STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK, DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
	)	Case No. **CRF 2016 21824**
Plaintiff,	)	
vs.	)	
	)	**MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS**
MARK TRAVIS GARNETT,	)	
	)	
Defendant.	)	

Defendant MARK TRAVIS GARNETT's Motion to Suppress is **DENIED**.
Casey Simmons, Dep. Prosecuting Attorney, lawyer for the Plaintiff.
Sean P. Walsh, Coeur d'Alene, lawyer for Defendant Garnett.

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I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.

The following facts are taken largely from the police report in this case. The police report is used to provide chronological context to what occurred on November 15, 2016. Summaries of testimony of the witnesses appearing at the March 22, 2017, hearing on the Motion to Suppress are also included and noted below as testimony from that hearing. However, no transcript of that hearing has been requested or prepared.

According to a report prepared by Jason Haines (Officer Haines), a Senior Probation and Parole Officer with the Idaho Department of Correction, on November 15, 2016, at approximately 11:00 a.m., Officer Haines conducted a welfare check and residence search at 4301 East Maplewood Avenue, #40, Post Falls, Idaho. This residence is a mobile

home, a single-wide trailer with an unfinished storage room added on to the single-wide trailer. Officer Haines was accompanied by three other probation officers[1] and Post Falls Police School Resource Officer/Detective JD Putnam. Arriving at the residence after the search began were Post Falls Police Detective Williamson and School Resource Officer/Detective Roberg. At that time, Tamara Brunko (Brunko), a probationer, resided at that Post Fall's address with her son. The purpose of the welfare check and residence search was to locate Brunko and her son because Brunko's son had missed several days of school and School Resource Officer Putnam expressed concern for his welfare. Brunko was also not in compliance with the terms and conditions of her probation, providing additional grounds for the welfare check and residence search. At the March 22, 2017, hearing, Officer Haines testified that Brunko had been ordered to attend inpatient treatment at the Walker Center in Gooding, Idaho, due to her continued use of heroin. Officer Haines testified that Brunko checked herself out of the Walker Center, and then Officer Haines got word that Brunko's child had not been attending school in Post Falls for several days, causing Haines to have concerns about not only Brunko's whereabouts but also her child's whereabouts.

Officer Haines and the other probation officers arrived at Brunko's mobile home and knocked on the front door. Andrew Soy (Soy), Brunko's boyfriend, answered the door. In response to questioning, Soy stated that Brunko still lived at the residence. Officer Haines and the others then entered the home and, at that time, Officer Haines noticed a man, later identified as Mark T. Garnett (Garnett), the defendant, lying on the couch in the living room.

Soy testified that he heard banging on the door, so Soy opened the door and the probation officer told him to take two steps back, sit on the couch while the probation

[1] The other probation officers include Probation Officer Johnson, Bjerke and Checa.

officer appeared to be reaching for his gun. The Court finds Soy's testimony regarding the probation officer's entrance not to be credible given the consistency of the testimony of Officer Haines, Officer Johnson and Officer Checa. All three testified Officer Haines knocked on the door, Soy opened the door, Haines asked Soy if his probationer Tamara Brunko lived there, Soy answered "Yes she does", then Soy took a couple of steps back. The Court specifically finds that even if the entrance of the officers occurred more forcefully as Soy describes, it would not make a difference in the Court's analysis because the probation officers had a right to enter Brunko's trailer and a right to search Brunko's trailer.

Officer Haines continued to question Soy and Soy told him that Brunko was not at the residence and he didn't know where she was. Officer Haines and the other probation officers then checked the residence for other people, and after finding no one, conducted a search of the residence for contraband. Officer Putnam remained in the living room during that search.

Both Garnett and Soy both testified that none of the probation officers or law enforcement officers asked Soy or Garnett for permission to search the premises. Probation officers Haines, Johnson and Checa each testified that neither Soy nor Garnett objected to the premises being searched and that Garnett did not object to the search of the backpack that was later found.

As part of the residence search, Officer Haines searched an enclosed and unfinished storage room attached to the residence's backdoor. In doing so, Haines located a camouflage backpack on a shelf. The backpack was initially concealed by a large, empty moving or storage box. According to the police report, there were no identifying marks or indicators of ownership on the exterior of the backpack. At the March 22, 2017, hearing, Garnett testified he had a red suitcase and a backpack in Brunko's trailer. At that hearing

Garnett was asked if the backpack and suitcase had his name on them. Garnett responded "One had my f***ing initials on it and one had a tag." At that hearing, Officer Haines specifically testified that he saw no tags, markings or initials on the backpack that was secured by parachute cord and a small lock. This Court specifically finds Officer Haines' testimony more credible than that of Garnett on this point.

According to the police report, the backpack had one large storage compartment, which was zipped together and the zippers were secured with a padlock. Officer Haines tore one of the zippers away from the lock, opened the backpack, and searched the backpack. In the backpack, he found a black pistol magazine, a Glock 9mm firearm, a full box of 9mm ammunition, another full magazine, and gun cleaning material. In an interior pocket of the backpack, Officer Haines found a piece of mail addressed to Garnett from Desi Gordon. Garnett was detained and his person was searched for weapons at that time. The Officers eventually learned that Garnett is a convicted felon and it is unlawful for him to possess a firearm. Additionally, dispatch ran the firearm's serial number and dispatch informed the officers that the pistol was stolen. Garnett was arrested for Felon in Possession of a Firearm, a felony, in violation of Idaho Code § 18-3316, and Possession of Stolen Property (firearm), a felony, in violation of Idaho Code § 18-2403(4).

At the March 22, 2017, hearing, Garnett testified that prior to the events in question on November 15, 2016, he had just finished parole. He testified that he was familiar that when Probation and Parole searches a probationer's residence, they search the entire house. At that hearing Soy testified that the trailer was owned by Brunko and Soy. Soy testified he knew that Brunko could be searched at any time and that her residence could be searched as well. Soy testified that Officer Haines had conducted an earlier search of Brunko's residence on October 4, 2016, and that Soy had let Officer Haines in on that

date. Both Soy and Garnett testified that Garnett had stayed at the trailer belonging to Brunko/Soy the night before November 15, 2016, and that Garnett was a guest of Soy's that evening.

On December 8, 2016, Garnett waived his right to a preliminary hearing. *Court Minutes (Dec. 8, 2016)*.

On February 7, 2017, Garnett filed a Motion to Suppress. On February 14, 2017, Garnett filed a Brief in Support of Motion to Suppress. The State filed a Brief in Response to Defendant's Motion to Suppress on March 15, 2017. The hearing on the Motion to Suppress was held March 22, 2017. At that hearing, the following testified: Andrew Soy, Mark Garnett, Idaho Department of Corrections probation and parole officers Jason Haines, Travis Johnson and George Checa. At the conclusion of that hearing, counsel for Garnett requested additional time to file a brief based on testimony adduced at that hearing. On March 23, 2017, Garnett filed Addendum to Defendant's Brief in Support of Motion to Suppress. On March 31, 2017, the State filed a Brief in Response to Defendant's Addendum Regarding Motion to Suppress. The Court has read all briefing which has been filed. At the conclusion of the March 22, 2017, hearing, the motion to suppress was taken under advisement and is now at issue.

At the conclusion of the March 22, 2017, hearing, which ended about 5:30 p.m., the Court instructed Garnett to test for the presence of controlled substances and alcohol at Absolute Drug Testing, and to report to Absolute at 8:00 a.m. the next morning, March 23, 2017, to provide his first sample. Garnettt failed to report to Absolute Drug Testing on March 23, 2017, has never signed up for drug testing, and has not been located at the 1001 East Young address in Coeur d'Alene, which he gave the Court on March 22, 2017.

Accordingly, a bench warrant has been issued. Jury trial in this matter is currently set for April 17, 2017.

II. STANDARD OF REVIEW.

In an appeal from an order granting or denying a motion to suppress, the reviewing court will not disturb findings of fact supported by substantial evidence. *State v. Whiteley*, 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct. App. 1993); *State v. Donato*, 135 Idaho 469, 470, 20 P.3d 5, 6 (2001). However, it freely reviews "the trial court's determination as to whether constitutional requirements [were] satisfied in light of the facts." *Whiteley*, 124 Idaho at 264, 858 P.2d at 803; *Donato*, 135 Idaho at 470, 20 P.3d at 6. "[T]he power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court." *State v. Dreier*, 139 Idaho 246, 250, 76 P.3d 990, 994 (Ct. App. 2003) (citing *State v. Valdez–Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct.App.1999)).

III. ANALYSIS.

Garnett's Motion to Suppress raises two issues. The first issue is whether Garnett had a legitimate expectation of privacy in Brunko's residence and his backpack such that he has standing to challenge the warrantless search of both areas. Assuming Garnett has standing, the second issue is whether the warrantless searches of Brunko's residence and Garnett's backpack were reasonable. Each issue is discussed in turn.

A. Standing and a Reasonable Expectation of Privacy

The Fourth Amendment to the U.S. Constitution and Article I, § 17 of the Idaho Constitution prohibit unreasonable searches and seizures by government officials. U.S. Const. amend. IV; Idaho Const. art. I, § 17; *State v. Spencer*, 139 Idaho 736, 738, 85 P.3d

1135, 1137 (Ct. App. 2004). To challenge a search and claim the protection of the Fourth Amendment and Article I, § 17, the defendant "must show that he had a legitimate expectation of privacy in the invaded place." *State v. Bottelson*, 102 Idaho 90, 92, 625 P.2d 1093, 1095 (1981) (citing *Rawlings v. Kentucky*, 448 U.S. 98, 100 S. Ct. 2556, 2561, 65 L. Ed. 2d 633 (1980); *Rakas v. Illinois*, 439 U.S. 128, 143, 99 S. Ct. 421, 430, 58 L. Ed. 2d 387 (1978); *Katz v. United States*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967)). In order to make that showing, the defendant needs to demonstrate that (1) he had an actual, subjective expectation of privacy in the area or item searched, and (2) his expectation of privacy, "when viewed objectively, was reasonable under the circumstances." *State v. Fancher*, 145 Idaho 832, 837, 186 P.3d 688, 693 (Ct. App. 2008); *State v. Johnson*, 126 Idaho 859, 862, 893 P.2d 806, 809 (Ct. App. 1995). "An expectation of privacy is objectively reasonable when it is legitimate, justifiable, and one society should both recognize and protect." *Fancher*, 145 Idaho at 837, 186 P.3d at 693 (citations omitted).

In this case, Garnett argues that he has standing to challenge the search of the residence because he was an overnight guest and, as an overnight guest, he had a legitimate expectation of privacy in Brunko's residence. Br. Supp. Mot. Suppress 3, 5. The State argues that Garnett has offered no evidence to support his claim that he was Brunko's overnight guest and, therefore, has failed to meet his burden. Br. Resp. Def.'s Mot. Supp. 5. At the March 22, 2017, hearing, Garnett presented evidence supporting his claim that he was an overnight guest at Bunko's single-wide trailer. Both Garnett and Soy testified Garnett had spent the night at Brunko's single-wide trailer. Thus, this Court finds Garnett has proven evidence sufficient to establish he has standing to challenge the search of Brunko's residence. In *State v. Vasquez*, 129 Idaho 129, 922 P.2d 426 (Ct. App.

1996), the Idaho Court of Appeals explained that “an overnight guest does possess a legitimate expectation of privacy in the host’s home,” while “one who has no ownership or possessory interest and is not a resident but who is merely paying a brief, casual visit, has no reasonable expectation of privacy in a residence.” *Id.* at 131, 922 P.2d at 428 (citing *Minnesota v. Olson*, 495 U.S. 91, 110 S. Ct. 1684, 109 L. Ed. 2d 85 (1990) and *Rakas v. Illinois*, 439 U.S. 128, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978)) (summarizing with approval the U.S. Supreme Court’s holdings in *Minnesota v. Olson* and *Rakas v. Illinois*)). Therefore, because this Court finds Garnett has shown he was not merely a casual visitor but rather, an overnight guest at Brunko’s residence, Garnett has met his burden and demonstrated that he had a legitimate expectation of privacy in the residence and, as a result, he may challenge the warrantless search of Brunko’s residence.

Garnett also argues that he had a legitimate expectation of privacy in his locked backpack and, thus, has standing to challenge the search of the backpack. Br. Supp. Mot. Suppress 4. The State appears to concede that Garnett has standing to challenge the backpack as it does not address that issue.

This Court agrees with Garnett. Garnett demonstrated an actual and subjective expectation of privacy in the interior contents of the backpack by locking the backpack and placing the backpack behind a large empty box in a storage room. Garnett’s expectation of privacy was also objectively reasonable. In *State v. Reimer*, 127 Idaho 214, 899 P.2d 427 (1995), the Idaho Supreme Court held that the defendant had an objectively reasonable expectation of privacy in a tightly sealed mug where the contents of the mug were not visible without opening the mug and the defendant initially kept the mug in his possession (i.e., he did not abandon the mug). *Id.* at 217, 899 P.2d at 430. Likewise, in the present case, Garnett appears to have hid the backpack behind a large empty box in the storage

room (attached to the residence), the contents of Garnett's backpack were not visible without opening the backpack, and Garnett kept the backpack locked. Together, these facts support the conclusion that Garnett had a legitimate expectation of privacy in the backpack and, as a result, Garnett has standing to challenge the warrantless search of the backpack.

A different conclusion likely would have been reached if it were proven that Garnett knew Brunko was on probation. There is certainly the inference that he knew, given the fact that he testified that he knew a probationer's entire residence would be searched, and given the fact that the backpack and suitcase were essentially hidden in the storage room.

If Garnett knew that Brunko was on probation, then, as Garnett testified, he would have known that Brunko's trailer was subject to search at the request of his probation officer. Thus, if Garnett knew Brunko was on probation then Garnett's expectation of privacy in the storage room probably would not be objectively reasonable. *State v. Spencer*, 139 Idaho 736, 85 P.3d 1135 (Ct. App. 2004), is instructive. In that case, the defendant lived in a bedroom at his sister's house. *Id.* at 737, 85 P.3d at 1136. His sister, Nina Conklin (Conklin), was on felony probation. *Id.* When Conklin's probation officer and two law enforcement officers searched her house pursuant to her probation, they encountered a locked door leading to the defendant's bedroom. *Id.* The officers informed both Conklin and the defendant that the entire house was subject to search, including the defendant's bedroom, and they proceeded to search the bedroom. *Id.* The officers discovered baggies with methamphetamine residue and drug paraphernalia in the defendant's bedroom. *Id.* at 737–38, 85 P.3d at 1136–37. The defendant, once charged, brought a motion to suppress the evidence seized. The Idaho Court of Appeals affirmed the district court's denial of that motion. *Id.* at 739, 85 P.3d at 1138. In doing so, it

emphasized that its holding was based on "the advance knowledge that [the defendant] had of Conklin's probationary terms and [the] consent to search [being in place] prior to [the defendant] moving into Conklin's home." *Id.* The Idaho Court of Appeals in *State v. Devore,* 134 Idaho 344, 2 P.3d 153 (Ct. App. 2000), explains why this is a fair result. "We conclude that the search notification form was both a consent and a notice of assumption of the risk that comes with residing with a felony probationer who has also consented to warrantless searches." 134 Idaho at 348, 2 P.3d at 157. In light of *Spencer* and *Devore,* had the evidence shown that Garnett knew that Brunko was on probation, then Garnett's expectation of privacy in the storage room likely would not have been objectively reasonable. This is because Garnett testified he knew the entire premises could be searched in a probation search. But the predicate fact, whether Garnett knew Brunko was on probation, was not discussed at hearing. Garnett must be given the benefit of that lack of evidence, and the Court finds Garnett has standing to challenge the warrantless search of the backpack.

B. Consent to Search the Residence and Backpack

The second issue is whether the warrantless searches of Brunko's residence and Garnett's backpack were reasonable. The State argues that the searches of the residence and backpack were valid pursuant the terms and conditions of Brunko's probation. Br. Resp. Def.'s Mot. Supp. 5, 9. Garnett generally states that both searches were unreasonable and violated his Fourth Amendment rights because the searches were conducted without a warrant and no exception to the warrant requirement applied. Br. Supp. Mot. Supp. 3. A warrantless search is "considered unreasonable per se unless [it] come[s] within one of the few specifically established and well-delineated exceptions to the warrant requirement." *State v. Geissler*, 134 Idaho 902, 904, 11 P.3d 1120, 1122 (Ct. App.

2000) (citing *California v Acevedo*, 500 U.S. 565, 580, 111 S. Ct. 1982, 1991, 114 L. Ed. 2d 619, 634 (1991); *State v. Henderson*, 114 Idaho 293, 295, 756 P.2d 1057, 1059 (1988)). An exception to the warrant requirement is a search conducted pursuant to an individual's consent. *State v. Johnson*, 110 Idaho 516, 522, 716 P.2d 1288, 1294 (1986). A second related exception is a search conducted pursuant to a probation agreement, in which the probationer consents in advance to warrantless searches as a condition of probation. *State v. Devore*, 134 Idaho 344, 347, 2 P.3d 153, 156 (Ct. App. 2000) (citing *State v. Peters*, 130 Idaho 960, 962, 950 P.2d 1299, 1301 (Ct. App. 1997)).

The State has the burden of proving consent by a preponderance of the evidence. *Johnson*, 110 Idaho at 522, 716 P.2d at 1294. To meet this burden, the State must show that the consent was voluntarily given and that "the consenting person had either actual authority or apparent authority over the place [or item] to be searched." *State v. Westlake*, 158 Idaho 817, 820, 353 P.3d 438, 441 (Ct. App. 2015) (citing *Illinois v. Rodriguez*, 497 U.S. 177, 181, 110 S. Ct. 2793, 2797–98, 111 L. Ed. 2d 148, 156–57 (1990); *State v. McCaughey*, 127 Idaho 669, 674, 904 P.2d 939, 944 (1995)). In other words, "[t]he State is not limited to proof that consent was given by the actual owner of the item or premises. If a person consenting to a search does not have actual authority, but government agents reasonably believe that the person has authority, a warrantless search may still be valid." *Id.* at 820, 353 P.3d at 441 (citing *Rodriguez*, 497 U.S. at 186, 110 S. Ct. at 2800, 111 L. Ed. 2d at 159–60; *State v. Brauch*, 133 Idaho 215, 219, 984 P.2d 703, 707 (1999); *Fancher*, 145 Idaho at 838–39, 186 P.3d at 694–95).

Because the State argues that Brunko consented to the warrantless search of her residence and Garnett's backpack when she waived her Fourth Amendment rights as a condition of her probation, the issue is whether Brunko had actual or apparent authority to

consent in advance to both searches. First, the State argues and this Court agrees that Brunko had actual authority to consent to the search of the residence, justifying the warrantless search of the residence. According to Officer Haines report, at the time of the search, he believed that Brunko was living at 4301 East Maplewood Avenue, #40, Post Falls, Idaho, and Brunko's boyfriend, Andrew Soy, confirmed that belief just prior to the start of the search. The purpose of the search was to locate Brunko and her son and, due to noncompliance with her probation terms, to determine whether Brunko was engaged in any illegal activity. That evidence is sufficient to meet the State's burden of showing by a preponderance of the evidence that Brunko lived at the residence, had actual authority to consent to the search and had in fact consented to that search by signing her probation agreement. *See Devore*, 134 Idaho at 347, 2 P.3d at 156 (explaining that "[t]he 'reasonable grounds' requirement for warrantless searches by probation and parole officers does not apply when the subject of the search has entered into a probation or parole agreement that includes a consent to warrantless searches"); *State v. Barker*, 136 Idaho 728, 731, 40 P.3d 86, 89 (2002) (affirming a district court's decision that a parolee's waiver of his Fourth Amendment rights applied to any place he might reside). Thus, the search of the residence was reasonable because Brunko had given her consent. Additionally, as discussed below at page 16, the officers had a reasonable suspicion that Brunko had or was actively violating her probation.

Second, with regard to the search of Garnett's backpack, the State argues that Officer Haines had reasonable suspicion to believe Brunko owned, possessed, or controlled the backpack, meaning that Brunko had the apparent authority to consent to that search. Br. Resp. Def.'s Mot. Supp. 9–12. The Idaho Court of Appeals summarized the analysis used to determine whether an individual had apparent authority to consent to a

search of a third-party's item or residence in *State v. Westlake*, 158 Idaho 817, 353 P.3d 438 (Ct. App. 2015):

> [A] determination of apparent authority is fact-driven, requiring consideration of the totality of the circumstances in each case. *Brauch*, 133 Idaho at 220, 984 P.2d at 708. "Every encounter has its own facts and its own dynamics. So does every consent." *State v. Benson*, 133 Idaho 152, 156, 983 P.2d 225, 229 (Ct. App. 1999) (quoting *United States v. Morning*, 64 F.3d 531, 533 (9th Cir.1995)). Apparent authority must be determined on the facts and circumstances known to the police at the time of the search; what they learned later or what is proved after the fact is irrelevant. *McCaughey*, 127 Idaho at 674, 904 P.2d at 944; *State v. Tena*, 156 Idaho 423, 426, 327 P.3d 399, 402 (Ct. App. 2014); *State v. Robinson*, 152 Idaho 961, 966, 277 P.3d 408, 413 (Ct. App. 2012); *State v. Buhler*, 137 Idaho 685, 687–88, 52 P.3d 329, 331–32 (Ct. App. 2002). [*United States v.*] *Rodriguez* neither imposes a duty of exhaustive inquiry by police before apparent authority will be found to exist, nor credits willful ignorance; it requires that the officer's belief in the consenter's authority over the place or object be objectively reasonable. *Rodriguez*, 497 U.S. at 187–88, 110 S. Ct. at 2800–01, 111 L. Ed. 2d at 160–61. Police may not accept a consenter's invitation to search if the circumstances are such that a reasonable person would doubt the consenter's authority absent further inquiry. *Id.* at 188, 110 S. Ct. at 2801, 111 L. Ed. 2d at 161; *McCaughey*, 127 Idaho at 672, 674, 904 P.2d at 942, 944. If the officers lack an objectively reasonable basis to believe authority exists, a search is impermissible unless further inquiry clarifies the authority. *Tena*, 156 Idaho at 426–27, 327 P.3d at 402–03; *Fancher*, 145 Idaho at 839, 186 P.3d at 695.

Id. at 821–22, 353 P.3d at 442–43. In *State v. Barker*, 158 Idaho 817, 353 P.3d 438 (2002), the Idaho Supreme Court concluded that a parolee, who consented to searches of his residence as a condition of his release, had apparent authority to consent to the search of his girlfriend's fanny pack. The Idaho Supreme Court explained:

> Because both Tate [the parolee] and Barker [the girlfriend] occupied the master bedroom, Tate had common authority over the bedroom sufficient for him to consent to a search of that room. His consent to search could not extend to items in the bedroom over which he had no common authority, however. When searching that room pursuant to Tate's consent, the officers could search any item in the bedroom if they had reasonable suspicion that Tate owned, possessed, or controlled the item. *United States v. Davis*, 932 F.2d 752 (9th Cir. 1991). The circumstances need not indicate that the item was obviously and undeniably owned, possessed, or controlled by Tate. *Id.* When searching a residence pursuant to the consent of only one of the occupants, the officers are not required in all instances to inquire into the

> ownership, possession, or control of an item when ownership, possession, or control is not obviously and undeniably apparent. *Id.* If the officers do inquire, they are not necessarily bound by the answer given. *Id.* The test is whether, under the totality of the circumstances, the officers had a reasonable suspicion that the item was owned, possessed, or controlled by the occupant who consented to the search.

Id. at 731–32, 40 P.3d at 89–90.

Here, Garnett was Brunko's overnight guest. Brunko, as a resident, certainly had common authority over the storage room sufficient for her to consent to the search of that room. Like in *State v. Barker*, her consent to search that room did not extend to items over which she had no common authority; however, officers could search any item in the storage room if they had reasonable suspicion that Brunko owned, possessed, or controlled the item. The facts in this case demonstrate that Officer Haines had reasonable suspicion that Brunko owned, possessed, or controlled the backpack. In his report, Officer Haines indicated that the backpack was found behind an empty box in a storage room at Brunko's residence and the backpack had no exterior indications of ownership. Further, when the backpack was located, Garnett was in another room, meaning that the backpack was not on or near Garnett's person at the time of the search (i.e., close proximity can suggest ownership). Together, these facts support a finding that Officer Haines' suspicion that the backpack belonged to Brunko was reasonable under the totality of the circumstances. As a result, Brunko had apparent authority to consent to the search of the backpack. Because the search of the backpack was conducted pursuant to Brunko's consent, the search was reasonable.

As mentioned above, at the March 22, 2017, hearing on Garnett's Motion to Suppress, both Garnett and Soy testified that none of the probation officers or law enforcement officers asked Soy or Garnett for permission to search the premises. This Court has been cited no authority by Garnett that it was incumbent on the probation

officers and/or law enforcement to ask Garnett for permission to search anything found within the single-wide trailer. This Court specifically finds there was no obligation on the probation officers and/or law enforcement to ask Garnett for permission to search anything found within the single-wide trailer. The basis for this Court's finding of no obligation on the probation officers or law enforcement to even inquire of Garnett if what they are about to search is Garnett's bag or not, let alone ask for Garnett's consent, is based on the above language from *Barker*:

> When searching a residence pursuant to the consent of only one of the occupants, the officers are not required in all instances to inquire into the ownership, possession, or control of an item when ownership, possession, or control is not obviously and undeniably apparent. *Id.* If the officers do inquire, they are not necessarily bound by the answer given. *Id.* The test is whether, under the totality of the circumstances, the officers had a reasonable suspicion that the item was owned, possessed, or controlled by the occupant who consented to the search.

Id. at 732, 40 P.3d at 90.

Thus, even if Garnett testified truthfully at the March 22, 2017, hearing, that "One had my f***ing initials on it and one had a tag," (the Court above found Officer Haines more credible than Garnett on this point, and Garnett's claim that his initials were on the backpack certainly was not corroborated by Soy or any of the other witnesses), the probation officers and law enforcement wouldn't necessarily have to equate those initials to Garnett. Keep in mind the bag(s) were found in an added on storage room to the single wide trailer, were placed behind a large cardboard box as if to be hidden. If Garnett's bags were found immediately adjacent to or under the couch that he was found sleeping on when officers arrived, a different result might be reached. But when Garnett, an overnight guest, is found sleeping on Brunko's couch when the officers arrived, and the backpack is subsequently found concealed behind a large moving box, in a make-shift storage room, Brunko's consent controls over Garnett's silence. Even if the backpack had Garnett's

initials on it, due to its location, the officers might not have had a duty to ask Garnett about the backpack before searching it. Again, if it were found under or near the couch upon which Garnett, the overnight guest was sleeping on, the officer would have had a duty to make further inquiry of Garnett before searching. Due to the location of the backpack and the lack of identification on the backpack, this Court finds the officers had no duty to inquire of Garnett. Garnett, instead, had the duty to inform the officers that they would find his backpack, where they would find his backpack and that they did not have his permission to search his backpack.

The Court must address a point made by Garnett in subsequent briefing. Garnett argues, "…Ms. Brunko, was not present, and that she had not been at the residence for at least five days prior to the search." Addendum Def.'s Br. in Supp. Mot. Suppress, 2. "Furthermore, Ms. Brunko was not at the residence at any point on the night Mr. Garnett stayed at the residence and he had no reason to believe a probation search would be conducted without her presence." *Id.* at 4. The Court finds this is actually an argument that cuts against Garnett. At the March 22, 2017, hearing, Garnett testified he had just recently completed parole and was familiar with the fact that probation and parole officers usually searched the entire residence during a home visit. Soy testified he knew Brunko was on probation. While Garnett didn't testify as to whether he knew Brunko was on probation (he wasn't asked), it strains belief that he wouldn't know. The fact that Garnett's belongings were essentially hidden in Brunko's trailer is evidence Garnett knew Brunko was on probation. If, as Garnett argues, Brunko had not been seen for five days, that only makes the likelihood of probation officers and law enforcement coming to look for Brunko, *more* likely. At the March 22, 2017, hearing, Officer Haines testified he asked Soy if

Brunko was still living there, and Soy said she was. Neither Garnett nor Soy disputed this fact.

If Garnett is arguing that Brunko's absence for five days somehow divests the probation officers of Brunko's written consent to search her residence, this Court specifically finds Brunko's absence for five days does not make this single-wide trailer any the less Brunko's residence. Brunko's residence was being searched either to find Brunko and inquire about her child not attending school, or to gather evidence that she had in fact absconded so that a warrant could be obtained. But there was been no abandonment by Brunko of her residence within that five-day period..

Finally, Garnett claims in his briefing after the hearing that Brunko had to have given verbal consent to search her trailer on this particular occasion on November 15, 2016. The Court finds such claim is not supported by the facts or the law. Garnett argues, "Ms. Brunko's initials next to the term of probation permitting searches is not sufficient, in and of itself, to establish Ms. Brunko waived her Fourth and Fourteenth amendment rights in their entirety." Addendum to Def.'s Br. Supp. Mot. Suppress 5. Garnett cites *State v. Turek,* 150 Idaho 745, 250 P.3d 796 (Ct. App. 2011) for the proposition that "As such, Ms. Brunko would have had to have provided specific consent for Probation and Parole to conduct a search of her residence on November 15, 2016 in order for the State to rely upon her 'consent.'" *Id.,* at 6. *Turek* is distinguishable. *Turek* involved an initial home visit by a probation officer. When Turek wasn't home the probation officer went around the back of the residence, opened an unlocked shed and found evidence of a marijuana grow operation. *Turek,* 150 Idaho at 747, 250 P. 3d at 798. As correctly pointed out by the State in its Brief in Response to Defendant's Addendum Regarding Motion to Suppress,

the Court of Appeals in *Turek* also noted *State v. Pinson,* 104 Idaho 227, 657 P.2d 1095 (Ct. App. 1983). As noted by the State:

> The *Turek* court distinguished its case from *Pinson* in that in *Pinson,* the probation officer "had reasonable grounds to believe that Pinson had violated the terms of his probation and the search was related to confirming that violation." 150 Idaho 745, 748. The Court held
>
> > "the entry was supported by reasonable suspicion which is consistent with well-developed law in this area that establishes that probation searches may be conducted without consent when the officers are there to investigate reasonable suspicion of violation of probation terms.
>
> *Id. See State v. Klingler,* 143 Idaho 494, 497, 148 P.3d 1240, 1243 (2006); *State v. Anderson,* 140 484, 487, 95 P.3d 635 638 (2004).

Br. Resp. Def's Addendum Regarding Mot. Suppress 6. In the present case the probation officers had reasonable grounds to believe Brunko had violated her probation and was continuing to violate her probation by walking away from treatment at the Walker Center, being dishonest with her probation officer of her failure to complete treatment, missing drug tests, submitting an altered sample, testing positive for heroin, and her child not showing up for school. *Turek* does not require Brunko's consent to search for this particular search on November 15, 2016, because this was not an initial home visit and the probation officers had a plethora of reason to have reasonable suspicion that Brunko was violating her probation terms.

IV. CONCLUSION AND ORDER.

For the reasons set forth above, the Court denies Garnett's Motion to Suppress.

IT IS HEREBY ORDERED that MARK TRAVIS GARNETT's Motion to Suppress is **DENIED**.

DATED this 3rd day of April, 2017

____

JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the ___________ day of April, 2017 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney – Sean Walsh
Prosecuting Attorney – Casey Simmons

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY:___________________________
Deputy