "officers may conduct brief investigatory stops of individuals if they have a reasonable articulable

suspicion of criminal activity." *United States v. Griffith*, 533 F.3d 979, 983–84 (8th Cir. 2008). "A law enforcement officer has reasonable suspicion [to conduct an investigatory stop] when the officer is aware of particularized, objective facts which, taken together with rational inferences from those facts, reasonably warrant suspicion that a crime is being committed." *United States v. Williams*, 929 F.3d 539, 544 (8th Cir. 2019) (alteration in original) (internal quotation marks omitted). To determine whether an officer had reasonable suspicion, we consider the totality of the circumstances. *Pacheco*, 996 F.3d at 512.

Considering all the relevant circumstances, Officer Hotz's initial encounter with Campbell-Martin and Leiva was not a Fourth Amendment seizure because it was a consensual encounter. Even if it became nonconsensual, Officer Hotz had reasonable suspicion to question them and ask for identification.

Officer Hotz's conduct would not have communicated to a reasonable person that he could not leave. Officer Hotz was alone, she did not display a weapon, she did not touch the defendants, and she did not use forceful language. She parked beside the car rather than in front of or behind it so the driver would have been able to drive away. She also did not ask the occupants to get out of the car until she knew they had provided false names.

We have previously held that an encounter was consensual when the officer parked at least fifteen feet in front of the parked car, did not turn on emergency lights, walked with his hand on his weapon, did not order the defendant to get out of the

car, and knocked on the window three separate times. *United States v. Barry*, 394 F.3d 1070, 1072, 1075 (8th Cir. 2006). Similarly, Officer Hotz parked two spots away from the car, did not turn on her emergency lights, and did not ask anyone to get out of the car. Even though Officer Hotz shined her spotlight on the car, this is "no more intrusive . . . than knocking on the vehicle's window." *Mabery*, 686 F.3d at 597.

Nor does requesting identification or asking questions effect a seizure "as long as the police do not convey a message that compliance with their requests is required." *Bostick*, 501 U.S. at 435; *see also United States v. Stewart*, 631 F.3d 453, 456 (8th Cir. 2011) ("Even when officers have no basis for suspecting a particular individual, they may generally ask the individual questions and request to examine his or her identification."); *United States v. Lozano*, 916 F.3d 726, 728, 730–31 (8th Cir. 2019). Here, Officer Hotz did not convey such a message when requesting the defendants' identification and asking them questions. When she asked for identification, her tone was conversational, she framed her request as a question, and she said "please." And when she said, "What's going on? Run me through. Something's going on right now," she did not use an authoritative tone of voice and she asked if Campbell-Martin was okay. *Cf. United States v. White*, 81 F.3d 775, 779 (8th Cir. 1996) (concluding that the defendant was not seized when "the tone of the entire exchange was cooperative").

Even if at a certain point the encounter became nonconsensual, Officer Hotz had reasonable suspicion to "expand[] the scope of the encounter to a[n investigatory] stop." *See Griffith*, 533 F.3d at 983–84.

Even before Officer Hotz asked to see the defendants' identification, she observed them drive into a school parking lot around 10:30 p.m., Campbell-Martin appeared to hide her face with her hands, and she did not look at Officer Hotz after Officer Hotz shined her spotlight on the driver's window. And after approaching the car, Officer Hotz had reasonable suspicion to believe that Campbell-Martin was under the influence of drugs because she was "nervous and fidgety," "[h]er speech was quick," "her pupils were constricted," and "[s]he kept pulling her knees to her chest and breathing really heavy." Officer Hotz also observed that the two passengers were very quiet and did not look toward her. Based on Officer Hotz's training and experience in dealing with individuals under the influence, she reasonably believed that Campbell-Martin might be under the influence. Officer Hotz had reasonable suspicion based on articulable facts to extend the encounter to investigate whether Campbell-Martin was driving under the influence. *See United States v. Marin*, 988 F.3d 1034, 1041–42 (8th Cir. 2021) (finding reasonable suspicion to prolong a traffic stop due to suspected drug use based on the defendant's excited speech, mannerisms, and elevated heart rate).

Leiva argues that Officer Hotz did not have reasonable suspicion of drug use because she did not perform a sobriety test or drug recognition test. Leiva's argument is unpersuasive because the relevant question is whether Officer Hotz had reasonable suspicion of criminal activity, not whether her reasonable suspicion was confirmed. *See United States v. Sanchez*, 572 F.3d 475, 478–79 (8th Cir. 2009) (concluding that an officer had reasonable

suspicion that a car did not display valid proof of vehicle registration even though the officer turned out to be wrong).

After asking for Campbell-Martin's and Leiva's identification information, Officer Hotz also had reasonable suspicion to believe that they gave false names because neither had identification, they did not know their social-security numbers, and Leiva stumbled through his date of birth. *See United States v. Chaney*, 584 F.3d 20, 26 (1st. Cir. 2009) (finding that the officer could extend the traffic stop based on reasonable suspicion that the defendant provided a false name and might be involved in criminal activity because of his "implausible answers and nervous demeanor").

Considering the totality of the circumstances, we conclude that the encounter was initially consensual, and even if it ultimately became nonconsensual, it was justified by reasonable suspicion of criminal activity. Therefore, the evidence obtained from the encounter should not be suppressed as "fruit of the poisonous tree." *See Tuton*, 893 F.3d at 568.

B.

Next, we consider whether Sergeant Holland's search of the backpack without a warrant constituted an illegal search. *See Birchfield v. North Dakota*, 579 U.S. ---, 136 S. Ct. 2160, 2173 (2016) (explaining that generally police need a warrant to conduct a search but that there are many exceptions to this requirement); *Arizona v. Gant*, 556 U.S. 332, 338 (2009) ("Among the exceptions to the warrant requirement is a search incident to a lawful arrest."). The district court concluded that the search was both

a valid inventory search and a valid search incident to arrest. Because we agree that the search was a valid search incident to arrest, we do not reach the question whether it was also a valid inventory search.

"Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Gant*, 556 U.S. at 351. A permissible search incident to arrest may extend to the passenger compartment, including containers in the passenger compartment. *New York v. Belton*, 453 U.S. 454, 460–61 (1981) (abrogated on other grounds by *Gant*, 556 U.S. at 343).

Here, "it [wa]s reasonable to believe that the vehicle contain[ed] evidence of the offense [of providing false identification information]."[2] *See Gant*, 556 U.S. at 351. The defendants argue that the search-incident-to-arrest exception does not apply in this case because in *Gant* the Court refused to apply the exception to the offense of driving with a suspended license. *See id.* at 344. The *Gant* court held that searching a car to find evidence of driving with a suspended license did not fall within the exception "[b]ecause police could not reasonably have believed either that Gant could have accessed his car at the time of the search or that evidence of the offense for which he was arrested might have been found therein." *Id.*

But this case involves a different offense of arrest—the offense of providing false identification

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[2] Campbell-Martin and Leiva do not challenge the basis for or the legality of their arrest.

information—and it was reasonable to believe that the vehicle and the backpack contained evidence of the offense of providing false identification information. Although the officers already knew that Campbell-Martin and Leiva provided false identification, they did not have Leiva's actual identification, which would help prove that Leiva provided false identification. It was reasonable to think that his identification would be in the car because he had not given the officers any identification even after he was arrested. *See id.* The backpack that was sitting at Leiva's feet in the car was a logical place to look for identification such as a driver's license, mail, receipts, credit cards, or checks. Indeed, the officers found paperwork in the backpack with Leiva's real name on it and Leiva's identification in the center console.

Leiva argues that the Eleventh Circuit's decision in *Davis v. United States*, 598 F.3d 1259 (11th Cir. 2010), eliminates the search-incident-to-arrest exception for offenses involving false identification. In *Davis*, the Eleventh Circuit stated in *dicta* that a search incident to arrest for the offense of providing false identification information was unconstitutional under *Gant* because the police could not expect to find evidence in the passenger compartment as the officer "had already verified [the defendant's] identity when he arrested him for giving a false name." *Id.* at 1263.

Respectfully, we disagree with the Eleventh Circuit's analysis. Nothing in *Gant* prohibits the police from searching for additional evidence of an offense. *See Gant*, 556 U.S. at 343–44, 351. Here, "it [was] reasonable to believe the vehicle contain[ed] evidence of the offense of arrest" because police could

have found evidence in the car and in the backpack relevant to the occupants providing false identification information, even though the officer already knew their real names. *See id.* at 351; *accord United States v. Edwards*, 769 F.3d 509, 515 (7th Cir. 2014) (holding that the search-incident-to-arrest exception applied to the offense of driving without the owner's consent when officers were searching for evidence of the car's ownership even though the defendant had already admitted that someone else owned the car); *cf. United States v. Donahue*, 764 F.3d 293, 303 (3d Cir. 2014) (analyzing the automobile exception and stating that "though it is clear from the record that the government had compelling evidence that Donahue had committed the crime of failing to surrender before its agents searched his vehicle . . . and such evidence might have lessened the *need* for a search, the search was lawful").

Considering the totality of the circumstances, we conclude that the officers were permitted to search the car and the backpack as a search incident to arrest. Therefore, the district court did not err in denying the motion to suppress.

III.

Second, the defendants argue that the district court erred in calculating their advisory sentencing guidelines range. "We review de novo the district court's interpretation and application of the advisory Guidelines and review for clear error its findings of fact." *United States v. Carpenter*, 487 F.3d 623, 625 (8th Cir. 2007).

A.

Campbell-Martin claims that the district court erred in denying her request for a two-level reduction for a minor role in the offense under U.S.S.G. § 3B1.2(b). We review "the district court's determination of whether a defendant qualifies for a mitigating role reduction for clear error." *Id.* "The propriety of a downward adjustment is determined by comparing the acts of each participant in relation to the relevant conduct for which the participant is held accountable and by measuring each participant's individual acts and relative culpability against the elements of the offense." *United States v. Salvador*, 426 F.3d 989, 993 (8th Cir. 2005). "However, 'merely showing the defendant was less culpable than other participants is not enough to entitle the defendant to the adjustment if the defendant was "deeply involved" in the offense.'" *United States v. Cubillos*, 474 F.3d 1114, 1120 (8th Cir. 2007) (quoting *United States v. Bush*, 352 F.3d 1177, 1182 (8th Cir. 2003)). "The defendant bears the burden of establishing entitlement to the reduction." *Id.*

The evidence before the district court showed that Campbell-Martin's role was to distribute the methamphetamine. "This is more than sufficient to show deep involvement in the offense." *Cubillos*, 474 F.3d at 1120. Campbell-Martin argues that it was Leiva who determined the amount of methamphetamine to buy, she did not have decision-making authority, she did not pay for the methamphetamine, and the evidence does not show that she was involved in the decision to buy and resell methamphetamine. Even assuming Campbell-Martin was less culpable than Leiva, however, the

presentence investigation report indicates that she was nonetheless deeply involved because she weighed the methamphetamine, sold it, and collected drug debts.[3] *See United States v. Barth*, 424 F.3d 752, 763–64 (8th Cir. 2005) (concluding that the defendant did not have a minor role when her home was a drug distribution center and she provided resources; weighed, cut, and packaged drugs; and collected money on behalf of the supplier); *United States v. Adamson*, 608 F.3d 1049, 1054 (8th Cir. 2010) (holding that well-paid couriers for selling drugs were not entitled to a minor-role reduction because "[t]ransportation is an important component of an illegal drug distribution organization"); *Salvador*, 426 F.3d at 994 (concluding that the defendant did not have a minor role even though he did not have decision-making authority because he played an "important role" as translator by facilitating transactions, being present at the transactions, and handing over the drugs). Thus, the district court did not clearly err in denying Campbell-Martin a minor-role reduction.

B.

Leiva claims that the district court incorrectly calculated his advisory sentencing guidelines range by applying a two-level enhancement for drug offenses directly involving protected locations under U.S.S.G. § 2D1.2(a)(1). He argues that the district court was required to find that he intended the distribution to take place in or within 1,000 feet of the protected

[3] The district court "may rely on unobjected-to paragraphs in a PSR." *United States v. Sarchett*, 3 F.4th 1115, 1120 (8th Cir. 2021) (citing Fed. R. Crim. P. 32(i)(3)(A)).

location because intent is an element of his offense—possession with intent to distribute—and that it could not because the plea agreement stipulated that he did not intend to distribute methamphetamine in or near the school. But the plain language of § 2D1.2(a)(1) does not require that the defendant intend for distribution to take place in or within 1,000 feet of a protected location. *United States v. Mundy*, 621 F.3d 283, 295–96 (3d Cir. 2010) (concluding that § 2D1.2(a)(1) does not require evidence that the defendant "intended to distribute any drugs within 1,000 feet of a school"); *cf. United States v. Walker*, 993 F.2d 196, 198–99 (9th Cir. 1993) (holding that U.S.S.G. § 2D1.2(a)(1) does not require the government to prove that the defendant intended to distribute to students). Because Leiva stipulated in his plea agreement that he knowingly and intentionally possessed the methamphetamine and was within 1,000 feet of a school, the district court properly applied the two-level enhancement.

C.

Leiva also claims that the district court erred in assessing three criminal-history points for his January 2018 drug-possession conviction under U.S.S.G. § 4A1.2(a). He claims that his January 2018 possession offense is relevant conduct for the instant offense of possession with intent to distribute that occurred in May 2018." When calculating criminal history points, a sentencing court is to consider 'any sentence previously imposed . . . for conduct not part of the instant offense,' defined as conduct other than 'relevant conduct' under U.S.S.G. § 1B1.3." *United States v. Pinkin*, 675 F.3d 1088, 1090–91 (8th Cir. 2012) (quoting U.S.S.G. § 4A1.2(a)(1) and U.S.S.G

§ 4A1.2, cmt. n.1). "Whether acts are relevant conduct under the sentencing guidelines is a factual determination subject to review for clear error." *United States v. White*, 447 F.3d 1029, 1032 (8th Cir. 2006).

Relevant conduct is "all acts and omissions . . . that were part of the same course of conduct or common scheme or plan as the offense of conviction." U.S.S.G. § 1B1.3(a)(2). "For two or more offenses to constitute part of a common scheme or plan, they must be substantially connected to each other by at least one common factor, such as common victims, common accomplices, common purpose, or similar *modus operandi*." U.S.S.G. § 1B1.3, cmt. n.5(B)(i). "Offenses that do not qualify as part of a common scheme or plan may nonetheless qualify as part of the same course of conduct if they are sufficiently connected or related to each other as to warrant the conclusion that they are part of a single episode, spree, or ongoing series of offenses." *Id.* at cmt. n.5(B)(ii). We can consider factors such as "the degree of similarity of the offenses, the regularity (repetitions) of the offenses, and the time interval between the offenses." *Id.*

The district court did not clearly err in determining that Leiva's January 2018 offense is not relevant conduct to the instant offense. First, there is no common scheme because the January 2018 offense did not involve the intent to distribute drugs. Second, the two offenses lack a common purpose because the January 2018 offense did not involve distributing methamphetamine, but rather the possession of prescription pills. Third, there were no common victims because neither offense has specific victims. Fourth, the offenses were also separated in time by

four months. Fifth, geographically the offenses were separated by more than sixty miles—the January 2018 offense occurred in Marshall County, Iowa, and the instant offense occurred in Marion, Iowa. Thus, the district court did not clearly err in finding that the January 2018 offense was not relevant conduct and assigning three criminal-history points for the offense.

IV.

For the foregoing reasons, we affirm.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ADAM SCOTT LEIVA and CHRISTIN CAMPBELL-MARTIN, Defendants.	No. 19-CR-79-CJW-MAR **ORDER**

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I. INTRODUCTION

This matter is before the Court on a Report and Recommendation ("R&R") (Doc. 55) of the Honorable Mark A. Roberts, United States Magistrate Judge.[1] On November 4, 2019, defendants Adam Scott Leiva ("Leiva") and Christin Campbell-Martin ("Campbell-Martin") both filed motions to suppress. (Docs. 34 & 36). On November 14, 2019, the government timely filed a resistance to both motions. (Doc. 42). On November 19, 2019, Judge Roberts held a hearing on both motions. (Doc. 45). On December 3 and 4, 2019, both defendants and the government timely filed supplemental briefs pursuant to Judge Roberts' Order. (Docs. 48, 49, & 53).[2]

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[1] In his motion, Leiva's counsel repeatedly refers to the Honorable Mark A. Roberts by the title "magistrate." (Docs. 56, at 2, 11, 24, 34, 37). The Court takes this opportunity to remind counsel that the proper title is United States Magistrate Judge. *See* Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089 (1990). This title has been in use for three decades now and the Court expects counsel to treat judicial officers with respect by using their proper title. *See* Ruth Dapper, *A Judge by Any Other Name? Mistitling of the United States Magistrate Judge*, 9 FED. CTS. L. REV. 1, 17 (Fall 2015). Thus, counsel should use "magistrate judge" rather than simply "magistrate."

[2] Campbell-Martin filed a timely supplemental brief on December 3, 2019, but did not include a table of contents as required. (Doc. 50). On December 4, 2019, Campbell-Martin requested and was granted permission to file an amended brief (Doc. 51 & 52), which she filed that same day (Doc. 53).

On January 9, 2020, Judge Roberts issued his R&R, recommending that the Court deny both defendants' motions to suppress. (Doc. 55). The deadline for filing objections to the R&R was January 23, 2020. On January 23, 2020, both defendants filed objections to the R&R. (Docs. 56 & 57). The government did not file any objections or a response.

For the following reasons, the Court **overrules in part** and **sustains in part** defendants' objections (Docs. 56 & 57), **adopts in part** and **rejects in part** Judge Roberts' R&R with modification (Doc. 55), and **denies** both defendants' motions to suppress (Docs. 34 & 36).

II. STANDARD OF REVIEW

The Court reviews Judge Roberts' R&R pursuant to the statutory standards found in Title 28, United States Code, Section 636(b)(1):

> A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

see also FED. R. CIV. P. 72(b) (stating identical requirements). While examining these statutory standards, the United States Supreme Court explained:

> Any party that desires plenary consideration by the Article III judge of any issue need only ask. Moreover, while the statute does not require the

> judge to review an issue de novo if no objections are filed, it does not preclude further review by the district judge, sua sponte or at the request of a party, under a de novo or any other standard.

Thomas v. Arn, 474 U.S. 140, 154 (1985). Thus, a district court may review de novo any issue in a magistrate judge's report and recommendation at any time. *Id.* If a party files an objection to the magistrate judge's report and recommendation, however, the district court must "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). In the absence of an objection, the district court is not required "to give any more consideration to the magistrate's report than the court considers appropriate." *Thomas*, 474 U.S. at 150.

De novo review, of course, is nondeferential and generally allows a reviewing court to make an "independent review" of the entire matter. *Salve Regina Coll. v. Russell*, 499 U.S. 225, 238 (1991) (noting also that "[w]hen de novo review is compelled, no form of appellate deference is acceptable"); *see Doe v. Chao*, 540 U.S. 614, 620–19 (2004) (noting de novo review is "distinct from any form of deferential review"). The de novo review of a magistrate judge's report and recommendation, however, only means a district court "'give[s] fresh consideration to those issues to which specific objection has been made.'" *United States v. Raddatz*, 447 U.S. 667, 675 (1980) (quoting H.R. Rep. No. 94-1609, at 3, reprinted in 1976 U.S.C.C.A.N. 6162, 6163 (discussing how certain amendments affect Section 636(b))). Thus, although de novo review generally entails review of an entire

matter, in the context of Section 636 a district court's required de novo review is limited to "de novo determination[s]" of only "those portions" or "specified proposed findings" to which objections have been made. 28 U.S.C. § 636(b)(1).

Consequently, the Eighth Circuit Court of Appeals has indicated de novo review would only be required if objections were "specific enough to trigger de novo review." *Branch v. Martin*, 886 F.2d 1043, 1046 (8th Cir. 1989). Despite this "specificity" requirement to trigger de novo review, the Eighth Circuit Court of Appeals has "emphasized the necessity . . . of retention by the district court of substantial control over the ultimate disposition of matters referred to a magistrate." *Belk v. Purkett*, 15 F.3d 803, 815 (8th Cir. 1994). As a result, the Eighth Circuit Court of Appeals has concluded that general objections require "full de novo review" if the record is concise. *Id.* ("Therefore, even had petitioner's objections lacked specificity, a de novo review would still have been appropriate given such a concise record."). Even if the reviewing court must construe objections liberally to require de novo review, it is clear to this Court that there is a distinction between making an objection and making no objection at all. *See Coop. Fin. Ass'n, Inc. v. Garst*, 917 F. Supp. 1356, 1373 (N.D. Iowa 1996) ("The court finds that the distinction between a flawed effort to bring objections to the district court's attention and no effort to make such objections is appropriate.").

In the absence of any objection, the Eighth Circuit Court of Appeals has indicated a district court should review a magistrate judge's report and recommendation under a clearly erroneous standard

of review. *See Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (noting when no objections are filed and the time for filing objections has expired, "[the district court judge] would only have to review the findings of the magistrate judge for clear error"); *Taylor v. Farrier*, 910 F.2d 518, 520 (8th Cir. 1990) (noting the advisory committee's note to FED. R. CIV. P. 72(b) indicates "when no timely objection is filed the court need only satisfy itself that there is no clear error on the face of the record"); *Branch*, 886 F.2d at 1046 (contrasting de novo review with "clearly erroneous standard" of review, and recognizing de novo review was required because objections were filed).

The Court is unaware of any case that has described the clearly erroneous standard of review in the context of a district court's review of a magistrate judge's report and recommendation to which no objection has been filed. In other contexts, however, the Supreme Court has stated the "foremost" principle under this standard of review "is that '[a] finding is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Anderson v. City of Bessemer City*, 470 U.S. 564, 573–74 (1985) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). Thus, the clearly erroneous standard of review is deferential, *see Dixon v. Crete Med. Clinic, P.C.*, 498 F.3d 837, 847 (8th Cir. 2007) (noting a finding is not clearly erroneous even if another view is supported by the evidence), but a district court may still reject the magistrate judge's report and recommendation when the district court is "left with a

definite and firm conviction that a mistake has been committed," *U.S. Gypsum Co.*, 333 U.S. at 395.

Even though some "lesser review" than de novo is not "positively require[d]" by statute, *Thomas*, 474 U.S. at 150, Eighth Circuit precedent leads this Court to believe that a clearly erroneous standard of review should generally be used as the baseline standard to review all findings in a magistrate judge's report and recommendation that are not objected to or when the parties fail to file any timely objections, *see Grinder*, 73 F.3d at 795; *Taylor*, 910 F.2d at 520; *Branch*, 886 F.2d at 1046; *see also* FED. R. CIV. P. 72(b) advisory committee's note ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."). In the context of the review of a magistrate judge's report and recommendation, the Court believes one further caveat is necessary: a district court always remains free to render its own decision under de novo review, regardless of whether it feels a mistake has been committed. *See Thomas*, 474 U.S. at 153–54. Thus, although a clearly erroneous standard of review is deferential and the minimum standard appropriate in this context, it is not mandatory, and the district court may choose to apply a less deferential standard.

III. FACTUAL BACKGROUND

After reviewing the record, the Court finds that Judge Roberts accurately and thoroughly set forth the relevant facts in his R&R. (Doc. 55, at 3–7). Leiva raises one factual objection, which is addressed below. Therefore, the Court adopts Judge Roberts' factual

findings as set forth below without modification. (*See id.*) (original footnotes omitted).

> These incidents occurred on May 25, 2018 at approximately 10:30 p.m. in the north parking lot of Linn-Mar High School in Marion, Iowa. City of Marion Police Officer Nicole Hotz [("Officer Hotz")] was patrolling the parking lot at the request of the school's administrators. (Hotz Hr'g Test.) She had been actively engaged in requesting people leave the parking lot when she saw a red SUV occupied by three passengers, two of whom were ultimately identified as Leiva and Campbell-Martin. The backseat passenger was Justin Harris [("Harris")]. Harris provided Officer Hotz an Iowa identification card to prove his identification. (*Id.*) Campbell-Martin initially identified herself as Shannon McKelvy. (Doc. 37 at 1.) Leiva initially identified himself as Favian Estrada. (*Id.*) The driver was ultimately identified as Campbell-Martin and the front seat passenger as Leiva. (*Id.*)
>
> When Officer Hotz pulled up beside the SUV she saw Campbell-Martin raise her hands near her face in a manner Officer Hotz characterized as attempting to hide her identity. (Hotz Hr'g Test.) Officer Hotz first shined a [flash]light on the SUV before exiting her squad car and approaching on foot. (Doc. 37 at 1.) Officer Hotz's report describes Campbell-Martin's appearance and behavior when initially confronted:
>
> > The female rolled down the window and I observed that she was very nervous and fidgety. Her speech was quick, and her

> pupils were constricted which was out of the normal for the darker lighting conditions. She kept pulling her knees to her chest and breathing really heavy.

(Doc. 37 at 1.) Officer Hotz's report also described the male passengers' behavior as "very quiet and [they] did not look towards me." (Doc. 37 at 1.) Officer Hotz requested identification from the occupants of the SUV. (*Id.*) Harris produced genuine identification, but each Defendant provided a name that turned out to be false. (Doc. 37 at 1.) Neither Defendant was able to supply the last four digits of his or her social security number or any form of identification. (*Id.*) Officer Hotz inquired about the car's owner. (Ex. B at 8:20.) Campbell-Martin indicated Harris was the owner, but Harris denied this, indicating it had been borrowed from one April Johnson. (*Id.*) Harris denied having a phone number to reach April. (*Id.* at 10:10.) Campbell-Martin told Officer Hotz she left her house without her "items." (Doc. 37 at 1.) Officer Hotz requested permission to search the vehicle, but Harris denied permission. (Ex. B at 9:40.)

Sergeant Richard Holland [("Sergeant Holland")] from the Marion police department subsequently arrived on the scene. (*Id.* at 13:00.) Sergeant Holland questioned the occupants of the SUV while Officer Hotz ran the information [Leiva] provided through a law enforcement database. (Ex. C at 3:00.) During this questioning, Sergeant Holland noticed a purse in the back seat of the vehicle that Campbell-Martin reported belonged to the registered owner. (*Id.* at

3:40.) Sergeant Holland asked if he could search the purse, but Campbell-Martin explained she was unable to grant permission because the purse did not belong to her. (*Id.*)

Officer Hotz returned to the SUV after she determined the information Leiva provided was false. (Ex. B at 15:00.) Officer Hotz went to the passenger side of the vehicle and asked Leiva to get out. (*Id.* at 15:20.) At this point she noticed a black backpack on the front floor of the vehicle. (Doc. 37 at 1.) Officer Hotz removed Leiva from the vehicle and arrested him for providing false information. (Ex. B at 15:30.) Leiva then provided his real name while Officer Hotz searched him during the arrest. (*Id.*) Leiva stated he had provided false information because of pending warrants. (*Id.* at 16:35.)

Sergeant Holland briefly left the immediate scene but remained in the parking lot, encouraging other drivers to leave. (Ex. C at 10:50.) When he returned, Harris told him the registered owner had loaned them and they were "in charge of the car." (*Id.* at 15:25.) Sergeant Holland asked Harris to look through the purse, and Harris complied. (*Id.* at 16:00.)[3] Harris

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[3] Leiva raises a factual objection here, noting that the R&R omits that Sergeant Holland reached into the SUV several times while talking with Harris. Leiva claims this was a warrantless search of the vehicle. (Doc. 56, at 30). The Court finds the omission of these facts to be immaterial. Sergeant Holland merely leans into the SUV while speaking with Harris, who is seated on the opposite side of the backseat, and illuminates the purse with his flashlight so that Harris can search the purse at his request. Sergeant Holland only reaches into the SUV to point

produced an ID for Campbell-Martin that Officer Hotz matched to the driver of the vehicle. (*Id.* at 16:45.) Officer Hotz then arrested Campbell-Martin for providing false information. (*Id.* at 17:55.)

Officer Hotz contacted a towing service for the vehicle and Sergeant Holland began what the Government contends is an inventory of the vehicle incident to towing. (*Id.* at 19:30.) Prior to the inventory Harris asked whether he could drive the car, but Sergeant Holland denied permission. (*Id.* at 18:40.) During the inventory, Sergeant Holland located what appeared to be methamphetamine inside the backpack located near where Leiva had been sitting. (*Id.* at 22:00.) This substance was later weighed and determined to be 929.5 grams of methamphetamine. (*Id.*) After finding this substance, Sergeant Holland instructed Officer Hotz to take Leiva out of the squad car and Mirandize him. (*Id.* at 27:10.) After Officer Hotz Mirandized Leiva, Sergeant Holland explained what he discovered in the backpack near Leiva's seat. (*Id.*) Leiva denied knowledge of the backpack's contents. (*Id.* at 31:35.)

Officer Hotz returned to the squad car to retrieve Campbell-Martin and Mirandize her.

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at things in the purse or retrieve items that Harris is voluntarily handing him. (Ex. C at 15:02). The Court will examine below defendants' standing to contest any search of the SUV. As to the purse specifically, the Court notes that Leiva has never claimed ownership of it and that Campbell-Martin repeatedly denied ownership of it at the scene before it was searched. In sum, the omission of these facts did not impair Judge Roberts' analysis.

(Ex. B. at 45:00.) Officer Hotz questioned Campbell-Martin after she Mirandized her. (*Id.* at 46:00.) Campbell-Martin stated Leiva and Harris picked her up in Ames, Iowa because her boyfriend was abusing her. (*Id.* at 46:20.) She denied using methamphetamine and denied knowledge of the backpack containing what law enforcement believed to be methamphetamine. (*Id.* at 47:50.) She stated that Leiva first drove the vehicle and Campbell-Martin started driving after Leiva became lost. (*Id.* at 48:20.) She further stated their destination was the Microtel in Marion because she was very tired. (*Id.* at 48:20.) She also admitted she had knowledge that Leiva deals methamphetamine and that the bag belonged to him. (*Id.* at 50:00.) She stated that earlier in the day they had traveled to Altoona, Iowa where he obtained a large amount of methamphetamine. (*Id.* at 51:15.)

After Officer Hotz Mirandized both Defendants, she and Sergeant Holland conducted post-*Miranda* interviews. Sergeant Holland returned to the SUV and continued the inventory search. (Ex. C at 32:00.) Sergeant Holland found additional items in the SUV, including small baggies approximately one inch by one inch, an electronic scale, paperwork with names and dollar amounts, including both Defendants' names, a glass pipe, and cash. (*Id.* at 35:45; Doc. 37 at 5.) Sergeant Holland instructed Officer Hotz to take pictures of the SUV and transport the occupants to the police station. (Ex. C at 40:30.)

(Doc. 55, 3–7) (footnote omitted).

IV. ANALYSIS

Both defendants have issued objections to Judge Roberts' R&R. (Docs. 56 & 57). Defendants' objections revolve around (1) the reasonableness of their seizure by Officer Hotz, (2) their respective standing to contest the search of the SUV, (3) their respective standing to contest the search of the backpack, and (4) whether those searches were permissible under the Fourth Amendment. The Court will address each argument in turn as to both defendants.

A. Seizure of Defendants

In his R&R, Judge Roberts found that Officer Hotz had reasonable suspicion that defendants were involved in criminal activity and thus lawfully seized defendants. Specifically, Judge Roberts found that Officer Hotz's initial encounter with defendants was voluntary and that neither defendant was seized until they were respectively handcuffed. (Doc. 55, at 9). Judge Roberts concluded that both defendants were properly seized after it was determined they each provided false information. (*Id.*). Importantly, Judge Roberts notes that a traffic stop did not occur here because the SUV at issue was already parked. (*Id.*, at 10). Rather, Judge Roberts found that Officer Hotz initiated a voluntary encounter, developed suspicion throughout her interaction with defendants, and ultimately had reasonable suspicion to seize both defendants upon confirming that they had provided false names. (*Id.*, at 13–16).

Leiva objects, arguing that because Officer Hotz's original mission in approaching defendants was to ask them to leave the parking lot, Officer Hotz's

subsequent inquiry into their identities was unrelated and thus unduly prolonged the stop. (Doc. 56, at 1821). In his objection, Leiva repeatedly refers to the facts here as a traffic stop. (*Id.*). Leiva also argues that no individualized suspicion existed as to him and Officer Hotz's request for his identification was thus unlawful. (*Id.*, at 21–23).

Campbell-Martin also objects, arguing that she was unlawfully seized when Officer Hotz approached the SUV. (Doc. 57, at 2). Campbell-Martin asserts that Officer Hotz only developed reasonable suspicion after the seizure upon Campbell-Martin's subsequent inability to verify her identity. (*Id.*). Campbell-Martin also argues that, to the extent reasonable suspicion of any other offense was present, the stop was unduly prolonged. (*Id.*).

The Fourth Amendment to the United States Constitution guarantees 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. A person is seized within the meaning of the Fourth Amendment "when the officer, by means of physical force or show of authority, terminates or restrains their freedom of movement." *Brendlin v. California*, 551 U.S. 249, 254 (2007) (internal quotation marks omitted). A court must look to "all of the circumstances surrounding [an] incident" to determine if "a reasonable person would have believed that he was not free to leave." *INS v. Delgado*, 466 U.S. 210, 215 (1984). The Eighth Circuit Court of Appeals has identified seven nonexclusive factors courts should consider in determining whether a seizure has occurred: (1) whether the officers positioned themselves so as to limit the person's

movement, (2) whether multiple officers were present, (3) whether officers displayed any weapons, (4) whether any physical touching occurred, (5) whether the officer's language or tone conveyed that compliance was necessary, (6) whether officer's seized any personal property, and (7) whether officers told the person that they were under investigation. *United States v. Griffith*, 533 F.3d 979, 983 (8th Cir. 2008).

The Supreme Court has held "that mere police questioning does not constitute a seizure." *Florida v. Bostick*, 501 U.S. 429, 434 (1991). Indeed, a consensual encounter between law enforcement officers and a person is not a seizure so long as "a reasonable person would feel free to disregard the police and go about his business[.]" *Id.* Such an encounter does not require any level of suspicion. *Id.* Thus, "a seizure does not occur simply because a police officer approaches an individual and asks a few questions." *Id.* Further, a request to see identification is not a seizure "as long as the police do not convey a message that compliance . . . is required." *Id.*, at 435. Shining a flashlight to illuminate a person is also not an inherently authoritative act by police. *United States v. Hayden*, 759 F.3d 842, 847 (8th Cir. 2014). The Eighth Circuit Court of Appeals has specifically held that an officer approaching a parked car and gaining the attention of its occupants alone is not a sufficient show of authority such that a reasonable person would believe they were not free to leave. *United States v. Barry*, 394 F.3d 1070, 1075 (8th Cir. 2005); *see also United States v. Vera*, 457 F.3d 831, 834, 836 (8th Cir. 2006) ("Absent a factual finding that [the officer] did more than request [the defendant] to exit his vehicle, provide his

identification, and enter the patrol car, there is no basis to conclude that the encounter was anything more than consensual."). This is true even if the officer had a holstered firearm because most people would except law enforcement officers to be armed. *United States v. Drayton*, 536 U.S. 194, 205 (2002).

The Court agrees with Judge Roberts that defendants were not seized when Officer Hotz shined her flashlight into the SUV and subsequently approached the SUV. *See, e.g.*, *Barry*, 394 F.3d at 1075 (holding that an officer parking fifteen feet in front of a suspicious vehicle in an alley at night, approaching the vehicle, shining his flashlight on his uniform, keeping his hand on his holstered weapon, and knocking on the driver-side window of the vehicle did not constitute a seizure); *United States v. Gordon*, No. 8:17CR290, 2018 WL 522356, at *2–3 (D. Neb. Jan. 5, 2018) (holding that two officers stopping their patrol car behind a parked vehicle, activating their lights, and knocking on the driver-side window of a vehicle did not constitute a seizure). Here, Officer Hotz pulled alongside defendants' SUV and shined her flashlight into the SUV but defendants were unresponsive. (Doc. 46, at 3). Instead, Officer Hotz testified that Campbell-Martin attempted to block her face from view. (*Id.*). Officer Hotz's body camera shows that there was more than a parking space between her patrol car and the SUV; about twelve feet. (Ex. B at 1:25). Officer Hotz was in full uniform and had a holstered firearm but never activated her lights or sirens and never grasped or drew her firearm. (Doc. 46, at 3). Officer Hotz then exited her vehicle and walked toward the SUV, at which time Campbell-Martin rolled down her window. (*Id.*).

Although Sergeant Holland and others arrived later, Officer Hotz was alone at this time. Further, no personal property was seized before defendants were placed in handcuffs.

Of the factors listed above, the only potential show of authority exhibited by Officer Hotz was her stated suspicion that "something is going on" and her request to see identification. (Ex. B at 0:37–0:49). This request alone, however, is not a seizure. *See Bostick*, 501 U.S. at 435; *Vera*, 457 F.3d at 835–36 (noting that a mere request to see identification, as opposed to an authoritative command, does not constitute a seizure even if most people would acquiesce to such a request). Officer Hotz's general questions and requests for identification evidence little more than her intent to uncover why three adults were sitting in a high school parking lot late at night. These actions alone do not constitute physical force or a sufficient show of authority such that they would cause a reasonable person to believe they were not free to leave. Such physical force or show of authority did not occur until each defendant was commanded to exit the vehicle and placed in handcuffs. These seizures occurred only after Officer Hotz had reasonable suspicion, and in fact probable cause, to believe that defendants had provided false information.

The Court also agrees with Judge Roberts that these facts do not constitute a traffic stop because defendants' SUV was already parked when Officer Hotz made contact. *See, e.g.*, *United States v. Elias*, No. 8:17CR250, 2018 WL 3626440, at *4 (D. Neb. May 29, 2018), *adopted*, 2018 WL 3625771 (July 30, 2018) (noting that a traffic stop did not occur because the car was "already parked"); *United States v. Avalos*, No.

4:16CR3038, 2017 WL 1050102, at *5 (D. Neb. Mar. 20, 2017), *adopted*, 2017 WL 1533379 (Apr. 27, 2017) (finding that a traffic stop did not occur because the vehicle was parked at its destination); *United States v. Vargas-Miranda*, 559 F. Supp. 2d 1016, 1020 (D. Neb. 2008), *aff'd*, 601 F.3d 861 (8th Cir 2010) (holding that a traffic stop did not occur because the vehicle was parked in a parking lot). Thus, there was no undue prolonging of any stop because no stop occurred. In any event, Officer Hotz's questioning of defendants lasted a reasonable length of time and was consistent with her broader mission of protecting the high school premises. Moreover, Officer Hotz's request to see defendants' identifications was only that; a mere request which was not unlawful and did not require any level of suspicion. *See Bostick*, 501 U.S. at 435.

Thus, the Court **overrules** defendants' objections as to their seizures and **adopts** Judge Roberts' R&R without modification.

B. Standing to Contest the Search of the SUV

In his R&R, Judge Roberts found that neither defendant had standing to contest the search of the SUV. (Doc. 55, at 18). Judge Roberts found that Leiva "provided only an assertion, without evidence, that he had permission to use the SUV." (*Id.*, at 21). Specifically, Judge Roberts noted that the record was unclear as to who owned the SUV and who allegedly gave Harris and perhaps Leiva permission to use it. Although the vehicle was not stolen, no evidence clarified Leiva's interest in the SUV. Further, Judge Roberts found that Campbell-Martin also had "not provided evidence that the vehicle's owner intended

for her to drive the vehicle, much less to have a possessory interest in it." (*Id.*, at 20).

Leiva objects, asserting that he had permission to use the vehicle and that no evidence contradicts his claim. (Doc. 56, at 10). Leiva asserts that Harris "stated at the scene that the owner gave the vehicle to both Harris and Leiva" and that no evidence indicated the vehicle was stolen or operated without consent. (*Id.*). Leiva asserts that the vehicle was loaned directly to him, thus making him a bailee with a protectable interest. (*Id.*, at 13). Leiva also notes that his belongings were present in the SUV and that he had travelled a substantial distance in the SUV that night. (*Id.*, at 12).

Campbell-Martin also objects, asserting that she had a "property or quasi-property interest in the SUV as a bailee," thus affording her a reasonable expectation of privacy in it. (Doc. 57, at 5). Campbell-Martin also notes that the government failed to argue that she lacks standing. (*Id.*, at 3). Campbell-Martin argues that no evidence suggested the vehicle was stolen and that her mere failure to provide "definitive proof that the car was given to her by the bona fide owner" should not bar her from having standing here. (*Id.*, at 6–7).

To have standing to challenge a search, a defendant must have a reasonable expectation of privacy in the place searched. *United States v. Barragan*, 379 F.3d 525, 529 (8th Cir. 2004). The burden to prove this reasonable expectation is on the defendant. *United States v. Gomez*, 16 F.3d 254, 256 (8th Cir. 1994). Courts should look to the totality of the circumstances, considering a defendant's "ownership,

possession and/or control of the area searched . . .; historical use of the property or item; ability to regulate access; . . . the existence or nonexistence of a subjective anticipation of privacy; and the objective reasonableness of the expectation of privacy considering the specific facts of the case." *Id.* A defendant's reasonable expectation must have some basis in "concepts of real or personal property law or to understandings that are recognized and permitted by society." *Byrd v. United States*, 138 S. Ct. 1518, 1527 (2018) (quoting *Rakas v. Illinois*, 439 U.S. 128, 144 n.12 (1978)). A defendant must establish both that they had a subjective expectation of privacy and that their expectation was objectively reasonable. *See, e.g.*, *United States v. Douglas*, 744 F.3d 1065, 1069 (8th Cir. 2014) (citation omitted).

It follows then that a defendant asserting a privacy interest in a vehicle "must present at least some evidence of consent or permission from the lawful owner/renter of a vehicle to give rise to an objectively reasonable expectation of privacy." *United States v. Russell*, 847 F.3d 616, 618 (8th Cir. 2017) (quotations and alterations omitted). Such evidence must be produced regardless of whether the defendant is the driver or a passenger in the vehicle searched. *Compare*, *Russell*, 847 F.3d at 618 (noting the defendant was a passenger), *with*, *United States v. Muhammad*, 58 F.3d 353, 354 (8th Cir. 1995) (noting the defendant as the driver). In *United States v. Russell*, the defendant lacked standing to challenge the search of the vehicle because, although it was rented by his girlfriend, he could not provide any evidence that his girlfriend permitted him or the driver to operate or possess the vehicle. 847 F.3d at

618–19. In *United States v. Muhammad*, the defendant also presented no evidence of authorization by the registered owner. 58 F.3d at 355. The Eighth Circuit Court of Appeals rejected the defendant's argument that the "lack of evidence that the car was stolen" was enough to meet his evidentiary burden. *Id.* In *United States v. Andrews*, the court found that the defendant lacked standing because, although he alleged that he had permission from someone to operate the vehicle, he never presented evidence that he obtained permission from the lawful owner of the vehicle. No. 18-CR-149 (SRN/DTS), 2019 WL 4165149, at *8 (D. Minn. Sept. 3, 2019). In *United States v. Bettis*, the defendant had standing to contest the search because the vehicle's renter testified that she gave him permission to drive it. No. 17-cr-48 (WMW/TNL), 2017 WL 9249436, at *5–6 (D. Minn. June 19, 2017). In short, a defendant who does not have any ownership or possessory interest in a vehicle must present some evidence that someone with authority gave the defendant permission to operate or otherwise possess the vehicle.

Defendants have failed to provide any evidence from which the Court could find they had permission from the lawful owner to use the SUV. When initially asked who owned the SUV, Campbell-Martin identified Harris. (Ex. B at 8:20). Harris quickly denied ownership, stating that the vehicle belonged to a "friend;" either April Johnson or April Johnston. Harris then revised that April was a "friend of a friend." (*Id.*, at 8:50). Harris did not have any contact information for this person. Kristin Jefferson was determined to be the registered owner. Harris then stated April was merely a cosignor. (Ex. C at 9:25).

Harris later told Sergeant Holland that the SUV was given to him, without mentioning Leiva as being jointly authorized. Sergeant Holland then asked Harris whether the co-signor gave him permission. Harris corrected Sergeant Holland, stating it was the "co-signor's cousin." (Ex. C at 15:25). April Johnson, April Johnston, nor Kristin Jefferson were contacted at the scene or afterwards to confirm in any way that defendants were given permission by someone with an ownership interest in the SUV. None of the three were called as witnesses at the suppression hearing or provided any other form of evidence showing that Leiva or Campbell-Martin had authority to possess or operate the SUV. Leiva never personally asserted that the SUV was given to him. None of the occupants ever claimed the SUV was given to Campbell-Martin.

A bare assertion of authorization from a third party along with the lack of evidence the car was stolen, without more, is insufficient to show defendants' have standing here. *See Russell*, 847 F.3d at 618–19; *Muhammad*, 58 F.3d at 355; *Andrews*, 2019 WL 4165149, at *8. Some evidence of authorization from someone with authority over the vehicle is necessary. *See, e.g.*, *Bettis*, 2017 WL 9249436, at *5–6. Leiva's reliance on *United Stated v. Best*, 135 F.3d 1223 (8th Cir. 1998), is misplaced. (Doc. 56, at 1113). The Eighth Circuit Court of Appeals held that the defendant in *Best* would have standing if he provided evidence that he had permission from the authorized renter, not merely permission from anyone at all. 135 F.3d at 1225. Similarly, Campbell-Martin provides *United States v. Baker*, 221 F.3d 438 (3d Cir. 2000), as persuasive authority that persons other than the registered owner can grant permission. (Doc. 57, at

7). The Third Circuit Court of Appeals held that "[a]lthough defendant and his associates were somewhat vague about who owned the car, there is no evidence in the record that the car was stolen[.]" *Baker*, 221 F.3d at 442. The lower court elaborates that two friends of the defendant, neither of whom was the registered owner, both claimed to be the owner and testified that the defendant had permission to operate the vehicle from them. No. 97-00297, 1999 WL 163631, at *2–4 (E.D. Penn. Mar. 17, 1999). Even if the Court accepts that the registered owner is not the sole person who can authorize others to use a vehicle, the defendant in *Baker* presented some evidence of authorization. Specifically, he presented the sworn testimony of two persons who both claimed ownership, albeit in conflict, and who both asserted that they had given defendant permission to use the vehicle. No such evidence was present here.

Leiva cites various statements made at the scene as evidence that Harris and Leiva were jointly given authorization to drive the SUV. (Doc. 56, at 10, 13–14). Most of these statements merely established that both Harris and Leiva were in the car when Campbell-Martin was picked up. Leiva misquotes Sergeant Holland's video at 15:40; Harris did not say the SUV was given to "us." Sergeant Holland asked Harris whether the car was given to "you," to which Harris replied "yes." (Ex. C at 15:24). Harris later told Sergeant Holland that he and Leiva picked up the SUV together. (*Id.*, at 31:18). At best, these statements show that Harris and Leiva jointly picked up the SUV and later picked up Campbell-Martin. These statements do not establish that anyone with

authority gave Leiva or even Harris permission to drive the SUV. At best, the Court could interpret the vague exchange to show that Harris was "given" the SUV, and that Leiva was along with Harris when Harris picked up that SUV. That might be enough for Harris to have standing, but not Leiva.

Defendants have failed to present any evidence that they had permission from someone with authority over the SUV and, thus, their expectation of privacy is not one that society would recognize as objectively reasonable. *See Russell*, 847 F.3d at 61819; *Douglas*, 744 F.3d at 1069. Even so, the general factors used to determine standing weigh against defendants. *See Gomez*, 16 F.3d at 256 (citing *United States v. Sanchez*, 943 F.2d 110, 113 (1st Cir. 1991)). Although defendants had possession and control over the SUV, the ability to regulate access to the SUV, and likely had subjective expectations of privacy to some extent, they did not have ownership and their expectations were not objectively reasonable. The only stated relationship defendants had to the owner was that she was a friend of Harris' friend or perhaps the cousin of a friend of a friend. Defendants, despite driving a long distance, had little historical use of the SUV, only having it in their possession for less than a day. *See Baker*, 221 F.3d at 442 (possessing the vehicle for four to six weeks prior to the search). Further, the only belongings defendants had in the vehicle, setting aside whether they disclaimed ownership of those items at the scene, were items commonly found on an individual's person such as phones, wallets, a backpack, a purse, and a hoodie. On balance, these factors weigh against standing here.

Lastly, the Court notes that the government has not asserted that Campbell-Martin lacks standing to contest the search of the SUV, discussing only her lack of standing as to the backpack. (Docs. 42-1, at 14–15; 49, at 2). Campbell-Martin asserts that the government has thus waived this argument. (Doc. 57, at 3–5). It is unclear why the government would only argue standing as to the backpack and not the SUV when the backpack was inside the SUV; perhaps the government erroneously assumed Campbell-Martin did not assert standing as to the SUV when she in fact did. (Doc. 36-1, at 9). Regardless, Judge Roberts was within his discretion to find Campbell-Martin lacked standing as to the SUV. As explained above, the Court concurs with Judge Roberts' analysis. Thus, the Court declines to find that Campbell-Martin has standing as to the SUV merely because the government failed to explicitly argue this issue.

Thus, the Court **overrules** defendants' objections as to their standing to contest the search of the SUV and **adopts** Judge Roberts' R&R without modification.

C. Standing to Contest the Search of the Backpack

In his R&R, Judge Roberts found that Leiva has standing to challenge the search of the backpack, but that Campbell-Martin does not. As to Leiva, the backpack was found on the floor of the front-passenger seat where Leiva had been sitting. (Doc. 55, at 22–23). Judge Roberts found that Leiva did not disclaim his interest in the backpack prior to the search and thus has standing. (*Id.*, at 25). Further, Judge Roberts found that Campbell-Martin failed to identify

any expectation of privacy she had in the backpack and had, in fact, denied having any knowledge about the backpack. (*Id.*, at 21). She later stated that the backpack belonged to Leiva and that she saw him retrieve a large amount of methamphetamine and place it in the backpack while in Altoona. (*Id.*).

Both defendants responded to this issue in their objections. Leiva concurs with the R&R, asserting that he did not disclaim ownership of the backpack and that, even if he had, it would not prevent him from having standing here because the backpack was found in an area under his immediate control. (Doc. 56, at 15–16). Campbell-Martin objects to the R&R, asserting that her reasonable expectation of privacy in the SUV "extends to objects and containers within" the SUV. (Doc. 57, at 8).

No party has timely objected to Judge Roberts' finding that Leiva has standing as to the backpack and, thus, the parties have waived their rights to a de novo review of the R&R on this issue. *See, e.g.*, *Newton*, 259 F.3d at 966. Therefore, the Court reviews this finding for clear error. *See id.* The Court finds no clear error here.

Campbell-Martin's only objection here relies on her standing to contest the search of the SUV, thus affording her standing as to its contents including the backpack. As discussed, the Court finds that Campbell-Martin does not have standing to contest the search of the SUV and thus has no standing to contest the search of its contents.

Thus, the Court **overrules** Campbell-Martin's objection as to her standing to contest the search of

the backpack and **adopts** Judge Roberts' R&R without modification.

D. Searches of the SUV and Backpack under the Fourth Amendment

1. Inventory Search Exception

In his R&R, Judge Roberts concluded that the search of the SUV and its contents was a proper inventory search. (Doc. 55, at 32). Although Officer Hotz and Sergeant Holland may have been "motivated in part by investigatory desire," Judge Roberts found that the impoundment of the vehicle was consistent with the Marion Police Department's policies. (*Id.*, at 31). The policy states that officers may impound a vehicle in a variety of circumstances, including if "the owner or other person in possession of the vehicle is arrested AND the arrested person is unwilling or unable to have the vehicle moved." (Doc. 42-2, at 1). Judge Roberts concluded that even if Harris were in possession of the SUV, Harris did not appear to have a valid driver's license and thus could not have driven the SUV from the scene. (Doc. 55, at 31). Judge Roberts further held that officers acted in accordance with the Marion Police Department's inventory procedures until the search of the SUV continued after the methamphetamine was discovered. (*Id.*, at 36); *see also* (Doc. 42-2) ("If evidence or contraband is inadvertently discovered during an inventory search, the inventory search should immediately stop, and law enforcement should obtain a warrant[.]"). Despite this violation, Judge Roberts concluded that the officers did not act pretextually or in bad faith. (*Id.*, at 37). Instead, Judge Roberts found that the officers

acted in their caretaking function, not their investigatory function. (*Id.*).

Both defendants object. Leiva asserts that the officers acted in their investigatory function, noting that the officers' statements at the scene indicate that the inventory search was a mere pretext for a "general rummaging." (Doc. 56, at 26–34).[4] Campbell-Martin also objects, similarly asserting that the officers' inventory search was a ruse to discover contraband. (Doc. 57, at 9–11). Campbell-Martin argues that Judge Roberts erred in discounting the subjective intent of the officers here. (*Id.*). Further, Campbell-Martin asserts that officers failed to "take any serious steps" to determine who owned the SUV, whether it had been lent to Harris, and whether Harris had a valid license to drive it, noting that Officer Hotz only found that Harris' license was invalid months later. (*Id.*, at 12–13). Campbell-Martin concludes that the officers' investigatory motives and failure to follow

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[4] Leiva also argues that, even if this were a proper inventory search, it should have ceased when Officer Hotz discovered a "spray can she appears to believe was associated with drug use." (Doc. 56, at 25). Officer Hotz found a can of Supertech R-134a auto air conditioning refrigerant in the backseat of the SUV. (Ex. B at 36:05). The Court fails to see how this can is associated with drug use. Moreover, upon discovering the can, Officer Hotz immediately asked Sergeant Holland "What do you use this for? Would that—Would that be for AC you think? The refrigerant, the coolant, and stuff?" She then disregarded the can. At best, Officer Hotz found the can initially suspicious and then quickly concluded it was *not* associated with drug use. The Court finds the can was not contraband, that Officer Hotz did not appear to believe it was contraband, and that her discovery of the can is irrelevant to this analysis.

department policy invalidate the search of the SUV and backpack here.

Upon impoundment of a vehicle, law enforcement officers may perform an inventory search to protect the owner's property while it remains in police custody, protect the police from liability as to the property, and mitigate any potential danger the property may present. *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976) (citations omitted). Thus, in performing an inventory search of a vehicle, police act in a caretaking function and not in an investigative function. *United States v. Taylor*, 636 F.3d 461, 464 (8th Cir. 2011). Thus, no level of probable cause or suspicion is required. *Id.* An inventory search, however, "must not be a ruse for a general rummaging in order to discover incriminating evidence." *Florida v. Wells*, 495 U.S. 1, 4 (1990). Any inference of investigatory motive is typically vitiated when police conduct the inventory search in accordance with department policy. *United States v. Marshall*, 986 F.2d 1171, 1174 (8th Cir. 1993). Courts will uphold an inventory search as proper even if it does not precisely conform to department policy so long as "it is not a pretext for an investigatory search." *Taylor*, 636 F.3d at 465. "Something else" beyond mere noncompliance must indicate that police acted with an investigatory motive. *United States v. Morris*, No. CR16-4096-LTS, 2017 WL 3495186, at *9 (N.D. Iowa Aug. 15, 2017) (quoting *United States v. Trevino*, No. 15-CR-2037-LRR, 2016 WL 2752386, at *3 (N.D. Iowa May 10, 2016)).[5] Therefore, court must examine

[5] Leiva asserts that non-compliance with department policy "creates an inference of pretext." (Doc. 56, at 27). This is

whether the vehicle was properly impounded, whether the search was conducted in accordance with department policy, and whether the officers acted in bad faith or with the sole purpose of investigation. *Colorado v. Bertine*, 479 U.S. 367, 37 (1987). Ultimately, "[t]he central question in evaluating the propriety of an inventory search is whether, in the totality of the circumstances, the search was reasonable." *United States v. Kennedy*, 427 F.3d 1136, 1143 (8th Cir. 2005).

It is critical to keep in mind that "[t]he officer's subjective intent is irrelevant." *United States v. Faulkner*, No. 5:17-CR-50144-JLV, 2018 WL 6985006, at *9 (D.S.D. Aug. 30, 2018) (citing *Marshall*, 986 F.2d at 1175–76). Indeed, an officer's mere suspicion that evidence may be discovered during an inventory search does not itself render the search investigative. *United States v. Porter*, 859 F.2d 83, 85 (8th Cir. 1988) (per curiam).

First, the Court considers whether the SUV was properly impounded. The government cites two bases in the Marion Police Department policies that warranted impoundment here. (Doc. 42-1, at 19). The first basis allows impoundment "[w]hen the owner or other person in possession of a vehicle is arrested AND the arrested person is unwilling or unable to

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incorrect. Inventory searches are not automatically unreasonable when department policies are not followed. *United States v. May*, 440 F. Supp. 2d 1016, 103738 (D. Minn. 2006); *see also Whren v. United States*, 517 U.S. 806, 816 (1996) ("[I]t is a long leap from the proposition that following regular procedures is some evidence of lack of pretext to the proposition that failure to follow regular procedures proves (or is an operational substitute for) pretext.").

have the vehicle moved." (Doc. 42-2, at 1). The R&R relies on this basis, concluding that Campbell-Martin had been arrested and that the SUV could not be relinquished to Harris because Harris did not have a valid license. Harris provided his driver's license at the scene. Even though it was apparently later discovered that Harris' license was invalid, officers believed Harris' license was valid at the time of the search. (Ex. C at 19:48). Harris even inquired if he could drive the SUV and was simply told that he could not. (*Id.* at 18:40). It would be illogical to read the policy as precluding another person in possession of a vehicle to be barred from operating it simply because the owner or driver was arrested. This is particularly true here when Harris is the party with the most direct, albeit weak, claim to authority over the SUV. Thus, the Court finds this policy to be ill-fitting at best if not outright inapplicable and sustains Campbell-Martin's objection on this issue. (Doc. 57, at 12–13).

The second basis cited by the government, however, is appropriate. The Marion Police Department policies also allow impoundment if "the officer is unable to determine if the vehicle is properly registered and there is some question as to who should have possession of the vehicle." (Doc. 42-2, at 1). Officers were able to determine at the scene that the SUV was registered to Kristin Jefferson. This fact does not preclude application of the policy. The language of the policy requires that there be some question as to whether the vehicle is *properly* registered, not simply a question as to whether it is registered at all. Here, confusion abounded as to who Kristin Jefferson was, who April Johnson or Johnston was, and what the extent of April's authority over the

vehicle was. This confusion goes directly to whether the SUV was properly registered to the correct person or persons. Moreover, such confusion is explicitly contemplated by the added requirement that there be "some question as to who should have possession of the vehicle." As discussed, it was far from clear that Harris or either defendant had permission from anyone with authority over the SUV to operate it. The Court finds this policy to be both proper and fitting here and therefore modifies Judge Roberts' R&R on this issue. Thus, the Court finds that the SUV was properly impounded.

Second, the Court considers whether the officers followed department policy during the search of the SUV. After a vehicle is properly impounded, officers may search its contents to protect the owner's property, protect the department from liability, and protect officers from any potential dangers in the vehicle. (Doc. 42-2, at 1). Because the SUV was properly impounded here, officers appropriately began to inventory its contents. Although defendants have cited various statements by the officers at the scene that show the officers were suspicious that drug activity was afoot and that they had some investigatory desire to search the vehicle, the Court finds that these statements do not corrupt an otherwise proper inventory search. Defendants ask the Court to invalidate the search based on the officers' alleged subjective intent, which is an irrelevant consideration here. Further, other conduct by the officers suggests that they had abandoned their intent to investigate for drugs once defendants were in custody. For example, Officer Hotz called to tell the canine search team not to come after arresting

Campbell-Martin and before searching the SUV. (Ex. B at 33:45).

There was no breach of the Marion Department policies up until the discovery of the methamphetamine in the backpack. The policies state that an inventory search should cease upon discovery of contraband. (*Id.*, at 2). Thus, the inventory search exception is applicable at least up until the discovery of the methamphetamine.

Last, the Court considers whether the officers acted in bad faith or with the sole purpose of conducting an investigation. This final consideration is particularly applicable to evidence that was found after the methamphetamine, i.e. evidence such as the scale, baggies, money, and ledger with defendants' names on it that was discovered while in breach of the inventory policy. Upon discovering the methamphetamine, the officers ceased searching the SUV for a time and began reading defendants their rights, questioning Harris and defendants, and making calls to discuss the situation with other officers. Once Sergeant Holland resumed his search of the SUV, he proceeded with caution by coordinating with other officers, repeatedly photographing the scene, and separating out potential evidence from other miscellaneous items. Although the officers were acting at least partially with an investigatory purpose at this point, their goal of inventorying the SUV's contents remained, particularly for the purpose of officer safety. The caution exhibited by officers once the methamphetamine was discovered is evident in their subsequent efforts to alert defendants of their rights, document the search thoroughly, and call other parties for advice on how to proceed. The Court finds,

based on the totality of the circumstances, that the search was reasonable, even after the methamphetamine was discovered. The officers' actions exhibit a lack of bad faith or sole investigatory purpose and, thus, the breach of the Marion Police Department's policy alone does not invalidate either the pre- or post-methamphetamine searches of the SUV.

Thus, the Court **overrules in part** and **sustains in part** defendants' objections as to the inventory search and **adopts** Judge Roberts' R&R with modification.

2. Search Incident to a Lawful Arrest Exception

In his R&R, Judge Roberts concluded that the search incident to arrest exception did not apply here because "the search was not necessary either to protect officer safety or to preserve evidence from destruction." (Doc. 55, at 38). Specifically, Judge Roberts found that the government did not "show officers had a reasonable belief that evidence of the offense of arrest may have been in the SUV." (*Id.*). Both Leiva and Campbell-Martin were arrested for providing false information. Judge Roberts held that the officers here did not have a reasonable belief that further evidence of this offense could be discovered in the vehicle. (*Id.*, at 39). Leiva agrees with this finding, noting that the similar offense of driving on a suspended license generally does not provide a reasonable basis to search a vehicle under this exception. (Doc. 56, at 34–36) (citing *Arizona v. Gant*, 556 U.S. 332 (2009); *People v. Lopez*, 453 P.3d 150

(Cal. 2019)). Campbell-Martin makes no mention of this exception in her objections.

No party has timely objected to Judge Roberts' finding here and, thus, the parties have waived their rights to a de novo review of the R&R on this issue. *See, e.g.*, *Newton*, 259 F.3d at 966. Therefore, the Court reviews this finding for clear error. *See id.* The Court has a definite and firm conviction that an error has been committed as to this issue. *See U.S. Gypsum Co.*, 333 U.S. at 395.

A search incident to a lawful arrest is an exception to the warrant requirement that is justified either by concern for officer safety or the need to collect evidence of the offense of arrest. *United States v. Robinson*, 414 U.S. 218, 226 (1973). Under this exception, officers may search "the arrestee's person and the area within his immediate control." *Chimel v. California*, 395 U.S. 752, 763 (1969). Officers may search items in the arrestee's vehicle if the arrestee is within reaching distance of the vehicle during the search or "if the police have reason to believe that the vehicle contains evidence relevant to the crime of arrest." *Davis v. United States*, 131 S. Ct. 2419, 2425 (2011) (internal citation and quotation marks omitted). "Even after an arrestee has been secured in the back of a police car, officers may search the vehicle incident to an arrest if their observations provide a 'reasonable basis' to conclude that evidence of the crime of arrest 'might be found in the vehicle.'" *United States v. Allen*, 713 F.3d 382, 387 (8th Cir. 2013) (quoting *United States v. Tinsley*, 365 Fed. App'x 709, 711 (8th Cir. 2010) (per curiam)).

This exception applies in cases when the crime of arrest is providing false information. *See, e.g.*, *United States v. Smith*, No. 2:18-cr-00023-JPH-CMM, 2019 WL 1383939, at *1, *4–5 (S.D. Ind. Mar. 26, 2019) (denying a defendant's motion to suppress and finding that officers properly searched defendant's person and backpack incident to arresting him for providing false information, i.e. giving officers a rearranged version of his real name); *United States v. Mahler*, No. 1:13-cr-00123-EJL, 2014 WL 495631, at *3–4 (D. Idaho Feb. 5, 2014), *aff'd*, *United States v. Gomez-Gutierrez*, 620 Fed. App'x 624 (2015) (upholding the search of a vehicle incident to defendant's arrest for providing false information, i.e. giving a fake name to police, despite the fact that the defendant was already handcuffed, "because it was reasonable to believe the officers would find some identification or other indicia revealing the Defendant's true identity"); *State v. White*, 489 N.W.2d 792, 793, 795 (Minn. 1992) (holding a defendant's vehicle could be searched incident to his arrest for providing false information, i.e. offering a fake name to police); *Armstead v. Commonwealth*, 695 S.E.2d 561, 566 (Va. Ct. App. 2010) ("The power to arrest [the defendant] for providing false identity information . . . authorized the officer to search the vehicle because it was 'reasonable to believe' the vehicle 'might' contain evidence of that crime[.]"); *State v. Robinson*, 812 P.2d 837, 839–40 (Ore. Ct. App. 1991) (finding the defendant's vehicle was properly searched incident to his arrest for providing false information, i.e. giving officers a fake name that did not match the registration); *State v. Gordon*, 821 P.2d 442, 443–44 (Ore. Ct. App. 1991) ("Evidence of defendant's identity

was relevant to the crime of giving false information to an officer. Accordingly, the search of defendant's vehicle for evidence of identification was proper as a search incident to arrest."); *see also United States v. Stamps*, 430 F.2d 33, 36 (5th Cir. 1970) (upholding a search incident to a defendant's arrest for false information, i.e. providing a fake name to police, based on officer safety).

Leiva's reliance on *Arizona v. Gant*, 556 U.S. 332 (2009), and *People v. Lopez*, 8 Cal. 5th 353 (2019), is misplaced. In both cases, the offense of arrest was driving on a suspended license. *Gant*, 556 U.S. at 332; *Lopez*, 8 Cal. 5th at 529. The offenses here were providing false information. In fact, a footnote in the concurrence in *Lopez* states:

> In some cases, the officer's questioning of the driver about his or her identity may demonstrate that the driver has lied to the officer in violation of Vehicle Code section 31 (giving false information to a peace officer), Penal Code section 148.9 (giving false identity to a peace officer), and perhaps in violation of Penal Code section 530.5 (false personation). The officer may then arrest the driver and search the vehicle for evidence of those violations, including evidence of correct identity.

The Court finds that driving on a suspended license and providing false information to police are distinguishable offenses and that the latter is not subject to the same evidentiary limitations. *See also Robinson*, 812 P.2d at 839 (noting that the search incident to arrest exception cannot be invoked based on a driver's failure to provide identification but can

be invoked for the offense of providing false information).

There is no dispute here that both defendants provided false information to law enforcement officers. Leiva identified himself as Favian Estrada; that is not his true name. Leiva was arrested for providing false information after his alias returned the profile of an obviously different person. Campbell-Martin identified herself as Shannon McKelvy; that is not her true name. Campbell-Martin was arrested after Harris retrieved her ID from her purse and provided it to law enforcement officers. It is immaterial that law enforcement officers already possessed evidence that both defendants provided false information. In other words, officers need not desist when they possess some evidence of an offense; they may continue to search until they have uncovered all the evidence that is within their lawful authority to obtain.

The officers here had a reasonable belief that evidence of defendants' false information would be present in the SUV. *United States v. Mahler*, 2014 WL 495631, is particularly instructive. There, the defendant provided the officer with his brother's name which, upon being searched, returned a photo that "somewhat resembled" the defendant. The officer was unconvinced and suspicious, particularly because the defendant was "extremely nervous." Officers eventually obtained a true photograph of the defendant and were able to ascertain his identity. Officers then arrested the defendant for driving while suspended, driving without insurance, and providing false information. A pat-down search of the defendant did not recover his wallet or identification. Officers

searched the defendant's vehicle and found methamphetamine in both the center console and a backpack, among other contraband. *Id.*, at *1–2. The court found the search of the vehicle was proper as incident to the defendant's arrest for providing false information, noting in part:

> Further, it is reasonable to believe that an adult, such as the Defendant, would have some form of identification or some item that would reveal his identity located either on his person or within the vehicle in which he was traveling and had been using for a week. Since the officers did not discover a wallet or any other identifying information on the Defendant's person during their frisk the next logical place to look for evidence of his identity was the vehicle in which he was traveling and had been in possession. There were a number of personal items in plain view contained in the vehicle that the officers reasonably concluded belonged to the Defendant and that [could] contain evidence of his identity. Given the totality of the circumstances in this case, the Court finds the officers lawfully searched the vehicle incident to arrest.

Id., at *4.

Here, officers had also already confirmed that defendants provided false information and had evidence confirming their real identities. Even so, it was reasonable for officers to believe that the vehicle defendants had been travelling in would contain additional identifying information, particularly Leiva's license which had not yet been recovered. The backpack near Leiva was a logical place to search for

such further identification. *See id.*; *see also Smith*, 2019 WL 1383939, at *1, *4–5 (upholding the search of a defendant's backpack for identifying information).[6] Thus, it was within the officers' authority to search the SUV for evidence of the arresting crime even though defendants had already been secured and some evidence had already been collected.

Thus, the Court **rejects** Judge Roberts' R&R on this issue and finds that the search of the SUV and backpack here are justified as searches incident to defendants' lawful arrests for providing false information.

3. Other Exceptions

In his R&R, Judge Roberts discusses the inevitable discovery doctrine and automobile exception to the warrant requirement. As to the inevitable discovery doctrine, Judge Roberts found that it did not apply because the government did not offer any evidence that law enforcement officers were "actively pursuing a substantial, alternative line of investigation" at the time of the alleged constitutional violation. (Doc. 55, at 26–27). Leiva concurs with the R&R (Doc. 56, at 37) and Campbell-Martin makes no mention of this doctrine in her objections. As to the automobile exception, Judge Roberts declined to consider it because the government did not argue that it applied. Neither defendant mentions the automobile exception in their objections.

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[6] Leiva's wallet and identification were ultimately found in the center console of the SUV. (Doc. 37, at 5); *see also* (Ex. C at 53:12).

The parties have not timely objected to these findings and, thus, have waived their rights to a de novo review of the R&R. *See, e.g.*, *Newton*, 259 F.3d at 966. Therefore, the Court reviews Judge Roberts' R&R for clear error on these issues. *See id.* The Court finds no clear error in Judge Roberts' decisions here. Thus, the Court **adopts** Judge Roberts' R&R on these issues and finds that the inevitable discovery doctrine and automobile exception are inapplicable here.[7]

V. CONCLUSION

For these reasons, the Court **overrules in part** and **sustains in part** defendants' objections (Docs. 56 & 57), **adopts in part** and **rejects in part** Judge Roberts' R&R with modification (Doc. 55), and **denies** both defendants' motions to suppress (Docs. 34 & 36). Specifically, the Court finds that the seizure of defendants was proper, that neither defendant has standing as to the SUV, that Leiva has standing as to the backpack but Campbell-Martin does not, and that the searches of the SUV and backpack here were proper either as inventory searches or searches incident to defendants' lawful arrests for

providing false information.

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[7] Leiva also argues that no exigent circumstances justified the warrantless searches here. (Doc. 56, at 23–24). Exigency was not raised by the government or discussed in the R&R. Due to a lack of resistance, the Court also finds that no exigent circumstances were present here.

IT IS SO ORDERED this 4th day of February, 2020.

C.J. Williams
United States District Judge
Northern District of Iowa