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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 16-2316 & 16-2467

[Filed November 5, 2018]

UNITED STATES OF AMERICA,)
Plaintiff-Appellee,)
)
v.)
)
JASON CORREA and SAUL MELERO,)
Defendants-Appellants.)
)

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.
Nos. 11-CR-0750-1 & 11-CR-0750-2 —
Robert M. Dow, Jr., *Judge*.

ARGUED APRIL 6, 2018 — DECIDED NOVEMBER 5, 2018

Before EASTERBROOK, RIPPLE, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Members of a Drug Enforcement Agency task force lawfully found drugs in a traffic stop and seized several garage openers and keys they also found in the car. An agent took the garage openers and drove around downtown Chicago pushing their buttons to look for a suspected stash

house. He found the right building when the door of a shared garage opened. The agent then used a seized key fob and mailbox key to enter the building's locked lobby and pinpoint the target condominium. At the agent's request, another agent sought and obtained the arrestee's consent to search the target condo. The search turned up extensive evidence of drug trafficking. As we explain below, the use of the garage door opener was close to the edge but did not violate the Fourth Amendment, at least where it opened a garage shared by many residents of the building. At all other stages of the investigation, the agents also complied with the Fourth Amendment. We affirm the district court's denial of the defendants' motion to suppress the evidence of drug trafficking found inside the condominium.

I. *Factual and Procedural Background*

Unless indicated otherwise, we adopt the district court's version of the facts from its initial order denying the motion to suppress. *United States v. Correa* ("*Correa I*"), No. 11 CR 0750, 2013 WL 5663804 (N.D. Ill. Oct. 17, 2013).

The investigation that led the DEA to defendants Jason Correa and Saul Melero began when a DEA confidential source obtained $500,000 in cash from two unidentified men. DEA agents tailed the men to a house a few miles away and put the house under surveillance. Eight days later, on October 27, 2011, agents followed one of the men (who drove the same car he had driven to meet the confidential source eight days earlier) to a grocery store in Chicago. With DEA task force members watching the parking lot and the

grocery, the man parked his car next to a silver Jeep and then went into the grocery. The man met in a coffee shop inside the grocery with a man later identified as Correa. Six minutes later, the two men walked to the unidentified man's car. He retrieved a multi-colored bag and gave it to Correa, who put it in the silver Jeep. Correa then drove away in the Jeep, tailed by task force officers in two unmarked cars. DEA Special Agent Thomas Asselborn radioed the officers and instructed them to stop Correa's car if they saw a traffic violation.

It did not take long.[1] The officer in the lead car, Mike Giorgetti, saw Correa turn left without signaling at 18th Street and Canal. After following Correa east across the Chicago River, Officer Giorgetti activated his lights and siren and pulled Correa over near the intersection of 18th Street and Wabash. Wearing a bulletproof vest marked "Police" on both sides, Officer Giorgetti approached the driver's side of Correa's car. The other task force officer, Steve Hollister, approached the passenger side. Officer Giorgetti asked Correa for his license and registration and asked Correa if he had anything illegal in the car. After Correa said no, Officer Giorgetti asked if he could

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[1] When he was Attorney General, the future Justice Jackson said, in explaining the importance of a prosecutor's fairness and impartiality: "We know that no local police force can strictly enforce the traffic laws, or it would arrest half the driving population on any given morning." R. Jackson, *The Federal Prosecutor, Address Delivered at the Second Annual Conference of United States Attorneys*, April 1, 1940, quoted in *Morrison v. Olson*, 487 U.S. 654, 727–28 (1988) (Scalia, J., dissenting).

search the car. Correa said "go ahead." Officer Hollister witnessed the exchange.

Officer Giorgetti found the multi-colored bag that the unidentified man had given to Correa moments earlier. In a bag inside that bag, Giorgetti found what he thought was cocaine. After finding the cocaine, the officers also found a bag on the front passenger seat containing four garage door openers, three sets of keys, and four cell phones. The officers then arrested Correa. After the officers arrested Correa, but before they took him to the DEA office and gave him *Miranda* warnings, Agent Asselborn arrived on the scene and took the garage door openers and keys.

Agent Asselborn drove straight to 1717 South Prairie—the address where the unidentified men had taken the confidential source's car and left with $500,000 in cash eight days earlier. That was a dead end: none of the garage door openers worked at that address. Agent Asselborn spent the next ten to fifteen minutes testing the openers on various nearby buildings. He tested them on "a bunch of townhouses with garages attached to them right in that area." When that did not work, he "kind of did a grid system," testing the openers on multiple buildings starting west of South Michigan Avenue and working his way east to an alley just east of Michigan Avenue. Eventually, the garage door opened for a multi-story condominium building at 1819 South Michigan Avenue. Thinking that someone else might have opened the door, Asselborn backed up down the alley, waited for the door to go down automatically, and then activated the opener again. The door opened. Asselborn used the

opener "a third time just to be sure," but he did not enter the garage.

The agents went to 1819 South Michigan Avenue. (They never did figure out what the other garage door openers opened.) Using a key fob from the same bag that had contained the garage door openers, agents entered the locked lobby of the building. They then tested mailbox keys from the same key ring on various mailboxes and found a match: Unit 702. Agent Asselborn contacted a supervisor who was back at the DEA office with Correa, to obtain Correa's consent for a search of Unit 702. The supervisor told Correa that the keys from the car matched Unit 702, asked if there was "anything illegal" in the condominium, and then asked if Correa "minded if we check 1819 S. Michigan, Unit 702." Correa said "go ahead and search it," but he refused to sign a consent form.

Inside the condominium, the agents found a handgun and more than a kilogram each of cocaine and heroin, as well as quantities of marijuana, Ecstasy, and methamphetamine. They also found equipment for weighing and packaging drugs, and personal documents of Saul Melero's. *Correa I*, at *2. After a neighbor told agents that Saul Melero was one of the condominium's residents and was standing outside on Michigan Avenue, agents arrested him on the spot.

Correa and Melero were both charged with drug and firearm offenses. They moved to suppress all of the evidence, asserting numerous violations of their Fourth Amendment rights. After an evidentiary hearing, the district court denied the motion. *Correa I*, 2013 WL 5663804. The court also denied their motion to

reconsider, *United States v. Correa* ("*Correa II*"), No. 11 CR 0750, 2014 WL 1018236 (N.D. Ill. Mar. 14, 2014), and their renewed motion to reconsider, *United States v. Correa* ("*Correa III*"), No. 11 CR 0750, 2015 WL 300463 (N.D. Ill. Jan. 21, 2015).

Correa pleaded guilty to charges of possession with intent to distribute various drugs, but he preserved his right to appeal the denial of the motion to suppress. The district court sentenced him to the mandatory minimum of ten years in prison. Melero went to trial, and a jury convicted him of possessing the drugs found in the condominium and for maintaining the condominium as a stash house. The district court sentenced Melero to eleven years in prison. Correa and Melero both appeal. The central issue is the denial of their motion to suppress, though it raises many subsidiary issues.

II. *Analysis*

On appeal from a district court's ruling on a motion to suppress, we review legal conclusions *de novo* and factual findings for clear error. See *United States v. Contreras*, 820 F.3d 255, 261 (7th Cir. 2016). We accept the district court's credibility determinations "unless the facts, as testified to by the police officers, were so unbelievable that no reasonable fact-finder could credit them." *Id.* at 263, citing *United States v. Pineda-Buenaventura*, 622 F.3d 761, 774 (7th Cir. 2010); see also *United States v. Rodriguez-Escalera*, 884 F.3d 661, 666–67 (7th Cir. 2018) (affirming grant of motion to suppress where district court declined to credit officer's explanation for extended traffic stop). "A credibility determination will be overturned only if credited

testimony is internally inconsistent, implausible, or contradicted by extrinsic evidence." *Id.*, citing *Blake v. United States*, 814 F.3d 851, 854–55 (7th Cir. 2016).

Our Fourth Amendment analysis follows the chronology of the investigative chain. We begin with the traffic stop and go on to the search of the car, the seizure of the garage door openers and keys, and the agent's use of those openers and keys to identify the right condominium, and we end with the search of the condominium and Melero's arrest. We find that the officers did not violate the Fourth Amendment at any step along the way.

A. *Traffic Stop*

The officers lawfully stopped Correa for a traffic violation, but our path to that conclusion is different from the district court's. Rather than decide whether the officers had sufficient grounds to stop Correa based on suspected drug activity, we find that Correa's traffic violation (turning without signaling) gave the officers probable cause for the traffic stop. That probable cause satisfies the Fourth Amendment's reasonableness requirement even if the officers were more interested in suspected drug trafficking than in dangerous driving on the streets of Chicago. See *United States v. Taylor*, 596 F.3d 373, 376 (7th Cir. 2010) (stop proper because driver's failure to wear seatbelt gave officers probable cause to believe driver committed traffic offense); see also *Whren v. United States*, 517 U.S. 806, 810 (1996) ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."), citing *Delaware v. Prouse*, 440 U.S. 648,

659 (1979), and *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977). That is why the stop was lawful even though Agent Asselborn acknowledged at the suppression hearing that the stop was a "pretext."

Correa argues that the stop was improper because he did not turn without signaling, because Officer Giorgetti's testimony that he saw the traffic violation is uncorroborated, and because, even if Officer Giorgetti saw the violation, he was outside of his jurisdiction and had no legal authority for the stop. We find no reversible error.

The conflict between Correa's testimony that he did signal and Officer Giorgetti's testimony that he did not presents an ordinary credibility issue. Judge Dow found that Officer Giorgetti's testimony was more credible than Correa's. *Correa I*, 2013 WL 5663804, at *3. That was not clearly erroneous. The judge could reasonably choose to believe the officer's testimony about what he saw, with or without corroboration.

The district court did not decide the traffic-law issues but instead held that the agents reasonably suspected a drug transaction. *Id.* at *3–4. We find that the stop was justified based on the traffic violation, so we do not decide whether the officers' suspicions of drug trafficking were enough to justify the stop.

Officer Giorgetti was a Willow Springs police officer acting as part of a DEA task force. See *id.* at *3. Under Illinois law, he could conduct a traffic stop outside his home municipality based on his observation of a turn made illegally without signaling. See *People v. Gutt*, 640 N.E.2d 1013, 1016 (Ill. App. 1994). Even if the stop

had not complied with state law, that would not affect the constitutionality of the stop, for which the officer's observation of a traffic offense gave him probable cause, or the resulting search. See *Virginia v. Moore*, 553 U.S. 164, 176 (2008).

B. *Search of the Car*

Next, the officers lawfully searched Correa's car because he gave them consent to do so. Because the original stop was lawful, Correa's consent to the search of the car was not tainted. Cf. *United States v. Cellitti*, 387 F.3d 618, 622 (7th Cir. 2004) ("Consent given during an illegal detention is presumptively invalid."). Correa argues that his consent was involuntary, but we see no reason to disturb the district court's credibility findings that led it to find his consent was voluntary. See *Correa I*, 2013 WL 5663804, at *4.

The search did not exceed the scope of Correa's consent. "The scope of consent is 'limited by the breadth of actual consent, and whether the search remained within the boundaries of the consent is a question of fact to be determined from the totality of all the circumstances.'" *United States v. Long*, 425 F.3d 482, 486 (7th Cir. 2005), quoting *United States v. Raney*, 342 F.3d 551, 556 (7th Cir. 2003). Giorgetti asked Correa if he "had anything in the vehicle that I needed to be aware of, anything illegal." Correa said "no." Next, Giorgetti "asked Mr. Correa if he had a problem with me searching the vehicle and he said go ahead."

The bag containing the cocaine, inside the multicolored bag, was within the scope of Correa's consent. The district court found that Correa did not

limit the scope of his consent, *Correa I*, 2013 WL 5663804, at *5, and that finding is not clearly erroneous. "As the Supreme Court has explained, the 'scope of a search is generally defined by its expressed object.'" *United States v. Thurman*, 889 F.3d 356, 368 (7th Cir. 2018), quoting *Florida v. Jimeno*, 500 U.S. 248, 251 (1991). Correa knew that Officer Giorgetti was looking for "anything illegal," so he had to have known that the officers could be looking for drugs. "Generally, consent to search a space includes consent to search containers within that space where a reasonable officer would construe the consent to extend to the container." *United States v. Melgar*, 227 F.3d 1038, 1041 (7th Cir. 2000), citing *Jimeno*, 500 U.S. at 251, *Wyoming v. Houghton*, 526 U.S. 295, 302 (1999), and *United States v. Ross*, 456 U.S. 798 (1982). The officers could reasonably understand Correa's unlimited consent to apply to a container that might contain drugs. E.g., *Jimeno*, 500 U.S. at 251–52 (general consent to search of car extended to paper bag on car floor); *United States v. Saucedo*, 688 F.3d 863, 865–67 (7th Cir. 2012) (applying *Jimeno* and holding that general consent allowed officer to remove vehicle's interior molding with screwdriver and search hidden, unlocked compartment because defendant was aware officer was looking for drugs).[2]

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[2] These cases offer lessons for anyone who might be asked to consent to a search of a vehicle or home. Such searches can be very intrusive and even destructive. *Jimeno* "ensures that many motorists will wind up 'consenting' to a far broader search than they might have imagined." *Ohio v. Robinette*, 519 U.S. 33, 48 n.5 (1996) (Stevens, J., dissenting), citing *Jimeno*, 500 U.S. 248, 254–55 (Marshall, J., dissenting).

C. *Seizure of Garage Openers and Keys*

The officers also lawfully seized the garage door openers and keys. Correa concedes that the officers "could look in the bag to see if it contained anything illegal," but he argues that he did not consent to seizure of those items. This argument fails because Correa did not have to consent to the seizure. After the officers found the drugs, they reasonably inferred that the multiple garage door openers, sets of keys, and cell phones could well be evidence of criminal activity.

Evidence is not limited to contraband, of course. See, e.g., *United States v. Johnson*, 383 F.3d 538, 545 (7th Cir. 2004) (permitting warrantless search of car "if there is probable cause to believe it contains contraband *or* evidence of a crime") (emphasis added). The police "may have probable cause to seize an ordinarily innocuous object when the context of an investigation casts that item in a suspicious light." *Cellitti*, 387 F.3d at 624 (collecting cases but holding that connection between car keys and gun-focused investigation was too attenuated); see also *United States v. Eschweiler*, 745 F.2d 435, 439 (7th Cir. 1984) (affirming seizure of safe deposit box key because agent could infer suspect had safe deposit box that might contain cocaine). While a single garage door opener "does not suggest any wrongdoing," these officers found not one but four garage door openers, together with three sets of keys and four cell phones. *Correa I*, 2013 WL 5663804, at *2. And the officers found all of those items after finding suspected cocaine in the car and after watching Correa receive the bag that contained that cocaine from one of the unidentified men who had

driven away from a handoff of at least $500,000 in cash eight days earlier. *Correa I*, 2013 WL 5663804, at *1. Taken together, these investigative threads suggested enough of a connection between drug trafficking and the garage door openers, keys, and cell phones to justify their seizure as part of the search of the car.

D. *Use of Garage Door Openers, Fob, and Keys*

Using the garage door opener to find the condominium building was a search, but it was reasonable. The Fourth Amendment provides, in full:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The text does not expressly require warrants, but the prohibition against unreasonable searches and seizures has long been read "to require warrants in some circumstances as essential to the 'reasonableness' of particularly intrusive searches, such as those into dwellings." *United States v. Limares*, 269 F.3d 794, 799 (7th Cir. 2001), citing *Chimel v. California*, 395 U.S. 752 (1969); see also *United States v. Rivera*, 817 F.3d 339, 340 (7th Cir. 2016) ("Contrary to popular impression, the Fourth Amendment does not require a warrant to search or to arrest—ever; its only reference to warrants is a condemnation of general warrants."). Warrants are a proxy for reasonableness. See *Riley v.*

California, 134 S. Ct. 2473, 2482 (2014); *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006).

Warrants, probable cause, reasonable suspicion, and other analytical labels are all ways to assess whether a search is reasonable. The Fourth Amendment essentially asks two questions: first, has there been a search or a seizure, and second, was it reasonable? See *Carpenter v. United States*, 138 S. Ct. 2206, 2215 n.2 (2018) (distinguishing "the threshold question whether a 'search' has occurred" from "the separate matter of whether the search was reasonable"); *Arizona v. Hicks*, 480 U.S. 321, 327 (1987) (analyzing search and reasonableness questions sequentially); see also William Baude & James Y. Stern, *The Positive Law Model of the Fourth Amendment*, 129 Harv. L. Rev. 1821, 1829 (2016). Those steps are not always neatly divided. See *id.*at 1871 & nn. 242–43 (noting that courts sometimes blend the question of reasonableness of law enforcement conduct with question of whether suspect had reasonable expectation of privacy). Following this approach, we conclude that using the garage door openers to locate the correct building was a search, but the search was reasonable.

1. *Was There a Search?*

The Supreme Court uses two analytical approaches to decide whether a search has occurred. One is the property-based or trespass approach. E.g., *Florida v. Jardines*, 569 U.S. 1 (2013) (dog sniff on front porch of home); *United States v. Jones*, 565 U.S. 400 (2012) (installation of GPS tracking device on car). The other is based on expectations of privacy. E.g., *Riley*, 134 S. Ct. at 2488-91 (search incident to arrest of cell phone

on arrestee's person). The two approaches work together, as was evident in *Byrd v. United States*, where the Court wrote that "'property concepts' are instructive in "determining the presence or absence of the privacy interests protected by that Amendment," 138 S. Ct. 1518, 1526 (2018), citing *Rakas v. Illinois*, 439 U.S. 128, 144 n.12 (1978), and that the reasonable expectation of privacy test "supplements, rather than displaces, 'the traditional property-based understanding of the Fourth Amendment.'" *Id.*, quoting *Jardines*, 569 U.S. at 11; see also *Jardines*, 569 U.S. at 12 (Kagan, J., concurring) (analyzing "on privacy as well as property grounds"); Baude & Stern, 129 Harv. L. Rev. at 1836 (property concept "operates as a sidecar to *Katz*"). Our opinions reflect that blended approach. See, e.g., *United States v. Sweeney*, 821 F.3d 893, 902–03 (7th Cir. 2016) (no search because there was no trespass of defendant-tenant's property interests and because he had no reasonable expectation of privacy in shared basement of apartment building); *United States v. Thompson*, 811 F.3d 944, 948 (7th Cir. 2016) (search occurs via either trespass or infringement of reasonable expectation of privacy).

Agent Asselborn's use of the garage door openers to find the condominium building was not a search of the garage at 1819 South Michigan Avenue, under either a trespass or privacy analysis. The agent did not trespass against these defendants' property interests. The trespass analysis can be fact-intensive, see, e.g., *Sweeney*, 821 F.3d at 899–900 (assessing whether plaintiff's lease conferred "exclusive property interest in any part" of shared common space), and can certainly be a more difficult question than it is here.

We noted in *Sweeney* that even if the officer trespassed in a common area, the trespass would have been against the building's owner, not against the defendant, who was an individual tenant. *Id.* at 900. We see no reason to conclude differently here. Even if there had been a trespass, we do not think the garage was protected from the agent's opening of the door. Three of the four factors for determining the scope of the curtilage, *id.* at 901 (collecting cases and listing factors as proximity of area to home, whether area is in an enclosure surrounding home, use of area, and whether steps have been taken to protect area from observation), cut in the government's favor. It was on a different floor than the target condominium. It was not "enclosed and intimate," *id.* at 902, to the condominium itself. If shared laundry facilities are not "intimately linked" to a home, as they were not in *Sweeney*, a shared parking facility is not. That leaves one factor that cuts slightly in the defendants' favor here—the fact that the garage was behind a garage door that only someone with an opener could open. Yet the agents did not even enter the garage.

The garage, though, is only half of the analysis: the openers are the other half. Agent Asselborn searched them by pushing the buttons, which interrogated the code generated by the opener with each push of the button. Absent a trespass, *Jones* suggests that we should focus on privacy. See 565 U.S. at 411 ("Situations involving merely the transmission of electronic signals without trespass would *remain* subject to *Katz* analysis.") (emphasis in original). *Katz* alone would have us focus on the reasonable expectation of privacy—just as in *United States v.*

Concepcion, 942 F.2d 1170, 1172–73 (7th Cir. 1991), where we held that taking an arrestee's key and testing it in his apartment door was a search, though a reasonable one. Because the arrestee had no expectation of privacy in his apartment building's locked common area, we did not conduct the same analysis for the officers' use of one of the arrestee's keys to open the door to the apartment building's locked common area. See *id.* at 1171–72.

The conclusion that this was a search of the openers fits with common sense. Agent Asselborn first took the openers at least three blocks away from the scene of Correa's arrest to test them on the garage of the building from which the unidentified men had emerged with the cash eight days earlier. When the openers did not work there, he tried them on "a bunch of townhouses with garages attached to them right in that area." And when that did not work, he "did a grid system." We believe that seeing this kind of approach—driving a car up and down streets and alleys testing multiple garage door openers, but backing up after one garage door opened, waiting for it to close, and then opening it again—would strike the layperson as an obvious search and "inspire most of us to—well, call the police." *Jardines*, 569 U.S. at 9.

2. *Was the Search Reasonable?*

The next question is whether the search was reasonable. The answer is yes. "There is no dispute that '[w]arrantless searches are presumptively unreasonable under the Fourth Amendment.'" *Thurman*, 889 F.3d at 365 (alteration in original), quoting *United States v. Strache*, 202 F.3d 980, 984

(7th Cir. 2000). "Therefore, '[i]n the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.'" *Id.* (alteration in original), quoting *Riley*, 134 S. Ct. at 2482; see also *Vale v. Louisiana*, 399 U.S. 30, 34–35 (1970) (reversing denial of motion to suppress because search of premises after arrest and without warrant was not justified by any exception to warrant requirement); 2 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 4.1(b) (5th ed.) (listing exceptions); 45 Geo. L.J. Ann. Rev. Crim. Proc. 49–176 (2016) (same).

By repeatedly pressing the openers' buttons, Agent Asselborn was, in essence, executing a set of searches in the wake of Correa's arrest. Agent Asselborn was taking chances. We conclude that the Fourth Amendment does not forbid this technique to identify the building or door associated with the opener, at least where the search discloses no further information. The logic of *Concepcion* suggests that Agent Asselborn could have shown the openers to landlords and asked them whether any of the openers matched the landlords' buildings. See 942 F.2d at 1173 (officers could have shown key to landlord to compare to key issued to tenant). Pressing buttons on openers that produce no response harms no one. Pressing the button of the opener that matched the building that turned out to house Correa and Melero's stash house was reasonable because these searches produced only an address, not any meaningful private information about the interior or contents of the garage. Correa had no reasonable expectation of privacy in that information. Officers routinely obtain that kind of information without a

warrant as booking information and in searches incident to arrest.

Agent Asselborn used the openers to learn an address—the kind of information officers may lawfully obtain as part of the booking process. And in that context, even *Miranda* protections do not apply, at least where the address is collected for record-keeping purposes. *Pennsylvania v. Muniz*, 496 U.S. 582, 601–02 (1990) (opinion of Brennan, J.); see also *United States v. Ceballos*, 385 F.3d 1120, 1123 (7th Cir. 2004) (noting that officers may question arrestee "to collect booking information incident to processing"), citing *United States v. Kane*, 726 F.2d 344, 349 (7th Cir. 1984).

At oral argument, counsel for Correa and Melero argued that garage door openers, unlike an arrestee's residential address provided at booking, do not necessarily indicate residence. But address books and wallets can provide officers with information beyond an arrestee's address. Courts have long held that officers may search wallets and address books found on arrestees without obtaining separate warrants for those searches, even if those searches are not conducted at the scene of an arrest. E.g., *United States v. Rodriguez*, 995 F.2d 776, 778 (7th Cir. 1993) (affirming denial of motion to suppress address book found on arrestee's person; searching and photocopying address book was permissible search incident to arrest even though search was conducted away from scene of arrest), citing *United States v. Molinaro*, 877 F.2d 1341, 1346–47 (7th Cir. 1989) (affirming denial of motion to suppress evidence seized from arrestee's wallet). *Riley* did not undo our approach to searches of

wallets and address books incident to arrest. See *Riley*, 134 at 2493 (rejecting argument that "officers could search cell phone data if they could have obtained the same information from a pre-digital counterpart," but not expressly rejecting lower courts' approach to searches of those pre-digital counterparts); see also *id.* at 2496 n.* (Alito, J., concurring in part and concurring in judgment), citing *Rodriguez* and *Molinaro*.

Correa argues, though, that *Riley* resolves this case because its holding prohibiting warrantless searches of cell phones seized incident to arrest should be read more broadly to apply to searches of "non-contraband electronic items that contain and/or can lead to privately held information in the home or about the home." *Riley* should not be read that broadly. Its holding was based on the Court's recognition that "Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee's person." 134 S. Ct. at 2489. Garage door openers do not implicate the same differences. *Riley* noted that cell phones "could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers." *Id.* Nevertheless, *Riley* helps to explain why Agent Asselborn's searches did not violate the Fourth Amendment.

As *Riley* reiterated, when "'privacy-related concerns are weighty enough' a 'search may require a warrant, notwithstanding the diminished expectations of privacy of the arrestee.'" *Id.* at 2488, quoting *Maryland v. King*, 569 U.S. 435, 463 (2018); see also *Carpenter v. United States*, 138 S. Ct. 2206, 2220 (2018) (collection of cell-

site location information "implicates privacy concerns far beyond those considered in *Smith* [pen register] and *Miller* [checks]"); but see *id.* at 2232 (Kennedy, J., dissenting) ("Still the Court errs, in my submission, when it concludes that cell-site records implicate greater privacy interests—and thus deserve greater Fourth Amendment protection—than financial records and telephone records."). Those concerns are not weighty enough here because the search of the garage door openers revealed only Correa's association with an address.

Like an officer searching an arrestee's wallet or address book, Agent Asselborn searched the garage door openers to generate investigative leads. *Riley* does not condemn that investigative step. In *Riley*, the Court warned that using an arrestee's cell phone to search files stored remotely "would be like finding a key in a suspect's pocket and arguing that it allowed law enforcement to unlock and search a house." *Id.* at 2491. Nothing comparable happened here. Agent Asselborn did not search or even enter the garage. We recognize that law enforcement creativity may call for judicial vigilance. See Baude & Stern, 129 Harv. L. Rev. at 1861 ("When police are intentionally pushing the limits of their power is precisely when we can ask them to check whether they are pushing too far."). But Agent Asselborn's searches of the garage door openers were good—or at least lucky—police work, not Fourth Amendment violations.

Officers are, of course, allowed and expected to investigate to build probable cause for an arrest. See *United States v. Prewitt*, 553 F.2d 1082, 1085 (7th Cir.

1977) (tracing origin of fraudulent money orders "in no way impinged on Prewitt's rights"). And if officers have probable cause to arrest someone, there is a good chance they also have probable cause to search his home for evidence. See *United States v. Kelly*, 772 F.3d 1072, 1080 (7th Cir. 2014) (officer obtained warrant for suspect's home on ground that drug dealers are likely to keep contraband in their residences); *United States v. Aljabari*, 626 F.3d 940, 946 (7th Cir. 2010) ("When probable cause exists to believe an individual has committed a crime involving physical evidence, and when there is no articulable, non-speculative reason to believe that evidence of that crime was not or could not have been hidden in that individual's home, a magistrate will generally be justified in finding probable cause to search that individual's home."), citing *United States v. Ressler*, 536 F.2d 208, 213 (7th Cir. 1976).

We do not address here what would happen if the agents had used the openers to open a private garage in which a resident had a reasonable expectation of privacy and then used what they saw to pursue further inquiries. (Imagine that the garage door goes up and officers see the stolen car they were told to look for. Cf. *Collins v. Virginia*, 138 S. Ct. 1663, 1671 (2018) (car exception did not permit officer to investigate motorcycle parked in curtilage).) We leave that scenario for a future case.

E. *Accessing the Lobby, Testing the Mailbox Key, and Searching the Condominium*

Under the reasoning of *Concepcion*, using the key fob to enter the locked building lobby and testing the

mailbox key were searches. 942 F.2d at 1172 ("inserting and turning the key is a 'search'"). The lobby was a common area in which Correa and Melero had no reasonable expectation of privacy. See *Sweeney*, 821 F.3d at 902, citing *Harney v. City of Chicago*, 702 F.3d 916, 925 (7th Cir. 2012). And Agent Asselborn did not trespass on their interests because Correa and Melero had no right to exclude anyone from the area. See *id.* at 899–900 ("to prove a claim of trespass, one must have possession of the property in question and the ability to exclude others from entrance onto or interference with that property"). But the officers learned something from using the fob and the mailbox key. They learned that Correa had access to the building and to a particular unit. That was enough for us to conclude that testing the key in the lock of the apartment was a search in *Concepcion*, 942 F.2d at 1172–73, and we see no reason to draw a different conclusion when the search is of a common-area door rather than an apartment door.

The search was reasonable and so did not violate the Fourth Amendment. For the reasons discussed regarding the search of the garage door opener, using the fob to access the lobby and testing the mailbox key without a warrant were reasonable searches. The officers needed to investigate to obtain more information—either to approach Correa and seek consent or to seek a warrant.

In *United States v. Bain*, the First Circuit criticized our "reasoning [in *Concepcion*] that the information gathered by the search could have been easily obtained otherwise." 874 F.3d 1, 18 (1st Cir. 2017). But like the

officers in *Concepcion*, the officers in *Bain* used the arrestee's keys on both the front door of the multi-family building and apartment doors inside. *Id.* at 8. The First Circuit expressly limited its analysis to the use of the key in the apartment door and said nothing in that limitation about using the key on the front door of the building. See *id.* at 19 n.9 ("We do not consider whether the curtilage of unit D extended … to the entire common space of 131 Laurel Street, which might mean that trying the key on the door of both of the other apartments in the building were searches of unit D."). So the First Circuit's criticism of *Concepcion* did not address, at least directly, a search like the one we address here. Unlike the officers in *Concepcion* and *Bain*, these officers did not use the keys to test the lock of the apartment door itself, let alone to enter the residence. They did not need to because they obtained Correa's consent to search the condominium.

The district court found that Correa's consent was valid because he had apparent authority to give it and because it was voluntary. *Correa I*, 2013 WL 5663804, at *6–7. Neither finding is clearly erroneous.

Correa also had apparent authority to consent to the search. When the officers asked him for consent, they knew he had possessed the garage door opener, the lobby key fob, and the mailbox key. Melero argues that merely possessing keys should not be enough to indicate apparent authority because otherwise, giving keys to "dogwalkers, dry cleaners, maids, or delivery persons" would give apparent authority. That argument is correct but incomplete. The apparent authority analysis depends on context, not just the

object possessed. See *United States v. King*, 627 F.3d 641, 648 (7th Cir. 2010) (officers' belief that restaurant employee had apparent authority was justified where employee had keys to restaurant and alarm deactivation code and opened restaurant, "a small establishment," alone); see also *United States v. Matlock*, 415 U.S. 164, 171 n.7 (1974) ("authority which justifies the third-party consent does not rest upon the law of property, with its attendant historical and legal refinements, but rests rather on mutual use of the property by persons generally having joint access or control for most purposes") (citations omitted). Given the context here—a days-long investigation in which Correa accepted a package of cocaine in a parking lot and, by his own admission, was driving toward the building's intersection when he was pulled over immediately afterward, *Correa I*, 2013 WL 5663804, at *6—the officers could reasonably believe Correa had authority to consent.

We also agree with the district court that Correa's consent was voluntary. Determining whether consent was voluntary depends on the totality of the circumstances, and several factors may be relevant. See *Cellitti*, 387 F.3d at 622 (factors include: "(1) the age, intelligence, and education of the person who gave consent, (2) whether she was advised of her constitutional rights, (3) how long she was detained before consenting, (4) whether she consented immediately or only after repeated requests by authorities, (5) whether physical coercion was used, and (6) whether she was in police custody at the time she gave her consent"), citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973), and *United*

States v. Raibley, 243 F.3d 1069, 1075–76 (7th Cir. 2001). Although the district court did not expressly evaluate the relevant factors to assess voluntariness, we see no clear error in its finding. The officers asked Correa if they could "check 1819 South Michigan, Unit 702." Correa said "'Go ahead and search it.'"

On appeal, Correa argues that his consent was involuntary because he was handcuffed, the officer who gave him *Miranda* warnings was not the same agent who requested consent, the agents did not advise him that he could refuse, and he refused to sign a consent form. The first argument conflicts with Correa's testimony at the suppression hearing where he testified that he was *not* handcuffed. The other arguments do not indicate an involuntary consent. See *United States v. Valencia*, 913 F.2d 378, 381 (7th Cir. 1990) (affirming finding of voluntariness where officers made no threats, defendant remained calm, never refused consent, received *Miranda* warnings, was informed that he did not have to consent, and indicated that he understood rights). To the extent Correa's account differs from the officers, we find no basis to disturb the district court's credibility determination. See *Correa I*, 2013 WL 5663804, at *6.

Melero's challenge to his arrest also fails. After the agents found the drug evidence and documents relating to Melero in Unit 702, the neighbor's identification of Melero gave them probable cause to arrest him.

The judgments are

AFFIRMED.

Ripple, *Circuit Judge*, concurring. I join the judgment and the opinion of the court. This is a very difficult case and certainly presents a situation near the outer limits of what the Fourth Amendment tolerates. Of special concern to me is the officers' entry into the locked foyer of the building. Given our decisions in *United States v. Concepcion*, 942 F.2d 1170 (7th Cir. 1991), and in *United States v. Sweeney,* 821 F.3d 893 (7th Cir. 2016), the officers can rely on the good faith exception to the exclusionary rule. Mr. Correa has not carried, moreover, his burden of demonstrating that the analysis here reflects inadequately his cognizable property and privacy rights. Nonetheless, this case should prompt us to consider whether our present case law reflects adequately the new realities of property ownership and privacy in an urban setting such as the one here.

As set forth in *Concepcion* and, to a somewhat lesser extent in *Sweeney*, the general rule of the last several decades has been that common areas in multi-dwelling buildings are not within the protection of the Fourth Amendment. Both our case law and the case law of at least four of our sister circuits reflect this approach.[1]

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[1] *United States v. Hawkins*, 139 F.3d 29, 32–33 (1st Cir. 1998) (apartment basement); *United States v. Nohara*, 3 F.3d 1239, 1241–42 (9th Cir. 1993) (apartment hallway); *United States v. Barrios-Moriera*, 872 F.2d 12, 14–15 (2d Cir. 1989) (apartment hallway), *abrogated on other grounds*, *Horton v. California*, 496 U.S. 128 (1990); *United States v. Eisler*, 567 F.2d 814, 816 (8th Cir. 1977) (apartment hallway); s*ee also United States v. Pyne*, 175 F. App'x 639, 640–41 (4th Cir. 2006) (concluding that an apartment parking garage with an unreliable security gate was a common area not within the scope of the Fourth Amendment's protection).

We need to be vigilant that our articulation and application of that default rule does not become so rigid and so automatic that we overlook situations where the realities are otherwise.

The Supreme Court's precedent does not require that we ignore the social and economic realities of contemporary urban America. In *United States v. Dunn*, 480 U.S. 294 (1987), the Supreme Court identified four factors that we should consider when determining the scope of curtilage. They are "the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by." *Id.* at 301. As mentioned previously, federal district courts applying these factors generally have found common areas unprotected by the Fourth Amendment because they are not within the exclusive control of the apartment owners or are used routinely by others.[2] State courts have followed the same path.[3]

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[2] *See*, *e.g.*, *Seay v. United States*, Nos. 15-3367 & 14-0614, 2018 WL 1583555, at *5 (D. Md. Apr. 2, 2018) (applying *Dunn* to determine that a common hallway in an apartment is not curtilage); *United States v. Bain*, 155 F. Supp. 3d 107, 116–17 (D. Mass. 2015) (applying *Dunn* to determine a landing outside of a tenant's door in an apartment hallway is not curtilage), *aff'd*, 874 F.3d 1 (1st Cir. 2017).

[3] *See*, *e.g.*, *State v. Luhm*, 880 N.W.2d 606, 617–18 (Minn. Ct. App. 2016) (applying *Dunn* and finding no reasonable expectation of privacy in the common area of a secured, multi-unit condominium building); *State v. Nguyen*, 841 N.W.2d 676, 680–82 (N.D. 2013) (deciding "[t]hat the law enforcement officers were technical

There always has been, however, a cautionary thread in our Fourth Amendment case law against rigid application of this general rule. The Supreme Court has emphasized that *Dunn*'s factor-based analysis is not a "finely tuned formula that, when mechanically applied, yields a 'correct' answer to all extent-of-curtilage questions." *Id.* This caution suggests that our inquiry should be a fact-intensive consideration of "whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." *Id.*

From time to time, we have expressed a mistrust of adopting ironclad rules about common spaces. In *Reardon v. Wroan,* 811 F.2d 1025, 1027 n.2 (7th Cir. 1987), we noted that the hallways of a fraternity house were protected. We reasoned that a fraternity is "an exclusive living arrangement with the goal of maximizing the privacy of its affairs" and that fraternity members are, practically speaking, "roommates in the same house" rather than "co-tenants sharing certain common areas." Indeed, in *United States v. Whitaker*, 820 F.3d 849, 854 (7th Cir. 2016), we acknowledged explicitly that there is a "middle ground between traditional apartment buildings and

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trespassers in the common hallways is of no consequence because Nguyen had no reasonable expectation that the common hallways of the apartment building would be free from any intrusion" where the hallways were available to use of tenants, guests, and others having legitimate reasons to be on the property, and no tenant could bar entry to such visitors); *State v. Dumstrey*, 873 N.W.2d 502, 512–15 (Wis. 2016) (determining that an apartment parking garage is not curtilage under the *Dunn* factors).

single-family houses," and recognized that "a strict apartment versus single-family home distinction is troubling because it would apportion Fourth Amendment protections on grounds that correlate with income, race, and ethnicity." We explicitly stressed in *United States v. Villegas*, 495 F.3d 761, 768–69 (7th Cir. 2007), the fact-specific nature of this inquiry.[4]

It is more difficult today to determine whether, on any given set of facts, individuals may claim Fourth Amendment protection beyond the boundaries of an individual living unit. Concerned about personal security and driven by economic necessity, individuals now engage in a wide variety of property arrangements to ensure that they have increased access to, and control over, the area outside the door to their individual condominiums or cooperative apartments. These contemporary changes necessitate constant vigilance that we take the time to appreciate fully the specific facts of such arrangements. Today, young adults live in quasi-communal arrangements to cope with the high cost of living in major cities; more

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[4] Notably, in *People v. Burns*, 50 N.E.3d 610 (Ill. 2016), the Illinois Supreme Court determined the third-floor landing of an apartment building was protected by the Fourth Amendment. The court suggested that the property-based rationale in *Florida v. Jardines*, 569 U.S. 1 (2013), is applicable to apartments and condominiums because the secured building's common areas were clearly not open to the general public. *Id.* at 620. The court also applied the *Dunn* factors and concluded that the landing was within the curtilage of the apartment. *Id.* at 620–22. Taking the factors in turn, it determined that the landing was in close proximity to the apartment; was located in a locked structure intended to exclude the general public outside of the tenant, his neighbor, and their invitees; and was not observable to people passing by.

affluent individuals live in condominium arrangements under increasingly strict agreed-upon rules; residents prescreen newcomers and occasionally the residential group is preformed; and senior citizens live in retirement communities where meals are taken in common and congregate living is expected as a condition for membership. In these situations, individuals have definite expectations, grounded in property rights or custom, about who is welcome in various parts of the establishment. *Cf. Moore v. City of East Cleveland*, 431 U.S. 494, 504 (1977) (plurality opinion of Powell, J.) ("Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family."). Fourth Amendment protections are not limited only to the most common living arrangements of the day. Those who assert the Fourth Amendment's protections must have a right to demonstrate that their living arrangement is grounded in assertions of property rights[5] or custom recognized by the community. *Cf. Kras v. United States,* 409 U.S. 434, 460 (1973) (Marshall, J., dissenting) ("[i]t is disgraceful for an interpretation of the Constitution to be premised upon unfounded assumptions about how people live."). As the Supreme Court has demonstrated recently in *United States v. Jones*, 565 U.S. 400 (2012), we must be sensitive to changes in modern life that impact Fourth Amendment values. Formalistic bright-line rules of the past do not always provide useful tools of analysis.

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[5] The Supreme Court recently has emphasized that both property concepts and privacy expectations can determine the scope of the Fourth Amendment. *See*, *e.g.*, *Florida v. Jardines*, 569 U.S. 1 (2013); *United States v. Jones*, 565 U.S. 400 (2012).

The Supreme Court has said that case-by-case adjudication of search and seizure cases will permit the courts "to unify precedent and will come closer to providing law enforcement officers with a defined set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement." *Ornelas v. United States*, 517 U.S. 690, 697–98 (1996) (internal quotation marks omitted). Premature reduction of precedent to rigid rules, however, can blind us to the values that we all agree are at the heart of the Fourth Amendment. Oversimplification of a nuanced and changing area is a superficial, and artificial, solution.

Because Mr. Correa has failed to carry his burden of establishing that he had a cognizable property interest or an expectation of privacy in the common lobby, the garage door or the remote device, his Fourth Amendment claim must fail. Moreover, as I noted at the outset, the officers can justify their opening of the locked lobby door on circuit precedent. Accordingly, with respect to those actions, the good faith exception to the warrant requirement bars the application of the exclusionary rule.

For these reasons, I join the judgment and the opinion of the court.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 11-cr-750-1
USM Number: 42345-424

[Filed May 26, 2016]

UNITED STATES OF AMERICA)
)
v.)
)
Jason Correa)
)

JUDGMENT IN A CRIMINAL CASE

Timothy R. Roellig
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 and 3 of the indictment.
☐ pleaded nolo contendere to count(s) which was accepted by the court.
☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	**Nature of Offense**	**Offense Ended**	**Count**
21 U.S.C. §841(a), 21 U.S.C. §841(b) (1)(A)	Possession with Intent to Distribute Cocaine & Heroin		1
21 U.S.C. §841(a), 21 U.S.C. §841(b) (1)(A)	Possession with Intent to Distribute Cocaine		3

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☒ Count(s) 4 of the indictment is dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this District within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

5/26/2016
Date of Imposition of Judgment

/s/ Robert M. Dow
Signature of Judge

Robert M. Dow, Jr.
Name and Title of Judge

5/26/16
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

One-Hundred-twenty (120) months as to Counts 1 and 3 of the Indictment, to be served concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons: Participate in RDAP. A facility closest to Chicago, Illinois that offers RDAP.

☐ The defendant is remanded to the custody of the United States Marshal.

☒ The defendant shall surrender to the United States Marshal for this district:

☒ at 12:30 on 5/26/2016, following the sentencing hearing.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2:00 pm on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows: _____ ______________________

Defendant delivered on ____ to __________ at ______, with a certified copy of this judgment.

____
UNITED STATES MARSHAL

By _________________________________
DEPUTY UNITED STATES MARSHAL

MANDATORY CONDITIONS OF SUPERVISED RELEASE PURSUANT TO 18 U.S.C § 3583(d)

Upon release from imprisonment, you shall be on supervised release for a term of:

Five (5) years as to Counts 1 and 3 of the Indictment, to be served concurrently.

You must report to the probation office in the district to which you are released within 72 hours of release from the custody of the Bureau of Prisons. The court imposes those conditions identified by checkmarks below:

During the period of supervised release:

☒ (1) you shall not commit another Federal, State, or local crime.

☒ (2) you shall not unlawfully possess a controlled substance.

☐ (3) you shall attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, if an approved program is readily available within a 50-mile radius of your legal residence. [Use for a first conviction of a domestic violence crime, as defined in § **3561(b)**.]

☐ (4) you shall register and comply with all requirements of the Sex Offender Registration and Notification Act **(42 U.S.C. § 16913).**

☒ (5) you shall cooperate in the collection of a DNA sample if the collection of such a sample is required by law.

☒ (6) you shall refrain from any unlawful use of a controlled substance AND submit to one drug test within 15 days of release on supervised release and at least two periodic tests thereafter, up to 104 periodic tests for use of a controlled substance during each year of supervised release. [This mandatory condition may be ameliorated or suspended by the court for any defendant if reliable sentencing information indicates a low risk of future substance abuse by the defendant.]

DISCRETIONARY CONDITIONS OF SUPERVISED RELEASE PURSUANT TO 18 U.S.C § 3563(b) AND 18 U.S.C § 3583(d)

Discretionary Conditions — The court orders that you abide by the following conditions during the term of supervised release because such conditions are reasonably related to the factors set forth in § **3553(a)(1)** and **(a)(2)(B), (C), and (D);** such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in § **3553** **(a)(2) (B), (C), and (D);** and such conditions are consistent with any pertinent policy statement issued by the Sentencing Commission pursuant to **28 U.S.C. 994a.**

The court imposes those conditions identified by checkmarks below:

During the period of supervised release:

☐ (1) you shall provide financial support to any dependents if financially able.

☐ (2) you shall make restitution to a victim of the offense under § **3556** (but not subject to the limitation of § **3663(a)** or § **3663A(c)(1)(A)).**

☐ (3) you shall give to the victims of the offense notice pursuant to the provisions of § **3555,** as follows:

☒ (4) you shall seek, and work conscientiously at, lawful employment or pursue conscientiously a course of study or vocational training that will equip you for employment.

☐ (5) you shall refrain from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances; (if checked yes, please indicate restriction(s))

☒ (6) you shall refrain from knowingly meeting or communicating with any person whom you know to be engaged, or planning to be engaged, in criminal activity and from:
☐ visiting the following type of places:
☒ knowingly meeting or communicating with the following persons: Saul Melero.

☒ (7) you shall refrain from ☐ any or ☒ excessive use of alcohol (defined as ☒ having a blood alcohol concentration greater than 0.08; or ☒), or any use of a narcotic drug or other controlled substance, as defined in § **102** of the Controlled Substances Act (**21 U.S.C. § 802**), without a prescription by a licensed medical practitioner.

☒ (8) you shall refrain from possessing a firearm, destructive device, or other dangerous weapon.

☒ (9) ☒ you shall participate, at the direction of a probation officer, in a substance abuse treatment program, which may include urine testing up to a maximum of 104 tests per year.

☐ you shall participate, at the direction of a probation officer, in a mental health treatment program, which may include the use of prescription medications.

☐ you shall participate, at the direction of a probation officer, in medical care; (if checked yes, please specify: .)

☐ (10) (intermittent confinement): you shall remain in the custody of the Bureau of Prisons during nights, weekends, or other intervals of time, totaling [no more than the lesser of one year or the term of imprisonment authorized for the offense], during the first year of the term of supervised release (provided, however, that a condition set forth in § **3563(b)(10)** shall be imposed only for a violation of a condition of supervised release in accordance with § **3583(e)(2)** and only when facilities are available) for the following period

☐ (11) (community confinement): you shall reside at, or participate in the program of a community corrections facility (including a facility maintained or under contract to the Bureau of Prisons) for all or part of the term of supervised release, for a period of months.

☐ (12) you shall work in community service for hours as directed by a probation officer.

☐ (13) you shall reside in the following place or area: , or refrain from residing in a specified place or area:

☒ (14) you shall remain within the jurisdiction where you are being supervised, unless granted permission to leave by the court or a probation officer.

☒ (15) you shall report to a probation officer as directed by the court or a probation officer.

☒ (16) ☒ you shall permit a probation officer to visit you ☒ at any reasonable time or ☐ as specified:
☒ at home ☐ at work ☐ at school
☐ at a community service location
☒ other reasonable location specified by a probation officer
☒ you shall permit confiscation of any contraband observed in plain view of the probation officer.

☒ (17) you shall notify a probation officer promptly, within 72 hours, of any change in residence, employer, or workplace and, absent constitutional or other legal privilege, answer inquiries by a probation officer.

☒ (18) you shall notify a probation officer promptly, within 72 hours, if arrested or questioned by a law enforcement officer.

☐ (19) (home confinement): you shall remain at your place of residence for a total of months during nonworking hours.

[This condition may be imposed only as an alternative to incarceration.]

- ☐ Compliance with this condition shall be monitored by telephonic or electronic signaling devices (the selection of which shall be determined by a probation officer). Electronic monitoring shall ordinarily be used in connection with home detention as it provides continuous monitoring of your whereabouts. Voice identification may be used in lieu of electronic monitoring to monitor home confinement and provides for random monitoring of your whereabouts. If the offender is unable to wear an electronic monitoring device due to health or medical reasons, it is recommended that home confinement with voice identification be ordered, which will provide for random checks on your whereabouts. Home detention with electronic monitoring or voice identification is not deemed appropriate and cannot be effectively administered in cases in which the offender has no bona fide residence, has a history of violent behavior, serious mental health problems, or substance abuse; has pending criminal charges elsewhere; requires frequent travel inside or outside the district; or is required to work more than 60 hours per week.
- ☐ You shall pay the cost of electronic monitoring or voice identification at the

daily contractual rate, if you are financially able to do so.

☐ The Court waives the electronic/ location monitoring component of this condition.

☐ (20) you shall comply with the terms of any court order or order of an administrative process pursuant to the law of a State, the District of Columbia, or any other possession or territory of the United States, requiring payments by you for the support and maintenance of a child or of a child and the parent with whom the child is living.

☐ (21) (deportation): you shall be surrendered to a duly authorized official of the Homeland Security Department for a determination on the issue of deportability by the appropriate authority in accordance with the laws under the Immigration and Nationality Act and the established implementing regulations. If ordered deported, you shall not reenter the United States without obtaining, in advance, the express written consent of the Attorney General or the Secretary of the Department of Homeland Security.

☒ (22) you shall satisfy such other special conditions as ordered below.

☐ (23) (if required to register under the Sex Offender Registration and Notification Act) you shall submit at any time, with or without a warrant, to a search of your person and any property, house, residence, vehicle, papers,

computer, other electronic communication or data storage devices or media, and effects, by any law enforcement or probation officer having reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by you, and by any probation officer in the lawful discharge of the officer's supervision functions (see special conditions section).

☐ (24) Other:

SPECIAL CONDITIONS OF SUPERVISED RELEASE PURSUANT TO 18 U.S.C. 3563(b)(22) and 3583(d)

The court imposes those conditions identified by checkmarks below:

During the term of supervised release:

☒ (1) if you have not obtained a high school diploma or equivalent, you shall participate in a General Educational Development (GED) preparation course and seek to obtain a GED within the first year of supervision.

☐ (2) you shall participate in an approved job skill-training program at the direction of a probation officer within the first 60 days of placement on supervision.

☒ (3) you shall, if unemployed after the first 60 days of supervision, or if unemployed for 60 days after termination or lay-off from employment, perform at least 20 hours of

community service per week at the direction of the U.S. Probation Office until gainfully employed. The amount of community service shall not exceed 400 hours.

☐ (4) you shall not maintain employment where you have access to other individual's personal information, including, but not limited to, Social Security numbers and credit card numbers (or money) unless approved by a probation officer.

☐ (5) you shall not incur new credit charges or open additional lines of credit without the approval of a probation officer unless you are in compliance with the financial obligations imposed by this judgment.

☐ (6) you shall provide a probation officer with access to any requested financial information necessary to monitor compliance with conditions of supervised release.

☐ (7) you shall notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

☒ (8) you shall provide documentation to the IRS and pay taxes as required by law.

☐ (9) you shall participate in a sex offender treatment program. The specific program and provider will be determined by a probation officer. You shall comply with all recommended treatment which may include

psychological and physiological testing. You shall maintain use of all prescribed medications.

- ☐ You shall comply with the requirements of the Computer and Internet Monitoring Program as administered by the United States Probation Office. You shall consent to the installation of computer monitoring software on all identified computers to which you have access. The software may restrict and/or record any and all activity on the computer, including the capture of keystrokes, application information, Internet use history, email correspondence, and chat conversations. A notice will be placed on the computer at the time of installation to warn others of the existence of the monitoring software. You shall not remove, tamper with, reverse engineer, or in any way circumvent the software.
- ☐ The cost of the monitoring shall be paid by you at the monthly contractual rate, if you are financially able, subject to satisfaction of other financial obligations imposed by this judgment.
- ☐ You shall not possess or use any device with access to any online computer service at any location (including place of employment) without the prior approval of a probation officer. This includes any Internet service provider, bulletin board system, or any other public or private network or email system.

- ☐ You shall not possess any device that could be used for covert photography without the prior approval of a probation officer.
- ☐ You shall not view or possess child pornography. If the treatment provider determines that exposure to other sexually stimulating material may be detrimental to the treatment process, or that additional conditions are likely to assist the treatment process, such proposed conditions shall be promptly presented to the court, for a determination, pursuant to **18 U.S.C. § 3583(e)(2),** regarding whether to enlarge or otherwise modify the conditions of supervision to include conditions consistent with the recommendations of the treatment provider.
- ☐ You shall not, without the approval of a probation officer and treatment provider, engage in activities that will put you in unsupervised private contact with any person under the age of 18, or visit locations where children regularly congregate (e.g., locations specified in the Sex Offender Registration and Notification Act.)
- ☐ This condition does not apply to your family members: [Names]
- ☐ Your employment shall be restricted to the district and division where you reside or are supervised, unless approval is

granted by a probation officer. Prior to accepting any form of employment you shall seek the approval of a probation officer, in order to allow the probation officer the opportunity to assess the level of risk to the community you will pose if employed in a particular capacity. You shall not participate in any volunteer activity that may cause you to come into direct contact with children except under circumstances approved in advance by a probation officer and treatment provider.

- ☐ You shall provide the probation officer with copies of your telephone bills, all credit card statements/receipts, and any other financial information requested.
- ☐ You shall comply with all state and local laws pertaining to convicted sex offenders, including such laws that impose restrictions beyond those set forth in this order.

☒ (10) you shall pay any financial penalty that is imposed by this judgment that remains unpaid at the commencement of the term of supervised release. Your monthly payment schedule shall be an amount that is at least $ or 10% of your net monthly income, defined as income net of reasonable expenses for basic necessities such as food, shelter, utilities, insurance, and employment-related expenses.

☒ (11) you shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the court.

☐ (12) you shall repay the United States "buy money" in the amount of $ which you received during the commission of this offense.

☐ (13) if the probation officer determines that you pose a risk to another person (including an organization or members of the community), the probation officer may require you to tell the person about the risk, and you must comply with that instruction. Such notification could include advising the person about your record of arrests and convictions and substance use. The probation officer may contact the person and confirm that you have told the person about the risk.

☐ (14) Other:

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
Totals	$200.00	$	$

☐ The determination of restitution is deferred until . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to **18 U.S.C. § 3664(i)**, all nonfederal victims must be paid before the United States is paid.

Name of Payee	**Total Loss***	**Restitution Ordered**	**Priority or Percentage**
Totals:			

☐ Restitution amount ordered pursuant to plea agreement $

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant **to 18 U.S.C. § 3612(f)**. All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to **18 U.S.C. § 3612(g)**.

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
☐ the interest requirement is waived for the .

☐ the interest requirement for the is modified as follows:

☐ The defendant's non-exempt assets, if any, are subject to immediate execution to satisfy any outstanding restitution or fine obligations.

* Findings for the total amount of losses are required under **Chapters 109A, 110, 110A, and 113A of Title 18** for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of $200.00 due immediately.

☐ balance due not later than , or
☐ balance due in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal *(e.g. weekly, monthly, quarterly)* installments of $ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal *(e.g. weekly, monthly, quarterly)* installments of $ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if Appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

No. 11 CR 0750
Judge Robert M. Dow, Jr.

[Filed January 21, 2015]

UNITED STATES OF AMERICA)
)
v.)
)
JASON CORREA and)
SAUL MELERO)
)

MEMORANDUM OPINION AND ORDER

Before the Court is Defendants Jason Correa's and Saul Melero's joint renewed motion to reconsider [149] the Court's October 17, 2013 and March 14, 2014 Opinions and Orders [110, 137] denying Defendants' joint motion to suppress evidence [74, 75]. For the reasons stated below, Defendants' motion [149] is denied.

I. Background

The Court extensively discussed the facts of this case in its previous opinions [110, 137]. Most relevant here are the following facts: In October 2011, DEA

agents arrested Correa and searched his car, seizing four garage door openers and three sets of keys inside. They drove to 1717 South Prairie, a building that they believed to be associated with the suspected drug activity, and attempted to activate the garage there using Correa's garage door openers. When the garage failed to open, they tested the openers on nearby garages and eventually found a match. Using one of the key fobs, they entered the lobby of that building. They tested a key from Correa's car on the residents' mailboxes and discovered that it matched the mailbox of unit 702. Believing that unit to be Correa's home, the agents sought and received Correa's consent to search it. Inside the apartment, they discovered drugs, weapons, and documentation belonging to Melero, another resident of the unit, whom they subsequently arrested.

Defendants moved to suppress the evidence from unit 702. The Court ruled that the garage-testing, the entry into the lobby using the fob, and the mailbox-testing were permissible under *United States v. Concepcion*, 942 F.2d 1170 (7th Cir. 1991), and *United States v. Flores-Lopez*, 670 F.3d 803 (7th Cir. 2012). In their renewed motion to reconsider, Defendants argue that neither precedent applies following the Supreme Court's decision in *Riley v. California*, 134 S. Ct. 2473 (2014). They contend that *Riley* effectively overrules *Flores-Lopez* in its entirety and limits *Concepcion* to searches involving non-electronic devices. They further argue that *Riley* affirmatively required the agents to obtain a warrant before using the garage openers or key fobs.

In response, the Government argues that *Riley*'s holding is immaterial to this motion. According to the Government, even if *Riley* rendered the search unconstitutional, the exclusionary remedy would be unavailable under *Davis v. United States*, 131 S. Ct. 2419, 2434 (2011). *Davis* creates a good faith exception, providing that "when the police conduct a search in objectively reasonable reliance on binding appellate precedent, the exclusionary rule does not apply." *Davis*, 131 S. Ct. at 2434. Accord *United States v. Taylor*, No. 14-1981, slip op. at 4 (7th Cir. Jan. 14, 2015) (describing *Davis* as holding "that the exclusionary rule does not apply 'when the police conduct a search in objectively reasonable reliance on binding appellate precedent'"). The Government argues that the agents conducted themselves in objectively reasonable reliance on *Concepcion*, which was binding Seventh Circuit precedent at the time of the law enforcement activity at issue here, and that this case therefore falls squarely within *Davis*'s good faith exception.[1] In reply, Defendants concede that if *Davis* applies, the exclusionary remedy is unavailable, but they argue that the garage-testing in particular falls outside the good faith exception. At issue here, therefore, is whether the agents tested the garages in objectively reasonable reliance on binding appellate precedent.

[1] The government's response brief and Defendants' reply brief focus exclusively on *Concepcion* because the Seventh Circuit had not decided *Flores-Lopez* at the time of the events at issue.

II. Analysis

The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." A search occurs when the government invades a person's reasonable expectation of privacy, *United States v. Jacobsen*, 466 U.S. 109, 113 (1984), or physically intrudes into a constitutionally protected area in order to obtain information, *United States v. Jones*, 132 S. Ct. 945, 951 (2012). To compel respect for the Fourth Amendment's guaranty, the Supreme Court created the exclusionary rule. *Elkins v. United States*, 364 U.S. 206, 217 (1960). The rule's sole purpose is to deter police misconduct. *Davis*, 131 S. Ct. 2426. It is not to remedy a personal right or redress a constitutional injury. *Id.*

Exclusion is a "last resort" because it frequently "suppress[es] the truth and set[s] the criminal loose in the community without punishment." *Davis*, 131 S. Ct. at 2427 (citation omitted). The Supreme Court therefore permits exclusion only when the benefit of deterrence outweighs these costs. *Id.* (citation omitted). The benefits of deterrence vary with the "flagrancy of the police misconduct at issue." *United States v. Leon*, 468 U.S. 897, 104 (1984). When the police act with "an objectively 'reasonable good-faith belief'" that their conduct is constitutional, exclusion is unwarranted because the costs of exclusion outweigh the deterrence benefits. *Davis*, 131 S. Ct. at 2427 (quoting *Leon*, 468 U.S. at 909 (finding exclusion unavailable when the police conducted a search in objectively reasonable reliance on a subsequently invalidated search

warrant)). When the police act with "deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence," exclusion is warranted because its deterrent value outweighs the costs. *Herring v. United States*, 555 U.S. 135, 144 (2009) (finding exclusion unwarranted where the police arrested the defendant pursuant to an arrest warrant that was subsequently recalled due to isolated, negligent recordkeeping); see *Davis*, 131 S. Ct. at 2427.

Davis extended *Leon*'s and *Herring*'s good faith exception to scenarios involving retroactive changes in law. See *United States v. Martin*, 712 F.3d 1080, 1082 (7th Cir. 2013). *Davis* addressed a scenario that began with a routine traffic stop and the defendant's subsequent arrest. While Davis was handcuffed in the back of the patrol car, the police searched his car and found a gun. At the time, the Eleventh Circuit, like many other circuits, had interpreted *New York v. Belton,* 453 U.S. 454 (1981), to create a bright-line rule authorizing car searches incident to the arrest of the car's occupant. More specifically, the Eleventh Circuit had interpreted *Belton* to authorize a car search incident to arrest where the defendant was "quickly pulled from the vehicle, handcuffed, laid on the ground, and placed under arrest." *United States v. Gonzalez*, 71 F.3d 819, 822 (11th Cir. 1996).

While Davis's appeal was pending, the Supreme Court decided *Arizona v. Gant,* 556 U.S. 332 (2009), which held that "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. Applied retroactively to Davis's search, *Gant* rendered *Davis's* search unconstitutional. The question before the Supreme Court was whether this constitutional injury entitled Davis to the exclusionary remedy. The Court answered no, finding that "searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule." *Davis*, 131 S. Ct. at 2423-24. In those cases, "suppression would do nothing to deter police misconduct," and "it would come at a high cost to both the truth and the public safety." *Id.* at 2423.

In her concurring opinion, Justice Sotomayor demarcated the limits of *Davis*, explaining that it applied only where "binding appellate precedent *specifically authorize[d]* a particular police practice" because, as the majority had explained, "application of the exclusionary rule cannot reasonably be expected to yield appreciable deterrence" in such circumstances. *Davis*, 131 S. Ct. at 2435 (Sotomayor, J., concurring) (quoting the majority at 2429). *Davis*, however, did not present "the markedly different question whether the exclusionary rule applies when the law governing the constitutionality of a particular search is unsettled." *Id.*

> "If, as the Government argues, all rulings resolving unsettled Fourth Amendment questions should be nonretroactive, then, in close cases, law enforcement officials would have little incentive to err on the side of constitutional behavior. Official awareness of the dubious constitutionality of a practice would be counterbalanced by official certainty that, so

> long as the Fourth Amendment law in the area remained unsettled, evidence obtained through the questionable practice would be excluded only in the one case definitively resolving the unsettled question."

Id. (quoting *United States v. Johnson,* 457 U.S. 537, 561 (1982) (footnote omitted)). The Seventh Circuit adopted Justice Sotomayor's limiting principle in *United States v. Martin*, 712 F.3d 1080, 1082 (7th Cir. 2013).

At issue here is whether the garage-testing falls within *Davis*'s good faith exception, given the holding in *Concepcion*. Although the Court discussed *Concepcion* in detail in its previous order [110], further discussion is necessary to determine whether the case specifically authorized the garage-testing or whether the law governing the constitutionality of the garage-testing was unsettled when it took place. In *Concepcion*, DEA agents arrested the defendant and seized his keys. *Concepcion*, 942 F.2d at 1171. After seeing the name "Concepcion" on the mailbox of a nearby apartment building, they conducted two searches relevant here. First, they used the defendant's keys to open the door to the common area of the apartment building. *Id.* Second, they used his keys to open his apartment door. *Id.* Having identified the correct apartment, the agents then sought and obtained consent from Concepcion to search the unit, where they found evidence that Concepcion then attempted to suppress. *Id.*

On appeal, the questions before the Seventh Circuit were whether (i) use of the defendant's key to unlock

the common area and (ii) use of his key to unlock his apartment were constitutional. The Seventh Circuit held that the first step was not a search, citing the well-established rule that a person has no reasonable expectation of privacy in a common area.[2] *Concepcion*, 942 F.2d at 1172 (citing, among others, *United States v. Acevedo*, 627 F.2d 68, 69 n.1 (7th Cir. 1980); *United States v. Boden*, 854 F.2d 983 (7th Cir. 1988)). The Court of Appeals next held that the second step, by contrast, was a search because a keyhole contains private information inaccessible to strangers: the identity of the person who may access the space beyond. *Id.* The Seventh Circuit then concluded that the search was reasonable, even in the absence of probable cause or a warrant, for two reasons. First, the invasion of privacy was minimal. Insertion of the key into the keyhole only revealed one fact: who could access the space beyond. *Id.* at 1173. Second, the police easily could have discovered the same information through alternative means involving neither probable cause nor a warrant.

> They could have looked him up in the telephone book or conducted a computer search of drivers' licenses. If they did not find him (or if they found too many persons of the same name), they could have visited the landlord and asked who lived in

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[2] The Supreme Court had yet to hear *Jones*, which held that a search includes not only an invasion into a reasonable expectation of privacy but also a physical intrusion into a constitutionally protected area to obtain information. *Jones*, 132 S. Ct. at 951. Accordingly, the Seventh Circuit's analysis focused only on the invasion into a reasonable expectation of privacy.

> apartment 1C. Instead of asking the landlord who lived there, they could have shown the landlord the key in their possession and asked the landlord to compare it with the key issued to the tenant. So too the agents could have followed Concepcion around to learn his residence (as they did; the key just confirmed what they thought they knew). The information the agents obtained from putting the key in the lock thus was no secret.

Id. 1173.

According to Defendants, the garage-testing falls outside *Davis*'s good faith exception for several reasons. First, they argue that *Concepcion* was not "binding appellate precedent" that "specifically authorized" the garage-testing within the meaning of *Davis*. The *Davis* court found that "binding appellate precedent" "specifically authorized" the search at issue there because the Eleventh Circuit had applied *Belton*'s bright-line rule to approve a factually identical search in *United States v. Gonzalez*, 71 F.3d 819 (11th Cir. 1996). Defendants argue that *Concepcion*, in contrast, adopted a balancing test, finding that the need for probable cause or a warrant increases with the invasiveness of a search. They suggest that a balancing test, by its nature, creates unsettled law because it is fact-sensitive. They also argue that *Concepcion*, specifically, creates unsettled law because it failed to identify exactly when an invasion is minimal enough to dispense with the need for probable cause or a warrant; it placed the search before it on one side of the scale without identifying the precise tipping point.

Concepcion may indeed create a sliding scale, and it may not identify the tipping point. But the Court need not know the precise tipping point to determine that the garage-testing fell comfortably within the scope of police conduct approved in *Concepcion*. Assuming that the garage was common to all the tenants—which Defendants do not appear to contest—then *Concepcion* clearly provides that the garage-testing was not a search at all because there is no reasonable expectation of privacy in the common areas of a residential building. *Concepcion*, 942 F.2d at 1172 ("We think the district court on solid ground in holding that a tenant has no reasonable expectation of privacy in the common areas of an apartment building") (citing, among others, *Acevedo*, 627 F.2d at 69 n.1; *Boden*, 854 F.2d 983). And even if the garage had belonged to only to the residents unit 702—which Defendants do not suggest—the use of Correa's garage door opener to open his garage and identify his building still would be a search specifically authorized by *Concepcion*. If the police may test a person's key on various apartments to identify his particular apartment, then, *a fortiori*, they may use his garage door opener to test various garages to identify his building. The garage-testing here revealed even less private information than the keyhole search in *Concepcion*; it identified the building of which Defendants were one of many tenants, whereas the keyhole search in *Concepcion* revealed the defendant's particular unit within a building. As in *Concepcion*, the Government could have discovered the same information through alternative means involving neither probable cause nor a warrant, like following Defendants home.

Defendants disagree, arguing that the garage-testing was more invasive than the keyhole search in *Concepcion* because it revealed significantly more information, or at least more valuable information. In *Concepcion*, the police had already identified the building where Defendant lived; they had just arrested him in front of it and spotted his name on the mailbox there. Defendants argue that the keyhole search consequently revealed little new information; it only identified his apartment within an already-known building. Defendants argue that prior to the garage-testing, by contrast, the agents here had yet to identify Defendants' building. In fact, Defendants note that the agents incorrectly suspected that the garage door opener matched the building at 1717 South Prairie. Thus, Defendants contend, the garage-testing provided the agents with more valuable information in that, on a more basic level, it identified Defendants' building.

Defendants misconstrue *Concepcion*. *Concepcion* did not rely on what the keyhole search revealed relative to what the police already knew; rather, it relied on what the search revealed relative to what the police *could have* known through independent means involving neither probable cause nor a warrant. *Concepcion*, 942 F.2d at 1173. As in *Concepcion*, the agents here could have learned the same information by following Defendants home or asking neighbors where they lived. Under *Concepcion*, their decision to use lawfully-obtained garage door openers instead does not render their conduct unconstitutional.

Moreover, even if *Concepcion* did not specifically authorize the garage-testing, *United States v. Knotts*,

460 U.S. 276 (1983) did. In *Knotts*, the police used a beeper to track a container's movements through public streets without a warrant. The Supreme Court found that there was no search because a "person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another"; when the defendant "travelled over the public streets he voluntarily conveyed to anyone who wanted to look the fact that he was travelling over particular roads in a particular direction, the fact of whatever stops he made, and the fact of his final destination when he exited from public roads onto private property." *Knotts*, 460 U.S. at 281-82. The Supreme Court further reasoned that "[n]othing in the Fourth Amendment prohibited the police from augmenting the sensory faculties bestowed upon them at birth with such enhancement as science and technology afforded them in this case." *Id.* at 282. Here, the garage-testing similarly identified a fact observable from public streets; the police could have learned where Defendants lived simply by watching them enter and exit their building. Defendants had no reasonable expectation of privacy in this fact because they voluntarily conveyed it to the public on a daily basis. Accordingly, Supreme Court precedent, if not Seventh Circuit precedent, specifically authorized the garage-testing.

Finally, Defendants argue that the Government fails to carry its burden of establishing good faith. Defendants cite no case law for their assumption that the Government bears this burden. Although the Supreme Court did not explicitly address the issue in *Davis*, it did characterize the core inquiry as whether

the government acted in "objectively" reasonable reliance on binding appellate precedent. *Davis*, 131 S. Ct. at 2423. *Davis* extends *Leon*, and *Leon* provides that courts are to "eschew inquiries into the subjective beliefs of law enforcement officers" because "'sending state and federal courts on an expedition into the minds of police officers would produce a grave and fruitless misallocation of judicial resources.'" *Leon*, 468 U.S. at 923 n.23 (citing *Massachusetts v. Painten*, 389 U.S. 560, 565 (1968) (White, J., dissenting)). In *Herring*, the Court reiterated that the "pertinent analysis of deterrence and culpability is objective, not an inquiry into the subjective awareness of arresting officers." *Herring*, 555 U.S. at 145 (internal quotation marks and citations omitted). In other words, the Supreme Court has confined the good-faith inquiry to the "objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal in light of all of the circumstances." *Id.* (quoting *Leon,* 468 U.S. at 922, n. 23) (internal quotation marks omitted). The same rationale applies in the context of *Davis*, and here, in light of *Concepcion*, the answer to that question is "no." Accordingly, the Court denies Defendant's motion.[3]

III. Conclusion

For the reasons stated above, Defendants' renewed motion to reconsider [149] is denied.

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[3] As noted in the Government's response brief [154, at 4], the Government has represented that it will not use at trial any evidence obtained from searches of Defendants' cell phones incident to arrest. Based on those representations, the Court agrees that any issue relating to those searches is moot.

Dated: January 21, 2015

/s/ Robert M. Dow, Jr.
Robert M. Dow, Jr.
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

No. 11 CR 0750
Judge Robert M. Dow, Jr.

[Filed March 14, 2014]

UNITED STATES OF AMERICA)
)
v.)
)
JASON CORREA and)
SAUL MELERO)
)

MEMORANDUM OPINION AND ORDER

Before the Court are Defendants Jason Correa and Saul Melero's joint motion to reconsider [116] the Court's October 17, 2013 Opinion and Order [110] denying Defendants' joint motion to suppress evidence [74, 75]. For the reasons below, Defendants' motion [116] is denied.

I. Background

The relevant facts for the purpose of Defendants' motion to reconsider are as follows: On October 19, 2013, DEA agents conducted surveillance of a meeting between a confidential source ("CS") and two unknown

males ("UM1" and "UM2") in a restaurant at 53rd and Pulaski in Chicago, Illinois. The men swapped cars when they left the restaurant, and DEA agents followed UM1 and UM2 until they drove into a parking garage at the intersection of 18th and South Prairie. After 25 minutes, UM1 and UM2 exited the parking garage attached to 1717 South Prairie, returned to 53rd and Pulaski where the CS was waiting, and the parties switched back to their original vehicles. DEA agents then met with the CS and discovered $500,000 cash in the vehicle that had not been there prior to the car swap, while other DEA agents followed UM1 and UM2 in their red GMC Canyon truck to a residence in Lyons, Illinois.

On October 27, 2013, while surveilling the Lyons residence, DEA agents observed UM2 leave the residence in the same red GMC truck. Agents followed UM2 to a grocery store at the intersection of Canal Street and Roosevelt Road. There, UM2 parked next to a silver Jeep Cherokee and met another unknown male, later identified as Defendant Correa, at the Starbucks inside the store. When the two men left the store, UM2 pulled a multi-colored bag from the red Canyon truck and handed it to Correa, who placed it in his Jeep. Correa then drove away in the Jeep, heading south on Canal Street. DEA agents followed Correa until Correa turned left onto 18th Street without using his turn signal, at which point the agents pulled over Correa at 18th and Wabash. After Correa consented to a search of the Jeep, agents recovered a bag of cocaine inside the vehicle. Agents then took Correa into custody and transported him to the DEA office, where he was given his Miranda warnings.

During the search of Correa's vehicle, Special Agent Thomas Asselborn ("SA Asselborn") discovered a bag on the front passenger seat, containing four garage door openers, three sets of keys, and four cell phones. SA Asselborn then took the bag and drove the few blocks from the scene of the traffic stop to the garage at 1717 South Prairie, where agents had observed UM1 and UM2 with $500,000 in the CS's car emerge eight days prior. When he arrived, SA Asselborn pressed the button on each of the four garage door openers to see if any worked at the address. When none of them opened the garage, SA Asselborn spent 10-15 minutes testing the openers on the garages of nearby buildings until one of them activated the garage door at 1819 South Michigan Avenue, a ten-story apartment and condominium building. SA Asselborn then called two other Specials Agents, Barnum and Loonan, and arranged to meet them the building's front entrance.

The Special Agents gained access to the lobby using a key fob from the bag. Inside the lobby, SA Asselborn tested another key on the residents' mailboxes, until he found its match in the mailbox for unit 702. Believing this to be Correa's home, SA Asselborn contacted DEA Group Supervisor James Laverty, who was with Correa at the time in an interview room at the DEA office. Laverty asked Correa if the agents could search unit 702, and Correa consented. SA Asselborn then opened the door to the unit using another key from the bag, at which point the agents discovered a plethora of contraband, including marijuana, methamphetamine, Ecstacy, a .32 caliber semiautomatic handgun, an assortment of drug packaging materials, and various documentation belonging to Saul Melero. Agents

showed a photo of Correa to neighbors, who not only identified Correa as a resident of the unit, but also informed the agents that the unit's other resident – who turned out to be Melero – was standing outside the building. Laverty then arrested Melero on the street.

In their joint motion to suppress [74, 75], Correa and Melero challenged (1) the agents' authority to pull over Correa and search his car, (2) SA Asselborn's use of the garage door openers and keys to identify unit 702 as Correa's home, (3) the Agent's authority to search the unit itself, and (4) the agent's authority to lawfully arrest Melero outside of the building. For the reasons discussed in the Court's October 17, 2013 Opinion and Order [110], the Court denied Defendants' motion in its entirety. Defendants' now ask the Court to reconsider its ruling concerning SA Asselborn's use of the garage door opener to locate 1819 South Michigan as Correa's residence, which they contend was a search that required a warrant.

II. Analysis

In denying Defendants' motion to suppress, the Court relied on *U.S. v. Concepcion*, 942 F.2d 1170 (7th Cir. 1991), a case with an analogous set of facts to those at issue here. See [110], at 11-13. In *Concepcion*, DEA agents arrested the defendant and seized his keys. 942 F.2d. at 1171. After the defendant was taken into custody, agents saw the name "Concepcion" on the mailbox of a nearby apartment building. *Id.* They tested Concepcion's keys, one of which worked on the door to the lobby. *Id.* Inside the building, the agents tested his other keys until they found a match to apartment 1C. *Id.* They opened the door an inch, but

immediately closed it and locked it without looking inside. *Id.* Having identified Concepcion's residence, the agents sought and obtained his consent to search the unit. *Id.* Concepcion later challenged the lawfulness of the actions taken by the agents that allowed them to establish the connection between Concepcion and the unit. *Id.*

In affirming the district court's determination that the agents' actions did not offend the Fourth Amendment, the Seventh Circuit agreed that "a tenant has no reasonable expectation of privacy in the common areas of an apartment building" because "the area outside of one's door lacks anything like the privacy of the area inside" and "Concepcion had no expectation that the goings-on in the common areas would remain his secret." *Id.* at 1172. Therefore, the agents' use of the keys to enter the locked building was lawful; because the act did not implicate the defendant's protected privacy interests, it was not a "search" within the meaning of the Fourth Amendment. *Id.* A harder question for the Seventh Circuit concerned the lawfulness of the agents' use of Concepcion's key to his apartment door, because a "keyhole contains *information* – information about who has access to the space beyond." *Id.* (emphasis in original). Because the information is not accessible to strangers, the Court concluded that the agents' use of the key to Concepcion's unit to confirm its match did constitute a "search" for purposes of the Fourth Amendment. *Id.* However, the Seventh Circuit determined that, because the privacy interest at issue was so small, the agents did not need a warrant (or even probable cause) to conduct this search. *Id.* at 1173.

In light of *Concepcion*, the Court concluded that SA Asselborn's actions did not offend Correa or Melero's Fourth Amendment rights. See [110], at 12-13. Asselborn's use of the key fob to enter the lobby was not a "search," because Defendants did not have a reasonable expectation of privacy in the common areas of the 10-floor, 60-80 unit condo building at 1819 South Michigan in which they rented a unit. And Asselborn's use of Correa's key in the lobby's mailboxes to determine its match to the mailbox for unit 702 – at most – was a "search" in the same way that the agents' use of Concepcion's keys to unit 1C was a search, and thus did not require a warrant. Finally, Asselborn's initial use of the garage door opener at 1819 South Michigan to identify it as Correa's building did not offend the Constitution, because – as *Concepcion* made explicitly clear – Correa did not have a reasonable expectation of privacy in the building's lobby and common areas, including the common garage. And even if Correa did have some reasonable expectation of privacy in the garage (for example, since it may be more difficult to access than the lobby and may not be accessible to every resident of the building), Asselborn's act of pressing the garage door button to open and close the door to confirm the match was no more invasive than the *Concepcion* agents' identical act on Concepcion's apartment door. In other words, Asselborn's use of the garage door either constituted a "search" that was so minimally invasive as to not require a warrant or it was not a search at all.

Defendants hardly address *Concepcion* in their motion to reconsider, but their arguments, at least implicitly, seek to exploit the primary factual difference

between that case and this one. Whereas in *Concepcion* the agents located the defendant's apartment building by visually inspecting the premises (which led to the discovery of the defendant's name on the building's exterior), Asselborn used a garage door opener to do so. Defendants argue that two recent Supreme Court cases – *United States v. Jones*, 132 S. Ct. 945 (2012), and *Florida v. Jardines*, 133 S. Ct. 1409 (2013) – compel the "natural conclusion" that Asselborn needed a warrant before he could lawfully use the assistance of this technology to hunt for Correa's building. The Court disagrees.

In *Jones*, FBI agents installed a GPS device on the undercarriage of a criminal suspect's automobile and then tracked it over the course of the next 28 days, gathering more than 2,000 pages of data concerning narcotics trafficking, including the location of a stash house. 132 S. Ct. at 948. First noting that the Fourth Amendment includes protection from unreasonable searches of our "effects," the Supreme Court held that "the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search,'" because "[t]he Government physically occupied private property for the purpose of obtaining information." *Id.* at 949.

Defendants argue that Asselborn "physically occupied" Correa's garage door openers in the same way that the agents occupied Jones's car. But *Jones* differs from the facts of this case in a critical respect. There, the agents "searched" an individual's property – continuously, for 28 days – that was not in their

possession. In Correa's case, even if Asselborn "searched" the garage door openers by pressing their buttons to see if they worked, he did so after lawfully seizing the garage door openers as evidence. For that reason, this case is much more like *United States v. Flores-Lopez*, 670 F.3d 803 (7th Cir. 2012), a case decided by the Seventh Circuit after *Jones*, and on facts more analogous to Correa's case.

In *Flores-Lopez*, officers arrested a defendant at the scene of a drug sale and lawfully seized three cell phones, two from his truck and one from his person. 670 F.3d at 804. At the scene, an officer searched each cell phone to determine their telephone numbers, which the government later used to subpoena the phones' call histories for use as evidence of a conspiracy. *Id.* The defendant argued that the search of his cell phones was unreasonable, because the officer conducted it without a warrant. *Id.* at 805. Citing *United States v. Rodriguez*, 995 F.2d 776, 778 (7th Cir. 1993) – a case which ruled that police did not need a warrant to flip through (*i.e.,* search) an address book found on a suspect to determine his address – the Seventh Circuit held that no warrant was necessary to perform the functional-equivalent search of a cell phone for its number. 670 F.3d at 807. The Seventh Circuit reasoned: "If police are entitled to open a pocket diary to copy the owner's address, they should be entitled to turn on a cell phone to learn its number. If allowed to leaf through a pocket address book, as they are, they should be entitled to read the address book in a cell phone." *Id. Flores-Lopez* therefore suggests that the Fourth Amendment analysis does not change simply because an ordinary item is searched in one

instance and a technologically advanced version of that item is searched in another.

This guidance supports application of *Concepcion* to Asselborn's use of the garage door opener (in essence, an electronic key). And if there was any doubt as to the continuing force of *Concepcion* after *Jones,* the Seventh Circuit nixed it by saying:

> But was there any *urgency* about searching the cell phone for its phone number? Yet even if there wasn't, that bit of information might be so trivial that its seizure would not infringe the Fourth Amendment. In *United States v. Concepcion*, 942 F.2d 1170, 1172-73 (7th Cir. 1991), police officers tested the keys of a person they had arrested on various locks to discover which door gave ingress to his residence, and this we said was a search – and any doubts on that score have been scotched by *United States v. Jones*, 132 S. Ct. 945, 949 (2012), which holds that attaching a GPS device to a vehicle is a search because "the Government physically occupied private property for the purpose of obtaining information." But we went on to hold in *Concepcion* that a minimally invasive search may be lawful in the absence of a warrant, even if the usual reasons for excusing the failure to obtain a warrant are absent, a holding that . . . survives *Jones* . . . .

Flores-Lopez, 670 F.3d. at 806-07. *Jones*, therefore, does not disturb *Concepcion*, the holding of which – if anything – is even more instructive as to Correa and

Melero's case when read in conjunction with *Flores-Lopez*.

After *Concepcion*, it seems clear that Asselborn lawfully could have tested a metal key (as opposed to an electronic door opener) on the garage door at 1819 South Michigan (and the other buildings nearby). If the garage is a common area, the act of using the key is not a search. And if Defendants (somehow) had as much of an expectation of privacy in the garage as in their condo, that act – though technically a search – still would not require a warrant because of its minimal invasiveness. The Court sees no difference – particularly after *Flores-Lopez* – between Asselborn's hypothetical use of a metal key and his actual use of an electronic one, other than the speed at which he could test the doors. Although the garage door opener made it slightly faster to locate the correct building – in the same way that finding a telephone number in a cell phone is faster than manually searching an address book – the underlying rationale for permitting this warrantless "search" (assuming, *arguendo*, that it was one) remains the same. As the Seventh Circuit reasoned:

> The agents properly arrested Concepcion without a warrant, and they properly searched his pockets and seized his keys without a warrant. Why then should a warrant be necessary to learn whether the keys in Concepcion's possession operate a lock? . . . Where [Concepcion] lived was something the agents could have ascertained in many other ways. They could have looked him up in the

> telephone book or conducted a computer search of drivers' licenses. If they did not find him (or if they found too many persons of the same name), they could have visited the landlord and asked who lived in apartment 1C. Instead of asking the landlord who lived there, they could have shown the landlord the key in their possession and asked the landlord to compare it with the key issued to the tenant. So too the agents could have followed Concepcion around to learn his residence.

Concepcion, 942 F.2d at 1142-43.

The same can be said here regarding Asselborn's quest for Correa's condo building. Although Asselborn did not know Correa's exact address, he believed it to be one of the buildings immediately surrounding 1717 South Prairie, where agents observed Correa depart in the CS's red Canyon truck with $500,000 just eight days earlier. Instead of testing the garage door opener on the surrounding buildings, Asselborn – like the agents in *Concepcion* in their search for the defendant's apartment – could have done any number of things to ascertain which building contained Correa's residence. He could have shown the garage door opener to the doorman (or the building manager or a resident leaving the garage) at each building to see if that same type of opener is used in that particular building's garage. Or instead he could have paid no attention to the garage door openers and gone directly to the front doors of the

buildings to see if the fob from the bag of keys worked.[1] Regardless, Asselborn could have determined 1819 South Michigan to be Correa's address without a prohibitive amount of additional effort.

Defendants citation to *Jardines* does not alter this conclusion. In *Jardines*, the Supreme Court held that the use of a trained police dog to sniff and explore the front porch of a home to determine the existence of marijuana inside constitutes a search for the purpose of the Fourth Amendment, such that a warrant or consent from the home owner is required before officers can lawfully conduct this activity. 133 S. Ct. at 1415-16. *Jardines* actually undercuts Defendants' argument. There, the conduct constituted a search because "the detectives had all four of their feet and all four of their companion's firmly planted on the constitutionally protected extension of Jardines' home" (*i.e.,* the curtilage). *Id.* at 1415. The detectives violated the Constitution, because they lacked a warrant or some other justification to conduct that search. *Id.* Here, none of those concerns are implicated because, as *Concepcion* instructs, an apartment building is a different animal than is a home. There is no curtilage. There is no constitutionally protected extension of the apartment into the building. In fact, a resident's reasonable expectations of privacy are so greatly reduced that an agent does not offend the Constitution

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[1] Notably, Defendants do not challenge Asselborn's use of the fob (as distinct from a metal key) to enter the lobby of the building, presumably because they see no real distinction between the use of a metal key and an electronic one. As noted, neither does the Court, which is why *Concepcion* controls here.

even by gaining entrance to and exploring the building's common areas and hallways or by testing keys in the locks of the apartments themselves.

Defendants' citations to other cases involving single family homes – *United States v. Kyllo*, 533 U.S. 27 (2001), *United States v. Karo*, 468 U.S. 705 (1984), and *United States v. Knotts*, 460 U.S. 276 (1983) – are likewise unpersuasive. Unlike here, those cases all involved the government's efforts to monitor and/or uncover the activity taking place within an individual's home. In *Karo*, the government, through a consenting confidential informant, placed a monitoring device in a barrel of ether, which the government believed was ordered to manufacture cocaine. 468 U.S. at 708. The monitor allowed the government to track the location and movement of drug activity, information which enabled agents to obtain a search warrant, and so the defendant challenged the monitor as violative of the Fourth Amendment. *Id.* at 710. The Supreme Court ruled that neither the installation of the monitor, nor its invasion into the defendant's home (by way of the barrel), were problematic. *Id.* at 712. The Court held that the monitoring of the activity inside the home, however, was unconstitutional. *Id.* at 713. *Knotts* also involved government installation of a monitoring device in a barrel (of chloroform instead of ether), like in *Karo* installed prior to the defendant's receipt of the barrel and with the consent of the then-owner. 468 U.S. at 277. But unlike in *Karo*, the government only tracked the device until it arrived at its destination, a drug laboratory. *Id.* Consequently, the Supreme Court held that no search (and thus no Fourth Amendment violation) occurred, since the activities that were

tracked (the movements of the car that contained the barrel) could have been observed by the naked eye and, therefore, did not invade a legitimate expectation of privacy. *Id.* at 285. Finally, in *Kyllo*, the Supreme Court determined that the government's use of a sense-enhancing thermal imaging device to glean information about the illegal activities inside a home constituted a "search" for the purposes of the Fourth Amendment. 533 U.S. at 34. Without a warrant, therefore, this activity violated the resident's constitutional rights. *Id.* at 39.

The Court fails to see how these cases help Correa and Melero. Defendants argue that the use of the garage door opener is akin to the government's use of the beeper in *Karo* and the thermal imaging technology in *Kyllo*. But those cases cut the other way. As mentioned above, the Supreme Court drew a critical distinction between government conduct that monitors the activities occurring inside the home (something that the government did not do here) and those that do not. Of the three cases cited above, the present case is most similar to *Knotts*, where the government used a tracking device to determine the defendant's address. Defendants cite this case, it seems, to suggest that *Knotts* established that the only acceptable means by which the government could have determined Correa's address was either by using a permissible tracking device (*i.e.,* one installed with consent, as in *Karo* and *Knotts*, rather than by physical intrusion as in *Jones*) or by following him until he arrived at the garage itself, rather than stopping him two blocks short of his destination the way they did. But the Court need not look further than *Concepcion* to reject that premise,

and *Knotts* really only serves to highlight that the present case is far different from the others that the Defendants cite.

In the end, *Concepcion* controls here. But rather than address the *Concepcion* case head-on, Defendants attempt to amalgamate an assortment of unrelated cases in the hopes that the Court will abandon Seventh Circuit precedent and rule in their favor. For all of the reasons stated above, the Court declines Defendants' invitation.

III. Conclusion

For the reasons stated above, Defendants' motion to reconsider [116] is denied.

Dated: March 14, 2014

/s/ Robert M. Dow, Jr.
Robert M. Dow, Jr.
United States District Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

No. 11 CR 0750
Judge Robert M. Dow, Jr.

[Filed October 17, 2013]

UNITED STATES OF AMERICA)
)
v.)
)
JASON CORREA and)
SAUL MELERO)
)

MEMORANDUM OPINION AND ORDER

Before the Court are Defendants Jason Correa and Saul Melero's joint motion to suppress evidence [74, 75]. For the reasons below, Defendants' motion is denied.

I. Background

The Seventh Circuit has described "the resolution of a motion to suppress" as a "fact-intensive inquiry" in which the district court must make "credibility determinations" based on "its opportunity at the suppression hearing to hear the testimony and observe the demeanor of the witnesses." *United States v.*

Kempf, 400 F.3d 501, 503 (7th Cir. 2005); see also *United States v. Springs*, 17 F.3d 192, 194 (7th Cir. 1994) (explaining the deference given to the credibility determinations of the district judge who has "heard the conflicting testimony, observed the witnesses, and then reached a determination about whom to believe"). In this case, the Court conducted a suppression hearing that spanned parts of April 18, 2013 and May 2, 2013, during which counsel for Defendants Correa and Melero and counsel for the Government presented the testimony of six witnesses: Defendant Correa, Drug Enforcement Administration ("DEA") Special Agents Thomas Asselborn and Craig Schwartz, DEA Task Force Officers Mike Giorgetti and Steve Hollister, and DEA Group Supervisor James Laverty. After considering the testimony of the witnesses and assessing their credibility, the Court sets forth the following recitation of the facts surrounding the encounters between the Defendants and DEA officers that gave rise to the federal charges against the Defendants and their motion to suppress currently before the Court.

On October 19, 2013, DEA agents surveilled a brief meeting between a confidential source ("CS") and two unknown males ("UM1" and "UM2") inside a restaurant at 53rd and Pulaski in Chicago, Illinois. After the meeting, UM1 and UM2 swapped cars with the CS; the CS left the restaurant in the red GMC Canyon truck in which UM1 and UM2 had arrived, while UM1 and UM2 drove away in the vehicle originally driven by the CS. DEA Agents followed UM1 and UM2 and observed them enter a parking garage near the intersection of 18th and South Prairie.

Roughly 25 minutes later, the agents saw UM1 and UM2 emerge in the CS's vehicle from the parking garage attached to 1717 South Prairie and drive back to 53rd and Pulaski, where they again met the CS, switched back to their original vehicles, and left. DEA Agents then met with the CS, discovering $500,000 in cash that was not in his vehicle prior to the meeting, while other DEA agents followed UM1 and UM2 to a residence in Lyons, Illinois.

Eight days later, on October 27, 2011, DEA agents, including Special Agent Asselborn, surveilled the Lyons, Illinois residence. Around 1:40pm, the agents observed UM2 exit the residence's garage in the same red GMC Canyon truck. DEA Agents then followed UM2 to a grocery store in the area of Canal Street and Roosevelt Road in Chicago, where he parked in the lot next to a silver Jeep Cherokee at 3:08pm. There, SA Loonan observed UM2 meet with an unknown male, later identified as Defendant Correa, in the Starbucks within the grocery store, while SA Schwartz conducted surveillance of the parking lot. Soon after, the two men left the store and walked to UM2's red Canyon truck, where UM2 pulled out a multi-colored bag and handed it to Correa, who placed it in the rear passenger side of his Jeep. Correa then left the parking lot in the Jeep and headed south on Canal Street. At that point, SA Asselborn instructed task force officers over DEA radio to initiate a traffic stop if they observed probable cause to conduct one. TFO Giorgetti followed Correa by a distance of two car lengths, and TFO Hollister trailed Giorgetti in another car.

Correa continued south on Canal Street until 18th Street, where TFO Giorgetti observed him turn left without using his turn signal. Farther down 18th street, TFO Giorgetti activated his emergency lights and siren and pulled over Correa near the intersection of 18th Street and Wabash. Donned in a bulletproof vest marked "Police" on both sides, TFO Giorgetti approached the driver's side of the truck, as TFO Hollister approached the passenger side of the vehicle. After asking Correa for his license and registration, TFO Giorgetti asked Correa if he had anything illegal in the Jeep. When Correa answered in the negative, TFO Giorgetti asked if he could search the vehicle, to which Correa replied, "go ahead." TFO Hollister witnessed the exchange.

While TFO Giorgetti searched the vehicle, TFO Hollister conducted a pat down of Correa on the side of the road. TFO Giorgetti found a Chicago Bears bag, with a black plastic bag inside, located on the floor behind the passenger seat. Inside the black plastic bag was a clear plastic bag, containing what TFO Giorgetti believed to be cocaine. At that point, TFOs Giorgetti and Hollister took Correa into custody and transported him to the DEA office, where TFO Hollister administered his Miranda rights and turned Correa over to Group Supervisor ("GS") Laverty.

Before Correa was taken from the scene of the traffic stop, SA Asselborn arrived and found a bag on the front passenger seat that contained four garage door openers, three sets of keys, and four cell phones. SA Asselborn took the bag and drove to 1717 South Prairie – the building from which UM1 and UM2

emerged eight days earlier in a car containing $500,000 in cash – to determine if the garage door openers worked at that address. When none of them opened the garage, SA Asselborn spent roughly 10-15 minutes testing the garage door openers on nearby buildings until he finally had success at 1819 South Michigan Avenue, a ten-story apartment and condominium building. SA Asselborn then instructed SAs Loonan and Barnum to meet him at the front entrance, where they gained access to the lobby using a key fob from the bag. Inside the lobby, SA Asselborn tested a key from the same key ring that contained the fob on a number of the building residents' mailboxes, eventually finding its match in the mailbox for unit 702. Believing this to be Correa's home, SA Asselborn contacted GS Laverty and asked if Correa would consent to a search of the unit. At about 4:50pm, in a small interview room where Correa was not handcuffed, GS Laverty asked Correa if the agents could search unit 702. Correa replied, "go ahead and search it," but refused to sign a written consent form. SA Asselborn and the other agents then conducted the search.

Using keys from the bag he recovered from the Jeep, SA Asselborn opened the front door to the one-bedroom unit. In the kitchen, agents recovered numerous items typically used in the packaging of narcotics for sale on the street, including: zip lock bags, heat seal bags, a heat sealer, rubber gloves, a rubber mallet, a rolling pin, two digital scales, and a grinder with white powdery residue. In addition, agents found checks in the name of Saul Melero, mail addressed to Saul Melero, Saul Melero's birth certificate, a receipt for furniture and a utility bill for another address in Saul

Melero's name, a marriage certificate for Saul Melero and Veronica Martinez, a court order from a case captioned Veronica Martinez Melero v. Saul Melero, a box of checks in the name of Marcelina Sanchez, and utility bills to Alfredo Melero for unit 702. In the living room, agents found a piece of mail from the U.S. government addressed to Saul Melero that contained a passport photograph, as well as a piece of paper that appeared to be a drug ledger. SA Asselborn used keys from the bag to open the locked bedroom door and a black hard plastic case found on the bedroom floor. The bedroom contained marijuana, two kilo presses, and boxes of Dormin. The locked black box contained 1.9 kilograms of a substance that field tested positive for cocaine, 1.4 kilograms of a substance that field tested positive for heroin, 538 grams of a substance that tested positive for marijuana, a bag of pills that field tested positive for Ecstacy and methamphetamine, 18 boxes of Dormin that contained 72 capsules each, a bottle of Inositol (a cutting agent for cocaine), two breathing masks, and a .32 caliber semiautomatic handgun.

Agents showed photos of Correa to neighbors, who believed him to be a resident of unit 702. One neighbor said she had seen packages in the mailroom addressed to S. Melero of unit 702. After the search, one of the neighbors approached the agents to inform them that the other resident of unit 702 was standing outside on Michigan Avenue in front of a white SUV. The neighbor then pointed out the person – who turned out to be Saul Melero – to the agents. Coincidentally, GS Laverty was out front at that time, waiting be let into the building. SA Branum relayed the description of

Melero to GS Laverty, who got in his car and drove down ahead of Melero on the street. With his gun in "low ready position," Laverty ordered Melero to the ground, and other agents arrived and handcuffed him.

II. Analysis

Correa argues that his Fourth Amendment rights were violated and that all evidence must be suppressed because: 1) the agents lacked authority to effectuate a traffic stop for failure to use his left turn signal, 2) the agents lacked both probable cause and reasonable suspicion to lawfully pull him over for a drug offense, 3) he never consented to a search of his vehicle, 4) even if he did, the agents exceeded the scope of that consent, 5) SA Asselborn's taking and use of the garage door opener, fob, and keys constituted an illegal search and seizure, 6) he never consented to a search of unit 702, and 7) even if he did, any of the agents' earlier illegal actions tainted the consent, rendering the search of the apartment unconstitutional. The Government argues that the agents had reasonable articulable suspicion to pull over Correa's Jeep, Correa voluntarily consented to its search, SA Asselborn acted constitutionally with respect to the keys, and Correa consented to a search of unit 702.

Melero argues that: 1) Correa lacked apparent authority to consent to a search of unit 702, and 2) the agents lacked probable cause to arrest Melero. The Government maintains that Correa had both actual and apparent authority to consent to the unit's search and that probable cause supported Melero's arrest.

A. The Lawfulness of the Traffic Stop

In their motion to suppress, Defendants contend that TFO Giorgetti lied when he testified that Correa failed to use his left turn signal, and that, in reality, the stop was unsupported by probable cause of a traffic violation. To attack Giorgetti's credibility, Defendants point to his testimony that he has authority as a Willow Springs, Illinois police officer to conduct traffic stops in Chicago. Defendants cite Illinois law that suggests the inaccuracy of Giorgetti's claim to argue that Giorgetti lied at the suppression hearing, and that Correa's testimony that he did, in fact, use his turn signal should be believed. In response, the Government highlights the various motivations Correa has to lie. In their reply, Defendants argue for the first time that the traffic stop was unlawful because neither his title as a Willow Springs police officer nor his status as a DEA Task Force Officer authorized Giorgetti to conduct the traffic stop.

Of course, if TFO Giorgetti had authority to conduct traffic stops in the city of Chicago, his observation that Correa failed to use his turn signal in the designated left turn lane – an observation that TFO Hollister said Giorgetti announced in real-time over DEA radio and that the Court finds credible – would have given him probable cause to pull over Correa, regardless of pretext or Giorgetti's subjective intentions. See *Wren v. United States*, 517 U.S. 806, 813 (1996) ("[T]he constitutional reasonableness of traffic stops [does not depend] on the actual motivations of the individual officers involved."); see also *United States v. McDonald*, 453 F.3d 958, 961-62 (7th Cir. 2006) ("An officer has

probable cause for a traffic stop when she has an 'objectively reasonable' basis to believe a traffic law has been violated."). The Court need not address the authority issue, however, because the fact that the agents had reasonable articulable suspicion of a drug transaction renders it moot.

DEA Agents may stop and briefly detain a person for investigative purposes if they have reasonable suspicion supported by articulable facts that criminal activity may be afoot. *U.S. v. Sokolow*, 490 U.S. 1, 7 (1989) (relying on *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). Although probable cause means "a fair probability that contraband or evidence of a crime will be found," the level of suspicion required for a *Terry* stop is less demanding. *Id.* In evaluating the legality of the stop, the Court must consider the totality of the circumstances, and the Agents must be able to articulate more than an "unparticularized suspicion or hunch." *Id.* at 7-8.

Here, the DEA agents articulated ample reason to suspect that Correa had engaged or was engaging in an illegal transaction. Agents observed Correa briefly meet in a coffee shop with UM2, who eight days prior placed $500,000 in another man's car after a similarly brief meeting at a restaurant. Agents suspected UM2 of involvement in a large-scale drug and/or money laundering operation being run out of 1717 South Prairie, the suspected "stash house" from which Agents' believed UM2 obtained the $500,000. After the brief meeting between UM2 and Correa, UM2 handed Correa an unknown package, with which Correa then drove off in the direction of 1717 South Prairie. Agents

followed Correa for more than a mile before pulling him over just a few blocks shy of the stash house. These observations made up much more than an unparticularized hunch. Agents articulated specific facts that amounted to an objectively reasonable suspicion that Correa had committed or was about to commit a crime, such that they were justified in initiating an investigatory stop.

B. The Legality of the Search of the Vehicle

Correa contends that he never consented to the search of his Jeep, and that if he did consent, he did so involuntarily after he was ordered out of the car at gunpoint. In the alternative, Correa argues that he only consented to a search for "illegal" items, and that the agents exceeded the scope of his consent when they seized items which are not themselves contraband (i.e. garage door openers and keys).

On the credibility issue of whether Correa consented to the search, the Court finds TFO Giorgetti's account to be the more believable one. The Court bases this on both Giorgetti's demeanor at the suppression hearing and the corroboration of his account provided by TFO Hollister. TFO Hollister testified that while TFO Giorgetti spoke with Correa through the driver's side window, he was standing at the passenger side and heard Correa give consent. Tr. at 157-59. Correa agreed that an agent stood at the passenger side window as he spoke with Giorgetti. *Id.* at 188. Moreover, Correa's account of the traffic stop left the Court questioning his version of events. Correa's testimony suggested that Agent Giorgetti opened all car doors, including the Jeep's rear hatch,

and searched the entire car before finally discovering the multicolored bag containing cocaine. Tr. at 190-92. This version does not comport with how the Court would expect this search to have transpired, given that the traffic stop was effectuated to investigate the contents of the multicolored bag and that the bag's location in the car was already known to the officers. It seems much more likely that the bag would have been the first thing searched by the officers. As such, the Court credits the accounts of TFOs Giorgetti and Hollister and finds that Correa consented to a search of the car.

Further, the Court determines Correa's contention that his consent was involuntary – an argument he raised for the first time in his reply brief – to be without merit. Correa's claim that Giorgetti pointed a gun at his head was contradicted by TFO Hollister, the only other witness present. And the suggestion in Correa's reply brief, Def. Reply at 12, that Giorgetti never advised Correa that he stopped him for a traffic violation is contradicted by Correa's own testimony. Tr. at 187 ("Then he approached my vehicle and told me that it was a traffic stop."). Further, the factors that the Seventh Circuit considers in determining whether a defendant voluntarily consented heavily weigh in the Government's favor: (1) the defendant's age, intelligence, and education; (2) whether the defendant was advised of his constitutional rights; (3) how long the defendant was detained prior to giving consent; (4) whether the consent was immediate, or was prompted by repeated requests by authorities; (5) whether any physical coercion was used; and (6) whether the defendant was in police custody when

he gave his consent." *U.S. v. Pineda-Buenaventura*, 622 F.3d 761, 776 (7th Cir. 2010). Correa was 30 years old at the time of his arrest, is a fluent English speaker from Chicago, and completed two years of high school. Although Correa was not advised that he could refuse consent, he previously had been arrested fifteen times for a variety of offenses, several of which stemmed from traffic stops. Correa consented immediately to Giorgetti's first request, and within a very short time of being pulled over. Finally, no physical coercion was used and Correa was not yet in police custody. Accordingly, the Court finds that Correa consented voluntarily.

Correa's argument that the search and seizure of the garage door openers and keys exceeded the scope of his consent is likewise unpersuasive. The scope of consent "is limited by the breadth of actual consent, and whether the search remained within the boundaries of consent is a question of fact to be determined from the totality of the circumstances." *U.S. v. Long*, 425 F.3d 482, 486 (7th Cir. 2005). TFO Giorgetti asked Correa if he could search the car, and Correa responded, "go ahead." Giorgetti's earlier question as to whether the car contained anything illegal did not somehow limit – as Defendants argue – the breadth of Correa's consent to a search of only those items which were in "plain view," or restrict the items which could be seized to only those which are by themselves illegal. Regardless, Correa testified that TFO Giorgetti was wearing a jacket that said "DEA" on it when he asked for consent, Tr. at 187, so Correa knew that Giorgetti would be searching for drugs. Since a bag large enough to hold several garage door

openers is, of course, large enough to contain drugs, there is no question that the breadth of Correa's consent included a search of the bag.

Correa's argument that the seizure of the garage door openers exceeded the scope of Correa's consent also falls flat. He cites no authority for his argument that a suspect, after giving consent to search his vehicle, can restrict the *seizure* of items to only those that are themselves contraband. In fact, in Defendants' reply brief, they acknowledge that "when, upon authorized inspection, the items at issue reveal themselves to be incriminating or lead to incriminating evidence, they may be seized." Def. Reply at 17. Once Correa consented to the search of the Jeep, the Agents were permitted to seize any contraband or evidence of a crime that they found. See *U.S. v. Loera*, 565 F.3d 406, 411 n.3 (7th Cir. 2009).

Moreover, the automobile exception to the warrant requirement provided SA Asselborn with further justification for his search and seizure. Once TFO Giorgetti discovered the bag of cocaine, the agents had probable cause to search the entire car and seize all evidence of a crime. See *U.S. v. Johnson*, 383 F.3d 538, 545 (7th Cir. 2004). Given the nature of the crimes that the agents were investigating – specifically, a drug and money laundering operation that involved both the switching of cars and access to apartments where the drugs or money are kept – it was reasonable for SA Asselborn to infer that a bag filled with an assortment of garage door openers, keys, and cell phones was evidence. See *U.S. v. Eschweiler*, 745 F.2d 435, 439 (7th Cir. 1984) (finding it lawful for an agent, executing a

search warrant for drugs and money, to seize the key to a safe deposit box after discovering cocaine, since it was reasonable to infer the box may contain cocaine or money from the sale of cocaine); see also *Kykta v. Washington*, No. 96-1799, 1997 WL 58860 at *3 (7th Cir. Feb. 5, 1997) (citing *Eschweiler* as validation of an officer's immediate perception of a connection between five safe deposit box keys and a drug offense; the presence of cocaine made it a reasonable to infer that the safe deposit boxes probably contained drugs and/or proceeds from drug trafficking).

Finally, Defendants' reliance on *Arizona v. Gant*, 556 U.S. 332 (2009) is wholly misplaced. *Gant* placed limitations on vehicle searches performed incident to a recent occupant's arrest, and has no bearing on searches, like the one here, justified by consent and probable cause.

C. SA Asselborn's Use of the Garage Door Openers and Keys

Defendants argue that SA Asselborn's use of the garage door openers and keys, which enabled him to identify unit 702 of 1819 South Michigan Avenue as Correa's home, constituted an illegal search in violation of their Fourth Amendment rights. On a remarkably similar set of facts, however, the Seventh Circuit made clear that the actions taken by SA Asselborn do not offend the Constitution. *U.S. v. Concepcion*, 942 F.2d 1170 (7th Cir. 1991). In *Concepcion*, DEA agents arrested the defendant and seized his keys. *Id.* at 1171. When the agents noticed the name "Concepcion" on the mailbox of a nearby apartment building, they tested Concepcion's keys, one of which opened the door to the

lobby. *Id.* Once inside the common area, the agents tested the other keys and successfully opened the door to apartment 1C. *Id.* Having identified the correct apartment number, agents sought and obtained consent from Concepcion to search the unit. *Id.* The Seventh Circuit found that Concepcion could not have a reasonable expectation of privacy in the common area of the apartment building, because it was shared by other tenants. *Id.* at 1172. Therefore, even the agents' use of keys to enter the locked area did not constitute an unlawful search. *Id.* The Court did, however, deem the agents' use of Concepcion's key in the lock of apartment 1C to be a "search," finding the apartment's keyhole itself to be within the protected zone of privacy, since it reveals personal information and is not accessible to strangers. *Id.* at 1172-73. However, the Seventh Circuit found that the privacy interest in a keyhole is so slight that a "search" of the lock (*i.e.* mere use of the key) need not be supported by probable cause. *Id.* at 1173.

Applying the Seventh Circuit's rationale to Correa and Melero's case, the Court sees no violation of their constitutional rights. As in *Concepcion*, the Defendants had no reasonable expectation of privacy in the common area of the building; therefore, the use of the key fob to enter the lobby was not a search at all. The use of the mail key to determine its match with the box for unit 702 was less of an intrusion into their zone of privacy than the agents' use of Concepcion's key to the unit itself. So though technically a "search," the agents did not need an exception to the warrant requirement to turn the mail key to identify its corresponding unit number. Nor was SA Asselborn's initial use of the

garage door opener at 1819 South Michigan violative of the Fourth Amendment. If the garage was common to other residents of the building, the use of the opener was akin to the use of the key fob and, thus, not a search at all. If the garage was private to unit 702 (although Defendants do not suggest that it was), its use was more like the *Concepcion* agents' use of the key to apartment 1C. In either case, SA Asselborn's actions were lawful.

Concepcion also forecloses Defendants' argument that SA Asselborn somehow improperly interfered with their Fourth Amendment-conferred "possessory interest" in the keys. And to the extent that Defendants challenge SA Asselborn's unsuccessful attempts to open the garages attached to neighboring buildings, they lack a reasonable expectation of privacy in those buildings to do so. See *Minnesota v. Carter*, 525 U.S. 83, 90 (1998).

D. Correa's Consent to Search Unit 702

Having deemed lawful the agents' actions that preceded Correa's alleged consent to search unit 702, all that remains is the credibility issue of whether Correa actually consented to the search. Correa points to the absence of a written consent form and GS Laverty's failure to contemporaneously record the event as evidence that he never consented at all. Though not contemporaneous, GS Laverty did memorialize the event in the DEA report: "At approximately 4:50pm, GS Laverty and TFO Perez spoke with Correa at the Chicago Field Division. GS Laverty, as witnessed by TFO Perez, was granted verbal consent to search unit #702 at 1819 S. Michigan,

Chicago, IL (see DEA 6 written to case file by SA Asselborn, titled 'Post Arrest Interview of Jason Correa on 10-27-11')." Gov. Opp. Ex. A at 3. As noted, the consent was witnessed by both GS Laverty and TFO Perez and contemporaneously relayed to SA Asselborn, who then searched the unit. Further, the Court found the suppression hearing testimony of both GS Laverty and SA Asselborn to be credible. GS Laverty testified, and SA Asselborn's testimony corroborated, that after Correa consented, Laverty immediately called SA Asselborn to relay it. Tr. at 28, 124. Although written consent is not constitutionally required, see *U.S. v. Dean*, 550 F.3d 626, 631 (7th Cir. 2008), GS Laverty testified that he, in fact, asked Correa to sign a consent form, but Correa refused to sign it. Tr. at 125. Moreover, the Defendants have offered (and the Court has found) no reasons to doubt the agents' credibility. On the other hand, the Court found Correa's testimony to be evasive at times and notes his substantial motivation to avoid a conviction by shading the truth. For the reasons given, the Court credits the testimony of GS Laverty and SA Asselborn and finds that Correa voluntarily consented to a search of unit 702.

E. Correa's Authority to Consent to Search Unit 702

Melero argues that Correa lacked apparent authority to consent to a search of the unit. In response, the Government contends that Correa had both apparent and actual authority to consent. "Apparent authority turns on whether the facts available to the officer at the time would allow a person of reasonable caution to believe that the consenting

party had authority over the premises." *U.S. v. King*, 627 F.3d 641, 648 (7th Cir. 2010). Melero asserts, without citing any supporting case law, that mere possession of keys is not enough to bestow apparent authority. Correa, though, possessed more than a mere key to the unit. He had a mailbox key, which suggested that he was using the unit as his mailing address. He also had a working garage door opener that gave him parking privileges at the home, as well as an electronic key fob that allowed him access to the lobby. The fob and garage door opener are particularly indicative of authority, because they are much more difficult to copy than a typical metal house key, making it unlikely that they were someone else's spare set. Possession of these items, therefore, suggests both "use of and access to the property," which are the "touchstone[s] of authority." *U.S. v. Chaidez*, 919 F.2d 1193, 1201 (7th Cir. 1990). Finally, Correa was only one block from the unit when the agents pulled him over, and by Correa's own admission, he was driving to the unit's exact intersection. Tr. at 214. That proximity only added to the reasonableness of the agents' belief that he had authority over the premises.

While certainly possible that the unit was not Correa's primary residence – as implied by the fact that SA Asselborn recovered the keys from a bag that included "a bunch" other keys and garage door openers – that possibility does not render Correa without authority to consent to its search. *King*, 627 F.3d at 648 (quoting *U.S. v. Matlock*, 415 U.S. 164, 171 n. 7 (1974) ("The authority which justifies the third-party consent does not rest upon the law of property . . . but rests rather on mutual use of the property by persons

generally having joint access or control for most purposes.")). Nor, as Melero suggests, did the agents have a duty to inquire further as to Correa's authority. *Id.* (citing *U.S. v. Pineda-Buenaventura*, 622 F.3d 761, 777 (7th Cir. 2010) (making clear that "officers have a duty to inquire further as to a third party's authority only 'when the circumstances make the authority questionable in the first place'"). For these reasons, the Court is convinced that a person of reasonable caution would believe Correa had authority over the premises. Because the Court finds that Correa had apparent authority to consent, the agents' search of unit 702 was proper and the Court need not determine whether Correa also had actual authority.

F. Probable Cause to Arrest Melero

Lastly, Melero argues that the agents lacked probable cause to arrest him, because the neighbor who visually identified Melero as an occupant of the unit did not identify him by name. Melero, however, cites no support for this proposition. "[P]olice may arrest someone outside of the home when they have probable cause to believe that a suspect has committed, is committing, or is about to commit an offense." *U.S. v. Slone*, 636 F.3d 845, 847 (7th Cir. 2010). Probable cause is defined "in terms of facts and circumstances sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense." *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975) (internal quotations omitted). Here, agents had ample reason – including a birth certificate, marriage certificate, passport photo, and court documentation – to believe that a person named Saul Melero lived in the

unit. The unit, of course, contained a mountain of evidence connecting its occupants to illegal drug activity. Neighbors had already demonstrated their familiarity with the residents of unit 702 by identifying Correa from a photo as one of the unit's two residents. So although the neighbor did not know Melero by name, the agents could reasonably conclude that the man he identified was Saul Melero. Regardless, the agents had probable cause to arrest anyone they believed to be a resident of unit 702 – Saul Melero or not – given the criminal activity that was clearly taking place inside it. Because it was entirely reasonable of the agents to believe Melero to be a resident of the unit, and thus to be involved in substantial criminal activity, they had probable cause to arrest him.

III. Conclusion

For the reasons stated above, Defendants' motion to suppress [74, 75] is denied.

Dated: October 17, 2013

/s/ Robert M. Dow, Jr.
Robert M. Dow, Jr.
United States District Judge

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

No. 16 2316

[Filed January 4, 2019]

UNITED STATES OF AMERICA,)
Plaintiff Appellee,)
)
v.)
)
JASON CORREA,)
Defendant Appellant.)
)

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 11 CR 0750 1

Robert M. Dow, Jr.,
Judge.

Before

FRANK H. EASTERBROOK, *Circuit Judge*

KENNETH F. RIPPLE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

O R D E R

On consideration of defendant Jason Correa's petition for rehearing and suggestion for rehearing en banc, filed on December 19, 2018, no judge in active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to deny the petition for rehearing.

Accordingly, the petition for rehearing and suggestion for rehearing en banc filed by defendant Jason Correa is **DENIED**.