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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,	)	
	)	
Plaintiff-Appellee,	)	
	)	
-vs-	)	
	)	
Garett James Casatelli,	)	Supreme Ct. No. 20200096
	)	
Defendant-Appellant.	)	Dist. Ct. No. 08-2019-CR-03103

BRIEF OF PLAINTIFF-APPELLEE
STATE OF NORTH DAKOTA

Appeal from Corrected Criminal Judgment Entered March 18, 2020

South Central Judicial District, Burleigh County
The Honorable Gail Hagerty, Presiding

ORAL ARGUMENT NOT REQUESTED

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STATEMENT OF THE ISSUE

Whether the district court erred in denying Casatelli's motion to suppress.

STATEMENT OF THE CASE

[¶1] The State charged Appellant Garett Casatelli with being in actual physical control of a motor vehicle with a blood alcohol concentration in excess of sixteen one-hundredths of one percent by weight in violation of N.D.C.C. § 39-08-01(1). (Appellant's Appendix ("App.") 6). Casatelli filed a motion to suppress in which he sought suppression of "the evidence found as a result of an unconstitutional search of her (sic) home and seizure within her (sic) home, in violation of the Fourth Amendment of the United States Constitution . . and Article I, Section 8 of the North Dakota State Constitution." (Doc. 14). Following an evidentiary hearing at which Deputies Citta and Nygaard of the Burleigh County Sheriff's Department testified, and at which Casatelli testified, the district court denied Casatelli's motion to suppress. (App. 10-12).

[¶2] Casatelli entered a conditional guilty plea to the amended charge of being in actual physical control of a motor vehicle with a blood alcohol concentration in excess of eight one-hundredths of one percent by weight in violation of N.D.C.C. § 39-08-01(1). (App. 7; 13). As part of the conditional plea, Casatelli reserved the right to appeal the district court's order denying his motion to suppress. (App. 13). Judgment was entered on February 25, 2020. (Doc. 44). A corrected judgment was entered on March 18, 2020. (App. 20). Casatelli timely appealed. (App. 22).

STATEMENT OF FACTS

[¶3] On October 3, 2019, Deputies Joseph Citta and Jaden Nygaard of the Burleigh County Sheriff's Department were dispatched to a residence in response to a loud party complaint. (Transcript of motion hearing held January 7, 2020 ("Tr.") 4:21-22). Deputies Citta and Nygaard arrived and identified the residence suspected to be the source of the noise complaint. (Tr. 4:24-25). The deputies parked down the street of the residence so they would not block the driveway. (Tr. 5:2-4). While walking up the driveway to resolve the loud party complaint, the deputies observed the Appellant, Garett Casatelli, exit the residence, get into his vehicle that was parked in the driveway, and start the engine. (Tr. 5:4-8). Upon realizing they were walking directly in Casatelli's path had he reversed, Deputy Citta made contact by shining his flashlight inside the vehicle and then knocking on the window. (Tr. 6:10-18).

[¶4] Once Casatelli realized who was knocking on the window, he shut off the vehicle's engine, pulled his key out of the ignition, and opened the door. (Tr. 6:20-7:4). When Casatelli opened his door, Deputy Citta began speaking with him. (Tr. 7:8-9). Deputy Citta could smell the odor of alcohol coming from inside the vehicle and from Casatelli's breath. (Tr. 7:9-10). While speaking with Casatelli, Deputy Citta could hear that Casatelli's speech was slurred and could see that his eyes were bloodshot and watery. (Tr. 7:10-12). From his training and experience, Deputy Citta recognized

that these indicators are consistent with someone who is under the influence of alcohol. (Tr. 9:25-10:2).

[¶5] During this conversation, the deputies did not order Casatelli to do anything. (Tr. 7:17-18). They did not tell Casatelli that he was detained. (Tr. 7:19-20). They did not tell Casatelli he was not free to leave. (Tr. 7:21-22). Instead, the deputies identified themselves and asked Casatelli questions about the loud party. (Tr. 7:25-8:2). They asked whether Casatelli knew the people at the residence. (Tr. 8:5). In response, Casatelli told the deputies that his friend's home was the source of the loud party. (Tr. 8:6-7). Deputy Citta then asked Casatelli if he would accompany the deputies to the front door of his friend's residence, and Casatelli agreed. (Tr. 8:7-11). The deputies did not order Casatelli to accompany them to the residence. (Tr. 8:16-17).

[¶6] Casatelli voluntarily accompanied the deputies to the front door. (Tr. 8:12-15). Deputies then either knocked on the door or rang the doorbell. (Tr. 8:20-25). The house-sitter, Mary Johnson, opened the door. (Tr. 8:20-9:3). The deputies informed Ms. Johnson why they were there. (Tr. 9:7-9). They then asked if they could come inside and speak with her, and she invited them inside the residence. (*Id.*) The deputies did not give Ms. Johnson any orders, nor did they tell her she was required to let them inside the residence. (Tr. 9:7-14).

[¶7] Once Ms. Johnson let the deputies inside the residence, she explained that the loud party was in the backyard, where the hot tub was located. (Tr.

10:5-6). With Ms. Johnson's consent, Deputy Citta then went to the backyard to speak with the group of five or six individuals in the hot tub area about the loud party complaint. (Tr. 10:8-11). During this time, Deputy Nygaard continued speaking with Ms. Johnson inside the doorway of the residence to the backyard, where Casatelli also remained. (Tr. 18:13-17). Once Deputy Nygaard finished speaking with Ms. Johnson in the doorway to the backyard, he entered the backyard to join Deputy Citta. (Tr. 18:20-21). Casatelli then followed Deputy Nygaard into the backyard, without any order to do so. (Tr. 18:22-24).

[¶8] At that point, Deputy Citta, Deputy Nygaard, and Casatelli were in the backyard together. (Tr. 10:23-11:1). After resolving the loud party complaint, Deputy Citta told Casatelli he had more questions for Casatelli and would like to talk to him away from the party. (Tr. 11:1-5; 15:8-12). At that time, Casatelli was standing in the backyard, less than fifteen feet from the residence. (Tr. 16:3-8). Casatelli then asked if he was free to leave, to which Deputy Citta responded "no." (Tr. 13:10-15). Although Deputy Citta believed he had reasonable suspicion Casatelli was under the influence of alcohol and committed the crime of actual physical control during their initial encounter in the driveway, it was not until this time that Deputy Citta told Casatelli he was not free to leave. (Tr. 13:22-14:1).

[¶9] Deputy Citta and Casatelli then walked approximately fifty to sixty feet around the side of the house to the front, to the area where Casatelli's

vehicle was located. (Tr. 11:13-17). Once they arrived at the front, Deputy Citta asked Casatelli if he would consent to field sobriety tests, and Casatelli agreed to take the tests. (Tr. 11:19-21). Deputy Citta then administered the Horizontal Gaze Nystagmus (HGN) test, and Casatelli attempted to perform the walk-and-turn test. (Tr. 11:23-24). Casatelli exhibited six out of six possible clues on the HGN test, indicating impairment. (Tr. 12:3-4). Casatelli was unable to perform the walk-and-turn test. (Tr. 12:5-6).

[¶10] Deputy Citta testified that, at that point, he had probable cause to arrest Casatelli. (Tr. 12:8-9). After walking with Casatelli to his patrol car, Deputy Citta administered a preliminary breath test, which resulted in an alcohol concentration of .206 percent. (Tr. 12:14-17). Casatelli was then arrested for actual physical control. (Tr. 12:18-19). At the detention center, Casatelli provided a breath sample which yielded an alcohol concentration of .191 percent. (Doc. 2).

ARGUMENT

I. Standard of Review

[¶11] Casatelli appeals the district court's order denying his motion to suppress evidence. When reviewing a district court's ruling on a motion to suppress evidence, this Court "defer[s] to a trial court's findings of fact, and conflicts in testimony are resolved in favor of affirmance because [this Court] recognize[s] the trial court is in a superior position to assess the credibility of witnesses and weigh evidence." *State v. Genre*, 2006 ND 77,

¶ 12, 712 N.W.2d 624. That standard of review "reflects the importance of the district court's opportunity to observe witnesses and assess their credibility." *State* v. *Morin*, 2012 ND 75, ¶ 5, 815 N.W.2d 299. Applying that deferential standard, this Court will affirm the trial court's denial of a motion to suppress 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." *State v. Juntunen*, 2014 ND 86, ¶ 3, 845 N.W.2d 325. "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. Graf*, 2006 ND 196, ¶ 7, 721 N.W.2d 381.

II. The district court properly denied Casatelli's motion to suppress.

A. While lawfully in the driveway of the residence, deputies developed reasonable suspicion Casatelli committed the offense of actual physical control.

[¶12] As a threshold matter, Casatelli does not challenge the deputies' actions before Casatelli "was in the backyard of the residence[.]" Appellant's Br., ¶ 20. In the district court, Casatelli conceded that he was not seized until—as he alleged—"law enforcement order[ed] him from a constitutionally protected area[.]" (Doc. 16, ¶ 12). By failing to challenge the deputies' actions prior to their interaction with Casatelli in the backyard of the residence, Casatelli waived any argument that those actions were unconstitutional. *State v. Hendrickson*, 2019 ND 183, ¶ 5, 931 N.W.2d 236 (citing N.D.R.Crim.P. 11(a)(2)).

[¶13] With respect to his interaction with deputies in the driveway, Casatelli does not dispute that the deputies were lawfully present in the driveway of the residence while investigating the loud party complaint. In responding to the complaint, deputies entered the driveway and encountered Casatelli as he left the party. This Court has held that "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.'" *State v. Winkler*, 552 N.W.2d 347, 352 (N.D. 1996) (quoting *State v. Crea*, 233 N.W.2d 736, 739 (Minn. 1975)). Because Deputies Citta and Nygaard were responding to a legitimate complaint of a loud party when they entered the driveway, the deputies were lawfully in the driveway when they encountered Casatelli in his vehicle. *Winkler*, 552 N.W.2d at 352.

[¶14] Nor does Casatelli claim that deputies seized him when they first encountered him in the driveway. It is not a Fourth Amendment seizure for a police officer to approach and talk with a person in a stopped vehicle in a public place. *State v. Steinmetz*, 552 N.W.2d 358, 360 (N.D. 1996). This Court has consistently held that where, like here, officers approach a parked vehicle, inquire of the occupant in a conversational manner, do not order the person to do something, and do not demand a response, no Fourth Amendment seizure has occurred. *City of Fargo v. Sivertson*, 1997 ND 204, ¶ 9, 571 N.W.2d 137.

[¶15] Here, deputies responded to the loud party complaint, arrived at the residence, and parked their patrol vehicles down the street so as not to hinder or block the driveway of the residence. (Tr. 5:1-4). While walking up the driveway, the deputies observed Casatelli leave the residence, get into his car, and start his engine. (Tr. 5:4-6). Realizing they were walking directly behind Casatelli's vehicle and would be in his path had he reversed, deputies shined a flashlight into Casatelli's vehicle and Deputy Citta knocked on the window. (Tr. 6:10-18). The deputies' use of a flashlight and the knock on the window of Casatelli's car was not a seizure implicating the Fourth Amendment. *See Richter v. North Dakota Dep't of Transp.*, 2010 ND 150, ¶ 16, 786 N.W.2d 716 (holding it was not a seizure when a police officer approached a parked vehicle with his flashlight and used a non-verbal hand gesture to communicate with the passenger).

[¶16] Once Casatelli realized who was knocking, he turned off the vehicle's engine and exited the vehicle without the deputies ordering him to do so. (Tr. 6:20-7:6; Tr. 7:14-18). After Casatelli exited his vehicle, the deputies began speaking with him. Because the deputies were on the premises to investigate a loud party complaint and did not order Casatelli out of his vehicle, did not order Casatelli to do anything, and did not make any threatening show of authority, the deputies' casual encounter with Casatelli was not a seizure under the Fourth Amendment. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) ("As long as the person to whom

questions are put remains free to disregard the questions and walk away, there has been no intrusion that a person's liberty or privacy as would under the Constitution require some particularized and objective justification.").

[¶17] After deputies informed Casatelli who they were and explained that they were responding to a complaint of a loud party, Deputy Citta asked Casatelli if he knew the owner of the residence and whether he would accompany the deputies to the front door to make contact with the host of the party. (Tr. 8:5-9). Casatelli agreed to accompany deputies to the residence. (Tr. 8:10-11). At that point in the consensual encounter, deputies developed reasonable suspicion that Casatelli committed the offense of actual physical control. In determining whether reasonable suspicion exists, this Court applies "an objective standard, taking into account the inferences and deductions that an investigating officer would make that may elude a layperson." *State v. Fields*, 2003 ND 81, ¶ 13, 662 N.W.2d 242. "The question is whether a reasonable person in the officer's position would be justified by some objective manifestation to suspect the defendant was, or was about to be, engaged in unlawful activity." *State v. Smith*, 452 N.W.2d 86, 88 (N.D. 1990).

[¶18] Under N.D.C.C. § 39-08-01(1), "[a] person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if . . . [t]hat person has an alcohol concentration of at least eight

one-hundredths of one percent . . . [or] [t]hat person is under the influence of intoxicating liquor." This Court has held that section 39-08-01 applies to a driveway like the one where deputies encountered Casatelli. *Martinson v. Levi*, 2017 ND 264, ¶ 14, 903 N.W.2d 286; *State v. Mayland*, 2017 ND 244, ¶ 12, 902 N.W.2d 762.

[¶19] During his conversation with Casatelli in the driveway, Deputy Citta observed several indicators of impairment. He smelled the odor of alcohol on Casatelli's breath and heard Casatelli's slurred speech. (Tr. 7:9-12). He also observed Casatelli's bloodshot, watery eyes. (*Id.*). Those facts, combined with Deputy Citta's observation of Casatelli getting into and starting his vehicle, constituted reasonable suspicion Casatelli committed the offense of actual physical control. *Abernathey v. Dep't of Transp.*, 2009 ND 122, ¶¶ 2, 16, 768 N.W.2d 485.

[¶20] In *Abernathey*, a deputy responded to a call of a loud party in a bar after closing time. 2009 ND 122, ¶ 2. Upon arriving at the bar, the deputy watched as a person in a pickup started and then shut off the vehicle. *Id.* Without activating his emergency lights, the deputy parked his squad car so as to not block the path of the pickup. *Id.* The deputy then approached the vehicle and spoke with the driver. *Id.* The deputy saw that the door was locked, so he asked if the driver would please unlock the door. *Id.* The deputy observed the driver's eyes to be bloodshot. *Id.* The driver then asked,

with slurred speech, what was going on. *Id*. The deputy then instructed the driver to open the door and step out. *Id*. at ¶ 2, 13.

[¶21] This Court affirmed the hearing officer's conclusion that no seizure occurred upon the officer's initial contact with the driver. The officer did not activate his patrol lights when approaching the pickup, did not park in a manner that blocked the pickup from leaving the scene, and requested, rather than commanded, the driver to unlock his door. *Id*. at ¶ 15. And even if a seizure occurred when the officer asked the driver to unlock his door a second time, the Court affirmed the hearing officer's conclusion that the deputy had reasonable suspicion that the driver committed the offense of actual physical control sufficient to justify the deputy's directive for him to exit the vehicle. *Id*. at ¶ 16.

[¶22] Like the deputy in *Abernathey*, Deputy Citta observed a person in control of a motor vehicle, and that person had bloodshot, watery eyes and slurred speech. (Tr. 5:4-7:12). That was enough in *Abernathey* to support reasonable suspicion for the offense of actual physical control. *Abernathey*, 2009 ND 122, ¶ 16. Deputy Citta had even more facts supporting reasonable suspicion than the officer in *Abernathey*, however, because Deputy Citta also smelled the odor of alcohol on Casatelli's breath. (Tr. 9:21-24). That, combined with Deputy Citta's observation of Casatelli entering and starting his vehicle, constituted reasonable suspicion for the crime of actual physical control. *Abernathey*, 2009 ND 122, ¶ 16; N.D.C.C. § 39-08-01(1). As such,

although deputies did not detain Casatelli in the driveway, deputies had reasonable suspicion that Casatelli committed the offense of actual physical control before they entered the residence to resolve the loud party complaint.

B. Deputies' consensual entry into the residence did not violate the Fourth Amendment.

[¶23] Casatelli consensually accompanied deputies to the residence that was the subject of the loud party complaint. (Tr. 8:5-17). In arguing that the district court should have granted his motion to suppress, Casatelli cites *Payton v. New York*, in which the United States Supreme Court held that the Fourth Amendment prohibits police from making a warrantless and *nonconsensual* entry into a *suspect*'*s* home in order to make a routine felony arrest. 445 U.S. 573, 576 (1980). *Payton* does not apply here, however, because the deputies obtained consent from the house-sitter to enter the residence. *See State v. Howard*, 373 N.W.2d 596, 598 (Minn. 1985) ("The holding in *Payton* was that, absent exigent circumstances *or consent*, police without an arrest warrant may not cross the threshold and enter the *suspect*'s residence to arrest him.") (emphasis added).

[¶24] Simply put, *Payton* does not apply where law enforcement officers *consensually* enter a residence other than the suspect's for a purpose other than arresting the suspect. *United States v. Cruz-Mendez*, 467 F.3d 1260, 1269 (10th Cir. 2006) ("*Payton* holds only that 'the Fourth Amendment . . . prohibits the police from making warrantless and *nonconsensual* entry into

a suspect's home in order to make a routine felony arrest.' [Where] the officers' entry . . . was consensual, *Payton* does not apply.") (emphasis in original) (quoting *Payton*, 445 U.S. at 576). Here, the deputies did not enter Casatelli's home without his consent to effectuate a warrantless arrest. Instead, the deputies entered a residence, with consent of the house sitter, to resolve a loud party complaint. *Payton* therefore does not apply. *Cruz-Mendez*, 467 F.3d at 1269; *United States v. Hardison*, 859 F.3d 585, 591 n.7 (8th Cir. 2017).

[¶25] Nor does *State v. Ackerman*, 499 N.W.2d 882 (N.D. 1993), require reversal here. In *Ackerman*, this Court recognized that "one's status as an overnight guest in another's home 'is alone enough to show that [the guest] had an expectation of privacy in the home that society is prepared to recognize as reasonable.'" 499 N.W.2d at 884 (quoting *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990)). But this Court also recognized that, despite that expectation, a guest at a loud party "may expect a knock at the door[,] [a]nd if the door is opened to a police officer, such a guest may expect to be arrested for a crime being committed in the officer's presence at the time the door is opened." *Ackerman*, 499 N.W.2d at 885. And this Court noted that such a guest could expect police to enter where, as here, they are given consent. *Id*. Because *Ackerman* was a case involving warrantless and *nonconsensual* entry based on the assertion of exigent circumstances, and because deputies' entry here was the result of consent by the house-sitter,

Ackerman does not apply. As such, deputies' consensual entry into the residence did not violate the Fourth Amendment.

C. Deputies' detention of Casatelli to perform field sobriety tests did not violate the Fourth Amendment.

[¶26] "The touchstone of the Fourth Amendment is reasonableness, and reasonableness . . . is measured in objective terms by examining the totality of the circumstances." *City of Bismarck v. Brekhus*, 2018 ND 84, ¶ 26, 908 N.W.2d 715 (internal quotations and citations omitted). That is because the Fourth Amendment only prohibits "unreasonable" seizures. *New York v. Quarles*, 467 U.S. 649, 688 n.10 (1984).

[¶27] Here, the district court concluded that deputies acted reasonably in turning their attention back to Casatelli after resolving the loud party complaint:

> The officers had a reasonable and articulable suspicion that Mr. Casatelli had been in actual physical control of a vehicle and that he was under the influence. They delayed investigation while they responded to a complaint of a loud party. The situation was such that deputies acted reasonably in investigating overlapping situations.

(App. 11). The district court's finding that the deputies acted reasonably in delaying their investigation of Casatelli until they resolved the loud party complaint is supported by the record. Deputy Citta testified that he believed, from the first encounter in the driveway, that he had reasonable suspicion Casatelli was under the influence and had committed the offense of actual physical control. (Tr. 12:25-13:4; 13:22-24). That reasonable suspicion was

based on Deputy Citta's observation of Casatelli entering his vehicle and starting the engine, Casatelli's slurred speech, his bloodshot, watery eyes, and the odor of alcohol on Casatelli's breath. (Tr. 5:4-25; 7:8-12). Any delay in the deputies' investigation of Casatelli was reasonable because they did not seize him while they completed their investigation into the loud party. Indeed, Casatelli does not even argue that he was seized before his interaction with the deputies in the backyard. Appellant's Br., ¶ 22.

[¶28] Thus, there is no dispute that Casatelli was not seized until he was in the backyard with deputies and Deputy Citta told him he was not free to leave. (Tr. 13:13-15). That detention was supported by Deputy Citta's reasonable suspicion that Casatelli committed the offense of actual physical control. (Tr. 13:13-20). Casatelli testified that Deputy Citta then told him to come with him to the area in which Casatelli would ultimately perform field sobriety tests. (Tr. 20:1-2.) The district court found that "[t]he evidence did not support a conclusion that Mr. Casatelli was coerced to accompany officers to do the field sobriety testing." (App. 11). Even if the deputies detained Casatelli and directed him from the backyard to the driveway before he consented to field sobriety tests, that detention was lawful. Deputies already had reasonable and articulable suspicion that Casatelli was under the influence and committed the offense of actual physical control, which was sufficient to detain him. *State v. Brossart*, 2015 ND 1, ¶ 40, 858 N.W.2d 275 ("Police may detain an individual for investigative purposes if

the officer has reasonable and articulable suspicion criminal activity is afoot.").

[¶29] Moreover, deputies moved Casatelli only about fifty to sixty feet from the backyard to the front of the house, still inside the curtilage of the residence. (Tr. 11:17-18). Casatelli provides no authority to support the argument that moving a suspect from one area of the curtilage to another to perform field sobriety tests violates the Fourth Amendment. As such, the deputies' detention of Casatelli and their movement with Casatelli to the driveway for field sobriety testing did not violate the Fourth Amendment.

D. The deputies' arrest of Casatelli, supported by probable cause, did not violate the Fourth Amendment.

[¶30] Once the deputies obtained Casatelli's consent for the field sobriety tests and observed several additional indicators of impairment, the deputies had probable cause to arrest Casatelli for actual physical control. (Tr. 12:8-9); *Lubenow v. North Dakota State Highway Com'r*, 438 N.W.2d 528, 533 (N.D. 1989) ("Probable cause exists when the facts and circumstances within a law enforcement officer's knowledge and of which he has reasonably trustworthy information are sufficient to warrant a man of reasonable caution in believing that an offense has been or is being committed."). The facts supporting probable cause include that the deputies observed Casatelli leave a loud party, enter a vehicle, and start the vehicle; Casatelli's breath smelled strongly of alcohol; Casatelli had slurred speech;

Casatelli exhibited six of six clues on the horizontal gaze nystagmus test; and Casatelli could not complete the walk-and-turn test. (5:1-6; 7:8-12; 11:23-12:6). Those facts established probable cause for Deputy Citta to arrest Casatelli for actual physical control. *Moran v. North Dakota Dep't of Transp.*, 543 N.W.2d 767, 770 (N.D. 1996) (bloodshot eyes and odor of alcohol are factors that can show the existence of probable cause to arrest for alcohol-related traffic offenses); *Baer v. Dir., N.D. Dep't* of *Transp.*, 1997 ND 222, ¶ 13, 571 N.W.2d 829 (staggering is a relevant factor indicating impairment); *Kahl v. Dir., N.D. Dep't of Transp.*, 1997 ND 147, ¶ 17, 567 N.W.2d 197 (failing field sobriety tests is relevant in determining probable cause); *State v. Goeman*, 431 N.W.2d 290, 292 (N.D. 1988) (slurred speech is a factor indicating impairment).

[¶31] Thus, even if deputies seized Casatelli by having him accompany them to Deputy Citta's patrol vehicle, they had probable cause to do so and could lawfully arrest Casatelli for actual physical control. N.D.C.C. § 29-06-15(1)(a) (providing that law enforcement officers may arrest for public offenses committed in their presence). Moreover, where an officer is legally in the curtilage of the home, and where additional facts become known to the officer to support probable cause to arrest, the arrest is valid. *Lubenow*, 438 N.W.2d at 533. Here, the deputies were in the backyard of a home with the consent of the house-sitter. Thus, the deputies were lawfully within the curtilage when they obtained Casatelli's consent for field sobriety tests.

Casatelli's performance on those tests, while still in the curtilage of the home, provided probable cause for the deputies to arrest Casatelli for actual physical control. As such, any seizure of Casatelli in the curtilage of the residence did not violate the Fourth Amendment. *Id.*

III. The exclusionary rule does not require suppression of evidence gathered outside the residence.

[¶32] Putting aside that Casatelli fails to articulate what, if any, evidence the district court should have suppressed, the United States Supreme Court's decision in *New York v. Harris*, 495 U.S. 14 (1990) makes clear that the exclusionary rule does not apply to evidence gathered outside the home where police have probable cause to arrest the defendant. In *Harris*, the Supreme Court held that the exclusionary rule does not prevent the State from admitting the defendant's statements made outside the defendant's home after the police entered the home without a warrant or consent and arrested the defendant. 495 U.S. at 21. Any argument for suppression of evidence gathered by deputies outside the home—including the breath test at the detention center—is foreclosed by *Harris*. *Id.*

[¶33] Because, with respect to *Payton* violations, the exclusionary rule does not apply to evidence gathered outside the home, suppression of the breath alcohol test—given by Casatelli at the detention center—was not an appropriate remedy here. *See State v. Pederson*, 2011 ND 155, ¶ 17, 801 N.W.2d 723 (holding that, because police had probable cause to arrest

defendant, defendant's statements made during interrogation at police station were not the product of the illegal entry into defendant's motel room, and exclusionary rule did not bar State's use of those statements). Because Casatelli's subsequent statements to law enforcement—and his submission to the breath test at the detention center—was "not the fruit of the fact the arrest was made in the house rather than someplace else[,]" the exclusionary rule does not apply. *Harris*, 495 U.S. at 21. As such, even if deputies' seizure of Casatelli in the backyard of the residence violated *Payton* and the Fourth Amendment, the district court properly denied Casatelli's motion to suppress.

IV. Casatelli provides no support for his argument that the North Dakota Constitution offers greater protection than the federal Constitution.

[¶34] Casatelli also argues the North Dakota Constitution provides greater protection than the federal Constitution against unreasonable searches and seizures. Appellant's Br., p. 5. But because Casatelli offers no support for this argument, this Court should not consider it. *City of Bismarck v. Weisz*, 2018 ND 49, ¶ 11, 907 N.W.2d 409; *Engstrom v. North Dakota Dep't of Transp.*, 2011 ND 235, ¶ 17, 807 N.W.2d 602.

CONCLUSION

[¶35] The district court did not err in denying Casatelli's motion to suppress. At all times, the deputies acted reasonably in their investigation, detention, and arrest of Casatelli. Moreover, Casatelli fails to articulate

which evidence should have been suppressed by the district court, and he concedes that all evidence gathered by the deputies before they were in the backyard with Casatelli is admissible. And because any evidence gathered outside the home—including the breath test at the detention center—is not subject to the exclusionary rule for an alleged *Payton* violation, the district court properly denied Casatelli's motion to dismiss. This Court should therefore affirm.

Dated this 7th day of July, 2020.

/s Dennis H. Ingold

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,	)	
	)	
Plaintiff-Appellee,	)	
	)	
-vs-	)	
	)	
Garett James Casatelli,	)	Supreme Ct. No. 20200096
	)	
Defendant-Appellant.	)	Dist. Ct. No. 08-2019-CR-03103

CERTIFICATE OF COMPLIANCE

[¶1] The undersigned, as attorney for the Appellee in the above matter, and as the author of this brief, hereby certifies that this brief complies with the page limitation in N.D.R.App.P. 32(a)(8).

[¶2] The number of pages in the principal Brief, is twenty-five (25) pages, according to the page count of the filed electronic document.

Dated this 7th day of July, 2020.

/s Dennis H. Ingold

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STATE OF NORTH DAKOTA	)
	) ss
COUNTY OF BURLEIGH	)

[¶1] I, Shalane L. Sherlock, declare that I am a United States citizen over 21 years of age, and on the 7th day of July, 2020, I served the following:

1. Brief of Plaintiff-Appellee
2. Certificate of Compliance
3. Affidavit of Service

on the following electronic transmission to the listed email address of:

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Attorney at Law
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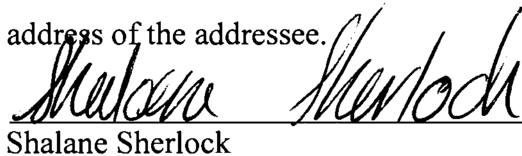
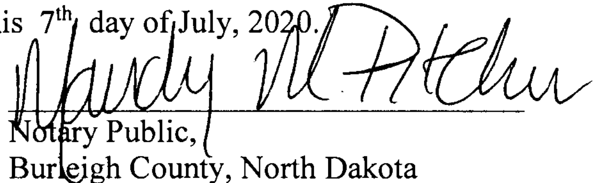
which address is the last known email address of the addressee.



Shalane Sherlock

Subscribed and sworn to before me this 7th day of July, 2020.



Notary Public,
Burleigh County, North Dakota

MANDY M PITCHER
Notary Public, State of North Dakota
My Commission Expires
January 25, 2023