

**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

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State of North Dakota,  
Plaintiff and Appellee,

vs.

Luke Gatlin,  
Defendant and Appellant.

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Supreme Court No. 20140083

District Court No. 18-2013-CR-00899

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ON APPEAL FROM CRIMINAL JUDGMENT  
FROM THE DISTRICT COURT  
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT  
GRAND FORKS COUNTY, NORTH DAKOTA  
THE HONORABLE JUDGE SONJA CLAPP PRESIDING

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**BRIEF OF APPELLEE**

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## **STATEMENT OF THE ISSUE**

- I. Whether the district court erred when denying the Defendant's motion to suppress?

## STATEMENT OF THE FACTS

[¶ 1] On April 28, 2013, the Grand Forks Police Department was dispatched 1117 6<sup>th</sup> Ave North in Grand Forks, North Dakota at 2:18 p.m. Motion to Suppress Tr. p. 6. The caller was Danny Sebjornson who was reporting that his brother, Michael Sebjornson, had warrants for his arrest and was at this residence. Motion to Suppress Tr. p. 6. Danny Sebjornson advised that he wanted officers to come get Michael Sebjornson. Motion to Suppress Tr. p. 6. Officer Buzzo testified that he responded to this call. Motion to Suppress Tr. p. 6. Officer Buzzo testified that because of an unrelated issue going on in the city of Grand Forks at the time, there were only three officers responsible for patrol in the entire city. Motion to Suppress Tr. pp. 4-7. Officer Buzzo, Officer Starr, and Officer Wadlow as well as a Grand Forks Sheriff's deputy responded to the scene based on prior involvement and history with Michael Sebjornson. Motion to Suppress Tr. p. 7. Officers confirmed that Michael Sebjornson had active warrants for his arrest. Motion to Suppress Tr. p. 7.

[¶ 2] Officer Buzzo arrived to the residence. Motion to Suppress Tr. p. 7. Upon making contact with the door, Ione Sebjornson, the mother of Danny and Michael Sebjornson, came to the front door. Motion to Suppress Tr. pp. 7-8. Ione Sebjornson is a resident at 1117 6<sup>th</sup> Ave North along with Steve Jensen. Motion to Suppress Tr. p. 8. Officer Buzzo spoke with Ione Sebjornson at the front door and explained why officers were there. Motion to Suppress Tr. p. 8. Ione Sebjornson advised that Michael Sebjornson was not in the residence and objected to Officer Buzzo entering the residence. Motion to Suppress Tr. p. 8. At the same time, Danny Sebjornson walked to the front door. Motion to Suppress Tr. p. 9. Danny Sebjornson advised that he also lived at 1117

6<sup>th</sup> Ave North. Motion to Suppress Tr. p. 9. Officer Buzzo inquired as to whether Michael Sebjornson was inside. Motion to Suppress Tr. p. 9. Danny Sebjornson responded, “yes” and either “come get him” or “go get him” as well as “he’s in the room”. Motion to Suppress Tr. p. 9. Officer Buzzo announced over the radio that he was going to make entry into the residence and began following Danny Sebjornson into the residence. Motion to Suppress Tr. p. 9. Officer Buzzo testified that it appeared Danny Sebjornson was leading him through the home attempting to help him find Michael Sebjorson. Motion to Suppress Tr. p. 9. Officer Buzzo described in detail the layout of the home. Motion to Suppress Tr. pp. 9-11. Officer Buzzo testified that at one point he observed someone lying on a bed covered up by blankets. Motion to Suppress Tr. p. 11. Officer Buzzo announced, “Michael, show me your hands” and repeated that statement a couple times. Motion to Suppress Tr. p. 11. Officer Buzzo testified that he had no information that any other individuals were in the residence. Motion to Suppress Tr. p. 11. The person under the bed eventually moved the covers back and Officer Buzzo was able to determine it was a female. Motion to Suppress Tr. p. 11. After determining the individual was not Michael Sebjornson, Officer Buzzo continued following Danny Sebjornson through the residence. Motion to Suppress Tr. p. 11. Officer Buzzo observed Danny Sebjornson indicate or motion that someone was in a room inside a closet. Motion to Suppress Tr. pp. 12-13. Officer Buzzo testified that Danny Sebjornson stated something to the effect of, “There is somebody here” or “he’s here” and looked at the closet area. Motion to Suppress Tr. p. 18. Officer Buzzo believed it to be Michael Sebjornson. Motion to Suppress Tr. pp. 12-13. Officer Buzzo entered the room and observed a male pushed against the corner of the closet. Motion to Suppress Tr. p. 13.

Officer Buzzo observed that person appeared to be hiding. Motion to Suppress Tr. p. 13. Officer Buzzo gave that person commands to come out of the closet. Motion to Suppress Tr. p. 13. Officer Buzzo was able to secure the individual in the living room. Motion to Suppress Tr. p. 13.

[¶ 3] Officer Buzzo asked the individual for his name and the male advised that he was Luke Gatlin (hereinafter, the Defendant). Motion to Suppress Tr. p. 13. Officer Buzzo initially believed it was Michael Sebjornson until the Defendant was able to confirm his identity with his date of birth. Motion to Suppress Tr. p. 13. It was determined that the Defendant also had warrants for his arrest. Motion to Suppress Tr. p. 13. The Defendant was taken into custody. Motion to Suppress Tr. p. 14. Subsequently Michael Sebjornson was located in the bathroom. Motion to Suppress Tr. p. 14.

[¶ 4] The Defendant never claimed he was an overnight guest. Motion to Suppress Tr. p. 14. Mr. Gatlin was observed to be wearing a long-sleeved shirt and jeans. Motion to Suppress Tr. p. 14. Officer Buzzo had an East Grand Forks address for the Defendant. Motion to Suppress Tr. p. 14. Further, the Defendant provided an East Grand Forks address when being booked into the jail. Motion to Suppress Tr. p. 15. There was no testimony or evidence presented by Defendant that he was an overnight guest or the nature of his status with respect to the residence. Motion to Suppress Tr. pp. 3-33. There was no testimony or evidence presented as to whether he was in the residence lawfully or whether the homeowners were even aware of his presence in the residence. Motion to Suppress Tr. pp. 3-33. The Defendant presented no witnesses or evidence. Motion to Suppress Tr. pp. 3-33.

[¶ 5] Upon being booked into the Grand Forks County Correctional Center, a methamphetamine pipe was found in his pocket. Motion to Suppress Tr. p. 15. The Defendant was charged with Possession of Drug Paraphernalia. The Defendant filed a motion to suppress. The district court denied the Defendant's motion. The Defendant entered a conditional plea and now is appealing the district court's denial of his motion to suppress.



## ARGUMENT

### **I. The district court did not err when denying the Defendant's motion to suppress.**

[¶ 6] When reviewing a district court's ruling on a motion to suppress, the North Dakota Supreme Court must defer to the district court's finding of fact and resolve conflicts in testimony in favor of affirmance. City of Grand Forks v. Zejdlik, 551 N.W.2d 772, 774 (N.D. 1996). The district court decision should be affirmed unless, after resolving conflicting evidence in favor of affirmance, the North Dakota Supreme Court can conclude there is insufficient competent evidence to support the decision or unless the decision goes against the manifest weight of the evidence. State v. Matthews, 2003 ND 108, ¶8, 655 N.W.2d 28. The North Dakota Supreme Court has stated that it gives great deference to a district court's decision in suppression matters. Id. Questions of law are fully reviewable on appeal and whether a finding of fact meets a legal standard is a question of law. State v. Morin, 2012 ND 75, ¶5, 815 N.W.2d 229.

[¶ 7] The Fourth Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment, and Article I, section 8, of the North Dakota Constitution protects individuals from unreasonable searches and seizures. State v. Matthews, 2003 ND 108, ¶8, 655 N.W.2d 28 (quoting Jamestown v. Dardis, 2000 ND 186, ¶8, 618 N.W.2d 495). Warrantless searches and seizures inside a home are presumptively unreasonable although the prohibition is not absolute. State v. Matthews, 2003 ND 108, ¶10, 655 N.W.2d 28. Searches and seizures without a warrant are not unreasonable under the Fourth Amendment if the government can show the search or seizure falls under one of the well-delineated exceptions to the search warrant requirement. State v. DeCoteau, 1999 ND 77, ¶7, 592 N.W.2d 579. A consent search is

one exception to both the warrant and probable cause requirement of the Fourth Amendment. State v. DeCoteau, 1999 ND 77, ¶9, 592 N.W.2d 579 (citing Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973)). Further, an individual is only able to claim the protections of the exclusionary rule if he has a reasonable expectation of privacy. State v. Torkelsen, 2008 ND 141, ¶31, 752 N.W.2d 640.

[¶ 8] In the instant case, the district court did not err when denying the Defendant's motion to suppress. First, the Defendant did not have a reasonable expectation of privacy and thus no standing to claim the protections of the exclusionary rule. Secondly, even if the Court were to find that the Defendant did have standing, the search was lawful. Law enforcement had an arrest warrant and a reasonable belief that the subject of that warrant was within the residence coupled with consent to enter the residence by Danny Sebjornson, a resident of the home. Additionally, the Defendant failed to object to the search.

A. *The Defendant does not have standing.*

[¶ 9] Once the state raises lack of standing, it is the defendant's burden to establish that he had a legitimate expectation of privacy in the place searched. State v. Raywalt, 444 N.W.2d 688, 689 (N.D. 1989) (citing State v. Benjamin, 417 N.W.2d 838, 839-840 (N.D. 1988)). In Raywalt, 444 N.W.2d 688, a defendant was present at a party at an apartment in Mandan, North Dakota. Officers entered pursuant to a search warrant. Raywalt, 444 N.W.2d at 689. The defendant's person was searched pursuant to a search clause in his conditions of probation. Id. The defendant attempted to challenge the probable cause to search the apartment. Id. The state objected asserting the defendant lacked standing to challenge the search of the apartment, despite the defendant being

present in the apartment during the search. Id. The defendant failed to make a showing that he had an expectation of privacy in the apartment. Id. The North Dakota Supreme Court found that the defendant failed to meet his burden to establish that he had standing to contest the search. Id.

[¶ 10] In the case at hand, the Defendant filed a motion to suppress alleging his Fourth Amendment rights were violated claiming the entry to the Sebjornson home was unlawful. The State responded in a Brief in Opposition to the Defendant's Motion to Suppress asserting that the Defendant did not have standing and that the exclusionary rule only applied if the Defendant could assert his own Fourth Amendment rights were violated. The State contended that the dispute over entry into the home was between Ione Sebjornson and Danny Sebjornson and the Defendant failed to assert his standing. During the suppression hearing, the Defendant called no witnesses and presented no evidence. There was absolutely no testimony or evidence as to the Defendant's status in the home. Although the Defendant consistently claims, in legal pleadings and arguments, that the Defendant was a "guest" in the Sebjornson home, there is absolutely no testimony or evidence establishing that the Defendant was a lawful "guest" overnight or otherwise. The only facts or evidence that this Court has to consider is the Defendant was present in the home when the search was conducted, hiding in a closet. The United States Supreme Court has stated that while an overnight guest may have a legitimate expectation of privacy in someone else's home, one who is merely present with consent of the householder may not. Minnesota v. Carter, 525 U.S. 83, 90 (1998). In this case, there were no facts or evidence presented by the Defendant that he was even present in the home with consent of the homeowner.

[¶ 11] The Defendant cites State v. Ackerman for support. However, in doing so, consistently relies on the Court to assume the Defendant established that he was, in fact, a guest in the home. The Defendant failed to do so. In Ackerman, the defendant established facts that he and the resident of the trailer were socializing and smoking marijuana together. State v. Ackerman, 499 N.W.2d 882. There are many facts or absence of facts that contrast the case at hand from Ackerman. Danny Sebjornson never advised the officer that Luke Gatlin was in the home. Motion to Suppress Tr. p. 18. Danny Sebjornson led Officer Buzzo through the house to find Michael Sebjornson. Motion to Suppress Tr. pp. 12-13. Danny Sebjornson pointed in a closet area and stated something to the effect of, “there is someone in there” or “he’s there”, and subsequently Luke Gatlin was discovered hiding in the closet. Motion to Suppress Tr. pp. 12-13, 18. Luke Gatlin was fully clothed. Motion to Suppress Tr. p. 14. It was 2:18 p.m. Motion to Suppress Tr. p. 6. Luke Gatlin listed an East Grand Forks residence as his own. Motion to Suppress Tr. pp. 14-15. There was no testimony or evidence as to the Defendant’s relationship to the homeowners, whether they invited him in or consented to his presence, the length of time he was in the residence or the residents’/homeowners’ knowledge of his presence. Defendant failed to meet his burden of establishing standing after the State contested it and therefore, the district court did not err in denying the Defendant’s motion to suppress.

*B. Should the Court find that the Defendant does have standing; the search of the residence was lawful.*

[¶ 12] Even if the Court were to determine the Defendant had standing, the search of the home was lawful for multiple reasons. First, the officers had an arrest warrant for Michael Sebjornson and a reasonable belief that he was in the residence. Coupled with

the arrest warrant, officers obtained consent to enter the residence from an occupant, Danny Sebjornson, and the Defendant failed to object to the search.

[¶ 13] Police officers executing an arrest warrant at a third person's home are allowed entry into that home to execute the warrant if they have a reasonable belief that the suspect resides at the place to be entered and have reason to believe that the suspect is present at the time the warrant is executed. United States v. Powell, 379 F.3d 520, 523 (8th Cir. 2004). Absent a reasonable belief that the suspect resides at the place to be entered and reason to believe that the suspect is present at the time the warrant is executed, law enforcement would need a search warrant, or an exception to the warrant requirement, to enter the dwelling of a third party to execute an arrest warrant on the subject. Steagald v. United States, 451 U.S. 204, 215-16 (1981); State v. DeCoteau, 1999 ND 77, ¶7, 592 N.W.2d 579. In the case at hand, Danny Sebjornson, a resident of 1117 6<sup>th</sup> Ave North called 911 to advise that Michael Sebjornson had a warrant for his arrest and was at 1117 6<sup>th</sup> Ave North. Motion to Suppress Tr. p. 6. Officer Buzzo responded to the residence. Ione Sebjornson, Michael and Danny's mother, told Officer Buzzo that Michael Sebjornson was not present and objected to his entry to search for Michael Sebjornson. Motion to Suppress Tr. p. 8. However, Danny Sebjornson presented himself at the door simultaneously, indicated that he resided at the residence, and advised that Michael Sebjorson was in fact at 1117 6<sup>th</sup> Ave North. Motion to Suppress Tr. p. 9. Danny Sebjornson consented to Officer Buzzo entering the residence to execute the arrest warrant and proceeded to bring Officer Buzzo throughout the residence to find Michael Sebjornson. Motion to Suppress Tr. pp. 9-11. Although Officer Buzzo did not testify about his knowledge of whether Michael Sebjornson resided at 1117 6<sup>th</sup> Ave North his

testimony does establish that he had a reasonable belief that Michael Sebjornson was at the residence upon Officer Buzzo's arrival. Further, Officer Buzzo obtained consent to enter the residence from a resident, Danny Sebjornson. Motion to Suppress Tr. p. 9. Ione Sebjornson objected to Officer Buzzo's entry into the home. The United States Supreme Court has stated that a warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present resident cannot be justified as reasonable **as to him** on the basis of consent given to the police by another resident. Georgia v. Randolph, 547 U.S. 103, 121 (2006) (emphasis added). Further, this Court has stated that a co-occupant who flatly refuses to object to a search, loses out on his opportunity to exclude evidence. State v. Hurt, 2007 ND 192, ¶11, 743 N.W.2d 102. Defendant posits on one hand that he has standing but on the other hand that because he was not a "co-occupant" he was not entitled to object to the search. Further, Defendant asks the Court to take his position one step further and rule that his lack of occupancy/residence status coupled with his lack of assertion of a right to privacy/objection to the search means that Ione Sebjornson's objection to the search should attach to him. There is no case law cited to support this position. To the contrary however, in Rodriguez v. State, the Texas Court of Appeals ruled that a homeowner's consent to search a residence trumped a guest's objection to the search and denied the guest/defendant's motion to suppress. Rodriguez v. State, 313 S.W.3d 403, 408 (Tx. App. 2009). In Rodriguez the court held that Georgia v. Randolph did not even apply in that instance. Id.

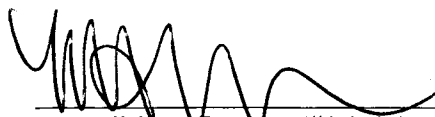
[¶ 14] Officer Buzzo had arrest warrants for Michael Sebjornson. Officer Buzzo had a reasonable belief that Michael Sebjornson was at 1117 6<sup>th</sup> Ave North. Officer

Buzzo had consent to enter the home from a resident of the home, Danny Sebjornson. Ione Sebjornson objected to search of the home. The search of the home over Ione Sebjornson's express refusal cannot be justified as reasonable **as to her** despite consent being given by Danny Sebjornson pursuant to the Georgia v. Randolph decision. However, Ione Sebjornson was never charged with a crime and has nothing to challenge, despite the search taking place over her objection. Even if the Court found that the Defendant has standing in this case, he failed to object to the search and a resident of the home consented to the search. Even if the Defendant had objected, the resident's consent would have trumped his objection. The district court did not err in denying the Defendant's motion to suppress.

**CONCLUSION**

[¶15] For the above-stated reasons, the State requests that this Court deny the Defendant's appeal and affirm the criminal judgment.

DATED this 14 day of May, 2014.



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STATE OF NORTH DAKOTA

State of North Dakota,

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v

Luke Adam Gatlin,

Defendant/Appellant.

AFFIDAVIT OF SERVICE

BY E-MAIL

Supreme Court No. 20140083  
District Court No. 18-2013-CR-00899  
SA# 126237

STATE OF NORTH DAKOTA )  
                                                          ) SS  
COUNTY OF GRAND FORKS)

The undersigned, being of legal age, being first duly sworn deposes and says that on the 14<sup>th</sup> day of May, 2014, she served a true copy of the following document:

**Brief of Appellee**

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Kristine Danielson  
States Attorney's Office

Subscribed and sworn to before me this 14<sup>th</sup> day of May, 2014.

Jennifer Alvstad  
Notary Public

kd

