TABLE OF CONTENTS

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

NORTH DAKOTA SUPREME COURT CASES

UNITED STATES APPELLATE COURT CASES

UNITED STATES CONSTITUTIONAL PROVISIONS

NORTH DAKOTA CENTURY CODE

STATEMENT OF THE ISSUES

I. Whether a house guest loses has standing to suppress evidence based on an alleged improper probationary search of a third party's residence

II. Whether the totality of the circumstances presented in evidence supported the district court's judgment denying an exclusion of evidence

STATEMENT OF THE CASE

[¶1] Appellant, Frank West ("West"), filed a motion to suppress evidence in Grand Forks County District Court. Appellee's App. 1. The State responded to West's motion and asked the district court to deny the motion. Appellee's App. 2. On September 13, 2019, a hearing on the motion was held, and testimony was received from Probation and Parole Officer Twyla Llewellyn ("Llewellyn"); Grand Forks Narcotics Task Force Officer Darin Johnson ("Johnson"); and Sierra Chaney, f/k/a Sierra Gist ("Sierra").

[¶2] The district court denied West's motion to suppress evidence. Appellee's App. 3. In the district court's Order Denying Motion to Suppress, the court found that West's privacy rights were not infringed upon by a lawful probation search, and West lost standing to suppress the evidence by failing to object to the search. Id. West subsequently pled guilty to Possession with Intent to Manufacture/Deliver Marijuana on October 25, 2019, in Criminal Judgment 18-2019-CR-00461. West has appealed the motion's denial to the North Dakota Supreme Court.

STATEMENT OF THE FACTS

[¶3] On March 6, 2019, Frank West was cited and arrested for Possession with Intent to Manufacture/Deliver Marijuana in Grand Forks County, North Dakota. On the day of his arrest, law enforcement were conducting a probation search of Darion Chaney's ("Chaney") residence. Darion Chaney, a third-party, was under probation and supervised by Llewellyn. Under the terms of Chaney's probation, Chaney was prohibited from possessing weapons, and engaging in other unlawful activity. Appellee's App. 4.

[¶4] A few days prior to the search of Chaney's residence, Llewellyn, a thirteen year veteran officer with Probation and Parole, received information that Chaney's wife,

Sierra, was conducting "straw purchases" of firearms on Chaney's behalf from Brother's Firearms in Grand Forks, ND. Brother's Firearms informed Llewellyn that these purchases had been occurring over the past several months. Meanwhile, the Grand Forks Narcotics Task Force received information that Chaney was involved in potential drug sales from Chaney's second-floor residence.

[¶5] Based on the alleged violations of Chaney's probation, Llewellyn decided to conduct a probation search of Chaney's residence. Llewellyn testified that her main concern for conducting a search of the residence was regarding safety. This safety concern was due to a number of factors, including Chaney being a convicted felon in possession of firearms; Chaney being a convicted of domestic violence offender; and Chaney's probation being set to expire in July 2019, so he would not have time to complete domestic violence programming. Chaney was incarcerated at the time of the probation search on March 6, 2019, for failing to comply with a sentence in three separate cases. Chaney was set to be released in the days following the search. Llewellyn had previously signed a petition to revoke Chaney's probation, however the petition was not filed until after the March 6th probation search as Llewellyn hoped Chaney would be able to get back into compliance with the terms of his probation. Chaney's probation was in-effect at the time of the search of his residence.

[¶6] On March 6, 2019, Llewellyn initiated a probation search at the residence Chaney had reported to probation at 502 North 48th Street, Apartment 204, in Grand Forks, North Dakota. Llewellyn had been at this address several times during the course of her supervision of Chaney and was aware Chaney, Sierra, and their two children lived there. Due to safety concerns that firearms were present in the residence, Llewellyn requested

assistance from Johnson and other officers with the Grand Forks Police Department to conduct the search.

[¶7] Upon entering of the residence, Llewellyn, followed by other officers, observed West lying on the couch in the common living room. Neither Llewellyn nor Johnson were aware West was staying at the apartment. Officers shouted commands for West to keep his hands visible. West complied and informed officers there was a handgun behind him under the couch cushion. For officers' safety, West's hands were handcuffed behind his back while officers searched the residence.

[¶8] For officers' safety, West remained in the common living area for the duration of the search. During that time, West voluntarily spoke with officers and informed them that he was visiting Chaney from Pennsylvania. West indicated that he arrived in Grand Forks the day prior to Chaney's incarceration on February 23, 2019, and planned to return to Pennsylvania upon Chaney's release from incarceration. Sierra testified that West was staying at the apartment to provide her protection and help out while Chaney was incarcerated.

[¶9] The search of Chaney's residence resulted in several firearms, weapons, and drug paraphernalia being seized and removed from the apartment. Officers also located a suitcase next to the front door of the residence's entrance. Inside the suitcase, officers discovered marijuana. After retrieving the marijuana from inside the suitcase, Officer Johnson and Officer Llewellyn testified that West admitted he owned that marijuana. West was present as officers retrieved the marijuana. West did not object to the search nor indicate that the suitcase belonged to him prior to officers retrieving the marijuana from

within the suitcase. The subject matter of the suppression motion was the marijuana that was located within the suitcase.

ARGUMENT

I. WEST DOES NOT HAVE STANDING TO CONTEST WHETHER DARION CHANEY'S CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN THEY CONDUCTED A PROBATION SEARCH AT CHANEY'S RESIDENCE

[¶10] The Fourth Amendment of the United States Constitution states,

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

U.S. Const. amend. IV. An individual challenging a search or seizure has the initial burden to show a constitutionally protected personal interest implicated by the search or seizure. State v. Gardner, 2019 ND 122, ¶6, 927 N.W.2d 84; State v. Zacher, 2015 ND 208, ¶7, 868 N.W.2d 847; State v. Glaesman, 545 N.W.2d 178, 182 n.1 (N.D. 1996). Where the issue is whether the defendant's personal rights have been violated, as opposed to the rights of a third party, the defendant bears the burden to show a sufficient personal interest in the asserted violation. Gardner, 2019 ND 122, ¶6, 927 N.W.2d 84; see State v. Raywalt, 444 N.W.2d 688, 689 (N.D. 1989) ("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.").

[¶11] The law regarding an individual's protection under the exclusionary rule is well established; the rule only applies if "the individual's own constitutional rights were violated –the individual may not claim violation of a third party's rights." State v. Gardner, 2019 ND 122, ¶7, 927 N.W.2d 84; State v. Oien, 2006 ND 138, ¶8, 717 N.W.2d 593; State v. Fischer, 270 N.W.2d 345, 349 (N.D. 1978) (citing Mancusi v. DeForte, 392 U.S. 364,

366, 88 S.Ct. 2120, 20 L.Ed.2d 1154 (1968) ("Fourth Amendment rights are personal rights, and [...] may be enforced by exclusion of evidence only at the instance of one whose own protection was infringed by the search and seizure.") (*abrogated* on other grounds); Plumhoff v. Rickard, 572 U.S. 765, 778, 134 S.Ct. 2012, 188 L.Ed.2d 1056 (2014) ("Fourth Amendment rights are personal rights which [...] may not be vicariously asserted.").

[¶12] In this case, West argues that the basis for searching Chaney's residence was invalid. In his brief, West cites to Chaney's probationary status and Chaney's incarceration. (See Appellant's Brief at ¶¶11, 23). Based on Chaney's status and location at the time before and during the search, West argues that the combination of Chaney's conditions and the subjective intent of the officers established that the purpose of the search was unconstitutional. (See Appellant's Brief ¶¶23, 25.) Chaney is a third-party and does not have an interest in the matter before the Court. West lacks standing to challenge the legality of the probation search under Darion Chaney's probation conditions, but he may challenge the search of property to which he, at one point, had a legitimate expectation of privacy.

[¶13] West's argument asks this Court to determine whether Darion Chaney's constitutional rights were violated by the probationary search. If the issue presented to this Court requires an analysis of whether the underlying basis of the search was for the purpose of probation or investigation, the Court will be required to analyze whether officers implicated Chaney's rights as a probationer when the decision was made to search Chaney's residence. Just as Darion Chaney does not have an interested in Frank West's appeal to the Supreme Court, Frank West does not have a legitimate privacy interest in whether officers violated Darion Chaney's rights as a probationer regarding how decision

was made to search the residence and its underlying purpose. Therefore, West does not have standing to challenge the validity and basis for the search.

A. If West does have standing, the evidence manifestly weighs in favor of a lawful probation search

[¶14] Even if the Court determines that West has standing to address the underlying purpose of the search of Chaney's residence, the evidence manifestly weighs in favor of a probation search which was supported by reasonable suspicion. North Dakota law recognizes that third-parties who reside with probationers have diminished privacy protections in areas which are subject to the probation search, such as common living areas. State v. Adams, 788 N.W.2d 619, 623 (N.D. 2010). As such, West's privacy rights as a guest in the home were not violated when officers lawfully entered the residence to conduct a probation search. Furthermore, West's privacy rights were not violated when officers searched a suitcase located in the common living area next to the main entrance.

[¶15] The touchstone of the Fourth Amendment is reasonableness. United States v. Knights, 534 U.S. 112, 112–13 (2001). Courts review probationary and investigative searches based on the reasonable standard under the totality of the circumstances. State v. LaFromboise, 542 N.W.2d 110 (N.D. 1996). If the search is probationary and executed pursuant to a search clause, the Court must then decide whether the search was reasonable.

i. The district court correctly found that the search was a probation search and not a subterfuge for criminal investigation

[¶16] This Court has addressed the issue of pre-textual probationary searches in LaFromboise. In LaFromboise, the probationer argued the search of his residence a pre-textual search for fruits of a crime. Id. at 112. LaFromboise's probation officer suspected that LaFromboise was violating his probation by possessing marijuana. Id. at 111. Pursuant to a clause which permitted searches of his person and property, eleven officers and a K9

drug-sniffing officer forcibly entered his apartment and discovered evidence of criminal activity. Id. Upon review of the district court's finding that the search was reasonable as the predominate purpose of the search was to determine whether the probationer was complying with his probation terms, the North Dakota Supreme Court looked to several factors expounded upon in the district court's ruling. Id. at 112. First, even though multiple officers and law enforcement agencies assisted with the search, the search was instigated by the probation officer. Id. at 112-113. Second, since the terms of probation included a search clause, no search warrant was necessary. Id. at 113. Third, failure to finalize a revocation of probation did not indicate a subterfuge for criminal investigation. Id. Finally, there was sufficient competent evidence that LaFromboise was violating his probation. Id. Under the totality of the circumstances, the Court found there was sufficient competent evidence that the search was not a subterfuge for criminal investigation. Id.

[¶17] In this case, the district court properly determined that, under the totality of the circumstances, the search of Chaney's residence was for the purpose of probation. Appellee's App. 3 at ¶¶19-20. In the district court's order denial of West's Motion to Suppress, the court relied on the competent evidence and testimony regarding the factual basis to initiate the search as well as Chaney's status as a probationer at the time of the search on March 6, 2019. Officer Llewellyn, Chaney's probation officer, testified that she and other law enforcement agencies received information that Chaney was in possession of guns and was involved in the sale of marijuana. Possession of guns and marijuana were each separate violations of Chaney's terms of probation, so she prompted a search of Chaney's residence to remove the weapons and drugs. Tr. pp 6-8. Due to the risks

associated with searching Chaney's residence, Llewellyn asked for other law enforcement agencies for assistance during the search. Tr. p. 8, lines 13-18.

[¶18] Llewellyn testified that Chaney was placed on probation January 7, 2018, and his probation was set to expire on July 6, 2019. Tr. p. 6, lines 2-5. As part of Chaney's terms of probation, Chaney was required to submit to warrantless searches of his residence by law enforcement officers. See Appellee's App. 4. The district court noted that while Llewellyn has submitted a petition to revoke Chaney's probation, Chaney's probation had not lapsed prior to the March 6, 2019 search of the residence. Appellee's App. 3 at ¶19. Llewellyn testified at the hearing that filing a petition does not always result in revocation. Id. In Chaney's specific case, Llewellyn hoped Chaney would get back into compliance with his probation before a hearing. Id. at ¶¶5, 19.

[¶19] Like in LaFromboise, the March 6, 2019, search of Darion Chaney's residence was instigated by Chaney's probation officer, the terms of Chaney's probation included a search clause, Chaney's probation was in effect at the time of the search, and there was sufficient evidence that Chaney was violating his probation. Based on the totality of the circumstances, the district court correctly held that the search of Chaney's residence was for the purpose of probation.

ii. The district court correctly found the search was lawful and supported by reasonable suspicion

[¶20] Upon determination that a search is for purpose of probation, the next analysis is whether the search is reasonable within the meaning of the Fourth Amendment under the totality of the circumstances. State v. Stenhoff, 2019 ND 106, ¶9, 925 N.W.2d 429; State v. Ballard, 2016 ND 8, ¶8, 874 N.W.2d 61; Knights, 534 U.S. 112, 112–13 (2001). An officer's search of a probationer's residence is lawful when (1) the probationer agrees to

the terms of his probation allowing searches of his person, residence, and property at any time, by a peace officer or probation officer; and (2) a law enforcement officer possesses reasonable suspicion of a unlawful activity. Stenhoff, 2019 ND 106, ¶9, 925 N.W.2d 429; State v. White, 2018 ND 266, ¶13, 920 N.W.2d 742; cf. Ballard, 2016 ND 8, ¶3, 874 N.W.2d 61 (holding that an officer's search of a probationer's person was unconstitutional when the officer had no "reasonable articulable suspicion of any drug-related or criminal activity" at the time of the stop.) The subjective intent of certain actors are not considered when the Court is faced with making a determination as to whether a search or seizure is constitutional. Whren v. United States, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

[¶21] In State v Stenhoff, the North Dakota Supreme Court held a probation search of a residence was lawful when it was supported by reasonable suspicion even if the probationer was incarcerated at the time of the search. 2019 ND 106, ¶16, 925 N.W.2d 429. In Stenhoff, law enforcement officers conducted a cursory search of a probationer's (Stenhoff) purported residence. Id. at ¶3. During the search, a child in the residence asked officers whether they were here due to the presence of illegal narcotics in the residence. Id. Stenhoff was arrested for an unrelated issue. Id. Officers later reported the suspected drugs at the residence to Stenhoff's probation officer who eventually authorized a search of the residence as there was a potential violation of the terms of his probation. Id. at ¶4. Stenhoff's terms of probation authorized law enforcement searches of his person, residence, vehicle and property without a warrant. Id. at ¶2.

[¶22] This Court held in Stenhoff that a child's statement alluding to the presence of drugs provided law enforcement reasonable suspicion that unlawful activity was afoot.

Id. at ¶11. Thus the statement was sufficient for officers to initiate a search of the probationer's residence after he was incarcerated. Id. at ¶11. The fact that probationer was incarcerated did not terminate or suspend the terms of his probation, and his residence remained subject to search. Id. ("Stenhoff remained on probation and subject to conditions of probation while in custody until such time as his probation was terminated or revoked."); see also U.S. v. Ickes, 2017 WL 1017120, at *1 (W.D. Ky. Mar. 15, 2017), aff'd, 922 F.3d 708 (6th Cir. 2019) (it was reasonable for the probation officer to search the defendant's property despite the fact that the defendant was already in custody.) Since a probationer has a lower expectation of privacy, there is no other requirement to search a probationer's property than reasonable suspicion. Id. at ¶16; see also State v. White, 2018 ND 266, ¶14, 920 N.W.2d 742. Thus, the probationer's residence was subject to search until the probation is no longer in effect.

[¶23] In this case, the district court correctly held that the probation search of Chaney's residence was lawful and supported by reasonable suspicion. Appellee's App. 3 at ¶¶22-24. Like officers in Stenhoff, Officer Llewellyn had reasonable suspicion that Chaney was in violation of two probation terms, and that evidence of those violations was present at Chaney's residence. Officer Llewellyn testified that a few days prior to the search, she received information that Chaney was conducting straw purchases of guns at a local gun shop over the span of a few months. Id. at ¶4. Meanwhile, Officer Johnson, testified at the hearing that the Narcotics Task Force Unit received information that Chaney was involved in drug sales out of his second-floor apartment. Id. at ¶5. This information was relayed to Llewellyn prior to the search. Id. Based on reports from multiple sources that Chaney was in violation of two separate terms of his probation, Llewellyn had

reasonable suspicion criminal activity was afoot and made the decision to search Chaney's reported residence. Id. at ¶6.

[¶24] Like the probation search in Stenhoff, the probation search of Chaney's residence was lawful because Chaney's terms of probation permitted warrantless probation searches of his residence and law enforcement officers had reasonable suspicion that Chaney was violating his probation when they received information from independent sources that Chaney was possessing guns and drugs. Even though Chaney was incarcerated at the time of the search, his probation terms were still in effect, and the searched place was his residence of record. There is no time-limit requirement as to when a probation search may occur after a probationer has been arrested or incarcerated. Any interpretation otherwise stands in stark contrast to the North Dakota Supreme Court's intent limiting the requirements needed to conduct probation searches. The district court's order dismissing West's motion to suppress properly applied this rationale. Id. at ¶18. Therefore, the probation search conducted on March 6, 2019 was lawful.

B. West's rights as a non-probationer were not violated under the reasonableness standard of the Fourth Amendment

[¶25] West argues that the probation search was unreasonable to West as a non-probationer inside Chaney's residence. He supports this argument by indicating since Chaney did not have physical access to the residence at the time of the search, all items inside his residence were not subject to a probation search. This argument is flawed and goes against the principles of probationary searches. The law has long held that probationers are subject to a significantly diminished expectation of privacy. Knights, 534 U.S. at 119, 122 S.Ct. at 591. Furthermore, non-probationers who choose to reside in dwellings of probationers assume the risk that they too will have diminished Fourth

Amendment rights in areas shared with the probationer. Adams, 788 N.W.2d 619, 623 (N.D. 2010); see also State v. Bursch, 905 N.W.2d 884, 890-891 (Minn. Ct. App. 2017) ("a non-probationer who knowingly lives with a probationer has a diminished expectation of privacy in areas of the residence shared with the probationer.").

[¶26] The terms of Chaney's probation mirror N.D.C.C. § 12.1-32.07(4)(n), which states, "submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant." See Appellee's App. 4. As aforementioned, there are no additional requirements necessary to initiate a probation search beyond reasonable suspicion a violation occurred. There is neither a requirement that the defendant be physically present during the search nor a requirement that all items accessible to non-probationers be excluded from the search. Adams, 2010 ND 184, ¶12, 788 N.W.2d 619 ("The fact that a probationer shares a residence does not nullify the authority to conduct a warrantless search of the probationer's property.").

[¶27] The evidence at issue in the motion to suppress was marijuana that was located inside a suitcase in the common living room of Chaney's apartment. This apartment was the only known residence of Chaney as it was the address reported to Officer Llewellyn for probation purposes. Officers were searching for evidence of illegal activity in all places which Chaney had access to within the apartment. Since marijuana and guns are not large objects, they would reasonably fit inside an average suitcase. Since the suitcase was located next to the entrance of the apartment in the common living room, Chaney had access to this section of the apartment, and the suitcase was subject to search. During the search, West indicated to officers that he was not a permanent resident of the address, but rather

an overnight guest of Chaney. Since the law recognizes that co-habitants of probationers have diminished privacy rights, it logically follows that an overnight guest has even further diminished rights. West voluntarily remained and occupied a residence that was subject to probationary searches, as such, his rights were not violated when law enforcement lawfully conducted a probation search of Chaney's residence nor when the suitcase was searched.

II. UNDER THE TOTALITY OF THE CIRCUMSTANCES, THE PRESENTED EVIDENCE MANIFESTLY WEIGHS IN FAVOR OF THE DISTRICT COURT'S ORDER THAT WEST LOST STANDING TO EXCLUDE EVIDENCE OF THE SEARCH

[¶28] The district court correctly held that even if West had a legitimate expectation of privacy within the Chaney's residence, that expectation became unreasonable when West failed to object to the search as it was taking place. An individual's ability to challenge a search or seizure depends on whether that person has a constitutionally protected expectation of privacy. Oien, 2006 ND 138, ¶8, 717 N.W.2d 593 A person has a 'reasonable expectation of privacy' which is established by (1) exhibiting an actual, subjective expectation of privacy, and (2) that expectation must be one that society recognizes as reasonable. State v. Nguyen, 2013 ND 252, ¶8, 841 N.W.2d 676.

[¶29] The North Dakota Supreme Court has recognized that probationers and co-habitants of probationers have a limited expectation of privacy. Adams, 788 N.W.2d 619, 623 (N.D. 2010). While there is no direct North Dakota case law regarding the privacy rights of an overnight guest of a probationer, it logically follows that an overnight guest has even further limitations of an expectation of privacy compared to co-habitants. In cases that address the rights of overnight guests of individuals who are not on probation, the Supreme Court has recognized that the overnight guest has an expectation of privacy. Minnesota v. Carter, 525 U.S. 83, 90 (1998). However, the overnight guest may lose that

expectation when it becomes unreasonable to assert privacy interests. Nguyen, 2013 ND 252, ¶8, 841 N.W.2d 676.

[¶30] One example of an expectation of privacy becoming unreasonable is when the overnight guest does not object to a lawful search of a residence. State v. Gatlin, 2014 ND 162, ¶10, 851 N.W.2d 178. In Gatlin, the defendant was an overnight guest of a third party. Id. at ¶2. The third party consented to a law enforcement search of the residence where the defendant was hiding in a closet. The defendant moved to suppress evidence of the search as he argued the search was not valid. Id. at ¶3. There, the North Dakota Supreme Court held that as upon a determination the search was valid, an overnight guest loses his opportunity to suppress evidence collected during the search when he does not flatly refuse to a valid search taking place. Id. at ¶10. Furthermore, the Supreme Court noted that the scope of the search was valid because the defendant failed to establish he had authority over the room before officers had entered. Id. at ¶¶11-12.

[¶31] The district court properly referred to Gatlin as part of its analysis to dismiss West's motion to suppress. Like in Gatlin, the district court determined that the search was valid as it was a lawful probation search supported by reasonable suspicion. Similar to the defendant in Gatlin, West was an overnight guest and was present during the search, and he failed to establish authority over the room prior to law enforcement officers' entrance. The district court determined that even if West had an expectation of privacy at one point in time, he lost his opportunity to suppress evidence collected during the search because he did not flatly refuse the valid search taking place. Any expectation of privacy West had at the beginning of the search became unreasonable when he failed to notify officers that he possessed the items inside the suitcase before officers searched inside the suitcase. Thus,

under the standards enumerated in Oien and Nguyen, West did not have a reasonable expectation of privacy in the residence and specifically within the suitcase. The district court properly supported its decision by analogizing West's motion to applicable case law. Furthermore, the district court's decision was proper as persons who associate with individuals on probation have diminished privacy rights in order to achieve the State's interest in monitoring the subjects of probation.

[¶32] The Minnesota Court of Appeals suggests that even if West had objected to the search, the State's legitimate interest in ensuring compliance with probation outweighs the non-probationer's privacy rights.

> By allowing non-probationers to prevent law enforcement from conducting the search of a probationer's residence, we would be creating a loophole whereby probationers are allowed to evade some of the conditions of their probation simply by making the strategic decision to live with a non-probationer. And this problem is not alleviated by requiring law enforcement to obtain a warrant to enter the residence because search conditions are included in probation agreements precisely to enable law enforcement to search a probationer's residence without any forewarning. This loophole would interfere with the state's ability to properly enforce the terms of probation, as well as impinge upon the state's ability to keep the general public safe from potentially law-breaking probationers. Based upon this record, Bursch knowingly lived with probationers and therefore had a diminished expectation of privacy in areas of the residence that he shared with them.

State v. Bursch, 905 N.W.2d 884, 892 (Minn. Ct. App. 2017). Based on North Dakota's understanding that both people residing with probationers and overnight guests have a limited expectation of privacy compared to the average citizen, the North Dakota Supreme Court can logically adopt and implement Minnesota's rationale for guests and co-occupants in probationers' residences.

CONCLUSION

[¶33] West has failed to show how his privacy rights were implicated during the lawful probation search which was supported by probable cause. Instead he implicitly alleges that Chaney's rights were violated due to the subjective motives of law enforcement officers and thus he argues that the evidence should have been suppressed. West lacks standing to do so. Furthermore, any expectation of privacy that West possessed was diminished as he was residing in the residence of a probationer and he failed to object to the search of items that belonged to West. For all the aforementioned reasons, the North Dakota Supreme Court should affirm the district court's order denying Carlson's motion for dismiss. The State respectfully requests oral argument to respond to any additional claim West's raises in oral argument.

Respectfully submitted this 26th day of December, 2019.

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