IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0709

STATE OF MONTANA,

Plaintiff and Appellee,

v.

CISSY DEEN MANYHIDES,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Seventeenth Judicial District Court,
Valley County, The Honorable John A. Kutzman, Presiding

APPEARANCES:

AUSTIN KNUDSEN
Montana Attorney General
BRAD FJELDHEIM
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
Brad.Fjeldheim@mt.gov

JOSHUA A. RACKI
Cascade County Attorney
ANGELA PAYNE
Deputy County Attorney
121 4th Street North, Suite 2A
Great Falls, MT 59401

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

RUFUS I. PEACE
Peace Law Group, LLC
7643 Gate Parkway, Suite 104-1267
Jacksonville, FL 32256

ATTORNEY FOR DEFENDANT
AND APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

STATEMENT OF THE ISSUE

Whether the district court correctly denied the Appellant's motion to suppress based on the undisputed facts and well-established law that a probationary home visit is not a search and allows a probation officer to make plain view observations inside a probationer's residence.

STATEMENT OF THE CASE

On September 6, 2023, the district court sentenced the Appellant, Cissy Manyhides (Manyhides), for her conviction of felony drug possession. (District Court Document (Doc.) 36.) The conviction is based on methamphetamine and drug paraphernalia observed and discovered by probation officers during a home visit with Manyhides pursuant to her probation conditions for a prior sentence. (Docs. 1-3, 35, 37.) Manyhides moved to suppress the evidence, but the district court denied her motion. (Docs. 15, 17, 20, 22-23.) Manyhides entered into a plea agreement with the State that resulted in her conviction, but she reserved the right to appeal the district court's denial of her motion to suppress. (Docs. 32-33.)

On appeal, Manyhides has abandoned the argument she raised below and argues for the first time that a probation officer exceeded the scope of the home visit when he observed drug paraphernalia in plain view on and around a bedroom nightstand. (Docs. 15, 17, 20, 23; Appellant's Brief (Br.) at 4-19.) To support her

argument, she asks this Court to change the law regarding probation home visits that it established in 2006 and has consistently applied since.

STATEMENT OF THE FACTS

I. Manyhides's prior sentence

On July 28, 2020, Manyhides began serving a three-year deferred imposition of sentence for her conviction of felony endangering the welfare of children.[1] (Doc. 15, Ex. A; 1/5/23 Tr. at 18-19.) Pursuant to her sentence, Manyhides signed the conditions of Adult Probation and Parole, which included a condition requiring her to open her home for visits from probation officers. (1/5/23 Tr. at 9-10.) The condition provided:

> 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 supervising 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.

(Doc. 15, Ex. A at 3; *see also* 1/5/23 Tr. at 9-10.)

[1] Manyhides's prior conviction was based on her methamphetamine use around her son. (Doc. 15, Ex. C at 3; 9/26/23 Tr. at 7 (referring to Manyhides's prior conviction as a "hot hair" case, which means a test of a child's hair sample produced a positive result for drugs).)

II. The offense

On February 10, 2022, Probation Officer Joshua Green (Officer Green) and Manyhides's supervising probation officer conducted a home visit at Manyhides's apartment. (1/5/23 Tr. at 6-7.) During the home visit, Officer Green saw drug paraphernalia in plain view. (*Id*. at 13-14, 23-24.) Officer Green examined the contents of a purse he had found next to the paraphernalia and discovered methamphetamine. (*Id*. at 13-14.) He called the police, who came and conducted a search of Manyhides's apartment and vehicle. (Doc. 1.)

During the entire encounter, law enforcement found the following:

- 4 small baggies containing a crystal-like substance, which was later weighed at 9.76 grams;
- Presumptive positive for methamphetamine utilizing a narcotic identification kit;
- A large amount of small baggies, which were similar to the ones containing the suspected methamphetamine;
- Two small electronic scales;
- Another container holding many small baggies and cotton swabs;
- A pair of multi-colored glass pipes, commonly used to inhale or otherwise ingest dangerous drugs;
- A glass pipe with white residue attached to a hose;
- A fabricated can of Dr. Pepper containing storage room inside with a removable lid; and

- A used hypodermic needle.

(*Id*. at 4.)

Officers found most of the items in Manyhides's bedroom. (*Id*.) In the common area of her apartment, they found one of the electronic scales and the container of baggies and cotton swabs. (*Id*.) They found the used hypodermic needle and one baggie of methamphetamine in Manyhides's vehicle. (*Id*.)

III. Procedural history of this case

On February 17, 2022, the State charged Manyhides with felony possession of dangerous drugs with intent to distribute, in violation of Mont. Code Ann. § 45-9-103. (Docs. 1-3.) On October 28, 2022, Manyhides moved to suppress the evidence discovered during a probation officer home visit and dismiss the case. (Docs. 15, 17, 20.) The district court held a suppression hearing on January 5, 2023, and Officer Green testified. (Doc. 22; 1/5/23 Tr. at 4-28.)

Officer Green explained that home visits are an integral part of supervising probationers, and they are discussed extensively with a probationer during the sign-up process. (1/5/23 Tr. at 9-10.) He generally described the purpose of a home visit is "to make contact with the offender in their home residence and essentially make sure everything's going okay for them there. It gives us a perspective from them in their personal residence essentially." (*Id*. at 7-8.) He confirmed that one of

the purposes described in the DOC operational procedures is to observe the residence for contraband, weapons, and illegal or dangerous objects. (*Id*. at 17-18; *see also* Doc. 20, Ex. A at 7.)

Officer Green explained that probation officers try to perform several home visits with a probationer every year, and they always do them in pairs. (1/5/23 Tr. at 8, 10, 21.) "[T]ypically the supervising officer has a conversation with the offender and the contact—the cover officer will basically do a walkthrough of the residence." (*Id*. at 8.) Officer Green said the cover officer's job "is to make sure there's nobody else in the residence that's hiding and make sure that the scene is safe essentially and protect my partner. And in course of doing so, we also do visual walk through and inspection." (*Id*. at 23.)

During the home visit to Manyhides's apartment on February 10, 2022, Officer Green and Manyhides's supervising officer knocked on her door and Manyhides answered. (*Id*. at 7-8, 21-24.) A couple of people were at the apartment with Manyhides, but they left as soon as the officers arrived. (*Id*.) Manyhides let the officers into her apartment. (*Id*.) Officer Green served as the cover officer while Manyhides visited with her supervising officer. (*Id*.) As he performed a safety walkthrough and visually inspected the apartment, Officer Green saw drug paraphernalia in plain view on and around a nightstand in a bedroom. (*Id*. at 11, 23-24.) Officer Green saw small plastic baggies, a pipe, a scale, baking soda and a

tube commonly used to do "hot rails," which is a common method of smoking meth. (*Id*. at 24.)

This plain view observation of drug paraphernalia caused Officer Green to conclude that there was drug use going on in the apartment and a further search may lead to the discovery of drugs. (*Id*.) Next to the paraphernalia, Officer Green saw a purse. (*Id*. at 13.) He examined the contents of the purse and discovered methamphetamine. (*Id*. at 13-14.) Officer Green placed Manyhides in custody and called the police to continue the investigation. (*Id*.)

Officer Green said the officers did not enter Manyhides's apartment based on any suspicions of drug activity or with any intention of performing a search. (*Id*. at 19-20, 26-27.) He said if he had not seen the drug paraphernalia during his walkthrough, he would not have had reasonable suspicion to search, and the encounter would have ended. (*Id*. at 26-27.)

Manyhides argued that regulations and DOC policies required a probation officer's home visit to be supported by a reasonable suspicion of criminal activity because it occurred after the first 45 days of supervision. (1/5/23 Tr. at 28-45.) She argued the regulation changed this Court's decision in *State v. Moody*, 2006 MT 305, ¶¶ 11-28, 334 Mont. 517, 148 P.3d 662, because it was issued after that decision. (1/5/23 Tr. at 28-45.) The State argued this Court had since reaffirmed its holding in *Moody* that a home visit was not a search, that Officer Green had lawful

authority to visually observe Manyhides's apartment, and his plain view observation of various drug paraphernalia provided a reasonable suspicion of drug activity to support the search of Manyhides's purse. (*Id*. at 45-50.)

The district court rejected Manyhides's argument and informed the parties it would subsequently issue a written order with findings and conclusions. (*Id*. at 62-64.) The district court issued its written order on January 17, 2023, and denied Manyhides's motions to suppress and dismiss. (Doc. 23.)

On September 26, 2023, Manyhides changed her plea pursuant to an agreement with the State. (9/26/23 Tr. at 9-14; Docs. 32-36.) In a global plea agreement, the parties agreed to resolve the charges pending in this matter and the revocation petition pending based on her prior sentence. (Doc. 32; *see also* Doc. 15, Ex. C (revocation petition in DC-19-260).) Manyhides agreed to plead guilty to the amended charge of felony drug possession and reserved her right to appeal the denial of her motion to suppress. (Doc. 32.) Manyhides further agreed to plead true to the allegations in the revocation petition in the prior case and the reimposition of the three-year deferred imposition of sentence. (*Id*.) The State agreed to dismiss the remaining charge in the case underlying this appeal and to make a joint sentencing recommendation. (*Id*.)

The district court imposed the jointly recommended sentence. (9/26/23 Tr. at 16-19.) In this matter, it committed Manyhides to the DOC for five years, all

suspended, for the felony drug possession conviction, and it ordered Manyhides to complete Veteran's Treatment Court. (*Id*.; Doc. 37.)

SUMMARY OF THE ARGUMENT

The district court correctly applied the well-established law regarding probationary home visits to the undisputed facts and denied Manyhides's motion to suppress. For the first time on appeal, Manyhides asks this Court to hold the district court in error based on her suggested change to the law regarding home visits that would restrict probation officers from conducting a walkthrough of a probationer's residence outside of areas generally accessible to guests.

Manyhides does not dispute the facts below, which include a probation condition allowing home visits, her allowing the officers into her apartment for the home visit, and Officer Green's plain view observation of drug paraphernalia on and around a nightstand in her bedroom. Instead, she relies on the general assertion that probation officers should not be able to make plain view observations in a bedroom because it is an inherently private space, she poses a hypothetical scenario regarding facts that may or may not occur in a different situation, and she relies on arguments that this Court has long since rejected.

Manyhides has failed to show that the district court erred or that this Court's precedent is manifestly wrong, and this Court should affirm the district court's

order denying her motion to suppress based on the undisputed facts and well-established law.

ARGUMENT

I. 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 the findings were correctly applied as a matter of law." *State v. Fischer*, 2014 MT 112, ¶ 8, 374 Mont. 533, 323 P.3d 891. "A finding is clearly erroneous if it is not supported by substantial evidence, if the lower court has misapprehended the effect of the evidence, or if our review of the record leaves us with the firm conviction that a mistake has been made." *State v. Thompson*, 2023 MT 194, ¶ 13, 413 Mont. 446, 537 P.3d 461 (quoting *State v. Conley*, 2018 MT 83, ¶ 9, 391 Mont. 164, 415 P.3d 473). "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion; it consists of more than a mere scintilla of evidence, but may be somewhat less than a preponderance." *Thompson*, ¶ 13 (quoting *State v. Brave*, 2016 MT 178, ¶ 6, 384 Mont. 169, 376 P.3d 139) (internal quotations and citation omitted).

II. The district court correctly denied Manyhides's motion to suppress.

"The Fourth Amendment of the United States Constitution and Article II, Section 11 of the Montana Constitution guarantee people the right to be free from unreasonable searches and seizures." *Thompson*, ¶ 15. "This protection is augmented by Article II, Section 10 which grants Montana residents an express right to privacy against government intrusion." *Id*. (citing Mont. Const. art. II, § 10). "The express right to privacy works in tandem with Article II, Section 11, to expand where people have reasonable expectations of privacy that are protected from unreasonable government intrusions." *Thompson*, ¶ 15 (citing *State v. Peoples*, 2022 MT 4, ¶ 13, 407 Mont. 84, 502 P.3d 129).

This Court has long held that a probationer has a diminished expectation of privacy. *State v. Burchett*, 277 Mont. 192, 195-96, 921 P.2d 854, 856 (1996) (citing *State v. Burke*, 235 Mont. 165, 169, 766 P.2d 254, 256–57 (1988) and *Griffin v. Wisconsin*, 483 U.S. 868 (1987)). Generally, "a probation officer may search a probationer's residence without a warrant so long as the officer has reasonable cause for the search." *State v. Moody*, 2006 MT 305, ¶ 12, 334 Mont. 517, 148 P.3d 662 (citing cases). "The 'reasonable cause' standard is substantially less than the probable cause standard required by the Fourth Amendment because of the probationer's diminished expectation of privacy and because the probation officer is in the best position to determine what level of supervision is necessary to

provide both rehabilitation of the probationer and safety for society." *Burchett*, 277 Mont. at 195-96, 921 P.2d at 856. This lesser standard extends to warrantless searches of a probationer's person and vehicle. *Moody*, ¶ 12 (citing Mont. Admin. R. 20.7.1101(7)).

The parameters of a probationer's diminished expectation of privacy are informed by the sentencing conditions imposed. *State v. Therriault*, 2000 MT 286, ¶ 49, 302 Mont. 189, 14 P.3d 444; *Burchett*, 277 Mont. at 195-96, 921 P.2d at 856. "As part of a probationer's sentencing conditions, a probationer may agree to allow probation officers to conduct home visits." *Thompson*, ¶ 17 (citing *Moody*, ¶ 19). A "home visit" occurs 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" and it "operates as an important check on a probationer's rehabilitation efforts." *Moody*, ¶ 16.

During a home visit, the probation officer may conduct routine measures such as verifying the probationer's address, observing their lifestyle, meeting others living in the residence, and observing for contraband in plain view. *Id*. (citing *Probation and Parole Bureau Standard Operating Procedures*, Ch. 60, "Sign-Up Procedure/Supervision Standards). Such probationary measures [2]"are

[2] Now located at Department of Corrections Probation and Parole Division Operational Procedure, PPD 6.3.201(IV)(C)(6), Administrative and Sign-Up Procedures for Community Supervision (July 29, 2019).

meant to facilitate rehabilitation and ensure that the community is not harmed by the probationer's conditional liberty status." *Moody*, ¶ 17. "Once a probationer is made 'unambiguously aware' of this express condition, she 'does not have an actual expectation of privacy that would preclude home visits.'" *Thompson*, ¶ 17 (quoting *Moody*, ¶ 19). "Because a probationer does not have an actual expectation of privacy, a home visit does not constitute a search." *Thompson*, ¶ 17.

A home visit, however, does not give probation officers "carte blanche to enter probationers' homes." *Thompson*, ¶ 19 (formatting omitted). "The Montana Constitution, [this Court's] jurisprudence, and the probation conditions themselves protect probationers from such intrusions." *Id*. (citing *Therriault,* ¶¶ 54-55). This Court in *Moody*, ¶ 24, specifically limited home visits. "While a home visit has the potential to turn into a search pursuant to an officer's plain view observations, it must remain within the parameters of a home visit unless or until there is reasonable cause to engage in a search." *Id*. Without reasonable cause, "a probation officer may not open drawers, cabinets, closets or the like; nor may the officer rummage through the probationer's belongings." *Id*.

"Determining the existence of reasonable cause to conduct a probationary search involves a factual inquiry based on the totality of the circumstances." *Thompson*, ¶ 20 (quoting *State v. Smith*, 2008 MT 7, ¶ 15, 341 Mont. 82, 176 P.3d 258).

A. The district court correctly based its findings on the undisputed facts and denied Manyhides's motion to suppress based on the law applicable to the issue presented.

Below, Manyhides's only argument was that DOC policy required probation officers to have reasonable cause to conduct a home visit after the first 45-days of supervision. The district court correctly rejected this argument and denied Manyhides's motion based on this Court's well-established precedent that a home visit is not a search. Manyhides has abandoned that argument on appeal and now argues the probation officers exceeded the scope of the home visit to conduct a search without reasonable cause. This Court should not hold a district court in error based on an argument it did not get the opportunity to address. *See State v. English*, 2006 MT 177, ¶ 71, 333 Mont. 23, 140 P.3d 454. But if this Court addresses it, the law does not support Manyhides's new position.

Recently, in *Thompson*, ¶ 22, this Court affirmed the denial of a motion to suppress evidence obtained during a home visit. The probation officer and other law enforcement officers conducted a home visit with a probationer who lived in a trailer with a covered structure surrounding the door. *Id.* ¶ 7. The officer entered the covered structure and repeatedly knocked on the trailer door, but no one answered. *Id.* The officer opened the door a crack and announced himself, which prompted the probationer to come to the door. *Id.* The officer said he was there to conduct a routine home visit, and the probationer allowed the officers to come in.

Id. While the probationer accompanied the probation officer to a back room where another person was located, another officer observed a methamphetamine pipe on a coffee table. *Id.* ¶ 8. This provided the probation officer reasonable cause to transition the home visit to a search, and the probationer directed the officers to a dresser where they found a significant amount of methamphetamine. *Id.* ¶ 9.

In *Thompson*, ¶¶ 14-22, this Court applied its well-established precedent in *Moody* and other probation cases to conclude the officer properly conducted a home visit that turned into a search. This Court supported its decision with the totality of the circumstances, which included the following undisputed facts:

> (1) Thompson agreed to make her home available for home visits; (2) Thompson had a history of not answering her door or making her home available for probation officers; (3) Edwards repeatedly testified that he went to Thompson's home with the express purpose of conducting a home visit and that he did not have reasonable cause to search her home; (4) Edwards entered the exterior structure based on his experience that residents with similar structures do not hear knocks on exterior doors and that the door was more like a "shed covering than an outside door"; (5) Edwards knocked multiple times on the trailer house door; (6) Edwards cracked the door open solely to announce himself; (7) Edwards did not enter Thompson's home until she came to the door; (8) upon coming to the door, Thompson allowed Edwards and the sheriff's deputies into her home; and (9) neither Edwards, nor the deputies, observed the drug paraphernalia until they had entered the home.

Id. ¶ 18 (footnote omitted).

Similarly here, it is undisputed that Manyhides's probation conditions required her to "make the residence open and available to an officer for a home

visit or for a search upon reasonable suspicion." (Doc. 15, Ex. A at 3; *see also* 1/5/23 Tr. at 9-10; Br. at 6.) Moreover, Manyhides has never challenged Officer Green's testimony to the following facts:

- Manyhides agreed to make her residence available for home visits;
- that the probation officers arrived at her apartment for a home visit—not to search it;
- that the officers knocked on her door;
- that Manyhides let them in;
- that she spoke with her supervising officer while Officer Green did a walkthrough of her apartment;
- that the purpose of the walkthrough was to identify any other people in the apartment, which is necessary for officer safety, and observe for any activity in violation of Manyhides's probationary sentence;
- that Officer Green observed during his walkthrough various items of methamphetamine paraphernalia in and around a nightstand in plain view;
- that Officer Green observed a purse next to the night stand;
- that Officer Green believed the purse may contain drugs or paraphernalia; and
- that Officer Green found methamphetamine in the purse.

The district court relied on these undisputed facts to support its order denying Manyhides's motion to suppress. (Doc. 23 at 1-3.)

As her argument indicates, Manyhides has no basis to challenge the officers' entrance to her apartment. Manyhides fashions her argument based on the dissenting opinion in *Thompson*, ¶¶ 23-33, but the concerns raised in that dissent are not present here. As Officer Green testified, he and the other officer went to Manyhides's apartment to conduct a home visit, which was included in Manyhides's probation conditions, and Manyhides answered the door and let them in. There is no question that Manyhides consented to the probation officers' entrance into her apartment. *See id*.

While lawfully present in Manyhides's apartment, Officer Green performed a walkthrough for the express purpose of officer safety and observation of obvious probation violations. As Officer Green testified and this Court explained in *Moody*, ¶ 16, these are routine measures of a home visit pursuant to DOC policy. *See Moody*, ¶ 16; PPD 6.3.201(IV)(C)(6)[3] (among other things, a probation officer should "assess home environment for officer safety" and "observe residence for contraband"). No fact in the record undermines the legitimacy of Officer Green's actions, and the law grants a probation officer "a 'degree of flexibility' to determine how to exercise his or her supervisory powers." *Conley*, ¶ 18 (quoting *Burke*, 235 Mont. at 169, 766 P.2d at 256) (cited with approval in *Thompson*, ¶ 18).

[3] Department of Corrections Probation and Parole Division Operational Procedure, PPD 6.3.201(IV)(C)(6), Administrative and Sign-Up Procedures for Community Supervision (July 29, 2019).

As this Court has long acknowledged, "the probation officer is in the best position to determine what level of supervision is necessary to provide both rehabilitation of the probationer and safety for society." *Burchett*, 277 Mont. at 195-96, 921 P.2d at 856.

The law further undermines Manyhides's argument that Officer Green exceeded the scope of the home visit. In *Moody*, ¶¶ 24, 27, this Court expressly defined the parameters of a home visit and prohibited a probation officer from accessing enclosed areas of a probationer's residence, like drawers, cabinets, and closets or rummaging through a probationer's belongings without reasonable cause. Officer Green's walkthrough of the apartment did not exceed those parameters. He did not access any enclosed areas or rummage through Manyhides's belongings. Manyhides does not dispute that the drug paraphernalia was on and around her nightstand or that Officer Green observed it in plain view.

Manyhides attempts to impugn Officer Green's lawful observation of the drug paraphernalia by relying on *State v. Olson*, 2002 MT 211, 311 Mont. 270, 55 P.3d 935, but her reliance is misplaced. Manyhides overstates this Court's holding in that case, which reversed the suppression order based on a clearly erroneous factual finding. *See Olson*, ¶¶ 11-12 (the court's finding that the officer could see a bong in another room from the kitchen where he was standing was clearly erroneous because it contradicted the officer's testimony that he had to lean

into the other room to see it). Moreover, the officer's lawful access to the offender's home in *Olson*, ¶¶ 10-12, was based on an arrest warrant and limited to the area where the arrest occurred—the kitchen. Here, Manyhides has provided no authority to support her suggested conclusion that Officer Green exceeded his lawful access to her apartment by conducting a walkaround during a probationary home visit that resulted in the observation of items in plain view on and around a bedroom nightstand. As this Court explained in *Moody*, ¶¶ 16-17, these actions are necessary to meet the supervisory purposes of a home visit.

Almost two decades ago, this Court established the relevant authority in *Moody*, ¶¶ 11-28, and it has consistently applied it as recently as 2023 in *Thompson*, ¶¶ 14-21. In *Moody*, ¶ 24, this Court specifically contemplated a probation officer discovering items in plain view during a home visit. As this case illustrates, a plain view observation may cause a home visit to transform into a probationary search that requires reasonable cause. *See id*. After Officer Green observed the drug paraphernalia, he identified a nearby purse as potentially containing illegal drugs or paraphernalia, looked inside, and discovered methamphetamine. Officer Green's access of the purse—an enclosed area—exceeded the parameters of a home visit and became a search. *Id*. ¶¶ 24, 27. But the search was lawful because Officer Green's observations of the drug

paraphernalia provided reasonable cause to support it. *Id*. ¶ 12 (reasonable cause is substantially lower than probable cause).

The district court correctly applied the well-established law to the totality of the circumstances in this case and denied Manyhides's motion to suppress.

B. This Court should not overrule its longstanding precedent.

Manyhides asks this Court to "refine" its precedent to further restrict home visits to areas in a home generally accessible to guests. (Br. at 18.) This would change the law, and nothing she relies on shows the standard that this Court adopted in *Moody* and has repeatedly affirmed for almost 20 years is manifestly wrong. *See State v. Gatts*, 279 Mont. 42, 51, 928 P.2d 114, 119 (1996) (explaining the importance of stare decisis and a petitioner's burden to show precedent is manifestly wrong).

Contrary to Manyhides's argument, the standard this Court created in *Moody* provided a meaningful distinction between a home visit and a search with defined parameters to constrain a probation officer's actions. It did not merely prohibit access to drawers and closets. (Br. at 18.) It prohibited a search without reasonable cause and specified that a probation officer during a home visit cannot access "enclosed areas of a probationer's residence (closets, cabinets, drawers and the like)" and cannot rummage through a probationer's belongings. *Moody*, ¶¶ 24, 27.

If a probation officer takes those actions, it is a search and must be supported by reasonable cause. *Id.*

The district court correctly applied this well-established law to the undisputed facts of this case. Because those facts are inconvenient for Manyhides, she forwards a hypothetical factual scenario to persuade this Court to change the law. (Br. at 18.) No fact in the record shows Manyhides did anything to indicate that she wanted to keep her bedroom private, and Officer Green did not demand Manyhides to open or unlock a door. (*Id.*) As Manyhides acknowledges, Officer Green did nothing to access her bedroom beyond merely walking through her apartment and observing things in plain view. These are the purposes of a home visit that this Court acknowledged in *Moody*, ¶¶ 16-17, and has repeatedly reaffirmed as recently as 2023. *See Thompson*, ¶¶ 14-21; *Fischer*, ¶¶ 13-17. Unsupported broad conclusions based on hypothetical speculation that may or may not occur in a different case do not support overruling long-standing precedent.

Manyhides relies on the dissenting opinion in *Moody*, ¶¶ 34-71, which this Court squarely denied based on a careful balancing of a probationer's "significantly diminished" expectation of privacy with the "routine and reasonable element of supervising a convicted person serving a term of supervised release." *Id*. ¶¶ 27-28. Merely reiterating an alternative argument that this Court has long since rejected does not show precedent is manifestly wrong. *See Gatts*, 279 Mont.

at 51, 928 P.2d at 119. This Court should apply its precedent and reject Manyhides's proposed new rule for the same reasons it determined a home visit was not a search in *Moody*, ¶¶ 11-28.

A home visit is not the same as a visit from a friend or guest, as Manyhides asserts. (*See* Br. at 14-19.) It is a common probation condition meant to "facilitate rehabilitation and ensure that the community is not harmed by the probationer's conditional liberty status." *Moody*, ¶¶ 16-17. A probationer who is "unambiguously aware" of a clearly expressed probation condition that requires her to "make her home open and available for the probation officer to visit pursuant to state policy does not have an actual expectation of privacy that would preclude home visits." *Id*. ¶ 19. A home visit allows a probation officer to observe the probationer in their home environment, which includes observing the residence, its occupants, and its layout for unlawful activity and officer safety concerns. *Id*. ¶ 16. To accomplish these goals, a probation officer is afforded a degree of flexibility. *Thompson*, ¶ 18; *Conley*, ¶ 18. Manyhides's proposed new rule contradicts these supervisory purposes and seeks to avoid the obligations of her supervised release by changing the law.

This Court should affirm the district court's denial of Manyhides's motion to suppress based on the facts in this case and the well-established law that applies to it.

CONCLUSION

The State respectfully requests this Court affirm Manyhides's conviction and sentence.

Respectfully submitted this 18th day of April, 2025.

AUSTIN KNUDSEN
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: */s/ Brad Fjeldheim*
BRAD FJELDHEIM
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 4,911 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Brad Fjeldheim
BRAD FJELDHEIM

CERTIFICATE OF SERVICE

I, Brad Fjeldheim, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 04-18-2025:

Joshua A. Racki (Govt Attorney)
121 4th Street North
Suite 2A
Great Falls MT 59401
Representing: State of Montana
Service Method: eService

Tammy Ann Hinderman (Attorney)
Office of State Public Defender
Appellate Defender Division
P.O. Box 200147
Helena MT 59620
Representing: Cissy Dean Manyhides
Service Method: eService

Rufus I. Peace (Attorney)
7643 Gate Parkway
Suite 104-1267
Jacksonville FL 32256
Representing: Cissy Dean Manyhides
Service Method: eService

Electronically signed by LaRay Jenks on behalf of Brad Fjeldheim
Dated: 04-18-2025