

IN THE SUPREME COURT OF THE STATE OF MONTANA
CAUSE NO. DA 23-0709

STATE OF MONTANA,
Plaintiff and Appellee,
and
CISSY DEAN MANYHIDES,
Defendant and Appellant.

Appellant/Defendant's Opening Brief

On Appeal from the District Court of the Seventeenth Judicial District
of the State of Montana, In and For Valley County

Before the Honorable John A. Kutzman
Cause No. CDC-22-85

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 II. The Court should refine its guidance concerning “home visits” by probation officers to limit the “visit” to those areas generally accessible to guests invited into a person’s home.

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STATEMENT OF THE ISSUES

I. Probation officers conducting a “home visit” with Appellant Cissy Manyhides’ (Manyhides) exceeded the scope of the home visit when a probation officer roamed freely throughout Manyhides’ home and entered into her bedroom, which constituted a warrantless search of Manyhides’ home without any warrant exception to justify the search.

II. The Court should refine its guidance concerning “home visits” by probation officers to limit the “visit” to those areas generally accessible to guests invited into a person’s home.

STATEMENT OF THE CASE

Manyhides was under court order probation conditions, including that she make her home open to home visits by probation officers. Two probation officers arrived at Manyhides home to conduct a home visit, one kept Manyhides engaged in conversation while the second officer conducted a search of the home, without reasonable suspicion Manyhides had committed any violation of probation conditions or any other crime. During the search, in Manyhides bedroom, the probation officer observed in plain sight what he believed to be drug paraphernalia and later located methamphetamine in Manyhides purse, leading to Manyhides arrest and later conviction. The probation officer action exceeded the scope of a home visit

and conducted a warrantless search without the requisite reasonable suspicion to do so.

In response to the violation of Manyhides' privacy, Manyhides urges the Court to draw a brightline rule defining what the limitations of a "home visit" are as opposed to a probation search. Doing so will provide guidance to probation officers while providing some privacy to probationers whose privacy rights are already greatly diminished.

SUMMARY OF ARGUMENT

While "home visits" by probation officers of those under their supervision do not constitute searches, home visits become searches when probation officers enter into private spaces (such as bedrooms) of the home. Such warrantless searches are Unconstitutional and require suppression of all evidence found as a result of the illegal search.

This Court's current restriction that "a probation officer may not open drawers, cabinets, closets or the like; nor may the officer rummage through the probationer's belongings" does not provide adequate guidance and allows for probation officers to assume jurisdiction over the entirety of a probationer's home and the Court should provide further guidance to ensure a "visit" is not de facto a search of a probationer's home.

Manyhides asks this Court to reverse and remand with instructions for the district court to apply Manyhides' purposed rule to her case and determine if suppression of the evidence is appropriate.

STATEMENT OF FACTS

On July 28, 2020, Manyhides was sentenced in Cascade County to a term of supervision, which included various conditions, relevant here:

2. The Defendant must obtain prior written approval from the Defendant's supervising officer before taking up residence in any location. The Defendant shall not change the Defendant's place of residence without first obtaining written permission from the Defendant's supervision officer or the officer's designee. The Defendant must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion. The Defendant will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.

8. Upon reasonable suspicion that the Defendant has violated the conditions of supervision a probation & parole officer may search the person, vehicle, and residence of the Defendant, and the Defendant must submit to such a search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the Defendant has violated the conditions of supervision.

See Doc. 15, § I.

On February 10, 2022, two probation officers arrived at Manyhides home to conduct a home visit. See Transcript of Proceedings, Motion to Suppress, January 5, 2023 (Tr.), 6:23-7:14, Appendix A. Upon arrival the probation officers made contact with Manyhides, one of the probation officers (Manyhides' supervising officer)

made conversation with Manyhides while the other officer did a walkthrough and visual inspection of the home. Tr. 8:3-9.

While the probation officer was “inspecting” Manyhides home, he entered Manyhides bedroom and saw what appeared to be drug paraphernalia on the nightstand.¹ Tr. 13:5-14. The probation officer then proceeded further into the bedroom to look under the nightstand where he discovered additional suspected drug paraphernalia on the floor underneath the nightstand. Tr. 13:5-14. Thereafter, the probation officer took Manyhides purse, which was nearby, and emptied its contents onto the bed where he discovery what he believed to be methamphetamine. Tr. 13:20-23.

As a result of these discoveries, Manyhides was taken into custody, and charged with Criminal Possession of Dangerous Drugs with the Intent to Distribute, and Criminal Possession of Drug Paraphernalia. See Doc. 01.

On October 28, 2022, Manyhides filed her Motion to Suppress Evidence and Dismiss, arguing the home visit constituted a search and the probation officers lacked the required reasonable suspicion to conduct the search of her home. Doc. 15, Appendix B.

¹ It is not apparent in the record if the bedroom door was open or closed at the time the probation officer conducted the inspection, nor is it apparent if the probation officer could see the nightstand from outside the bedroom.

On November 15, 2022, the State filed its response, arguing the home visit was not a search, and no reasonable suspicion was needed to support the probation officer's actions within the home. Doc. 17, Appendix C. On December 2, 2022, Manyhides replied providing additional support and evidence for her arguments. Doc. 20, Appendix D.

On January 5, 2023, the district court held a hearing on the suppression issue, and thereafter issued its Order Denying Motion to Suppress and Dismiss. Doc. 23, Appendix E. The district court found the home visit was authorized and did not constitute a search, therefore no reasonable suspicion was needed prior to the home visit occurring. Doc. 23.

On September 1, 2023, the Manyhides and the State entered into a Global Plea Agreement, resolving multiple cases, relevant here the State agreed to dismiss the paraphernalia charge and amend the possession with intent to distribute to a possession of dangerous drugs charge. Doc. 32. As part of the Global Plea Agreement, the State agreed not to object to Manyhides filing an appeal based upon her motion to suppress and its denial. Doc. 32, page 4.

On September 26, 2023, Manyhides entered a guilty plea to the amended charge of Criminal Possession of Dangerous Drugs. Transcript of Proceedings, Change of Plea and Sentencing, September 26, 2023, 6:1-5. Further, the district court and parties acknowledged the motion to suppress and its outcome were reserved by

Manyhides as an appealable issue. *Id.*, 6:7-12. After accepting Manyhides' guilty plea, the district court sentenced her to five years Department of Corrections, all suspended, in line with the plea agreement. *Id.*, 16:10-14.

Thereafter, this appeal ensued to address the issue related to the probation "home visit" lacking reasonable suspicion prior to locating the drug paraphernalia in Manyhides' bedroom.

STANDARD OF REVIEW

This Court's standard of review of the denial of a motion to suppress is whether the court's findings of fact are clearly erroneous and whether its interpretation and application of the law are correct. *State v. Fischer*, 2014 MT 112, ¶ 8, 374 Mont. 533, 535, 323 P.3d 891, 893, citing to *State v. Kriesel*, 2000 MT 144, ¶ 7, 300 Mont. 44, 2 P.3d 831, see also *State v. Nalder*, 2001 MT 270, P5, 307 Mont. 280, P5, 37 P.3d 661, P5.

ARGUMENT

Based on the record below, the probation officer had no reasonable suspicion to conduct a search until he observed the drug paraphernalia on Manyhides' nightstand, within her bedroom. See Tr. 13:5-7 ("...the first violations that I noted were on the nightstand which appeared to me to be some paraphernalia...").

I. When the Probation Officer Exceeded the Scope of Home Visit by Intruding Upon Manyhides' Personal Spaces Within the Home, the Home Visit Became a Search

This case revolves around the question of what a home visit is and what the limitations are for probation officers executing a home visit.

A. Application of Plain View Doctrine

The plain view doctrine is a well-recognized exception to the warrant requirement which "begins with the premise that the police officer had a prior justification for an intrusion, in the course of which he came inadvertently across a piece of evidence incriminating the accused." *State v. Olson*, 2002 MT 211, ¶ 10, 311 Mont. 270, 55 P.3d 935 (internal citations omitted). If an officer is lawfully in a place, and an officer observes what is apparent evidence of a crime, the officer may lawfully seize the evidence without a warrant. *Id.*, ¶ 10.

The application of the plain view doctrine turns entirely upon the officer being lawfully present in a place where they can observe evidence of a crime. For example, in *Olson*, officers, pursuant to a valid arrest warrant, entered into the kitchen of Olson's home to place her under arrest. After placing Olson under arrest, an officer looked into the living room and observed a marijuana bong on a coffee table. *Id.*, ¶ 4. However, to see the bong, the officer had to lean in through the door between the kitchen and living room. *Id.*, ¶ 12. This Court concluded by leaning through the doorway, the officer entered into a portion of the residence that was not included within the lawful boundaries of the officer's presence, and all evidence obtained as a result of that violation should have been suppressed. *Id.*, ¶ 24.

As applied to the present case, the probation officer observed the evidence in question in Manyhide's bedroom, it was in plain view after the probation officer entered into the bedroom. So, if the officer was legally present in Manyhide's bedroom, then the evidence in this case was legally seized. However, if the probation officer was not legally within Manyhide's bedroom, then the evidence was not legally seized and may have been suppressed.

B. The “Home Visit” by Probation and Parole Transformed into a Search When a Probation Officer Entered into Private Areas of Manyhides’ Home

Generally, “[a] home visit by a probation officer is not a search.” *State v. Fischer*, 2014 MT 112, ¶ 9, 374 Mont. 533, 535, 323 P.3d 891, 893; citing *State v. Moody*, 2006 MT 305, ¶¶ 23-24, 334 Mont. 517, 148 P.3d 662. This is because a probationer who is still subject to supervision has a diminished expectation of privacy. *Fischer*, ¶ 11, citing *State v. Burchett*, 277 Mont. 192, 195-96, 921 P.2d 854, 856 (1996). All probationers are, as a standard part of supervision, required to make their residence open and available to a probation officer for a home visit at anytime. Mont. Admin R. 20.7.1101(2).

A home visit may transform into a search pursuant to a probation officer's plain view observations, “but those observations must remain within the parameters of a home visit unless or until there is reasonable cause to engage in a search.” *Moody*, ¶ 24.

A "search" is a means of gathering items of evidence or information employed by government agents which substantially infringes or intrudes into or upon one's home, person, or other area, thing, or information in which she has a reasonable expectation of privacy. Mont. Const. art. II, § 11; U.S. Const. amend. IV; *State v. Peoples*, 2022 MT 4, ¶ 14, 407 Mont. 84, 502 P.3d 129 (internal citations omitted).

To determine if a search violated the Montana Constitution, this Court looks to two primary factors: "(1) whether the person has an actual expectation of privacy that society is willing to recognize as objectively reasonable, and (2) the nature of the state's intrusion." *City of Whitefish v. Zumwalt*, 2024 MT 153, ¶ 25, 417 Mont. 237, 553 P.3d 1.

Here, a person has an actual expectation of privacy within their home, even more so within their bedroom, and society has and remains willing to recognize that expectation as objectively reasonable. While probationers have a lower expectation of privacy within their homes, it is not so low as to allow probation officers during a home visit to intrude upon every area of a probationer's home without a warrant or warrant exception justifying the intrusion.

i. Manyhides Maintained a Reasonable Expectation of Privacy Within Her Bedroom

It is well settled that a person has an actual expectation of privacy within their home and society is willing to recognize that expectation as objectively reasonable.

See *Billings v. Whalen*, 242 Mont. 293, 298, 790 P.2d 471, 474 (1990), citing to *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). Indeed, a home is where a person has the greatest expectation of privacy, and a person does not need to take affirmative steps to assert or retain that privacy expectation. *State v. Bassett*, 1999 MT 109, ¶ 39, 294 Mont. 327, 982 P.2d 410 (internal citations omitted), citing to *State v. Siegal*, 281 Mont. 250, 274, 934 P.2d 176, 190 (1997).

Additionally, Montanans have heightened expectations of privacy, and this Court has consistently held that our constitutional scheme affords broader protection than the Fourth Amendment to the United States Constitution. *Bassett*, ¶ 42.

Despite their reduced privacy interests, probationers maintain an expectation of privacy in their home during probation. *Peoples*, ¶ 4, citing *Moody*, ¶ 27. Like any other person's home, "[a] probationer's home . . . is protected by" the express requirement of the Fourth Amendment, and similar language of Article II, Section 11, that government searches be reasonable in manner and scope. *Peoples*, ¶ 4, quoting *Griffin v. Wisconsin*, 483 U.S. 868, 873, 107 S. Ct. 3164, 3168, 97 L. Ed. 2d 709 (1987).

This Court's application of the plain view doctrine in *Olson*, is instructive, because officers were lawfully within the home, but exceeded that authority by leaning into other rooms when they had no lawful purpose therein. Showing that even when law enforcement is legally within a person's home, it does not grant law

enforcement total authority over the entirety of the home, rather law enforcement is limited only to the area within the home necessary to accomplish the purpose which allowed them into the home in the first place. As this Court has consistently stated, law enforcement is limited in their invasions of a defendant's privacy to the specific purpose that allowed the State's intrusion into that person's privacy in the beginning. See *Basset*, ¶¶ 40-41, *Peoples*, ¶ 17 (“the warrantless search is limited in scope to the reasonable suspicion that justified it in the first instance”).

Here, Manyhides may have a reduced expectation of privacy in her home in general, allowing probation officers to conduct home visits, but that does not waive all expectation of privacy within the entirety of the home. Instead, Manyhides retained a valid expectation of privacy to all areas of the home outside of which the probation officers required entrance to in order to conduct a home visit, including Manyhides' bedroom, which are generally considered private and off limits to those welcomed within a home as guests.

ii. This Home Visit Exceeded the State's purpose for Home Visits

Manyhides was subject to certain conditions of probation, including “[t]he Defendant must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion.”

“A home visit is when ‘the probation officer stops by the probationer's home to determine whether the individual is abiding by the conditions of his or her

probation,' without going through the probationer's belongings or opening enclosed areas such as drawers, closets, or cabinets.” *State v. Thompson*, 2023 MT 194, ¶ 17, 413 Mont. 446, 537 P.3d 461, quoting *Moody*, ¶¶ 16, 24.

In this case, testimony provided by the probation officer shows the purpose of the home visit was “...basically to make contact with the offender in their home residence and essentially make sure everything’s going okay for them there.” Tr. 7:23-8:2.

Here, two probation officers arrived at Manyhides home, while one kept Manyhides in conversation, presumably near the entryway, the other conducted a complete “visual walkthrough and inspection” of the entirety of the home. This exceeds the scope of the State’s purpose for the home visit, that is to meet with the probationer to ensure that “everything was going okay for them there” or to allow a determination the individual is abiding by conditions of his or her probation.

There is no need to conduct a complete walkthrough of a person’s home to determine if they are doing ok there. Already the standard for a warrantless search is incredibly low, requiring only reasonable suspicion, which is a much lower standard than probable cause, and requires only a showing of some articulable facts that caused the probation officer to have a suspicion something is amiss. See *Moody*, ¶ 12; *Fisher*, ¶ 11. A probation officer should generally be able to develop such a suspicion merely by talking with the probationer, or seeing the general condition of

the home. There were no such indications in this case, with the probation officer indicating there were no facts giving rise to a reasonable suspicion of Manyhides violating any conditions of probation, until the probation officer observed the paraphernalia within Manyhides' bedroom.

When the probation officers arrived, knocked on the door, stepped into the entryway, no search had occurred. However, when one officer remained with Manyhides and the other roamed freely throughout the home, a search was occurring.

The word "visit" implies the probation officer acts a guest in the probationer's home, perhaps a forced or unwelcome guest but a guest none the less. Even when welcomed into a home, guests do not generally enter into or remain in the homeowner's bedroom because these areas are considered private and off limits to guests, without express permission by the owner. To allow unfettered access for probation officers to roam every room or space within a probationer's home constitutes a search, and as such requires a warrant or warrant exception.

This is implied within this Court's guidance that "a probation officer may not open drawers, cabinets, closets or the like; nor may the officer rummage through the probationer's belongings." *Moody*, ¶ 24, see also *Fisher*, ¶ 9 (quoting *Moody*). Otherwise, the probation officer has engaged in a search. *Ibid*.

Moreover, this court has defined a home visit as, “[a] home visit is when ‘the probation officer stops by the probationer's home to determine whether the individual is abiding by the conditions of his or her probation,’ without going through the probationer's belongings or opening enclosed areas such as drawers, closets, or cabinets.” *Thompson*, ¶ 17, quoting *Moody*, ¶¶ 16, 24.

When a friend “stops by” to check up on neighbor, it would be considered audacious for the friend to begin going through the neighbor’s drawers, closets and cabinets, it would likewise be audacious for the friend to simply enter the neighbor’s bedroom to have a look around, without invitation to do so.

Simply put, entering into and roaming through the entirety of a person’s home while looking for contraband or evidence of non-compliance certainly constitutes a search. See *Moody*, ¶ 50, Nelson Dissenting. In his dissent from the Court’s holding in *Moody*, Justice Nelson points out “[T]he fact that the probation officer may rummage through drawers and personal belongings in a "search," but may not do so in a "visit", seems a slender reed of distinction indeed when, during the visit, the probation officer, as a "visitor," may, nevertheless, observe and visually inspect everyone and everything in the home--with no restriction whatsoever ...” *Moody*, ¶ 61.

Probation officers may “stop by” and be welcomed into a probationer’s home as a guest but when a probation officer takes it upon themselves to inspect every

room in the house (including the bedrooms), for the express purpose of looking for contraband or some other evidence to determine if the probationer is in compliance, then it is a search and must be supported by a warrant or warrant exception.

II. The Court Should Adopt Manyhides' Proposed Rule Limiting Home Visits to Areas Generally Accessible to Guests Within a Home

This Court should refine its limitation on probation home visits to limit the “visit” to those areas generally accessible to guests invited into a person’s home.

As Justice Nelson pointed out, the current limitation is one that is a “slender reed” of distinction between a search and a “home visit.” What if the bedroom door had been closed and locked, could the probation officer force the door or demand entry? It would appear that under the current practice, the probation officer could demand entry to “inspect” the bedroom for compliance. Clearly the probationer would have demonstrated an intent to keep the bedroom private, and it is without a doubt a privacy interest the public would recognize, yet it appears to be within the scope of the current practice of probation officers. If there is no further distinction between a search and “home visit” than the probation officer cannot open a drawer or closet, then there is no real distinction at all.

Adopting Manyhides’ proposed rule allows for courts to make a determination if the home visit exceeded the scope and purpose of a home visit by looking to the facts of each case. The proposed rule, like the plain view doctrine would be a factual determination based upon the totality of the circumstances faced by the probation

officer. For instance, an entry way or living room area is generally accessible to guests, but bedrooms are not; however, if the bedroom was open and visible to the probation officer from the common area of the home, and the probation officer could observe some evidence which gave rise to a reasonable suspicion of criminal activity without entrance to the bedroom, that would be within the scope of a home visit. If, however, the bedroom was down a hallway or the door was shut, it would be outside of the scope of a home visit and the probation officer could not take the opportunity to just go and see what was in those rooms.

Finally, the proposed rule would provide probation officers with more sound guidance regarding their role when “visiting” probationers, and establish a baseline to allow some dignity to probationers who endeavor under an already greatly reduced expectation of privacy.

CONCLUSION

The home visit to Manyhides’ home became a search when the probation officer ventured into what are normally considered private areas of the home, without reasonable suspicion to do so.

For the foregoing reasons, this Court should reverse and remand with instructions to apply Manyhides’ proposed rule to her case and determine if suppression of the evidence located is appropriate.

DATED this 23rd day of December, 2024.

PEACE LAW GROUP, LLC

/s/Rufus I. Peace
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this Appellant's Opening Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes, quoted, and indented material; and that the word count calculated by Microsoft Word Professional Edition is 3,803 words, excluding the Table of Contents, Table of Authorities, Certificate of Service, and Certificate of Compliance.

DATED this 23rd day of December 2024.

PEACE LAW GROUP, LLC

/s/Rufus I. Peace
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APPENDIX

Transcript of Proceedings, January 5, 2023.....Appendix A

Motion to Suppress Evidence and Dismiss, October 28, 2022..... Appendix B

Response to Motion to Suppress Evidence and Dismiss, November 15, 2022
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Reply In Support of Motion to Suppress Evidence and Dismiss, December 2, 2022
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Order Denying Motion to Suppress Evidence and Dismiss, January 17, 2023
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CERTIFICATE OF SERVICE

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