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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota, Plaintiff/Appellee, vs. Luke Adam Gatlin, Defendant/Appellant.	Supreme Court No. 20140083 Grand Forks Co. No. 18-2013-CR-00899

APPEAL FROM THE CRIMINAL JUDGMENT ENTERED FEBRUARY 20, 2014 BY THE DISTRICT COURT FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT THE HONORABLE SONJA CLAPP PRESIDING.

BRIEF OF THE APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF ISSUE PRESENTED FOR REVIEW

I. Whether the trial court abused its discretion in denying defense's motion to suppress evidence?

   A. Whether Mr. Gatlin has standing to suppress evidence seized as a result of the unconstitutional search?

   B. Whether Mr. Gatlin lost out on his right to suppress evidence because the District Court erroneously applied State v. Hurt's principle to a house guest?

   C. Whether Mr. Gatlin's Fourth Amendment rights were violated when the police executed the search over Ms. Sebjornson's express refusal?

   D. Whether Mr. Sebjornson's consent to search was only valid as to the common areas and, therefore, Mr. Gatlin's search was outside the scope and invalid?

NATURE OF THE CASE AND PROCEDURAL HISTORY

¶1 On April 29, 2013, the State charged Mr. Gatlin with possession of drug paraphernalia. (Docket 2; App. 5).

¶2 On June 25, 2013, defense filed a Motion to Suppress Evidence on the basis that the evidence seized was the result of an illegal search of the residence. (Docket 32-35; App. 6-14). On July 8, 2013, the State filed a Brief in Opposition to Defendant's Motion to Suppress Evidence resisting the defense's motion. (Docket 39-40; App. 15-18). On August 15, 2013, a Suppression Hearing was held before the Court. (See Transcript of Motion to Suppress Hearing). Oral arguments were taken. At the end of the hearing the Court took the issues under advisement. (Motion to Suppress Tr. 32-33). On September 26, 2013, the Court issued an order denying Defendant's Motion to Suppress Evidence. (Docket 41; App. 19-22).

¶3 On February 20, 2014, Mr. Gatlin entered into a conditional plea (Docket 53; App. 23), and was sentenced to 4 years a criminal judgment was entered in this case. (Docket 51; App. 24). On March 3, 2014, a notice of appeal was filed. (Docket 54; App. 25).

¶4 This appeal is taken from a Criminal Judgment entered by the Honorable Sonja Clapp, Judge of the District Court for the Northeast Central Judicial District on February 20, 2014, convicting the Defendant and Appellant Luke Adam Gatlin of possession of drug paraphernalia. (Docket 51; App. 24). Appellant, Luke Adam Gatlin, timely filed a Notice of Appeal on March 3, 2014. (Docket 54; App. 25).

STATEMENT OF FACTS

¶5 On April 28, 2013, Officer Buzzo was dispatched to the Sebjornson-Jenson house located at 1117 6th Avenue North based upon a call into 911 stating that Michael Sebjornson had warrants out for his arrest and was currently in the house. (Tr. 5-6). When Officer Buzzo arrived at the residence, he was greeted at the door by Ione Sebjornson. (Tr. 7). Officer Buzzo explained that he was there to get Michael. (Tr. 8). Ione stated he was not there. (Tr. 8). Officer Buzzo then asked if she would consent to a search of the home. (Tr. 8). Ione said no, she would not consent. (Tr. 8).

¶6 At that time Danny Sebjornson, the son of Ione and the brother to Michael, walked to the front door. (Tr. 8). Officer Buzzo asked Danny if he lived there. (Tr. 9). Danny replied that he did. (Tr. 9). Officer Buzzo then asked Danny if Michael was inside and Danny indicated he was. (Tr. 9). Danny told Officer Buzzo to go get him. (Tr. 9). Officer Buzzo then followed Danny into the house. (Tr. 9). Officer Buzzo searched the common areas of the house including the living room, dining room, and the hallway. (Tr. 9-10).

¶7 Officer Buzzo next looked into a bedroom and saw someone lying on the bed covered with a blanket. (Tr. 11). Officer Buzzo stood in the doorway of the bedroom and said, “Michael show me your hands.” (Tr. 11). The person moved the covers back and it was a female. (Tr. 11).

¶8 Officer Buzzo then followed Danny through the dining room area and towards the living room. (Tr. 11). Danny walked into the next bedroom and looked at Officer Buzzo, then the closet area. (Tr. 11). Officer Buzzo entered the room and saw a male pushed up against the corner of the closet. (Tr. 13). Officer Buzzo told the person (later

identified as Mr. Gatlin) to come out of the closet. (Tr. 13). Officer Buzzo brought Mr. Gatlin into the living room where Mr. Gatlin was secured. (Tr. 13). Officer Buzzo believed he had Michael in his custody. (Tr. 13). Mr. Gatlin identified himself. (Tr. 13). Officer Buzzo ran a check on him and it came back that Mr. Gatlin had active warrants. (Tr. 13). Officer Wadlow took custody of Mr. Gatlin. (Tr. 14).

¶9 Danny then came up to Officer Buzzo and told him Michael was in the bathroom. (Tr. 14). Michael was subsequently located (Tr. 14).

JURISDICTIONAL STATEMENT

¶10 Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law. Pursuant to constitutional provisions, the North Dakota legislature enacted §§ 29-28-03 and 29-28-06 which provide as follows:

> § 29-28-03. "*Appeals as a matter of right*. An appeal to the supreme court provided for in this chapter may be taken as a matter of right."
>
> § 29-28-06. "*From what defendant may appeal*. An appeal may be taken by the defendant from:
> 1. A verdict of guilty;
> 2. A final judgment of conviction;
> 3. An order refusing a motion in arrest of judgment;
> 4. An order denying a motion for new trial; or
> 5. An order made after judgment affecting any substantial right of the party."

State v. Lewis, 291 N.W.2d 735 (N.D. 1980).

¶11 The district court had jurisdiction under N.D. Const. art. VI, § 8, and N.D.C.C. § 27-05-06. Mr. Gatlin's appeal was timely under N.D.R.App.P. 4(b). This Court has jurisdiction under N.D. Const. art. VI, § 6, and N.D.C.C. § 29-28-06(1).

STANDARD OF REVIEW

¶12 The North Dakota Supreme Court reviews a trial court's evidentiary ruling under an abuse-of-discretion standard. “A trial court abuses its discretion in evidentiary rulings when it acts arbitrarily, capriciously, or unreasonably or if it misinterprets or misapplies the law.” State v. Ramsey, 2005 ND 42, ¶ 8, 692 N.W.2d 498 (citations omitted).

¶13 In reviewing a ruling on a motion to suppress evidence from the district court, this Court will defer to the district court's finding of fact and resolve conflicts of testimony in favor of affirmance. State v. Matthews, 2003 ND 108, ¶ 8, 655 N.W.2d 28. However, questions of law are fully reviewable. Id.

LAW AND ARGUMENT

I. The Trial Court abused its discretion in denying defense's motion to suppress evidence.

¶14 The district court erred by denying defendant's motion to suppress evidence. More specifically, the district court erred in its determination that Mr. Gatlin does not have standing to bring a motion to suppress. Mr. Gatlin has standing to bring a motion to suppress because he had an expectation of privacy at the residence. See United States v. Gomez, 16 F.3d 254 (8th Cir. 1994).

¶15 Furthermore, Mr. Gatlin's Fourth Amendment rights were violated when the police crossed the threshold of the front door and executed the search despite Ms. Sebjornson's express refusal. Georgia v. Randolph, 547 U.S. 103, 120 (2006). Alternatively, Mr. Sebjornson's consent to search was limited to common areas and therefore, law enforcement exceeded its scope when they found Mr. Gatlin in bedroom closet. Therefore, the district court's order denying Mr. Gatlin's motion to suppress evidence should be reversed and the evidence seized subsequent to the officers' unconstitutional entrance into the residence should be suppressed.

A. Mr. Gatlin has standing to suppress evidence seized as a result of the unconstitutional search.

¶16 Mr. Gatlin has standing to suppress evidence seized as a result of the unconstitutional search. The district court erroneously held that because the Defendant "was present during the search and failed to object, [he] thereby extinguish[ed] any opportunity to seek suppression." (App. 22). However, the issue of standing rests upon whether the Defendant had an expectation of privacy in the residence. Mr. Gatlin, as a

guest, had a reasonable expectation of privacy in the area searched and therefore has standing to suppress the evidence seized as a result of the search. See State v. Ackerman, 499 N.W.2d 882 (1993).

¶17 The inquiry into whether Mr. Gatlin has standing rests upon whether he had an expectation of privacy in the area searched. The district court erroneously rests its conclusion on an interpretation in United States v. Padilla, 508 U.S. 77, 81 (1993), which states "[i]t has long been the rule that a defendant can urge the suppression of evidence obtained in violation of the Fourth Amendment only if that defendant demonstrates that *his* Fourth Amendment rights were violated by the challenged search or seizure." (Emphasis added). The district court heavily focuses on Mr. Gatlin's Fourth Amendment rights versus Ms. Sebjornson's Fourth Amendment rights. However, the emphasis on "his" in Padilla differentiates between defendants who have an expectation of privacy from defendants who do not have an expectation of privacy. See United States v. Gomez, 16 F.3d 254, 256 (8th Cir. 1994); contra, Jones v. United States, 362 U.S. 257, 261 (1960).

¶18 The Supreme Court further explains in Padilla:

> The established principle is that suppression 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.

508 U.S. at 81-82 (citing Alderman v. United States, 394 U.S. 165, 171–72 (1969)). In Alderman v. United States, 394 U.S. 165, 173-74 (1969), the Court explained, "there is no necessity to exclude evidence against one defendant in order to protect the rights of another. No rights of the victim of an illegal search are at stake when the evidence is

offered against some other party." However the Court explained, "we think there is a substantial difference for constitutional purposes between preventing the incrimination of a defendant through the very evidence illegally seized from him and suppressing evidence on the motion of a party who cannot claim this predicate for exclusion." Alderman, 394 U.S. at 174.

¶19 The true standard for determining whether a person has standing to suppress is whether or not that person had an expectation of privacy. In United States v. Gomez, 16 F.3d 254, 256 (8th Cir. 1994) (citations omitted), the court explains:

> Because Fourth Amendment rights are personal and may not be asserted vicariously, we must first determine whether Gomez had a legitimate expectation of privacy in the area searched or the item seized. If a defendant fails to prove a sufficiently close connection to the relevant places or objects searched he has no standing to claim that they were searched or seized illegally. The defendant moving to suppress has the burden of proving a reasonable expectation of privacy in the area searched. Factors relevant to the determination of standing include: ownership, possession and/or control of the area searched or item seized; historical use of the property or item; ability to regulate access; the totality of the circumstances surrounding the search; the existence or nonexistence of a subjective anticipation of privacy; and the objective reasonableness of the expectation of privacy considering the specific facts of the case.
>
> The district court failed to correctly apply this test. In reality:
>
> [I]n order to qualify as a "person aggrieved by an unlawful search and seizure" one must have been a victim of a search or seizure . . . as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else . . . . Ordinarily, then, it is entirely proper to require of one who seeks to challenge the legality of a search as the basis for suppressing relevant evidence that he allege, and if the allegation be disputed that he establish, that he himself was the victim of an invasion of privacy.

Jones v. United States, 362 U.S. 257, 261 (1960). In order to show Mr. Gatlin had standing to suppress the evidence, he need only show that he had a reasonable expectation of privacy in the residence searched.

¶20 The Supreme Court of the United States has held that a person's status as an overnight guest in another's home "is alone enough to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable." Minnesota v. Olson, 495 U.S. 91, 96-97 (1990). The North Dakota Supreme Court has expanded this ruling, holding that standing also includes non-overnight guests. See State v. Ackerman, 499 N.W.2d 882, 884-85 (1993). The Court explained, "visiting the house of another without an overnight stay is (again in the words of *Olson*) likewise 'a longstanding social custom that serves functions recognized as valuable by society' and an event during which 'hosts will more likely than not respect the privacy interests of their guests.'" Ackerman, 499 N.W.2d at 884 (citations omitted). The North Dakota Supreme Court has already held that a guest in the home has standing to suppress evidence. See generally, Ackerman, 499 N.W.2d 882 (1993). Mr. Gatlin, as a guest, had a reasonable expectation of privacy in the area searched and therefore has standing to suppress the evidence seized as a result of the search.

B. Mr. Gatlin did not lose out on his right to suppress evidence because the District Court erroneously applied State v. Hurt's principle to a house guest.

¶21 Mr. Gatlin did not "lose out" on his right to suppress evidence. The district court, erroneously relying on State v. Hurt, 2007 ND 192, 743 N.W.2d 102, concluded that Mr. Gatlin gave up his right to suppress evidence because he was present during the search but failed to object. An opportunity to refuse to consent or "lose out" only applies to persons with common authority over the residence, not house guests. See United States v. Matlock, 415 U.S. 164, 170 (1974). Therefore, if the guest cannot consent, then the guest cannot lose out on his chance to refuse. The district court's application of co-occupant principles to Mr. Gatlin, as a house guest, was erroneous.

¶22 The district court erroneously applies State v. Hurt principle to a house guest. The district court relies on State v. Hurt, 2007 ND 192, 743 N.W.2d 102, in deciding that Mr. Gatlin gave up his right to suppress evidence because he was present during the search but failed to object. However, Hurt clearly states that a "co-occupant who is present *at the door* and does not flatly refuse the search at the time *his fellow occupant* provides consent 'loses out' on his opportunity to exclude evidence gathered in a *common area* co-occupant consent search." 2007 ND at ¶ 11 (citing Randolph, 547 U.S. at 121) (emphasis added). Hurt focuses on co-occupants or residents of the household, not simply other guests in the home. It further distinguishes that an occupant who is present at the door and who does not refuse to consent loses his right to bring a suppression claim. However, a co-occupant who is at the door and chooses to refuse the officers' entrance is very different from a house guest who does not answer the door and does not assert refusal.

¶23 The district court misstates the Court's ruling in Hurt by declaring that "a defendant who is present during a search but fails to object 'loses out' on his opportunity to seek the suppression of evidence." (App. 21-22). Hurt explains that Randolph "does not require law enforcement to provide co-occupants any opportunity to assert their Fourth Amendment rights at the door." State v. Hurt, 2007 ND 192,¶ 11,743 N.W.2d 102, 106. Rather, Randolph merely provides "a physically present co-occupant's stated refusal to permit entry prevails [over the consent of his fellow occupant], rendering the warrantless search unreasonable and invalid as to him." Randolph, 547 U.S. at 106. The Court explained that the co-occupant who is not present at the door and does not flatly refuse the search at the time his fellow occupant provides consent "loses out" on his

opportunity to exclude evidence gathered in a common area co-occupant consent search. State v. Hurt, 2007 ND 192,¶ 11,743 N.W.2d 102, 106 (citing Randolph, 547 U.S. at 106). This holding is distinguishable from the district court's holding which states defendant *who is present during a search but fails to object* "loses out" on his opportunity.

¶24 An opportunity to refuse consent or "lose out" only applies to persons with common authority over the residence, not house guests. In Matlock, the Court specifically explains, "the consent of one who possesses common authority over the premises or effects is valid against the absent, nonconsenting person with whom that authority is shared." United States v. Matlock, 415 U.S. 164, 170 (1974). Matlock makes it clear that the other party from whom consent may even be considered is other tenants of the house, who actually have common authority in the house. Clearly, a house guest would not be considered a "fellow occupant" with shared authority to grant or deny consent. In Randolph, the Court further defines a person of authority:

> That person might be the householder against whom evidence is sought, Schneckloth v. Bustamonte, 412 U.S. 218, 222 (1973), or a fellow occupant who shares common authority over property, when the suspect is absent, Matlock, [U.S. 415] at 170, and the exception for consent extends even to entries and searches with the permission of a co-occupant whom the police reasonably, but erroneously, believe to possess shared authority as an occupant, Rodriguez, [497 U.S.] at 186.

Georgia v. Randolph, 547 U.S. 103, 109 (2006). The Court refers to these prior cases as "our *co-occupant* consent-to-search-cases." See Randolph, 547 U.S. at 109 (emphasis added).

¶25The Court in Randolph further reiterates the difference between the authority of a co-occupant and a house guest. The Court explained that an overnight houseguest

has a legitimate expectation of privacy in their temporary quarters because "it is unlikely that [the host] will admit someone who wants to see or meet with the guest over the objection of the guest." Randolph, 547 U.S. at 113 (quoting Minnesota v. Olson, 495 U.S. 91, 99 (1990)). The Court continues, "[i]f that customary expectation of courtesy or deference is a foundation of Fourth Amendment rights of a houseguest, it presumably should follow that an inhabitant of shared premises may claim at least as much, and it turns out that the *co-inhabitant naturally has an even stronger claim.*" Randolph, 547 U.S. at 113 (emphasis added).

¶26 Although the courts have not reached the question of house guest authority to consent, the courts have clearly provided expectations for co-occupants. The Supreme Court in Randolph suggests that the co-occupants have authority to refuse or consent, and therefore have the ability to "lose out" on the opportunity to refuse. However, no such holding or social norm provides for a house guest to be present at the door to refuse consent or "lose out." In fact, the Supreme Court explained that guests are at the mercy of their hosts; guests "do not have legal authority to determine who may or may not enter the household." Olson, 495 U.S. at 99. Therefore, if the guest cannot consent, then the guest cannot lose out on his chance to refuse. The district court's application of co-occupant principles to Mr. Gatlin, as a house guest, was erroneous.

C. Mr. Gatlin's Fourth Amendment rights were violated when the police executed the search over Ms. Sebjornson's express refusal.

¶27 Mr. Gatlin's Fourth Amendment rights were violated when the police executed the search over Ms. Sebjornson's express refusal. Mr. Gatlin's expectation of privacy, as a houseguest, is linked to his host's expectation of privacy and her subsequent admittance or refusal of other guests. See Minnesota v. Olson, 495 U.S. 91 (1990). The

warrantless search of this residence, over Ms. Sebjornson's express refusal cannot be justified as reasonable to her, nor her guests, on the basis of consent given by Mr. Sebjornson. Georgia v. Randolph, 547 U.S. 103, 120 (2006).

¶28 Mr. Gatlin's expectation of privacy is linked to his host's expectation of privacy; and therefore, the host's consent is linked to the houseguest's consent. The Court in Minnesota v. Olson explains, "[t]he houseguest is there with the permission of his host, who is willing to share his house and *his privacy with his guest*." 495 U.S. 91, 99 (1990)(emphasis added). The Court implies that the guest's privacy is contingent upon the host's privacy. The host may permit or exclude others at his discretion, but he will usually accommodate his guests and exclude unwanted guests. Olson, 495 U.S. at 99. The legitimate expectation of privacy is not contingent upon the authority to admit or exclude guests. Id. Therefore, a houseguest's consent is linked to his host's consent.

¶29 The Fourth and Fourteenth Amendments to the United States Constitution and the North Dakota Constitution declares "[t]he rights of the people to be secure in their person, houses, papers and effects, against unreasonable searches and seizures shall not be violated . . . ." N.D.Const. art. I, § 8. "The Fourth Amendment of the United States Constitution, applicable to the states through the Fourteenth Amendment, protects individuals from unreasonable searches and seizures." State v. Guscette, 2004 ND 71,¶ 7, 678 N.W.2d 126, 129 (citing State v. Tognotti, 2003 ND 99,¶ 7, 663 N.W.2d 642). In Illinois v. Rodriquez, 497 U.S. 177, 183 (1990), the Court emphasized that the Fourth Amendment does not assure a defendant no government search of his house will occur unless he consents; rather, the Fourth Amendment guarantees only no search will occur that are "unreasonable." (Citing U.S. Const. amend. IV). In discussing the officers good

faith and reasonableness requirement, the Court explains that what is demanded of officers "is not that they always be correct, but that they always be reasonable." Id. at 185 (citing Brinegar v. United States, 338 U.S. 160, 176 (1949)).

¶30 The Fourth Amendment applies to warrantless entries into a felony suspect's house to make a felony arrest, unless there is consent from the suspect. Payton v. New York, 445 U.S. 573 (1981). In Payton, the U.S. Supreme court held that all warrantless entries into the home where presumptively unreasonable. State v. Bollinger, 2004 ND 30, ¶ 14, 674 N.W.2d 281 (citing Payton v. New York, 445 U.S. 573 (1981)). The state bears the burden of showing that the warrantless entry is reasonable because of exigent circumstances and the arrest that occurs after the entry is legal. City of Jamestown v. Dardis, 2000 ND 186, ¶ 15, 618 N.W.2d 495 (citing Welsh v. Wisconsin, 466 U.S. 740, 750 (1984)).

¶31 Voluntary consent is an exception to the warrant requirement. See Illinois v. Rodriguez, 497 U.S. 177, 184-86 (1990). The United States Supreme Court has recognized the validity of searches in which a co-occupant, who shares common authority over the property, consents to a search of the home when the defendant was absent from the premises. United States v. Matlock, 415 U.S. 164, 170 (1974). The United States Supreme Court has also recognized the validity of searches in which the fellow occupant, vested with common authority, gives consent, and the defendant is present, but unaware consent had been given and unaware law enforcement was entering the home to conduct a search. Rodriguez, 497 U.S. at 180, 186. These exceptions highlight the necessity of the officer's good faith attempts to be reasonable. See id. at 185.

¶32 However, in Georgia v. Randolph, the United State's Supreme Court held, "a physically present co-occupant's stated refusal to permit entry prevails [over the consent of his fellow occupant], rendering the warrantless search unreasonable and invalid as to him." Randolph, 547 U.S. at 106. The Supreme Court made it clear 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." Randolph, 547 U.S. at 120. It is clear that the express refusal by an occupant makes the officers' entrance into the home, subsequent to the refusal, unreasonable.

¶33 In this case, police went to 1117 6th Avenue North with an arrest warrant for Michael Sebjornson without a search warrant for the house. (App. 19). Ms. Ione Sebjornson refused to give consent for the police to enter the house. (App. 22). After Ms. Sebjornson's express refusal, the officer asked Mr. Danny Sebjornson if he lived there, to which Mr. Sebjornson replied, "yes." (App. 19). The officer then asked Mr. Sebjornson if Michael was home and Mr. Sebjornson replied, "yes, he's in the room, just go get him." (App. 19). The officers then entered the house. (App. 19).

¶34 In this case, as explained in Randolph, "it is fair to say that a caller standing at the door of shared premises would have no confidence that one occupant's invitation was sufficiently good reason to enter when a fellow tenant stood there saying, 'stay out' . . . no sensible person would go inside under those conditions." Randolph, 547 U.S. at 113. The law enforcement entrance into the house, after express refusal by Ms. Sebjornson, is therefore unreasonable. The Court has made it clear that:

> Since the co-tenant wishing to open the door to a third party has no recognized authority in law or social practice to prevail over a present and

> objecting co-tenant, his disputed invitation, without more, gives a police officer no better claim to reasonableness in entering than the officer would have in the absence of any consent at all.

Id. at 114. Once Ms. Sebjornson refused, subsequent requests to enter and search became unreasonable. Therefore, when law enforcement entered the home, the search became unreasonable as to Ms. Sebjornson and her guests.

¶35 It should be noted that the holding in Randolph specifically includes "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 . . . .*" 547 U.S. at 120 (emphasis added). The majority noted "[t]he dissent is critical that our holding does not pass upon the constitutionality of such a search as to a third tenant." Id. at 120 n.8. The Court does not address the constitutionality of third party invasion of privacy but does answer the dissent's criticism of the unconstitutionality of a third party by stating, "[w]e decide the case before us, not a different one." Id. at 120 n.8. This suggests that the "reasonable as to him," referring to the objecting tenant, also attaches to third party occupants; otherwise it would be unconstitutional. Therefore, Mr. Gatlin's Fourth Amendment rights were violated when law enforcement violated Ms. Sebjornson's Fourth Amendment right.

D. Alternatively, Mr. Sebjornson's consent to search was only valid as to the common areas and, therefore, Mr. Gatlin's search was outside the scope and invalid.

¶36 If the Court does not agree that Mr. Gatlin's Fourth Amendment protections attach to the nonconsenting occupant, then the search which discovered Mr. Gatlin was still unreasonable, because Mr. Sebjornson's consent to search only stretches to common areas. See Georgia v. Randolph, 547 U.S. 103, 110 (2006). The Supreme Court has

allowed searches of shared dwellings when there was no present, objecting co-tenant on the basis that "it is reasonable to recognize that any one of the co-inhabitants has the right to permit the inspection in his own right and that others have assumed the risk that one of their number might permit the *common area* to be searched." Randolph, 547 U.S. at 110 (emphasis added). If Mr. Gatlin's expectation of privacy attaches to the consenting tenant, then the reasonable search only extends to common areas. Therefore, law enforcement exceeded its scope when they found Mr. Gatlin in a bedroom closet.

CONCLUSION

¶37 Based upon the submission, pleadings, testimony, argument and authority contained herein, Appellant respectfully requests that this Court find that the District Court abused its discretion when it denied Mr. Gatlin's motion to suppress evidence obtained during the illegal search. Mr. Gatlin respectfully requests that this Court reverse the District Court's order and remand this case to the District Court.

Dated this 15th day of April, 2014.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota, Plaintiff/Appellee, vs. Luke Adam Gatlin, 00899 Defendant/Appellant.	AFFIDAVIT OF SERVICE Grand Forks Co. No. 18-2013-CR- Supreme Court No. 20140083

The undersigned, being of legal age, being first duly sworn deposes and says that on the 15th day of April, 2014, she served true copies of the following documents:

Brief of the Appellant
Appendix of Appellant

And that said copies were served upon:

Meredith H. Larson
Grand Forks County
Assistant State's Attorney
Email: sasupportstaff@gfcounty.org
by email, and to:

Luke Gatlin
c/o NDSP
PO Box 5521
Bismarck ND 58506-5521
by mail.

Dated this 15th day of April, 2014.

_____
Holly Bicker

Subscribe and sworn to before me this 15th day of April, 2014.

_____
Notary Public
County of Grand Forks
State of North Dakota