

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA)
)
)
 v.) Criminal No. 12-200-9 (JAF)
)
 [9] Ismael E. Cruz-Ramos,)
 a/k/a "Chapu,")
)
 Defendant.)

OPINION AND ORDER

WILLIAM E. SMITH, United States District Judge.*

I. Background

Defendant Ismael E. Cruz-Ramos, a/k/a "Chapu," was indicted, along with thirty-two others, on charges relating to his membership and participation in the criminal organization referred to as La Organizacion de Narcotraficantes Unidos, or La ONU. Cruz-Ramos was charged with one count of violating the Racketeer Influenced and Corrupt Organizations Act ("RICO"); one count of conspiracy to possess with the intent to distribute 280 grams or more of cocaine base ("crack"), five kilograms or more of cocaine, one kilogram or more of heroin, and a detectable amount of marijuana, all within 1,000 feet of a housing facility owned by a public housing authority; one count of conspiracy to

* The Honorable William E. Smith, District Judge for the U.S. District Court for the District of Rhode Island, sitting by designation.

possess firearms during and in relation to narcotics trafficking offenses; one count of committing a violent crime in aid of racketeering activity, namely the murder of Christian Toledo Sanchez, a/k/a "Pekeke;" and one count of using and carrying a firearm in relation to a crime of violence. (Superseding Indictment, ECF No. 196.) On January 21, 2013, Cruz-Ramos moved to suppress all tangible evidence and statements resulting from the Puerto Rico Police Department's ("PRPD") warrantless entry and subsequent search of both Cruz-Ramos's residence and a red Ford Expedition located on the property. (Mot. to Suppress, ECF No. 554.) The search yielded a significant cache: four high-powered rifles were found in a flower stand (also referred to as a flower box) on the terrace adjacent to a door to the residence, and seven handguns, 1,064 decks of heroin, eighty baggies of cocaine, twenty-one plastic containers of marijuana, 740 orange top vials of crack, and 253 purple top vials of crack were found in the Expedition parked in the residence's rear carport. (United States' Resp. in Opp'n to Mot. to Suppress ¶ 4, ECF No. 594.)

The Court held a two-day evidentiary hearing via video link on Thursday, January 31, 2013 and Friday, February 1, 2013. With trial scheduled to begin the following Tuesday, February 5,

2013,¹ and the parties' need for a ruling in advance of trial, the Court orally announced its decision at a status conference on Monday, February 4, 2013: the firearms discovered in the flower stand were suppressed but all other evidence, including Cruz-Ramos's statements to the police, was admissible. Due to the complex nature of the issues involved, the Court informed the parties that it would file this written opinion further explaining its determination.

For the reasons set forth herein, the motion to suppress was GRANTED IN PART and DENIED IN PART.

II. Findings of Fact

The following facts are derived from the testimony of PRPD Lieutenant Luis David Flores-Ortiz, PRPD Officer Carlos A. Jimenez-Rolon, and Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") Agent Fernando Vazquez, the only witnesses who testified during the evidentiary hearing.

On August 28, 2010, at approximately 2:30 a.m., PRPD Officer Carlos A. Jimenez-Rolon arrived at the Las Dalias housing project - a housing project with one of the highest

¹ The trial actually began two days later, on February 7, 2013, after seven of the ten Defendants pleaded guilty on February 5, 2013. After seven days of trial, during which the government presented overwhelming evidence of the remaining Defendants' guilt through the testimony of cooperating witnesses, police officers, and experts, the jury returned a verdict of guilty on all counts against each Defendant on February 15, 2013.

crime rates amongst Puerto Rican housing projects - to conduct a "preventative round." (Hr'g Tr. 51:25-52:3, Feb. 1, 2013 (hereinafter "Day 2 Tr."), ECF No. 675.) During the round, Officer Jimenez-Rolon observed an individual walking, so he exited his marked car and told the individual to stop. (Id. at 52:6-8.) Instead of stopping, the individual began to run, and Officer Jimenez-Rolon chased after him. (Id. at 52:8.) When the individual reached building sixteen, he stuck his hand in his pocket and threw an unidentified item toward the second story. (Id. at 52:9-10.) At this point, Officer Jimenez-Rolon realized he would be unable to catch the individual, so he instead chose to climb up to the second story of the building to seize the item that was thrown. (Id. at 52:9-16.) On the second floor, Officer Jimenez-Rolon discovered a second individual (the "Informant") lying down with a firearm to his right side. (Id. at 52:16-17.) Officer Jimenez-Rolon placed the Informant under arrest and transported him back to the police station. (Id. at 52:25-53:2.) The arrest occurred at 2:45 a.m., and they arrived at the PRPD police station around 3:00. (Id. at 52:22-23, 53:3; see also Hr'g Tr. 7:21-8:6, Jan. 31, 2013 (hereinafter "Day 1 Tr."), ECF No. 656.)

Upon arriving at the police station, Officer Jimenez-Rolon began to interview the Informant. The Informant stated that if the PRPD could provide security to his family, he would tell the

officer where Edwin Bernard Astacio ("Bernard") was located. (Day 2 Tr. at 53:6-23.) Bernard, one of the most wanted fugitives in Puerto Rico, had outstanding arrest warrants at both the state and federal level for, among other things, shooting down a municipal helicopter.² (Id. at 53:22-23; Day 1 Tr. at 9:15-24, 44:10-21.) At that point, Officer Jimenez-Rolon alerted his supervisor, Lieutenant Luis David Flores-Ortiz,³ and Lieutenant Flores-Ortiz continued the interview. (Day 2 Tr. at 53:24-54:5.) The Informant reiterated to Lieutenant Flores-Ortiz that he knew where Bernard was located and that, in exchange for this information, the Informant wanted protection for himself and his family. (Day 1 Tr. at 8:18-25, 10:4-9.) Lieutenant Flores-Ortiz agreed to the Informant's request for protection. (Id. at 10:4-9.)

The Informant then proceeded to tell Lieutenant Flores-Ortiz that Bernard was hiding in a house in the Berwind Estates subdivision in Rio Piedras, Puerto Rico, along with at least four other people - Chapu (Cruz-Ramos), two females, and possibly other unidentified males - but that he would not be

² Bernard is a co-Defendant in this case, but he, along with two other Defendants (the "Capital Defendants"), was severed from the Defendants tried before the Court on February 7.

³ On August 28, 2010, Flores-Ortiz held the rank of sergeant, but he has since been promoted to lieutenant. The Court will refer to him using his current rank.

there for long. (Id. at 10:11-18, 10:24-25, 12:24-13:1.) According to the Informant, once the sun came up, Bernard would leave through the rear of the residence and go to the Las Dalias housing project, at which point the PRPD would lose their opportunity to arrest him. (Id. at 12:17-19.) The Informant also warned that Bernard would be found with "many weapons, firearms, and controlled substances." (Id. at 10:14-15.) Regarding these items, the Informant provided detailed information as to exactly where they would find the firearms - in the flower box on the terrace and in a red Ford Expedition (id. at 13:12-13) - and what firearms would be found - long weapons, such as rifles, and sidearms such as pistols, Glocks, Berettas, FN's, and more. (Id. at 13:16, 19-21.) Four rifles, according to the Informant, would be inside the terrace flower box. (Id. at 13:24-14:2; Day 2 Tr. at 57:17-18.) The red Expedition, meanwhile, would contain a hidden compartment with the remaining sidearms and the drugs. (Day 2 Tr. at 60:25-61:8.) The Informant further cautioned Lieutenant Flores-Ortiz that Bernard would open fire at the PRPD as soon as he saw them, and thus their lives would be in constant danger. (Day 1 Tr. at 11:16-19.) The entire interview between Lieutenant Flores-Ortiz and the Informant lasted between twenty and twenty-five minutes and ended between 3:30 and 4:00 a.m. (Id. at 14:5-12.)

Prior to this encounter, Lieutenant Flores-Ortiz had never met nor spoken to the Informant. (Id. at 34:18-22.) To the Lieutenant's knowledge, the Informant had never previously provided information about criminal activity, and the PRPD had never relied on this Informant to make arrests or seize contraband. (Id. at 34:23-35:4.) Thus, neither the PRPD nor Lieutenant Flores-Ortiz had any relation of trust with the Informant. (Id. at 35:5-6.) Nevertheless, Lieutenant Flores-Ortiz believed the Informant to be reliable. He based this conclusion on the fact that both the Informant and Bernard came from the Las Dalias housing project, and thus the Informant could likely be part of Bernard's "close-knit group" and know Bernard's whereabouts. (Day 2 Tr. at 28:17-23.)

The PRPD decided to corroborate the Informant's information. (Day 1 Tr. at 14:21.) Officer Jimenez-Rolon was instructed to have the Informant take him to the house where Bernard was located. (Id. at 16:5-14, 55:8-13; Day 2 Tr. at 54:12-22.) The Informant directed Jimenez-Rolon to Berwind Estates, a residential subdivision with a security hut (a guardhouse) and camera at its entrance. (Day 1 Tr. at 17:8-15, 18:17-18.) To reach Berwind Estates, Officer Jimenez-Rolon needed to drive by at least two of the three nearby housing

projects - Las Dalias, El Prado, and Monte Hatillo.⁴ (Id. at 23:11-21.)

Once Officer Jimenez-Rolon and the Informant entered Berwind Estates and passed through the manned security hut (id. at 52:6-9), the Informant pointed out a "good-sized residence" with "lots of vegetation behind it." (Id. at 17:7-8.) The vegetation extended not only behind the house but also to the side of it. (Id. at 19:11-12.) This vegetation was relatively thick, but if someone was in it, they could be seen from certain angles. (Day 2 Tr. at 7:17-24.) The rear of the residence consisted of an entrance into the house, a cement driveway that became terra-cotta flooring as it approached the residence, and a carport. (Day 1 Tr. at 21:5-8; Day 2 Tr. at 18:21-19:2.) The terrace described by the Informant was also visible from the rear of the house.⁵ (Day 1 Tr. at 21:18-19.)

Having corroborated the details provided by the Informant regarding the residence, Officer Jimenez-Rolon transported the Informant back to the police station, and the PRPD proceeded to

⁴ At the suppression hearing, Lieutenant Flores-Ortiz was provided an aerial photograph of the geographic location which included Berwind Estates and the surrounding areas, including the three housing projects. (Exhibit 11.) The Lieutenant marked the residence with an "X" and circled the three housing projects described as being located "around the residence." (Day 1 Tr. at 23:11-21.)

⁵ It is unclear if the terrace was actually in the rear of the residence or on the side of the residence.

act on the Informant's information and immediately return to the residence to arrest Bernard. (Id. at 55:8-13; Day 2 Tr. at 54:23-25.) According to Lieutenant Flores-Ortiz, it was vital that the PRPD act before daylight for a variety of reasons. First, Bernard would leave once the sun came up. (Day 1 Tr. at 32:7-17.) The vegetation on the rear and side of the residence posed a particular concern because "it was through there that the individuals were going to be trying to escape" (id. at 22:3-8), and it could be possible for someone to hide in the vegetation. (Day 2 Tr. at 29:18-19.) Thus, if the sun rose and Bernard made it to the vegetation, it would be very difficult for the PRPD to find him again. Second, Bernard was the most-wanted fugitive in Puerto Rico, so no time could be wasted. (Day 1 Tr. at 32:7-17.) Third, Bernard was extremely dangerous - he had shot down a police helicopter with a firearm - and was an absolute danger both to society and to the PRPD. (Id.) Finally, the PRPD was concerned that other members of La ONU would arrive from the surrounding housing projects to prevent the PRPD from arresting Bernard. As already mentioned, Las Dalias is known in Puerto Rico for having one of the highest crime rates amongst housing projects. (Day 2 Tr. at 52:1-3.) Prior to August 28, 2010, Lieutenant Flores-Ortiz had effectuated a number of arrests at Las Dalias, and many related to crimes involving firearms and controlled substances. (Day 1

Tr. at 24:3-25.) In addition, two weeks earlier, on August 14, 2010, the PRPD had attempted to arrest El Jincho, a resident of Las Dalias, at the El Prado housing project. (Id. at 25:13-20.) During that arrest, upon approaching the housing project, the PRPD was fired upon for more than two or three minutes, and as a result, the PRPD was unable to arrest El Jincho. (Id. at 25:23-26:3.) Like El Jincho, Bernard was affiliated with both the El Prado and Las Dalias housing projects, so the PRPD was concerned that a similar occurrence could happen here. (Id. at 26:8-12.)

With the decision to act made, the PRPD proceeded back to Berwind Estates, arriving around 5:00 a.m. (Id. at 11-16.) The officers established a perimeter surrounding the residence and extending out to the guardhouse. (Id. at 50:11-22, 51:21-52:2.) Officer Jimenez-Rolon was stationed as part of the perimeter team. (Day 2 Tr. at 55:20-24.) At the same time, an entry team, consisting of six officers, was preparing to enter the side of the residence. (Day 1 Tr. at 26:16-18, 27:3-5.) Though the PRPD considered this to be the most dangerous part of the house, it also provided the easiest access for the PRPD to make the arrest of Bernard. (Id. at 26:18-20.) Around 5:20 to 5:30 a.m., the PRPD entry team entered the property through the vegetation on the side of the house, crossed over the terracotta floored portion of the carport driveway, and proceeded to the door located on the side terrace. (Id. at 15:17-19, 26:22-

27:7; Day 2 Tr. at 17:15-21.) In order to enter the carport area, the PRPD had to jump a cement wall (Day 2 Tr. at 18:17-20), and to gain entrance to the terrace, the PRPD had to open a closed (but not locked) gate. (Id. at 19:3-13.) From the terrace, the entry team observed through a window that an unidentified female was in the kitchen area. (Day 1 Tr. at 27:16-20.) The team indicated to the female that they were police officers and that she was not to make a sound. (Id. at 27:21-24.) They asked her to open the door, which she did, and then asked her where Bernard was located. (Id.) The unidentified female told the PRPD that Bernard was in the bedroom, so the entry team moved in that direction. (Id. at 28:3-5.) On the way to the bedroom, other males - including Cruz-Ramos - came out of the adjacent rooms, and the PRPD detained them. (Id. at 28:5-8.) The PRPD entry team then entered the bedroom and placed Bernard, who was in the bed either asleep or just half-awake, under arrest. (Id. at 28:9-12.) Located close to Bernard was a .40 caliber pistol. (Id. at 28:17-18, 28:24-29:1.) Also in the bedroom was another unidentified female. (Id. at 28:19-20.) Once Bernard was arrested and secured, the other detained occupants of the house were also arrested for harboring a fugitive. (Day 2 Tr. at 21:18-24.) Neither Bernard nor any of the other occupants was immediately taken to the police station; rather "some minutes

went by" before they were transported from the residence by a transport team. (Id. at 22:2-8.)

With the occupants arrested and the house secure, a member of the entry team then yelled "clear," at which point Officer Jimenez-Rolon left his post on the perimeter and entered onto the terrace. (Id. at 56:22-23.) Acting on the information provided by the Informant, Officer Jimenez-Rolon went over to the flower box, removed the dirt from the top, and opened the plastic box hidden under the dirt. (Id. at 57:21-23; Day 1 Tr. at 30:5-7.) Just as the Informant described, inside were four longarm rifles, including an AK-47, which Officer Jimenez-Rolon immediately seized. (Day 2 Tr. at 57:23-24; Day 1 Tr. at 30:14.) The guns were superficially covered with dirt, so the rifles were not visible until removing or moving the dirt around. (Day 1 Tr. at 31:8-11, 31:22-32:2; Day 2 Tr. at 75:14-15.) According to Officer Jimenez-Rolon, he seized the rifles because the Monte Hatillo, Monte Park, and Las Dalias housing projects were all located close to Berwind Estates - especially Las Dalias which could be accessed through the vegetation behind the residence - and the PRPD did not want anybody coming in, grabbing the rifles, and assaulting the officers with them. (Day 2 Tr. at 57:25-58:12.) Officer Jimenez-Rolon believed this was a strong possibility, as he had previously been fired upon when attempting to arrest someone from a La ONU controlled

housing project and he knew that people have tried to prevent the PRPD from effectuating arrests in the past. (Id. at 59:6-14.)

After seizing the weapons from the flower stand, Officer Jimenez-Rolon entered the house. (Id. at 59:25.) Continuing to act on the Informant's intelligence, Officer Jimenez-Rolon walked into the foyer and through a glass door which opened onto the residence's rear carport, where a red Ford Expedition was parked. (Id. at 60:1-2, 78:8-20.) The Expedition was parked in front of two other vehicles, a gold car and another SUV, so it could not be easily accessed without following the path that Officer Jimenez-Rolon took. (Id. at 78:21-79:11.) Inside the Expedition, underneath a rug, Officer Jimenez-Rolon discovered a hidden compartment containing weapons, ammunition, and drugs; all of the evidence was seized. (Id. at 61:11-22, 63:18, 76:14-18.) The PRPD also seized two bulletproof police vests found on the perimeter of the residence near the vegetation. (Id. at 61:23-63:1.)

Once the arrests were effectuated and the flower stand and Expedition were searched, additional PRPD officers arrived at the residence. These officers arrived around 6:00 or 6:30 a.m., after the sun had come up, and were there for one of two purposes: either to help with the transport of the arrestees back to the police station or to take pictures of the scene.

(Id. at 32:15-34:2.) The PRPD needed these additional officers to transport the arrestees because the route from Berwind Estates to the PRPD police station required the officers to drive on a road containing dangerous housing projects on either side. (Id. at 34:3-16.) The PRPD officers who took pictures of the crime scene remained at the residence for approximately thirty to forty-five minutes after the arrestees were removed. (Id. at 36:14-22.)

Following his arrest, Cruz-Ramos was taken to the PRPD narcotics unit in San Juan, Rio Piedras. Later that morning, between 10:30 a.m. and noon, he was placed in a small room with ATF Agent Vazquez and two FBI task force officers. (Id. at 85:9-13, 89:9-14.) The interview was not recorded. (Id. at 98:12-14.) Agent Vazquez spoke with Cruz-Ramos for fifteen or twenty minutes and described the atmosphere as "calm and relaxed." (Id. at 85:15-18.) Cruz-Ramos did not appear to be under the influence of drugs or alcohol, and he was never threatened or tricked into talking. (Id. at 85:19-86:2.) Agent Vazquez verbally advised Cruz-Ramos of his constitutional rights, and Cruz-Ramos acknowledged understanding those rights, though he refused to sign any paperwork confirming this acknowledgement and understanding. (Id. at 86:3-21.) Thus, there is no written document confirming that Cruz-Ramos received and/or waived his constitutional rights. (Id. at 90:21-92:8.)

Agent Vazquez testified that at no point did Cruz-Ramos ask for a lawyer, and Agent Vazquez understood Cruz-Ramos to be voluntarily speaking with him. (Id. at 88:15-19.)

Cruz-Ramos told the agents that he lived in the house where he and Bernard were arrested but was originally from the Las Gladiolas public housing project. (Id. at 92:21-93:5, 87:19-21.) Being from Las Gladiolas, Cruz-Ramos admitted being affiliated with a group of housing projects that were partners and supported each other. (Id. 87:20-25.) He also admitted carrying a Smith & Wesson MP for personal defense and having "like eighteen rifles hidden or buried somewhere." (Id. at 87:12-14, 88:5-9.) Finally, Cruz-Ramos told the agents that he knew Bernard because he and Bernard hung out together in different pubs in the San Jose area and because Bernard was talking with Cruz-Ramos's stepdaughter. (Id. at 87:6-9.) Cruz-Ramos knew Bernard was wanted by the police and had tried to arrange for Bernard to get a lawyer and surrender himself. (Id. at 86:25-87:5, 87:15-21.)

Throughout the operation, the PRPD never obtained, or even attempted to obtain, a search warrant for either the residence in Berwind Estates or the red Expedition. (Id. at 74:9-11.) According to Lieutenant Flores-Ortiz and Officer Jimenez-Rolon, it is extremely difficult to get a search warrant in Puerto Rico, particularly during non-business hours. Indeed,

Lieutenant Flores-Ortiz explained that in order to get a warrant, PRPD must "conduct several surveillances over a period of days, a lot of photographs, videos; and the process gets complicated. It's a process that takes a great deal of time." (Id. at 40:15-20.) Moreover, the PRPD would have needed the search warrant extremely quickly in the early morning hours on Saturday, August 28, 2010. Considering that the district attorneys do not arrive at the CMID⁶ until after 9:00 a.m. (Day 1 Tr. at 46:20-47:1; Day 2 Tr. at 38:25-39:6), at that early hour the PRPD was "not going to be getting a search warrant, not to mention that those warrants take several hours, a great many hours, to obtain." (Day 1 Tr. at 15:5-10, 45:3-23; Day 2 Tr. at 73:23-74:4.) The officers did acknowledge that assistant district attorneys are on duty twenty-four hours a day, but those assistant district attorneys are only available for specific types of situations, such as murders. (Day 1 Tr. at 49:11-14; Day 2 Tr. at 39:5-13.)

The PRPD also never called the federal agencies, the U.S. Marshals, or the U.S. Attorney's Office to try and obtain a federal search warrant. (Day 1 Tr. at 44:22-45:2-5.) Agent Vazquez testified that federal search warrants can be obtained twenty-four hours a day and that federal magistrate judges can

⁶ The CMID is the Puerto Rico office where the PRPD officers go to file complaints and begin the process of obtaining search warrants. (Day 2 Tr. at 39:18-40:7.)

issue warrants over the phone if exigent circumstances exist. (Day 2 Tr. at 97:16-22.) Lieutenant Flores-Ortiz conceded that, at the time, he did not know federal magistrate judges were available to issue warrants at all hours. (Day 1 Tr. at 46:3-6.)

III. Discussion

Cruz-Ramos moved for the suppression of three sets of evidence - the rifles found in the flower stand on the terrace, the guns, ammunition, and drugs found in the red Expedition, and the post-arrest statements made to Agent Vazquez - due to the PRPD's alleged violation of his Fourth Amendment rights. The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," U.S. Const. amend. IV, and it is a basic tenet of Fourth Amendment law that "searches conducted without a warrant are presumptively unreasonable." United States v. Cruz Jimenez, 894 F.2d 1, 6 (1st Cir. 1990). This is especially true when the search involves a home. E.g., Payton v. New York, 445 U.S. 573, 589-90 (1980); United States v. Weidul, 325 F.3d 50, 53 (1st Cir. 2003). The Supreme Court has, however, recognized certain exceptions to the warrant requirement, which can validate an otherwise illegal search and/or seizure. See, e.g., Kentucky v. King, 131 S. Ct. 1849, 1856 (2011); Payton, 445 U.S. at 590; Cruz Jimenez, 894 F.2d

at 6. Assuming the defendant has standing, the burden shifts to the government to demonstrate that one or more of these exceptions is applicable. Cruz Jimenez, 894 F.2d at 6.

A. Standing

"The concept of standing under the Fourth Amendment refers to defendant's burden of proving a legitimate expectation of privacy as a prerequisite to challenge unlawful police conduct." United States v. Gomez-Vega, 519 F. Supp. 2d 241, 255 (D.P.R. 2007). It is a "shorthand method of referring to the issue of whether the defendant's own Fourth Amendment interests were implicated by the challenged governmental action." Id. To satisfy the standing requirement, the burden is on the defendant to establish that he "had reasonable expectation of privacy in the area searched and in relation to the items seized." Id. (citing United States v Aguirre, 839 F2d 854, 859 (1st Cir. 1988); United States v. Mancini, 8 F.3d 104, 107 (1st Cir. 1993)).

Here, the government argued that Crus-Ramos lacked standing to challenge the PRPD action regarding both the residence and the red Expedition because he never asserted an ownership interest or a legitimate expectation of privacy in either the residence or the vehicle.

1. The Residence

The government first argued that Cruz-Ramos lacked standing to challenge the entry into the residence and the subsequent search of the flower stand because he did not put on any evidence that he owned the house, lived in the house, or had a reasonable expectation of privacy in the house. In fact, even when confronted with notice that the government was going to argue a lack of standing, Cruz-Ramos did not submit an affidavit, put on any witnesses, cross-examine government witnesses, or offer any exhibits which could have asserted standing to challenge the entry into and search of the residence. ATF Agent Vazquez did testify that Cruz-Ramos told the agents that he lived in the house where he and Bernard were arrested (Day 2 Tr. at 92:21-93:5), but Cruz-Ramos did not contend that this statement established his standing. Instead, he made two other arguments on this point.

First, Cruz-Ramos argued that the government conceded in its opposition papers that the PRPD entered Cruz-Ramos's residence to arrest Bernard, and that this concession was enough to establish standing. This argument fails. In United States v. Zermeno, 66 F.3d 1058, 1062 (9th Cir. 1995), the Ninth Circuit explained:

A defendant is not entitled to rely on the government's allegations in the pleadings, or positions the government has taken in the case, to

establish standing. [United States v. Singleton, 987 F.2d 1444, 1449 (9th Cir. 1993).] The government's assertions in its pleadings are not evidence.

While neither the District of Puerto Rico nor the First Circuit has addressed this issue, the logic of Zermeno is persuasive and has been cited favorably throughout the country. See, e.g., United States v. Moffett, 84 F.3d 1291, 1294 (10th Cir. 1996); United States v. Henry, Criminal Indictment No. 1:09-CR-0522-1-TCB-GGB, 2010 WL 5559207, at *5 (N.D. Ga. Dec. 7, 2010); see also United States v. Ruth, 65 F.3d 599, 604-05 (7th Cir. 1995) (not citing Zermeno but finding that defendant cannot satisfy his burden of establishing standing by relying solely on submissions by the government). Thus, the Court found that the government's statements in its pleadings and oppositions regarding ownership of the residence were not evidence and could not be used by Cruz-Ramos to establish standing.

Cruz-Ramos's second contention, however, had some merit. During argument, Cruz-Ramos directed the Court to criminal case number 10-305, the case where Cruz-Ramos was charged for harboring Bernard. (Day 2 Tr. at 106:17-107:3.) Docket entry twenty-six of that case is the signed plea agreement between the government and Cruz-Ramos, and pages eight and nine contain the agreed-upon statement of facts. In this statement of facts, the parties jointly submitted to the court that "[o]n August 28, 2010, pursuant to the above-mentioned federal Arrest Warrant,

Officers from the Special Operations Unit of the Police of Puerto Rico arrested Edwin Bernard Astacio-Espino on Calle Hostos corner with Marginal Montecarlo, Berwind Estates, San Juan, Puerto Rico, at the residence of Ismael E. Cruz-Ramos, the defendant." See Plea Agreement, Criminal No. 10-305(JAG), ECF No. 26 at 8.

By directing the Court to the signed plea agreement, Cruz-Ramos was implicitly asking the Court to take judicial notice of the facts contained in it. Rule 201 of the Federal Rules of Evidence permits the Court to take judicial notice of facts that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. Rules of Evid. 201(b)(2). The facts contained in filed pleadings in other cases constitute such facts. See United States v. Epperson, 528 F.2d 48, 50 (9th Cir. 1975) (agreeing with the district judge's decision "to take judicial notice of its records that a Harold Clayborn had pleaded guilty to the above robbery"); Alexander v. City of Greensboro, No. 1:09-CV-293, 2011 WL 3360644, at *6 (M.D.N.C. Aug. 3, 2011) ("Therefore, even taking judicial notice of the filings in the companion action, the court cannot say as a matter of law that the ten Plaintiffs lack contractual standing for failure to file EEOC Charges."); Friedman v. Giles Cnty. Adult-Oriented Establishment Bd., No. 1-00-0065, 2005 WL 6786279, at *1 n.4 (M.D. Tenn. Sept. 29, 2005) ("In a companion

case to this lawsuit . . . testimony at the bench trial . . . of that case revealed that Ms. Edwards as of that date had not worked at Club Utopia for over six months. The Court therefore takes judicial notice of this fact . . . and finds that Ms. Edwards lacks standing to assert her claims as a plaintiff in the instant case."). Accordingly, the Court took judicial notice of the signed plea agreement in criminal case number 10-305. The statement of facts contained in the plea agreement states that Bernard was arrested in the residence of Cruz-Ramos, and that, together with Cruz-Ramos's statement to Agent Vazquez to the same effect, was enough to satisfy the standing requirement. Therefore, Cruz-Ramos had standing to challenge the PRPD's warrantless entry into his residence as well as the subsequent search of the flower box.

2. The Expedition

The government also argued that Cruz-Ramos failed to establish standing to challenge the search of the red Ford Expedition. Indeed, Cruz-Ramos admitted that there was no evidence in the record that he owned or had a legitimate expectation of privacy in the Expedition. (Day 2 Tr. at 109:13-23.) Cruz-Ramos's argument, however, was that none was necessary: because the car was on his property (as opposed to a public street), and because he had established standing to

challenge warrantless searches of his property, individualized standing for the vehicle was not needed. (Id. at 107:19-108:6.)

Cruz-Ramos was correct. In Alderman v. United States, the Supreme Court held:

If the police make an unwarranted search of a house and seize tangible property belonging to third parties - even a transcript of a third-party conversation - the homeowner may object to its use against him, not because he had any interest in the seized items as "effects" protected by the Fourth Amendment, but because they were the fruits of an unauthorized search of his house, which is itself expressly protected by the Fourth Amendment. Nothing seen or found on the premises may legally form the basis for an arrest or search warrant or for testimony at the homeowner's trial, since the prosecution would be using the fruits of a Fourth Amendment violation.

394 U.S. 165, 176-77 (1969) (emphasis added). The District of Kansas subsequently applied this logic to an automobile belonging to a third party but located on a defendant's property in United States v. Cowdin, 984 F. Supp. 1374 (D. Kan. 1997). There, the court agreed with defendant's argument that while he "generally would lack standing to challenge a search of his sister's car, . . . the search of his sister's car was a fruit of the unlawful search of defendant's residence and therefore any evidence obtained in the subsequent search of the car should be suppressed." Id. at 1377.

In the present case, there was no evidence in the record that Cruz-Ramos owned the Expedition or had a legitimate

expectation of privacy in it.⁷ But, as discussed above, Cruz-Ramos did have standing to challenge the search of the residence and the premises. The Expedition was located on the red terracotta portion of residence's rear carport. (Day 2 Tr. at 60:1-2, 78:8-20.) It was parked in front of two other vehicles and was not easily accessible; indeed, Officer Jimenez-Rolon needed to enter the house, walk through the foyer, and back out through a glass door just to access the Expedition. (Id. at 78:8-79:11.) Thus, the Expedition was clearly on Cruz-Ramos's property and within the curtilage. The relevant inquiry, therefore, was not whether Cruz-Ramos had an interest in the Expedition, but rather whether he had an interest in the property on which the Expedition was located, and it was obvious that he did. See United States v. Ramirez, 724 F. Supp. 580, 583 (N.D. Ill. 1989) ("[T]he government cannot escape judicial scrutiny by urging (as it does) that Ramirez had disclaimed ownership of the suitcase and therefore lacks standing to complain - for it is not the status of the suitcase that is relevant at this stage of the analysis. What is relevant instead is that Ramirez certainly had the required proprietary interest in the locker [in which the suitcase was located], so

⁷ At oral argument, Cruz-Ramos stated that he had been provided discovery by the government that shows he "had" the Expedition, was "involved in" it, and "had contact and had been in" it, but none of that discovery was introduced into evidence. (Day 2 Tr. at 109:8-22.)

as to have standing to challenge its search."). Thus, Cruz-Ramos had standing to challenge the warrantless search of the Expedition.

B. The Warrantless Entry into the House to Arrest Bernard

Having established standing, Cruz-Ramos was able to move for suppression of three sets of evidence - the rifles found in the flower stand on the terrace; the guns, ammunition, and drugs found in the red Expedition; and the post-arrest statements Cruz-Ramos made to Agent Vazquez. All three claims stemmed from the initial warrantless entry onto his property and into his residence to arrest Bernard. If this initial entry was illegal, then everything subsequently discovered by the PRPD would be subject to suppression as fruit of the poisonous tree. If the initial entry was legal, however, then each category of evidence would have to be analyzed separately because lawfully entering a residence for one purpose does not give the PRPD free reign to enter for all purposes. See, e.g., Maryland v. Garrison, 480 U.S. 79, 84 (1987) ("[T]he scope of a lawful search is 'defined by the object of the search and the places in which there is probable cause to believe that it may be found.'" (quoting United States v. Ross, 456 U.S. 798, 824 (1982))). If this were the case, then exceptions to the warrant requirement would be necessary for each challenged search. Because the legality of

the initial entry was therefore potentially outcome-determinative, it made the most sense to start there.

On August 28, 2010, the PRPD had both a state and federal arrest warrant for Bernard. They did not, however, have a search warrant for Cruz-Ramos's residence, and an arrest warrant for a third party is insufficient to allow the police to enter a defendant's home. See Steagald v. United States, 451 U.S. 204, 213 (1981). To the contrary, "[i]t is clearly established that a search warrant is ordinarily required to enter the home of a third person to arrest an individual who is believed to be inside the home. This rule applies regardless of the existence of an arrest warrant." Fletcher v. Town of Clinton, 196 F.3d 41, 49 (1st Cir. 1999) (citing Steagald, 451 U.S. at 216). Of course, like all Fourth Amendment rules, there are exceptions to this requirement, and police may lawfully enter a defendant's home without a warrant to effect a third-party's arrest if both probable cause and exigent circumstances are present. Hegarty v. Somerset Cnty., 53 F.3d 1367, 1373 (1st Cir. 1995).

1. Probable Cause

The government contended that the information provided by the Informant, corroborated by Officer Jimenez-Rolon taking the Informant to the scene and having him point out the specific house, established probable cause for the PRPD to believe Bernard was inside the residence. Probable cause exists where

"the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." Ornelas v. United States, 517 U.S. 690, 696 (1996). "Determinations of probable cause are based on a review of the 'totality-of-the-circumstances,' and involve practical, common sense review of the facts available to the officer at the time of the search." United States v. Padro, 52 F.3d 120, 123 (6th Cir. 1995). This is especially apt when basing probable cause on an unknown or unreliable informant because "tips doubtless come in many shapes and sizes from many different types of persons." Illinois v. Gates, 462 U.S. 213, 232, 233-34 (1983). Such an approach "permits a balanced assessment of the relative weights of all the various indicia of reliability (and unreliability) attending an informant's tip." Id. at 234. These various indicia include, but are not limited to, the informant's veracity, his or her basis of knowledge, the level of detail provided, whether the information was subsequently corroborated, whether the information given subjected the informant to possible personal or penal risk, and whether the informant testified at a probable cause hearing. See Alabama v. White, 496 U.S. 325, 328 (1990) (quoting Gates, 462 U.S. at 230); United States v. Olson, 408 F.3d 366, 370 (7th Cir. 2005); United States v. One 56-Foot Motor Yacht Named the Tahuna, 702 F.2d 1276, 1287 (9th Cir. 1983); United States v.

Albert, No. CR. A. 97-404-01, 1998 WL 242601, at *2 (E.D. Pa. May 14, 1998).

Here, probable cause existed that Bernard was in Cruz-Ramos's residence. Although the Informant had never provided information before, and only offered the information upon his arrest and interrogation, all of the other facts and circumstances support the PRPD's conclusion that the Informant was indeed truthful and reliable. First, the Informant was arrested in Las Dalias, a housing project that Bernard was associated with, so it was reasonable for the PRPD to believe that the Informant would have a basis for the information he was providing. Second, the Informant provided extremely detailed information. He told Lieutenant Flores-Ortiz and Officer Jimenez-Rolon (1) exactly which house Bernard was in; (2) that there was a flower stand with rifles in it; (3) that there was a red Expedition with drugs and additional sidearms such as Glockes, Berettas, and FNs in a hidden compartment; (4) that there were at least four other people in the house, including Cruz-Ramos and two females; (5) that Bernard was always armed; and (6) that Bernard planned to leave at sunrise through the rear of the residence and go to Las Dalias. Third, the Informant agreed to, and did, travel with Officer Jimenez-Rolon to Berwind Estates and pointed out the precise residence, which matched the description he had already provided. Indeed, the

terrace the Informant had described, containing the flower stand, was visible from the street. Finally, the Informant gave this information despite putting himself at grave personal risk. He knew that he and his family would be in danger if he spoke to the PRPD, which is why he asked for protection before agreeing to supply the information. (Bernard was at this time one of the most wanted suspects in Puerto Rico; he was wanted specifically for his alleged role in shooting down a police helicopter and killing a co-pilot, a crime for which he is indicted and now faces the possibility of a death sentence. Moreover, as the Informant described and the police understood, anyone found cooperating with law enforcement was designated for ambush by La ONU.) Indeed, there was nothing to give the police pause about the Informant's veracity. Under a totality-of-the-circumstances approach, taking into account the facts available to the PRPD and applying common sense and all reasonable inferences, the PRPD reasonably determined that the Informant was both truthful and reliable, and that probable cause existed that Bernard was located at the residence. See Gates, 462 U.S. at 234; Padro, 52 F.3d at 123.

2. Exigent Circumstances

Exigent circumstances exist where the police officers reasonably believe that "there is such compelling necessity for immediate action as will not brook the delay of obtaining a

warrant." Fletcher, 196 F.3d at 49 (quoting United States v. Almonte, 952 F.2d 20, 22 (1st Cir. 1991)); see also Estate of Bennett v. Wainright, 548 F.3d 155, 169 (1st Cir. 2008). The First Circuit has recognized four categories of exigent circumstances: "(1) 'hot pursuit' of a fleeing felon; (2) threatened destruction of evidence inside a residence before a warrant can be obtained; (3) a risk that the suspect may escape from the residence undetected; or (4) a threat, posed by a suspect, to the lives or safety of the public, the police officers, or to herself." Fletcher, 196 F.3d at 49 (quoting Hegarty, 53 F.3d at 1374).

The Court had little doubt that exigent circumstances justified the PRPD entering Cruz-Ramos's residence without a search warrant in order to arrest Bernard. Of the four recognized categories, two of them - risk of escape and the threat by the suspect to the lives or safety of the public and police - existed here. First, the Informant told the PRPD that Bernard would be leaving the residence through the rear door as soon as the sun came up. Once outside, he would likely head to the vegetation behind the building and proceed to Las Dalias, on a wooded or hidden path, at which point the police would no longer be able to find and arrest him. By the time the interrogation was over and the PRPD had corroborated the Informant's information, it was between 4:00 and 5:00 a.m., so

time was of the essence because the sun would rise shortly. (See Day 2 Tr. at 33:1-5 (estimating that the sun came up between 6:00 and 6:30 a.m.)). Thus, it was objectively reasonable for the PRPD to believe that Bernard would escape if immediate action was not taken. See Fletcher, 196 F.3d at 49.

Exigent circumstances also existed due to the threat posed by Bernard. The Informant cautioned Lieutenant Flores-Ortiz and Officer Jimenez-Rolon that Bernard was armed at all times and would fire at the PRPD the moment he saw them. In addition, he warned that there were at least four other individuals in the house and a cache of weapons in both the flower box and the red Expedition. Considering that Bernard was wanted for shooting down a municipal helicopter and that members of La ONU had previously engaged in shoot-outs with the police to prevent them from effectuating arrests, it was eminently reasonable for the police to fear a shoot-out. If such circumstances occurred, the safety and lives of the PRPD, as well as any members of the public located in Berwind Estates, would have been in danger. Thus, exigent circumstances existed for this reason as well. See Fletcher, 196 F.3d at 49.

Relying on Kentucky v. King, 131 S. Ct. 1849 (2011), Cruz-Ramos argued that the exigent circumstances exception to the warrant requirement was inapplicable because the police created the exigency they are now relying on when they decided to go to

Cruz-Ramos's residence to arrest Bernard despite the Informant's warning that it was dangerous and they would be shot at. However, Cruz-Ramos misunderstood this rule. In King, the Supreme Court acknowledged that "police may not rely on the need to prevent destruction of evidence when that exigency was 'created' or 'manufactured' by the conduct of the police." Id. at 1857. Realizing that "in some sense the police always create the exigent circumstances," id. at 1857 (quoting United States v. Duchi, 906 F.2d 1278, 1284 (8th Cir. 1990)), the Court elaborated, explaining that "the exigent circumstances rule applies when the police do not gain entry to premises by means of an actual or threatened violation of the Fourth Amendment." Id. at 1862. In other words, the police cannot act improperly or unreasonably and then rely on exigent circumstances to justify their actions. That was not the situation before the Court. King involved exigencies regarding the preservation of evidence; here, by contrast, the exigency involved the police entering an already dangerous situation - one cannot question the proposition that a cache of guns being stored at a private residence creates a danger to neighbors and the public even without police involvement. Thus, the PRPD did not create or manufacture this danger, but rather just included it in the calculus of whether or not to conduct the raid. The PRPD reasonably and properly acted on the Informant's information to

enter the residence and arrest Bernard, so Cruz-Ramos's reliance on King's police-created exigency exception was misplaced.

Because both probable cause and exigent circumstances existed, the PRPD did not violate Cruz-Ramos's Fourth Amendment rights when it entered his property and home without a warrant to arrest Bernard.

C. The Warrantless Search of the Flower Stand

As with the warrantless entry into the house, the PRPD needed both probable cause and exigent circumstances to justify the search of the flower stand without a warrant.

1. Probable Cause

The PRPD had probable cause to search the flower stand based on the Informant's statement that the flower stand contained four rifles. As described above, the Informant had all of the indicia of reliability. And, by the time the PRPD went to search for the rifles, they had even more reason to trust the veracity of the Informant because he had been further corroborated. Not only had the Informant accompanied Officer Jimenez-Rolon to Berwind Estates and pointed out the house and the red Expedition, but Bernard was indeed located in the residence, he was indeed armed, and Cruz-Ramos and two other females were indeed located inside. This further corroboration only increased the Informant's reliability and further supported the probable cause calculus as to whether the flower stand

contained the rifles. See Padro, 52 F.3d at 123 (determining probable cause at the time of the search).

2. Exigent Circumstances

Unlike the warrantless entry of the house to search for and arrest Bernard, the Court found no exigent circumstances justifying the warrantless search of the flower box which uncovered four longarm rifles. First, the police were never in "hot pursuit" of Bernard or the rifles. Second, the evidence did not support (and the parties did not contend) that there was ever a threat that the rifles would be destroyed before the PRPD could obtain a warrant. Third, by the time the PRPD searched the flower stand, there was no longer a concern that Bernard or any other arrestee would flee. To the contrary, the PRPD entry team yelled "clear," indicating that the house was secure and the perimeter team could safely conduct the search. In fact, the only recognized category of exigent circumstances that the government argued was the threat posed to the lives or safety of the public and the police officers. However, the danger characterized by the PRPD at the suppression hearing was not an objectively reasonable threat rising to the level of exigent circumstances.

Lieutenant Flores-Ortiz and Officer Jimenez-Rolon both testified that they felt their lives were in danger, but could not provide any concrete details to support this fear. As

already mentioned, the house was unquestionably secured by the time the PRPD searched the flower stand; there was no threat that Bernard, Cruz-Ramos, or any other occupant of the house would be able to grab the rifles from the flower stand and shoot at the PRPD. The facts also did not support the officers' fear that members of La ONU would ambush them⁸ in order to recover the guns and drugs if they remained on the premises, and thus the PRPD had to secure the guns immediately. First, a perimeter had already been established. This perimeter extended not only around the house but also to the entrance of Berwind Estates, which consisted of cameras and a manned guardhouse. Second, neither officer testified that a protective sweep of the property surrounding the house, especially the vegetation to the rear, was conducted, casting further doubt on the officers' belief that an ambush was likely. Moreover, Lieutenant Flores-Ortiz testified that the vegetation was transparent enough that, if officers were positioned at certain angles, the PRPD would have been able to see an ambush coming. Third, the PRPD's prior experience of being fired at by members of La ONU is inapposite.

⁸ It is worth noting that Fletcher indicates that exigency can be caused by a threat posed by the suspect, and does not mention threats by outsiders. Fletcher, 196 F.3d at 49. Here, the suspects, Bernard and Cruz-Ramos were already in custody and were no longer a threat. That being said, the Court believes that if there was a legitimate threat of members of La ONU ambushing the PRPD, the exigent circumstances exception would still apply.

In that situation, members of the PRPD had been ambushed while trying to effectuate an arrest at the El Prado housing project which is one of La ONU's home bases. Here, by contrast, the PRPD was not arresting a suspect at a housing project, but rather was making the arrest at a private residence in a gated community, albeit in a dangerous area. Furthermore, the prior ambush occurred in order to prevent the arrest from taking place; here, the arrest had already occurred. The officers provided no evidence that La ONU had previously ambushed police after an arrest took place, the arrestees had already been removed from the premises, and the crime scene had been secured. Fourth, the officers' description of the close proximity between the housing projects and Cruz-Ramos's house is questionable at best. Lieutenant Flores-Ortiz stated that a path led from the house to the projects; however, the Lieutenant marked the residence and the three housing projects on a picture containing an aerial view of the area. Though the exhibit did not provide a scale, there was clearly a significant distance between Cruz-Ramos's house and the nearest housing project. The threat that La ONU members in these housing projects would travel through the woods to Cruz-Ramos's residence to ambush the police while they obtained a search warrant seemed unlikely. Finally, and perhaps most telling, the PRPD felt the premises were secure enough that they were able to leave a small group behind to take

pictures of the scene. This group stayed at the residence for thirty to forty-five minutes after the arrestees had been removed and after the sun had come up. Members of La ONU would have no knowledge that Bernard had been arrested and/or taken to the police station, or that the drugs and firearms had been seized, so the threat of an ambush in order to either prevent Bernard's arrest or to recover the contraband was just as real when the pictures were being taken as it was immediately following Bernard's arrest.

The government's argument that it was impossible to obtain a warrant did not alter this calculus. First, there is no recognized category of exigent circumstances for being unable to obtain a warrant. Cf. Fletcher, 196 F.3d at 49 (listing the recognized categories of exigent circumstances (quoting Hegarty, 53 F.3d at 1374)). In fact, it is arguable that basing exigency on the difficulty of obtaining a warrant could qualify as the type of police-created exigency forbidden by King. Second, as will be discussed in more detail below, the evidence made clear that it was possible, albeit difficult, to obtain a warrant in these circumstances.

Accordingly, the facts did not support any sort of exigency regarding the search of the flower stand - either during the time immediately following the arrest of Bernard or in the time period shortly thereafter. With probable cause but no exigent

circumstances, the warrantless search of Cruz-Ramos's residence, including the flower stand, violated Cruz-Ramos's Fourth Amendment rights.

D. The Warrantless Search of the Red Expedition

1. Probable Cause

For the same reasons set forth above as to the flower stand, there was probable cause that the red Expedition contained a hidden compartment with a significant cache of sidearm pistols and guns.

2. Exigent Circumstances

The government argued that the exigency related to the search of the flower stand also applied to the search of the Expedition. Because the Court found that exigent circumstances did not exist to justify the search of the flower stand without a warrant, the search of the Expedition could likewise not be based on any exigency.

3. Automobile Exception

In addition to exigent circumstances, the government also contended that the search of the Expedition fell under the automobile exception to the warrant requirement. The exception recognizes that "the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office," South Dakota v. Opperman, 428 U.S. 364, 367 (1976), and thus "[i]f a car is readily mobile and probable

cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more." Pennsylvania v. Labron, 518 U.S. 938, 940 (1996); see also California v. Acevedo, 500 U.S. 565, 569 (1991); United States v. Polanco, 634 F.3d 39, 42 (1st Cir. 2011) (quoting Arizona v. Gant, 129 S. Ct. 1710, 1721 (2009)). As discussed above, probable cause existed for the officers to believe that the Expedition contained drugs and firearms.

That being said, "[t]he word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears." Coolidge v. New Hampshire, 403 U.S. 443, 461 (1971). This is especially true when an automobile is located on private property, where courts are conflicted on whether or not the automobile exception applies. Compare id. (declining to uphold a search where a vehicle is unoccupied, parked on private property, and beyond the scope of a valid search incident to arrest) and United States v. Fields, 456 F.3d 519, 524-25 (5th Cir. 2006) ("Thus, we have concluded that automobile exception may not apply when a vehicle is parked at the residence of the criminal defendant challenging the constitutionality of the search.") and United States v. Williams, 124 F. App'x 885, 887 (5th Cir. 2005) ("[S]ome support exists for the proposition that the automobile exception does not apply when a vehicle is parked in the defendant's private driveway") with Labron, 518

U.S. at 939, 941 (upholding a warrantless search of an automobile in the driveway of a farmhouse, though it was unclear whether the defendant had any connection to the farmhouse) and United States v. Shepherd, 714 F.2d 316, 319 (4th Cir. 1983) (“[T]he Supreme Court has never held that a vehicle’s location on private property forecloses application of the automobile exception under all circumstances.”) and Young v. Addison, No. CIV-10-608-D, 2011 WL 7272268, at *8 (W.D. Okla. Dec. 28, 2011) (“Courts have therefore held that under this exception, the fact that the search took place on private property is inconsequential.”). Other courts have addressed this issue in the context of curtilage, which has been defined as “the area to which extends the intimate activity associated with the ‘sanctity of a man’s home and the privacies of life.’” Oliver v. United States, 466 U.S. 170, 180 (1984) (quoting Boyd v. United States, 116 U.S. 616, 630 (1886)); see United States v. Manning, No. 1:06-00010, 2007 WL 1656223, at *8 (M.D. Tenn. June 7, 2007) (“Because the Nissan was not within the curtilage of the home and further because the officers were executing a valid arrest warrant, they had a right to walk by or stop next to the vehicle and look inside.”); United States v. Jones, No. 2:06-cr-202, 2007 WL 4224220, at *11 (S.D. Ohio Nov. 27, 2007). The

First Circuit, meanwhile, has never squarely addressed the issue of whether the automobile exception applies on private property.⁹

In the Court's view, the curtilage distinction was the most logical framework for analyzing this type of situation. As the Southern District of Ohio stated in Jones,

[N]o Supreme Court decision allows warrantless entry into areas of a home or business where the owner has a reasonable expectation of privacy simply because the police are in search of an automobile. Thus, a Court must first resolve the issue of whether the individual challenging the search had a legitimate expectation of privacy in the area where the automobile is located before determining if the automobile exception applies.

2007 WL 4224220, at *11. Thus, under ordinary circumstances, if the Expedition was parked in the curtilage, it would obtain the same protection as Cruz-Ramos's residence, and the automobile exception would not apply.

"[T]he extent of the curtilage is determined by factors that bear upon whether an individual reasonably may expect that the area in question should be treated as the home itself." United States v. Dunn, 480 U.S. 294, 300 (1987) (citing Oliver, 466 U.S. at 180). Carports have routinely been considered part

⁹ There have been First Circuit cases involving an automobile on private property, but all of those cases were resolved on other grounds. See Robinson v. Cook, No. 12-1722, 2013 WL 238772, at *3 n.4 (1st Cir. Jan. 23, 2013); United States v. Goncalves, 642 F.3d 245, 251 (1st Cir. 2011); United States v. Moscatiello, 771 F.2d 589, 599-600 (1st Cir. 1985), vacated on other grounds, Murray v. United States, 487 U.S. 533 (1988).

of the curtilage. See, e.g., United States v. Perea-Rey, 680 F.3d 1179, 1184 (9th Cir. 2012); Woodbury v. Beto, 426 F.2d 923, 927 (5th Cir. 1970); Jones, 2007 WL 4224220, at *11. Here, there was little doubt that the Expedition was located within the curtilage; it was parked on the red terra-cotta portion of the rear carport, as opposed to the regular pavement located closer to the street. Moreover, Cruz-Ramos took extra care to keep the Expedition from the public. In addition to being in the rear carport, and not one of the carports located at the front of the house, the Expedition was also parked in front of, or blocked in by, two other cars. Indeed, it appeared that the primary way to access the Expedition was to enter the house and then exit through a side door.

These were not ordinary circumstances, however, and the fact that the Expedition was located within the curtilage was of no help to Cruz-Ramos. Due to the exigent circumstances previously discussed, the PRPD lawfully entered the property to arrest Bernard. By being lawfully present on the property, the PRPD essentially burst the curtilage bubble shielding the house and the Expedition. Once legally inside the curtilage, the automobile exception became applicable, and the PRPD could search the Expedition based on the probable cause that it contained firearms and drugs. Cf. United States v. Tobin, 923 F.2d 1506, 1513 (11th Cir. 1991) ("Because we find that

warrantless entry into Ackerson's house justifiable, we hold the search of the garage . . . to be permissible. . . . Moreover, the search of the station wagon [in the garage] may be justified on the basis of the automobile exception."); United States v. Hibbs, ---F. Supp. 2d ----, No. 12-cr-30037, 2012 WL 4497505, at *7-8 (C.D. Ill. Sept. 26, 2012) (finding that even if the search warrant did not authorize the search of the curtilage and a car located on it, the police were lawfully on the curtilage, and thus were permitted to conduct a dog sniff and subsequent search pursuant to the automobile exception); cf. also United States v. Tabor, 722 F.2d 596, 598 (10th Cir. 1983) (admitting evidence discovered in plain view following a warrantless entry into a barn because "[w]here the initial intrusion that brings the police within plain view of such an article is supported, not by a warrant, but by one of the recognized exceptions to the warrant requirement, the seizure is also legitimate" (quoting Coolidge, 403 U.S. at 465)). Accordingly, the PRPD did not violate Cruz-Ramos's Fourth Amendment rights by searching the Expedition, and all evidence seized from it was admissible.

It is worth mentioning that, even assuming the Court had found that the PRPD's lawful presence on the premises did not eliminate the curtilage protection, thus making the automobile exception inapplicable, such an unconstitutional search of the Expedition would still not have resulted in exclusion of the

evidence. Based on the PRPD's legal presence on Cruz-Ramos's property, the probable cause known to them at the time, and the automobile exception, it was entirely reasonable for them to believe that the warrantless search of the Expedition was justified. Any violation of Cruz-Ramos's Fourth Amendment rights, therefore, would have been a good faith error, covered by the good faith exception to the exclusionary rule. See Davis v. United States, 131 S. Ct. 2419, 2427-28 (2011) (neglecting to exclude evidence when "the police act with an objectively 'reasonable good-faith belief' that their conduct is lawful" (quoting United States v. Leon, 468 U.S. 897, 909 (1984))); Herring v. United States, 555 U.S. 135, 143 (2009) ("[E]vidence should be suppressed 'only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment." (quoting Illinois v. Krull, 480 U.S. 340, 348-49 (1987) (internal quotation marks omitted))).

The First Circuit's recent opinion in United States v. Sparks, Nos. 11-1134, 11-1143, 2013 WL 1197741 (1st Cir. Mar. 26, 2013), does not alter this conclusion. Sparks involved the application of the good faith exception where there is circuit precedent on the issue. Id. at *3 ("In this case, suppression would be inappropriate because the agents' attachment and monitoring of the GPS tracker was authorized by settled, binding

circuit precedent.”). Even Davis, which Sparks relies upon, involved application of the good faith exception in the face of binding circuit precedent. 131 S. Ct. at 2434 (“We therefore hold that when the police conduct a search in objectively reasonable reliance on binding appellate precedent, the exclusionary rule does not apply.”). Importantly, this is not the only situation in which the good faith exception is applicable. To the contrary, the Supreme Court “has over time applied this ‘good-faith’ exception across a range of cases.” Id. at 2428; see, e.g., Herring, 555 U.S. at 137 (applying the good faith exception where police employees erred in maintaining records in a warrant database); Arizona v. Evans, 514 U.S. 1, 14 (1995) (applying the good faith exception where police reasonably relied on incorrect warrant information in a judicially maintained database); Krull, 480 U.S. at 349-50 (applying the good faith exception to searches conducted in reasonable reliance on subsequently invalidated statutes); Leon, 468 U.S. at 922 (holding that the exclusionary rule does not apply if the police conducted a search in “objectively reasonable reliance” on a warrant later held to be invalid). Indeed, the relevant standard for applying the good faith exception comes not from Davis but from Herring, which holds that

[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.

555 U.S. at 144. Here, in the absence of any directly related precedent from the First Circuit or any other circuit regarding the automobile exception on private property where the police are lawfully present on the property, Sparks, and to some extent Davis, is inapplicable. The Court, therefore, must return to Herring and objectively analyze the conduct of the PRPD:¹⁰ the officers were legally on Cruz-Ramos's property; they had strong probable cause that the Expedition contained contraband; and they knew that due to a lesser expectation of privacy, the automobile exception generally allows officers to search a vehicle without a warrant so long as probable cause existed. These actions in no way qualify as "deliberate, reckless, or grossly negligent," and thus exclusion would be improper. See

¹⁰ Because this is an objective inquiry, the question is not whether the PRPD actually went through this entire framework before searching the Expedition but rather whether their conduct was objectively reasonable in light of the circumstances. See, e.g., Herring v. United States, 555 U.S. 135, 145 (2009) ("The pertinent analysis of deterrence and culpability is objective, not an 'inquiry into the subjective awareness of arresting officers.'" (quoting Reply Brief for Petitioner 4-5)); United States v. Leon, 468 U.S. 897, 924 (1984) ("[T]he good-faith exception[] turn[s] . . . on objective reasonableness"); United States v. Curzi, 867 F.2d 36, 44 (1st Cir. 1989) (same).

Herring, 55 U.S. at 144. In fact, exclusion would serve no purpose other than to punish law enforcement for what would amount to, at worst, a good faith misunderstanding of the law, which is not the exclusionary rule's purpose.

E. Post-Arrest Statements

Cruz-Ramos briefly argued that his arrest for harboring a fugitive was the result of the illegal entry into his house, and thus anything coming from that entry, including his arrest and post-arrest statements, must be suppressed as fruit of the poisonous tree. As discussed in detail above, the PRPD did not violate the Fourth Amendment when it entered the residence to arrest Bernard. Because 18 U.S.C. § 1071 prohibits "harbor[ing] or conceal[ing] any person for whose arrest a warrant or process has been issued . . . so as to prevent his discovery and arrest," and Bernard was found hiding in Cruz-Ramos's residence, the PRPD had probable cause to arrest Cruz-Ramos for violating the statute. Without a Fourth Amendment violation, there can be no fruit of a poisonous tree.

At the suppression hearing, Cruz-Ramos also raised the issue of a potential Fifth Amendment violation by attempting to cast doubt on the voluntariness of his statement. Agent Vazquez testified that he gave Cruz-Ramos his Miranda warnings and that Cruz-Ramos acknowledged receiving and understanding those warnings. Though Cruz-Ramos emphasized that the conversation

was not recorded and that there is no written waiver of rights, he put on no evidence to contradict Agent Vazquez's version of events. To the contrary, Cruz-Ramos directed the Court to evidence confirming the voluntariness of the statement. To establish his standing in the house, Cruz-Ramos asked the Court to take judicial notice of the plea agreement in criminal case number 10-305, which the Court did pursuant to Rule 201 of the Federal Rules of Evidence. The signed statement of facts states that "[p]rior to the interview, the officers advised Cruz-Ramos of his constitutional rights, which he voluntarily and knowingly waived." Plea Agreement at 8. Cruz-Ramos could not expect the Court to take judicial notice of the plea agreement when it benefited his position but to completely ignore it when it cut against him. In addition, the Court found Agent Vazquez credible and had no reason to disbelieve his testimony. Therefore, the statement made by Cruz-Ramos to Agent Vazquez following his arrest on August 28, 2010 was admissible.

F. The Exclusionary Rule

Finally, because the PRPD violated Cruz-Ramos's Fourth Amendment rights to be secure from unreasonable searches and seizures when it searched the flower stand located on his terrace and seized the four longarm rifles, the Court had to determine whether the exclusionary rule should be applied and the rifles suppressed. The Supreme Court has "repeatedly held"

that the exclusionary rule's "sole purpose . . . is to deter future Fourth Amendment violations." Davis, 131 S. Ct. at 2426. The application of the rule, therefore, has been "limited . . . to situations in which this purpose is 'thought most efficaciously served.'" Id. (quoting United States v. Calandra, 414 U.S. 338, 348 (1974)). "Where suppression fails to yield 'appreciable deterrence,' exclusion is 'clearly . . . unwarranted.'" Id. at 2426-27 (omission in original) (quoting United States v. Janis, 428 U.S. 433, 454 (1976)).

Deterrence, however, is necessary, but not sufficient, for exclusion. Id. at 2427 (quoting Hudson v. Michigan, 547 U.S. 586, 596 (2006)). The Court must also "account for the 'substantial social costs' generated by the rule," that is, ignoring "reliable, trustworthy evidence bearing on guilt or innocence." Id. (quoting Leon, 468 U.S. at 907). Accordingly, in order for the Court to suppress evidence, the deterrent benefits must outweigh the heavy social costs. Id.

In the present case, the Court believed that there was a high deterrent benefit while only a minimal social cost, and as such, suppression of the four rifles was appropriate. Both Lieutenant Flores-Ortiz and Officer Jimenez-Rolon testified that they did not attempt to obtain a search warrant for Cruz-Ramos's home because it would have been extremely difficult, if not impossible, to do so. According to the officers, the PRPD would

have had to "conduct several surveillances over a period of days, a lot of photographs, videos," (although clearly probable cause was present by the time Bernard was in custody) and even if they had done so, a district attorney would not have been available until after 9:00 a.m. because this was not a murder case. Taking the officers at their word, the Court was troubled with the perceived difficulty involved in obtaining a state search warrant. There are many serious crimes besides murder - for example rape, drug trafficking, and robbery - many of which often take place outside of regular business hours; requiring police officers to wait until 9:00 a.m. to obtain a warrant for these crimes makes little sense. Even so, the difficulty in obtaining a warrant is no excuse for conducting warrantless searches. A defendant's Fourth Amendment rights do not vary according to the availability of a district attorney or judge to issue a warrant. If Puerto Rico policy and procedure mandates that an officer must wait until 9:00 a.m. to obtain a search warrant, then so be it; absent an exception to the warrant requirement, the officers must wait until 9:00 a.m. to conduct the search.

What was most frustrating about the police action, however, was that the PRPD simply assumed that a warrant could not be obtained and did not try. The analysis here may have been different if Lieutenant Flores-Ortiz had at least attempted to

contact the on-call district attorney and explain the situation. Considering Bernard was one of the most wanted fugitives in Puerto Rico, an exception to the murder requirement may have been made. Unfortunately, the Court will never know. Finally, contrary to the officers' belief, it was possible to obtain a warrant; they could have contacted the U.S. Attorney's Office and obtained a federal search warrant. Agent Vazquez testified that federal magistrate judges in Puerto Rico are available twenty-four hours a day, seven days a week to issue warrants, and they can even issue phone warrants under certain circumstances. Yet, the PRPD never attempted this route either. Indeed, both Lieutenant Flores-Ortiz and Officer Jimenez-Rolon testified that they did not know that option was available.

Suppression of the four rifles could have a positive deterrent effect to address these concerns. First, suppression could encourage a change in the policy and procedure in obtaining a state search warrant in Puerto Rico. By realizing that the unavailability of a district attorney or judge to issue a search warrant is simply no excuse for a warrantless search, steps may be taken to ensure that the PRPD can obtain a search warrant whenever necessary. Second, suppression of the rifles could lead to better training. The current PRPD policy appears to be that once the clock strikes a certain hour, the PRPD is to take matters into its own hands, conduct warrantless searches,

and then attempt to justify those searches after the fact. Instead, the PRPD should be trained to at least try to get a search warrant from the local officials. If obtaining this warrant is not feasible, then the PRPD should be informed that federal agents and magistrate judges are available to issue warrants at all hours of the day, and they should be trained on the procedures and steps necessary to obtain federal warrants.

While the deterrent benefits of suppression were high, the social cost of suppression in this case was extremely low. The warrantless raid on Cruz-Ramos's house resulted in the arrest of Bernard and Cruz-Ramos, an inculpatory statement by Cruz-Ramos, four rifles, seven handguns and significant amounts of heroin, cocaine, and crack. All of this evidence, with the exception of the four rifles, was still admissible. This was not a case where suppression resulted in "set[ting] the criminal loose in the community without punishment" and forcing "society [to] swallow this bitter pill." Id. (citing Herring, 555 U.S. at 141; Hudson, 547 U.S. at 591). Moreover, all of the seized evidence, including the four rifles, will be admissible against Bernard and the other co-defendants in this case. See, e.g., United States v. Padilla, 508 U.S. 77, 81-82 (1993) ("[S]uppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved

solely by the introduction of damaging evidence. Co-conspirators and codefendants have been accorded no special standing." (quoting Alderman v. United States, 394 U.S. 165, 171-72 (1969)); United States v. Graham, 391 F.2d 439, 446 (6th Cir. 1968) ("[E]vidence which is illegally seized from one person may properly be admissible against a third party who is tried separately."). With high deterrent value and low social cost, it was appropriate to apply the exclusionary rule in these circumstances. See Davis, 131 S. Ct. at 2426-27. Accordingly, the four rifles discovered as a result of the PRPD's warrantless search of the flower stand were suppressed.

IV. Conclusion

For the foregoing reasons, Cruz-Ramos's motion to suppress was GRANTED IN PART and DENIED IN PART.

IT IS SO ORDERED.

/s/ William E. Smith

William E. Smith
United States District Judge
Date: April 9, 2013