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,

Plaintiff,

vs.

CHRISTOPHER LINDSEY WOOD,

Defendant.

Case No. **CRF 2016 22097**

MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

Defendant CHRISTOPHER LINDSEY WOOD's Motion to Suppress is **DENIED**.
Laura McClinton, Dep. Prosecuting Attorney, lawyer for the Plaintiff.
Sean P. Walsh, Coeur d'Alene, lawyer for Defendant Wood.

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I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.

According to Coeur d'Alene Police Officer Caleb Hutchison's (Officer Hutchison) report, on November 18, 2016, Probation Officers Travis Johnson and Cody Kuebler conducted a search of Terry Wilson's (Wilson) apartment located at 1201 N. Lincoln Way, #38, Coeur d'Alene, Idaho. Aff. in Supp. Probable Cause (Report for Incident 16C37552, at 3). Mr. Wilson is a parolee. *Id.* While conducting that search, Officers Johnson and Kuebler requested agency assistance, and Officer Hutchison was the officer that responded to their request. *Id.* Upon his arrival, Officers Johnson and Kuebler told Officer Hutchison that they were at the apartment doing a probation search and, in the apartment's rear bedroom, they had located two locked safes next to each other under a futon being

used as a bed. *Id.* Sometime after finding the two safes, Christopher L. Wood (Wood), the defendant and a non-probationer, arrived at the apartment. *Id.* According to Officers Johnson and Kuebler's testimony at the Motion to Suppress hearing, Wood informed them that he had been living at Wilson's apartment on and off since July 2016; he stated that he owned one of the safes, but denied ownership of the second safe; he told them that the key to his safe was on a key ring in his coat pocket; and he told the officers that they could open his safe. The officers then opened Wood's safe using the key provided and found drug paraphernalia within. Wood was arrested and charged with Possession of a Controlled Substance (Methamphetamine), a felony, in violation of Idaho Code § 37-2732(c)(1).

Wood waived his right to a preliminary hearing. *Court Minutes (Dec. 1, 2016*). He filed a Motion to Suppress on February 3, 2017, and a Brief in Support of Motion to Suppress on February 15, 2017. The State filed its Brief in Opposition to Defendant's Motion to Suppress on February 28, 2017, the day before the hearing. A Motion to Suppress hearing was held on March 1, 2017. At the conclusion of that hearing, defense counsel asked permission of this Court to reopen the record at a later date in order to elicit testimony from Wood, who failed to appear for the Motion to Suppress hearing. The Court denied that request. Additionally, defense counsel noted that the State's Brief in Opposition to Defendant's Motion to Suppress was untimely, and as a result, defense counsel asked for additional time to file a response brief. The Court granted that request. Defense counsel's response brief was due by March 6, 2017. As of March 9, 2017, no brief from defendant has been filed. The State was also provided an opportunity to submit additional briefing, which is due by March 9, 2017. On March 6, 2017, the State submitted an Addendum to State's Brief in Opposition to Defendant's Motion to Suppress.

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.

III. ANALYSIS.

The issue in this case is whether Wood had a reasonable expectation of privacy in the rear bedroom and safe such that he may challenge the warrantless search of both areas. 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). Both provisions specifically protect "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures . . . ." U.S. Const. amend. IV; Idaho Const. art. I, § 17. Importantly, "[a] man's residence is 'a place especially protected against unreasonable police intrusion' pursuant to these constitutional safeguards." *State v. Fancher*, 145 Idaho 832, 836–37,186 P.3d 688, 692–93 (Ct. App. 2008) (quoting 1 Wayne R. Lafave, Search and Seizure § 2.3 (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." *Fancher*, 145 Idaho at 837, 186 P.3d at 693; *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).

Wood argues that he has standing to challenge the search of the rear bedroom in Wilson's apartment because he was a resident of or, at a minimum, an overnight guest at that apartment. Br. Supp. Mot. Suppress 2–3, 5. In other words, Wood is arguing that he had a subjective expectation of privacy in the rear bedroom because he was a renter or an overnight guest, and his status as a renter or overnight guest is sufficient to establish that his subjective expectation of privacy, when viewed objectively, was reasonable. *Id.* The State makes two arguments in response.

First, the State argues that Wood has not established that he had a subjective expectation of privacy in the rear bedroom. Addendum State's Br. Opp'n Def.'s Mot. Supp. 3. The State notes that Wood did not testify at the Motion to Suppress hearing and, as a result, this Court has no information as to Wood's state of mind or his beliefs with respect to whether or not "he maintained any possessory interest" in the rear bedroom. *Id.* The State explains that this Court does not know whether Wood was the "sole occupant of the spare bedroom; whether Mr. Wilson utilized the room when his son stayed with him; whether other people had access to the room; how often [Wood] stayed in the room; and

whether [Wood] paid rent." *Id.*

Whether Wood had a subjective expectation of privacy in the rear bedroom is a question of fact. *State v. Pruss*, 145 Idaho 623, 626, 181 P.3d 1231, 1234 (2008). While there are few facts supporting Wood's claim that he had a subjective expectation of privacy in the rear bedroom, the record is not entirely silent. Specifically, there is factual support for concluding that Wood was an occasional overnight guest at Wilson's apartment, and possibly a resident. For example, at the Motion to Suppress hearing, Officer Hutchison testified that when he spoke to Wood on the day of the search, Wood indicated that he had been staying at Wilson's apartment off and on since July 2016. Officers Johnson and Kuebler confirmed that Wood was a frequent guest of Wilsons, though not an approved overnight guest. Lastly, in the Pre-Booking Information Sheet completed after Wood's arrest, Wood listed his address as 1201 N. Lincoln Way, #38, Coeur d'Alene, Idaho, which is the address for Wilson's apartment. This testimony demonstrates that Wood consistently told others that he lived or frequently stayed at Wilson's apartment, strongly suggesting that Wood considered Wilson's apartment to be his primary residence. Because Wood most likely considered Wilson's apartment to be his home, it is reasonable to infer that Wood had an actual, subjective expectation of privacy in the rear bedroom. *See State v. Pruss*, 145 Idaho 623, 626, 181 P.3d 1231, 1234 (2003) (explaining that "one can certainly infer that a person has a subjective expectation of privacy in his dwelling...").

The State's second argument is that even if this Court finds that Wood had a subjective expectation of privacy in the rear bedroom, that subjective privacy expectation was not reasonable. Addendum State's Br. Opp'n Def.'s Mot. Supp. 4–6. This Court agrees that Wood's subjective expectation of privacy in the rear bedroom, when viewed objectively, was not reasonable under the circumstances. That is because Wood knew

that Wilson was on parole and that Wilson's apartment was subject to search at the request of his probation and parole officer. *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.* It further explained the limits of its holding:

> If the evidence established that [the defendant] had no knowledge that Conklin was subject to probationary search, then his expectation of privacy may have been objectively reasonable and his consent would be necessary to search his private bedroom. Likewise, had [the defendant] been living with Conklin *prior* to her being placed on probation, then his already established objective expectation of privacy would not have been defeated simply because Conklin, a cohabitant, was placed on probation. This latter scenario would still require that consent be obtained in order to make the search valid.

Id. (footnote omitted).

The facts in this case are analogous to the facts in *State v. Spencer*. At the Motion to Suppress hearing in this case, Officer Johnson testified to the following: he had

conducted resident checks at Wilson's apartment prior to the November 18, 2016, residence check; Wood was present for at least two prior residence checks at Wilson's apartment; during those two resident checks, Wilson's apartment was searched, including the rear bedroom; when conducting the two prior resident checks and searches, Officer Johnson was wearing his probation and parole uniform, he informed Wood that he was a probation officer and that Wilson was on parole, and he instructed Wood to sit in the living room while the officers searched the apartment (per protocol). Officer Kuebler's testimony at the Motion to Suppress hearing corroborated what Officer Johnson testified to. Together, these facts show that, prior to the November 18, 2016, search of Wilson's apartment, Wood knew that Wilson was on parole and, because he was present during prior searches of Wilson's apartment, Wood also had direct knowledge that Wilson's apartment, including the rear bedroom, was subject to search pursuant to the terms of Wilson's parole agreement. Moreover, Wilson's consent to search his apartment was in place prior to Wood moving into or staying overnight at Wilson's apartment. Officer Johnson testified that he had been supervising Wilson for approximately two years as of November 18, 2016. Consequently, Wilson's terms of supervision agreement (containing the consent to search provision) had been in place since at least November 18, 2014. As noted above, Wood told Officer Hutchison that he had been staying at Wilson's apartment off and on since July 2016. Thus, the consent to search Wilson's apartment predates the earliest date Wood might have moved into Wilson's apartment.

In summary, Wood's subjective expectation of privacy in the rear bedroom was not objectively reasonable and, as a result, Wood has failed to show that he had a legitimate expectation of privacy in the rear bedroom. Therefore, Wood does not have standing to challenge the search of the rear bedroom.

In addition to the rear bedroom, Wood also argues that he had a legitimate expectation of privacy in the locked safe found underneath a futon being used as a bed in the rear bedroom. Br. Supp. Mot. Suppress 5. The Court disagrees. Wood successfully demonstrated he had an actual and subjective expectation of privacy in the interior contents of the safe by locking the safe, placing the safe underneath the bed in the rear bedroom, and keeping the key to his safe on his person. However, Wood's expectation of privacy in the safe was not objectively reasonable for the same reasons that his subjective expectation of privacy in the rear bedroom was not reasonable. As explained above, Wood was fully aware that Wilson's apartment was subject to a search at any time. Yet, despite that advance knowledge, Wood chose to store his safe at Wilson's apartment. Because Wood knew that Wilson's apartment was subject to search as a condition of Wilson's parole, and because Wood knew this before moving into Wilson's apartment, Wood's expectation of privacy in his safe was not objectively reasonable. Likewise, Wood did not have a legitimate expectation of privacy in his safe, and therefore, Wood does not have standing to challenge the search of the safe.

Even if Wood had standing to challenge the search of the safe, the State presented sufficient evidence showing that Wood consented to the search of the safe. 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)). One 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). The State has the burden of

proving consent by a preponderance of the evidence. *Johnson*, 110 Idaho at 522, 716 P.2d at 1294.

> The [S]tate must show that consent was not the result of duress or coercion, either direct or implied. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248, 93 S. Ct. 2041, 2058, 36 L. Ed. 2d 854, 875 (1973); *State v. Whiteley*, 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct. App.1 993). The voluntariness of an individual's consent is evaluated in light of all the circumstances. *Whiteley*, 124 Idaho at 264, 858 P.2d at 803. Consent to search may be in the form of words, gestures, or conduct. *State v. Knapp*, 120 Idaho 343, 348, 815 P.2d 1083, 1088 (Ct. App. 1991).

State v. Fleenor, 133 Idaho 552, 554–55, 989 P.2d 784, 786–87 (Ct. App. 1999)

At the Motion to Suppress hearing in this case, Officer Johnson testified that when he asked Wood about the two safes discovered in the rear bedroom, Wood claimed ownership of one of the safes and informed him that the key to the safe was on the key ring in his coat pocket. Officer Johnson stated that Wood then consented to Officer Kuebler opening the safe—Wood stated that the probation officers could open the safe and told the probation officers where to find the key. Officer Johnson then handed Officer Kuebler the key to open the safe and Officer Kuebler opened the safe. According to testimony by both probation officers, Wood never objected to Officer Kuebler opening the safe. Additionally, Officer Kuebler testified that during the conversation with Wood about opening the safe, no weapons were drawn and no one yelled at Wood. Instead, the conversation was calm and collected. This testimony satisfies the State's burden of demonstrating by a preponderance of the evidence that Wood voluntarily consented to the search of the safe.

IV. CONCLUSION AND ORDER.

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

IT IS HEREBY ORDERED that CHRISTOPHER LINDSEY WOOD's Motion to Suppress is **DENIED**.

DATED this 9th day of March, 2017

_____
JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

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

Defense Attorney - Sean P. Walsh
Prosecuting Attorney – Laura McClinton

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY:_____
Deputy