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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

IN THE STATE OF NORTH DAKOTA

State of North Dakota

Plaintiff and Appellee,

v.

Garett James Casatelli,

Defendant and Appellant.

Appeal from corrected Criminal Judgment entered on March 18, 2020
The Honorable Gail Hagerty
Burleigh County, North Dakota
South Central Judicial District

SUPREME COURT NO. 20200096
BURLEIGH COUNTY NO. 08-2019-CR-03103

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BRIEF OF APPELLANT
ORAL ARGUMENT REQUESTED

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STATEMENT OF THE ISSUE

ISSUE: **Casatelli was seized in violation of the Fourth Amendment, applicable to the states through the Fourteenth amendment, as well as even greater protection provided under Article I, Section 8 of the North Dakota State Constitution, when he was seized from a constitutionally protected area.**

STATEMENT OF THE CASE

Nature of the Case.

[¶ 1] This is an appeal of the corrected Criminal Judgment entered on March 18, 2020. (App. p. 20; Doc. ID No.: 46), wherein Garett Casatelli entered a conditional guilty plea to the charge of Actual Physical Control-.08 or Greater, a Class B Misdemeanor, in violation of N.D.C.C. § 39-08-01, reserving his right to appeal the Order denying the Motion to Suppress (App. p. 18, Doc. ID. No. 37), issued by the district court on January 16, 2020. (App. p. 10; Doc. ID No.: 24).

Course of Proceedings/Disposition of the Court Below.

[¶ 2] On October 3, 2019, Garett Casatelli was charged with APC-.16 or Greater, a Class B Misdemeanor, in violation of N.D.C.C. § 39-08-01. (App. p. 6, Doc. ID No.: 1). On December 5, 2019, Casatelli moved to suppress evidence gained after seizing him from a constitutionally protected area. (Doc. ID Nos. 12-17). The State responded and resisted the motion, (Doc. ID Nos. 22 and 23), and a hearing was held before the district court on January 7, 2020. (Tr., pp. 1-20).

[¶ 3] The Court denied the motion on January 16, 2020 (App. p. 10, Doc. ID No.: 24), and Casatelli entered a conditional guilty plea to the amended charge of APC-.08 or Greater, a Class B Misdemeanor, in violation of N.D.C.C. § 39-08-01, reserving his right to appeal the Order denying the Motion to Suppress. (App. pp. 16-18; Doc. ID Nos.: 36-37). The

corrected Criminal Judgment was entered on March 18, 2020, (App. p. 20, Doc. ID No.: 46, and Casatelli timely filed his Notice of Appeal and Statement of Preliminary Issues on March 20, 2020. (App. p. 22, Doc. ID No.: 49).

STATEMENT OF FACTS

[¶ 4] On October 3, 2019, Burleigh County Deputies Citta and Nygaard were dispatched to the area of 3906 Rooster Road for a report of a loud party. (Tr., p. 4, lines 13-22). The deputies parked down the street and as they were walking up the driveway, they observed a male walk out of the front door and enter his vehicle parked at the end of the driveway next to the garage door. (Tr. p. 5, lines 1-6).

[¶ 5] The male started the vehicle and the deputies make contact with the male in the vehicle by shining their flashlights and Deputy Citta knocked on the window of the vehicle. (Tr. p. 6, lines 8-18). The male looked and realized it was the sheriff's department, and then pulled the key out of the ignition, shut the vehicle off, and opened the door. (Tr. p. 6, lines 20-25).

[¶ 6] Once the door was opened, Deputy Citta could smell the odor of alcoholic beverage coming from inside the vehicle and off his Casatelli's breath. (Tr. p. 7, lines 8-10). Deputy Citta also observed that Casatelli's eyes were bloodshot and glossy, and as he was speaking with Casatelli, he could hear slurred speech, (Tr. p. 7, lines 10-12), but Deputy Citta was able to make coherent sentences with what Casatelli was saying. (Tr. p. 14, lines 9-11).

[¶ 7] Deputy Citta asked Casatelli if he knew the people at the residence, and Casatelli said it was one of his friend's residence who was having a party. (Tr. p. 8, lines 5-8). Deputy Citta then asked Casatelli if he would accompany the deputies to the front door to make

contact with everybody for the loud party, and Casatelli agreed to come with. (Tr. p. 8, lines 7-11).

[¶ 8] The deputies either rang the doorbell or knocked on the door made contact with the house sitter, Mary Johnson. (Tr. p. 8, lines 20-25). Johnson opened the door, the deputies explained why they were there and asked if they could come in and speak with her, and she let the deputies inside the residence. (Tr. p. 9, lines 2-9; p. 10, line 8).

[¶ 9] The party was in the hot tub area in the backyard of the residence, and while Casatelli was standing with Deputy Nygaard and Johnson either inside the residence or right at the door of the backyard, Deputy Citta went to speak with the 5 or 6 individuals in the hot tub in the backyard about the loud party complaint. (Tr. p. 10, lines 5-11; lines 13-15).

[¶ 10] Deputy Nygaard and Casatelli left from where the door was to standing right next to Deputy Citta. (Tr. p. 10, lines 23-25; p. 11, line 1). While Deputy Citta was dealing with the loud party, and as Deputy Nygaard and Casatelli came back and were standing next to Deputy Citta, Deputy Nygaard handed Casatelli's driver's license to Deputy Citta. (Tr. p. 13, lines 10-13). Casatelli was standing in the backyard of the home less than 15 fee from the house. (Tr. p. 16, lines 1-8). Casatelli then asked if he was free to leave and then Deputy Citta took hold of Casatelli's driver's license and told Casatelli, "no," and that he was not free to leave. (Tr. p. 13, lines 13-25).

[¶ 11] Deputy Citta detained Casatelli because Deputy Citta felt they had reasonable suspicion to detain Casatelli as they were standing in the backyard. (Tr. p. 13, lines 16-25). After that, Deputy Citta can't remember if he then ordered Casatelli to come with him or asked Casatelli to come with him. (Tr. p. 11, lines 2-4; p. 13, lines 5-7). Deputy Citta

testified that he told Casatelli that he would like to talk to him away from the party. (Tr. p. 15, lines 7-10). Casatelli testified that, as he was standing back there after Deputy Citta was done talking to everyone, Deputy Citta told Casatelli to come with him and that he needed Casatelli to come with him. (Tr. p. 19, lines 21-23; p. 20, lines 1-2). Casatelli testified that he did not feel free to leave and he felt like he had no other option. (Tr. p. 19, lines 21-23; Tr. p. 20, lines 3-4).

[¶ 12] Deputy Citta took Casatelli from the backyard of the residence to the front of the house by the garage. (Tr. p. 11, lines 9-15). Deputy Citta then administered field sobriety testing on Casatelli and, after developing probable cause for the arrest, he placed Casatelli under arrest on the charge of APC. (Tr. p. 12, lines 18-19).

STANDARD OF REVIEW

[¶ 13] This Court gives deference to the district court's findings of fact when reviewing a motion to suppress evidence, *State v. DeCoteau*, 1999 ND 77, ¶ 6, 592 N.W.2d 579, and a district court's findings of fact on a motion to suppress will not be reversed if there is sufficient competent evidence fairly capable of supporting the court's findings, and the decision is not contrary to the manifest weight of the evidence. *Id.* However, matters of law are fully reviewable by this Court on appeal. *Id.*

LAW AND ARGUMENT

ISSUE: Casatelli was seized in violation of the Fourth Amendment, applicable to the states through the Fourteenth amendment, as well as even greater protection provided under Article I, Section 8 of the North Dakota State Constitution, when he was seized from a constitutionally protected area.

[¶ 14] A person alleging his rights have been violated under the Fourth Amendment has an initial burden of establishing a prima facie case of illegal seizure. *State v. Smith*, 1999 ND 9, 589 N.W.2d 546, ¶10. After the defendant has made a prima facie case, however, the burden of persuasion is shifted to the State to justify its actions. *Id.*

[¶ 15] The Fourth Amendment to the United States Constitution and Article 1, Section 8, of the North Dakota Constitution protect individuals from unreasonable searches and seizures. *State v. DeCoteau*, 1999 ND 77, *supra* at ¶ 7. Subject to a few well-delineated exceptions, searches and seizures without a warrant are unreasonable under the Fourth Amendment. *Id.* "A search occurs when the government intrudes upon an individual's reasonable expectation of privacy." *State v. Winkler*, 552 N.W.2d 347, 351 (N.D.1996).

[¶ 16] In *Payton v. New York*, the Supreme Court held that, "searches and seizures inside a home without a warrant are presumptively unreasonable." 445 U.S. 573, 585-86, (1980). *Payton* involved warrantless routine arrests in which there was ample time to obtain warrants. Thus, the Supreme Court observed that the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed," *quoting United States v. United States District Court*, 407 U.S. 297, 313 (1972). A principal protection against unnecessary intrusions into private dwellings is the warrant requirement imposed by the Fourth Amendment on agents of the government who seek to enter the home for purposes of search or arrest. *Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984).

[¶ 17] Fourth Amendment "protection extends to the curtilage surrounding a home," *U.S. v. Wells*, 648 F.3d 671, 675 (8th Cir. 2011), which "is the area to which extends the intimate activity associated with the sanctity of a man's home and the privacies of life, and therefore has been considered part of the home itself for Fourth Amendment purposes." *Wells* at 675, *quoting Oliver v. United States*, 466 U.S. 170, 180 (1984)(citation and internal quotation marks omitted).

[¶ 18] Consequently, curtilage generally "should be treated as the home itself." *Wells* at 675, *quoting United States v. Dunn*, 480 U.S. 294, 300 (1987). *Also see State v. Winkler*, supra (police with legitimate business may enter certain areas surrounding a home where persons may have a reasonable expectation of privacy, such as curtilage, but which are "impliedly open to use by the public."), *citing State v. Crea*, 305 Minn. 342, 233 N.W.2d 736, 739 (1975)(police may walk on the sidewalk and onto the porch of a house and knock on the door if they are conducting an investigation and want to question the owner; the police had a right to walk onto the driveway because it was an area of the curtilage impliedly open to use by the public); 1 W. LaFave, Search and Seizure § 2.3(f) at 412 (1987)

[¶ 19] A backyard that is accessible only by walking around the side of a home is a place generally recognized as "an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened." *Wells, supra* at 672, *quoting Florida v. Riley*, 488 U.S. 445, 452, (1989)(O'Connor, J., concurring)(*quoting California v. Ciraolo*, 476 U.S. 207, 213 (1986). In *Wells*, the Eighth Circuit concluded that the officers were in the backyard of the residence, and therefore "were standing in an area in which Wells's had a reasonable expectation of privacy, i.e., the curtilage of his home,

when they observed the lighted outbuilding." *Wells, supra* at 679.

[¶ 20] In this case, the district court opined that, "it was not his residence and there is no indication he had any expectation of privacy in that area, where there was a party underway." (Order, App. p. 11, ¶ 6, Doc. ID No.: 24). While the State did not even argue standing in this case *State v. Kieper*, 2008 ND 65, 747 N.W.2d 497("It is well-established that "[i]ssues which are not raised before the [district] court, including constitutional issues, will not be considered for the first time on appeal."), in *State v. Ackerman*, 499 N.W.2d 882, 884 (N.D. 1993), this Court held that a guest in another's home, even though not an overnight guest, was alone enough to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable. As Casatelli was in the backyard of the residence where he was a guest, he enjoyed an expectation of privacy in a constitutionally protected area.

[¶ 21] While the State and district court both agree in this case that, when standing in the backyard, the deputies had reasonable and articuable suspicion that Casatelli had been in actual physical control of a vehicle and that he was under the influence, it should be noted that the district court's finding that Casatelli's "balance was unstable," (Tr., p. 2, lines 2-3) is not supported by the record, and probable cause did not exist to arrest Casatelli as he stood in the backyard.

[¶ 22] As Casatelli was in the constitutionally protected backyard of the home and seized from that constitutionally protected area, the issue is whether or not it was lawful for law enforcement to seize Casatelli from that constitutionally protected area when probable cause did not exist to arrest Casatelli as he stood in the backyard. It has been generally held that a warrantless arrest will be illegal if the defendannt's presence outside was acquired by

coercion or a false claim of authority. Wayne R. LaFave, Search and Seizure (Third Ed. 1996), § 6.1(e). The conclusion is that the Fourth Amendment could be too easily circumvented if law enforcement is allowed to order the occupants out in order to achieve a valid warrantless arrest.

[¶ 23] The general consensus is that, where the police use coercive tactics to force a person out of his home to effectuate the warrantless arrest, the arrest is considered to have taken place within the home and contrary to *Payton, supra*, and the Fourth Amendment. *United States v. Curzi*, 867 F.2d 36 (1st Cir. 1989); *Sharrar v. Felsing*, 128 F.3d 810, 819 (3rd Cir.1997), *abrogated on other grounds* by *Curley v. Klem*, 499 F.3d 199 (3rd Cir.2007), *United States v. Morgan*, 743 F.2d 1158, 1166 (6th Cir.1984); *United States v. Al-Azzawy*, 784 F.2d 890, 893 (9th Cir.1985); *United States v. Maez*, 872 F.2d 1444, 1451 (10th Cir.1989); *United States v. Edmondson*, 791 F.2d 1512, 1514-15 (11th Cir.1986); *United States v. Hernandez-Penaloza*, 899 F.Supp.2d 1269 (M.D.Fla.2012); *United States v. McCool*, 526 F.Supp. 1206, 1209 (M.D.Tenn.1981); *Scroggins v. State of Arkansas*, 276 Ark. 177, 633 S.W.2d 33, 37 (1982).

[¶ 24] The important point is that in cases coercion to leave the home, the privacy of the home is effectively invaded. *Maez, supra* at 1451. A contrary rule would undermine the constitutional precepts emphasized in *Payton*. *Morgan, supra* at 1166. Thus, where the suspect is located inside his house when the officers forcibly compel him to exit the house, the arrest outside the house is considered to have occurred inside the home even though the officers made no actual entry. *Hernandez-Penaloza, supra*. To hold otherwise would allow officers to greatly extend their "reach" by using weapons and controlling suspect's

movements from outside the home. *Hernandez-Penaloza, supra* at 14, *citing United States v. Johnson*, 626 F.2d 753, 757 (9th Cir.1980). The prohibition even applies when crimes are being committed in the officer's presence. *City of Fargo v. Lee, et al.*, 1998 ND 126, 580 N.W.2d 580 (crimes being committed or attempted in police officers' presence did not create exigent circumstances justifying a warrantless entry into a fraternity house). Similarly, Casatelli should enjoy the same protections where he was a guest in the backyard.

[¶ 25] In this case, the district court held that, the evidence did not support a conclusion that Casatelli was coerced to accompany officers to do the field sobriety testing." (Order, p. 2, ¶ 6, App. p. 2, Doc. ID No. 24). However, under the Fourth Amendment, a seizure occurs "whenever an officer stops an individual and restrains his freedom" *City of Devils Lake v. Grove*, 2008 ND 55, ¶ 10, 755 N.W.2d 485, and "[A] person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Id.*

[¶ 26] Here, Casatelli was a guest in the backyard of the home less than 15 feet from the house was told he was not free to leave, even after he asked if he was free to leave. Deputy Citta then told Casatelli he would like to talk to him away from the party, and then took Casatelli from the backyard of the residence to the front of the house by the garage where he administered field sobriety testing on Casatelli and, after developing probable cause for the arrest, placed Casatelli under arrest on the charge of APC. It seems very clear that Casatelli was seized from the backyard when he should have enjoyed an expectation of privacy at the time, especially since law enforcement did not have probable cause to arrest him.

[¶ 27] The exclusionary rule prohibits evidence seized during an unlawful search from

constituting proof against the victim of the search, as such evidence is "fruits of the poisonous tree." *Wong Sun v. United States,* 371 U.S. 471 (1963). Thus, any subsequent evidence gained as a result of the initial illegally acquired evidence is considered, "fruit of the poisonous tree" and must likewise be suppressed, unless an exception to the warrant requirement for the search exists. *State v. Kitchen*, 1997 ND 241, ¶ 9, 572 N.W.2d 106, *citing Wong Sun v. United States*, 371 U.S. 471 (1963).

CONCLUSION AND PRAYER FOR RELIEF

[¶ 28] In this case, Casatelli was detained and not free to leave when he was taken from a constitutionally protected area, in violation of the Fourth Amendment, applicable to the states through the Fourteenth amendment, as well as protection provided under Article I, Section 8 of the North Dakota State Constitution.

[¶ 29] WHEREFORE, the Appellant, Garett James Casatelli, by and through his attorney, Chad R. McCabe, prays for this honorable Court to reverse the Order denying the Motion to Suppress.

Dated this 8th day of June, 2020.

/s/ Chad R. McCabe
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REQUEST FOR ORAL ARGUMENT

[¶ 30] This appeal concerns an issue of first impression as to whether a guest in a home can be seized from the backyard when they should enjoy an expectation of privacy, expecially when law enforcement do not have probable cause to arrest the individual. Oral argument would be helpful to further discuss this issue and answer any questions from this Court.

CERTIFICATE OF PAGE COMPLIANCE

[¶ 31] The undersigned certifies that this brief is in compliance with the page limitations of Rule 32, N.D.R.App.P.

Dated this 8th day of June, 2020.

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CERTIFICATE OF SERVICE

[¶ 32] A true and correct copy of the foregoing document was sent by electronic transmission on this 8th day of June, 2020, to the following:

Dennis H. Ingold
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Dated this 8th day of June, 2020.

/s/ Chad R. McCabe
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