

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW ROBERT ALLEN LASTINE,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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No. 73239

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**RESPONDENT'S ANSWERING BRIEF**

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**RESPONDENT'S ANSWERING BRIEF**

**I. Statement of the Issues**

A person who has actual or apparent authority over an area may allow police to search the area without a warrant. Robert Lastine permitted police officers to enter his house, which he owned and lived in, to look for his nephew, the defendant, in a room the defendant had stayed in. Did the police lawfully enter the room and seize the defendant without a warrant?

**II. Statement of Facts**

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of leaving the scene of an accident involving personal injury.

Viewing the facts in a light most favorable to the State, the following was

proved at trial. *See Origel–Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (sufficient evidence supports a conviction when, “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”) (citation marks omitted).

On January 7, 2016, Ms. Gertrude Green was driving home in Sun Valley, Nevada, after work (Joint Appendix, Volume 2, 170-71) (“JA”; “Vol.”). She was stopped at a red traffic light when a small, brownish-rust colored truck hit the rear end of her SUV. *Id.* at 172-73, 184. She “went forward and [her] seatbelt yanked [her] back and [her] neck snapped.” *Id.* at 173. The truck veered off down an embankment and sped away down another street. *Id.* at 173-74. There was only one person, a male, in the truck. *Id.* at 174, 175; Vol. 2, 198. The collision damaged the rear driver’s side of Ms. Green’s car. *Id.* at 177. Ms. Green went to the hospital where she received a brace for a thoracic whiplash. *Id.* at 178-79. She received physical therapy for six months and experienced significant migraine headaches. *Id.* at 180.

Another citizen saw the truck’s driver “driving erratically or aggressively,” swerving from lane to lane, before he hit Ms. Green’s car (JA, Vol. 2, 199). It did not appear the driver made any attempt to slow down or



stop before he hit Ms. Green. *Id. at 199-200.* After the driver hit Ms. Green, he sped up and drove away. *Id. at 204.* The citizen saw the rear license plate of the truck at the accident scene, which had come off during the accident; at trial, the citizen identified both the exact number on the plate and Andrew's truck that the plate was on. *Id. at 207-09, 215.*

Trooper Alyssa Howald received a call around 5:59 p.m. about a hit and run accident in Sun Valley. *Id. at 261.* She ran the license plate from Andrew's truck through dispatch. *Id. at 264.* The recorded address for the license plate listed Robert Lastine's residence—Andrew's uncle. *Id. at 264.* The license plate matched the front license plate on Andrew's truck, which was parked outside his uncle's residence. *Id. at 220-21, 225, 236, 264, 266.* The accident scene was only a minute's drive away from Robert Lastine's house. *Id. at 265.*

Andrew's footprints matched footprints leading from the driver's side of his truck to the side door that led to a room in Robert Lastine's residence. *Id. at 250, 254-55, 266, 307.* Andrew refused to identify himself to law enforcement or answer their questions about his well-being after they arrived at his uncle's residence. *Id. at 267, 290.* REMSA medics arrived at the residence about 15 minutes later. *Id. at 291.*

Trooper Howald went to Robert Lastine's residence, arrested Andrew, and found a set of keys in Andrew's pocket. *Id. at 269, 271.* Trooper Howald drove Andrew to the Washoe County Detention Center; at one point Andrew spontaneously told Trooper Howald, "I was a fucking idiot and that's all that matters, . . . one, you're a fucking idiot, two, you're a fucking idiot, three, idiot, this guy." *Id. at 272-73.* He appeared to be referring to himself. *Id. at 273.*

Trooper Eddie Bowers saw what appeared to be white paint from Ms. Green's SUV on Andrew's truck. *Id. at 226, 227.* The damage to Ms. Green's SUV and Andrew's truck matched up. *Id. at 227-28.* Deputy Francisco Gamboa noticed a lot of steam coming from the engine area of Andrew's truck when he observed the truck parked in front of Robert Lastine's residence. *Id. at 305.*

Andrew returned home sometime in the late afternoon or early evening the day of the accident. *Id. at 240-41, 261-62.* Neither Robert Lastine nor his wife drove Andrew's truck that day. *Id. at 243.* Robert Lastine saw damage to Andrew's truck the next day. *Id. at 245.* Andrew had the only set of keys to his truck. *Id. at 257.*

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A jury convicted Andrew of leaving the scene of an accident involving personal injury (JA, Vol. 1, 134-35). This appeal follows.

### **Motion to Suppress Hearing**

Andrew filed a motion to dismiss or suppress evidence before trial. *Id.* at 4-17. The following evidence was developed at a hearing on the motion.

Robert Lastine owned and lived in his manufactured home in Sun Valley, Nevada (JA, Vol. 1, 35). He had added a room to the back of the home. *Id.* The room had two doors: one that was accessed from inside the house from a common hallway, and another inside the room that led to the outside of the house. *Id.* at 35, 36. Robert Lastine's nephew, Andrew Lastine, lived in the back room for a while, and paid rent to his uncle when he could. *Id.* at 36. A refrigerator and TV were in the room. *Id.* at 37. If Robert Lastine wanted to go into the room, he "knock[ed] on the door just out of courtesy, because it was [Andrew's] space." *Id.*

Andrew owned a Ford Ranger, titled and registered in his name, that he parked in his uncle's front yard. *Id.* at 39, 53. Robert Lastine never saw anyone else drive his nephew's truck. *Id.*

On January 6, 2016, Deputy Sheriff Francisco Gamboa went to Robert Lastine's house because the license plate of one of the cars involved in an

accident was lying in the street, and the plate matched Robert Lastine's address. *Id. at 61.* Deputy Gamboa saw Andrew's truck in front of his uncle's house; the truck's front license plate matched the license plate found at the accident scene. *Id. at 61, 63.* The truck "had heavy damage to the front," and "a very large plume of smoke or steam shooting up in the air." *Id.*

Deputy Gamboa knocked on Robert Lastine's door. *Id. at 40-41, 62.* Robert Lastine answered the door; the deputy sheriff asked him who owned the Ford truck; and Robert Lastine told him his nephew owned it. *Id. at 42, 64.*

After another deputy sheriff arrived, the deputies asked Mr. Lastine if they could enter his house and talk to the owner of the truck. *Id. at 42, 44.* Robert Lastine agreed. *Id. at 45, 55.* One or both of the deputies asked Robert Lastine if Andrew was there. *Id. at 42.* Robert Lastine stated "if he's there, he would be in the back room." *Id.* Robert Lastine told the deputies that Andrew was his nephew, and they could look for Andrew in the room, but nowhere else. *Id. at 45, 56; see also Id. at 65* (Robert Lastine told deputy Gamboa "go get him.").

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Robert Lastine showed deputy Gamboa the door of the room where Andrew was. *Id. at 66.* Deputy Gamboa and Deputy Obos went to the room; the door “was closed except for maybe approximately an inch,”; and Deputy Gamboa looked inside and “saw Andrew hiding under a blanket on the bed.” *Id. at 66, 67.*

Deputy Gamboa announced his presence as law enforcement several times. *Id.* Andrew did not respond. *Id.* The deputy was concerned about Andrew’s well-being because there had been “a major car accident,” and there were footprints from the truck to the outside door of Andrew’s room. *Id. at 67-68, 79, 83.* Deputy Gamboa asked Andrew to show his hands, but Andrew responded, “No.” *Id. at 68.* Deputies Gamboa and Obos then entered the room and handcuffed Andrew. *Id. at 68, 86.* The deputies observed two black tennis shoes in front of Andrew’s bed. *Id.* Muddy footprints were near Andrew’s bed and the door (JA, Vol. 3, 321).

When the deputies brought Andrew into the living room, Robert Lastine thought Andrew needed medical treatment (JA, Vol. 1, 56). REMSA paramedics came to the residence at some point. *Id. at 91.*

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Trooper Alyssa Howald arrived a little later at the house, placed Andrew under arrest, and searched his pockets incident to the arrest. *Id. at* 89, 91. She found a set of keys in one of Andrew's pockets, and started Andrew's truck with the key. *Id.* Robert Lastine thought there was but a single set of keys to Andrew's truck. *Id. at* 57-58.

Andrew filed a motion to suppress the shoes the deputies found in his room, statements he made to Trooper Howald, the key she found in his pocket, and the fact that the key started his truck. *Id. at* 4-17. The district court, the Honorable Patrick Flanagan, granted in part and denied in part the motion. *Id. at* 122-27. Judge Flanagan found that Robert Lastine had the actual and apparent authority to consent to a search of his home, which included the room Andrew was in. *Id. at* 122-23.

Judge Flanagan found that the deputies had probable cause to arrest Andrew, and that they properly seized Andrew's shoes, given that they were lawfully in Andrew's bedroom and the shoes were in plain view. *Id. at* 125. Judge Flanagan found the search of Andrew was within the scope of a lawful arrest and would have been conducted in any event once he was transported to the jail. *Id. at* 126-27. Judge Flanagan, however, found that Trooper Howald's entry into Andrew's truck without a warrant was not justified;

accordingly he suppressed evidence that the key started Andrew's truck. *Id.* at 127-28.

### **III. Summary of the Argument**

Andrew Lastine drove his truck into the rear of a SUV which was stopped at a red light in Sun Valley, Nevada. Instead of stopping after the accident, Andrew drove to his uncle's house. Police matched a license plate that they found at the accident to Andrew's truck, which was traced to his uncle's home.

When police arrived at the uncle's residence, they met Andrew's uncle, Robert Lastine. Police asked Robert Lastine if they could enter his home and look for Andrew. Robert Lastine agreed, and showed the officers the room where Andrew was.

The door to the room was partially open and Andrew was in the room. But he did not respond to the officers' request to show his hands; accordingly, they handcuffed him.

Andrew was eventually arrested, and paramedics came to Robert Lastine's residence because Robert Lastine and the officers thought Andrew may have been hurt in the accident. As Andrew was going to jail, he some inculcating remarks about how stupid he had been.

The district court correctly denied Andrew's motion to suppress evidence obtained from his arrest. Robert Lastine had the actual, apparent, and exclusive authority to permit officers to enter a bedroom in his own house. Andrew also assumed the risk that his uncle would permit officers to go into the room. Thus, the evidence obtained from Andrew's arrest was lawfully acquired.

Even if the officers' entry into the room was unlawful, the error was harmless. Almost all of the evidence presented at trial to convict Andrew was obtained apart from the entry into the room where officers found him.

The judgment of conviction should be affirmed.

#### **IV. Argument**

Andrew argues Judge Flanagan erred in denying his motion to suppress. The State disagrees.

**A. The district court correctly found that Robert Lastine had actual or apparent authority to consent to a search for Andrew in Robert Lastine's home. Andrew also assumed the risk of his uncle's consent to search for him. Robert Lastine had exclusive authority to consent to a search of his residence.**

##### **1. Standard of review**

The Court reviews "the lawfulness of a search de novo because such a review requires consideration of both factual circumstances and legal issues,"



but the Court defers to the district court's findings of fact during a suppression hearing. *McMorran v. State*, 118 Nev. 379, 383, 46 P.3d 81, 84 (2002); *United States v. Almeida-Perez*, 549 F.3d 1162, 1170 (8th Cir.2008) (explaining that whether a third party had common authority to consent to a search is a question of fact reviewed for clear error but that the reasonableness of an officer's reliance on indicia of common authority presents question of law subject to de novo review).

## **2. Discussion**

The Fourth Amendment generally precludes the police from entering a person's home without a warrant. *Georgia v. Randolph*, 547 U.S. 103, 109 (2006). Consent exempts a search from the warrant requirement of the Fourth Amendment. *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973). It is the State's burden to prove consent. *Howe v. State*, 112 Nev. 458, 463, 916 P.2d 153, 157 (1996).

The police may enter and search a defendant's house with the voluntary consent of the defendant or a third party who has actual authority or other sufficient relationship to the premises to be searched. *Randolph*, 547 U.S. at 109; *United States v. Matlock*, 415 U.S. 164, 170 (1974); *Johnson v. State*, 118 Nev. 787, 794, 59 P.3d 450, 455 (2002) (“Even if a person has

standing to object to a warrantless search, the search is proper if that person's cohabitant consents to the search and the cohabitant 'possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.' ") (quoting *United States v. Matlock*, 415 U.S. at 171), overruled on other grounds by *Nunnery v. State*, 127 Nev. 749, 770-72, 263 P.3d 235, 250-51 (2011)).

"Actual authority is proved (1) where defendant and a third party have mutual use of and joint access to or control over the property at issue, or (2) where defendant assumes the risk that the third party might consent to a search of the property." *State v. Taylor*, 114 Nev. 1071, 1079, 968 P.2d 315, 321 (1998). Even when the police make a mistake of fact as to a third party's actual authority, a search is not unlawful if the police reasonably believed that the third party had actual authority—that is, the third party had apparent authority. *Illinois v. Rodriguez*, 497 U.S. 177, 184-86 (1990). The reasonableness of an officer's belief that a third-party has common authority is viewed under an objective standard. *Id.*

#### **a. Actual Authority**

Here, police found Andrew's license plate at the accident scene where he had rear-ended Ms. Green's SUV. Instead of remaining at the accident,

Andrew sped away to his uncle's house—only a minute away. Police traced Andrew's license plate to the home that Robert Lastine owned and lived in. Andrew stayed in the back room of his uncle's house. The room had two doors—one inside the house and another on the side of the house's exterior. Andrew occasionally paid rent. He owned a Ford Ranger, titled and registered in his name, that he parked in front of his uncle's house.

When Deputy Gamboa arrived at Robert Lastine's residence he asked who owned the Ford truck on the property. Robert Lastine told him that his nephew owned it. The license plate found at the accident scene matched the front license plate on Andrew's truck. The truck had damage to its front end, and steam or smoke came from the truck.

When another deputy sheriff arrived, the deputies asked Robert Lastine if they could enter the house and talk to the truck's owner. Robert Lastine agreed. The deputies asked Robert Lastine if Andrew was in the house. Robert Lastine said that if he were, he would be in the back room. Robert Lastine told the deputies they could "go get him," but they could not search any other place of the house. Robert Lastine showed the deputies Andrew's room. The door of the room was slightly open. Deputy Gamboa saw Andrew hiding under a blanket, and announced his presence as a law

enforcement officer several times, but Andrew did not respond. The deputy was concerned about Andrew's well-being because there had been "a major car accident" and one of the cars involved in the accident was at Andrew's uncle's residence. There was significant damage to the truck. Andrew refused to show his hands, so deputies entered the room. Robert Lastine thought Andrew needed medical treatment. REMSA paramedics came to the residence at some point. When Trooper Howald arrived at the residence, she arrested Andrew.

From this scenario, the district court correctly concluded that Robert Lastine had actual authority to permit officers to "go get" Andrew. Robert Lastine owned and lived in the house. Andrew stayed in one of the rooms, and sometimes paid rent. Robert Lastine led the officers to the door of Andrew's room, which was inside Robert Lastine's residence, and which was partially open. Robert Lastine told the officers they could not go into any other area of the house. A reasonable officer, given this situation, would have believed that Robert Lastine had actual authority to permit the officers to "go get" Andrew. In other words, police had "the consent of one who possesse[d] common authority over premises or effects," which was "valid as against the absent, nonconsenting person [Andrew] with whom that

authority is shared.” *Matlock*, 415 U.S. at 170. *See also, State v. Taylor*, 114 Nev. 1071, 1079, 968 P.2d 315, 321 (1998) (“Actual authority is proved (1) where defendant and a third party have mutual use of and joint access to or control over the property at issue, or (2) where defendant assumes the risk that the third party might consent to a search of the property.”).

A person who occupies a motel room or home with another person possesses the authority to consent to a search. *See e.g., United States v. Hall*, 979 F.2d 77, 79 (6th Cir. 1992) (owner of home in which defendant rented room had common authority over room and therefore validly consented to search of defendant's room; homeowner owned all the furniture in defendant's room, door to room was never locked, and while homeowner never entered defendant's room when he was not home, homeowner had access to that room at all times); *United States v. Wright*, 971 F.2d 176, 180 (8th Cir. 1992) (homeowner possessed authority to consent to a search of his own home, including the guest bedroom where defendant spent the evening); *United States v. Richard*, 994 F.2d 244, 250 (5th Cir. 1993) (co-occupant of a motel room had authority to consent to a search of a room she had been staying in for several days).

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The fact that Robert Lastine may not have used the room is not dispositive of his authority to give consent to police to enter the room. See *United States v. Iribe*, 11 F.3d 1553, 1556 (10th Cir. 1993) (finding defendant's niece had authority consent to search because the niece “clearly had joint access to the house inasmuch as she was living with [defendant] at [the house which was the subject of the search]”); *United States v. Hall*, 979 F.2d 77, 78–79 (6th Cir. 1992) (finding common authority where consenting homeowner had access to defendant's rental room, but never entered it when defendant was not present), cert. denied, 507 U.S. 947 (1993); *United States v. Peterson*, 524 F.2d 167, 180–81 (4th Cir. 1975) (mother's access and control over premises gave authority to consent with no showing of use), cert. denied, 423 U.S. 1088, (1976); *State v. Washington*, 86 N.C.App. 235, 357 S.E.2d 419, 426 (1987) (“[A]ctual use is irrelevant where [defendant's mother] retained sufficient control over the premises that defendant assumed the risk that she might at some time exercise her right to enter upon and inspect the premises and permit others to do so.”).

There is no evidence that Andrew objected to the search of his room or the seizure of his person or that police removed him to forestall such an objection. See *George v. Randolph*, 547 U.S. 103, 106 (2006) (“a physically

present co-occupant's stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid as to him."'). Accordingly, the district court correctly concluded that Robert Lastine had the actual authority to let police search a bedroom in his house.

#### **b. Assumed Risk**

At a minimum, Andrew assumed the risk that his uncle might consent to a search of his own house. *Taylor, supra*. There was no evidence that Andrew considered his room a distinct and separate space that he had exclusive control over such that his uncle had no legal or moral right to enter. There was no formal lease agreement between Robert Lastine and Andrew; Andrew did not always pay rent; there was no evidence the inside door to Andrew's room could be locked; indeed, the door was partially open when police came to the residence; Andrew had no legal right to stay in the room; and there did not appear to be a separate bathroom, kitchen, or plumbing that would make the room independently self-contained. Moreover, Andrew did not present evidence about how often he stayed at his uncle's house, how long he had been there, whether he was current on his rent, whether his uncle had access to the room and under what circumstances, or any other living arrangement he and his uncle had.

In short, Andrew did not meet his burden to show that he had a legitimate expectation of privacy in his uncle's room. *Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980) ("Petitioner, of course, bears the burden of proving not only that the search of Cox's purse was illegal, but also that he had a legitimate expectation of privacy in that purse."). Accordingly, Andrew assumed the risk that his uncle would permit police to enter the room.

### **c. Exclusive Authority**

But the Court need not consider whether Robert Lastine had actual authority to consent to a search of his house, or whether Andrew assumed the risk that his uncle might consent to a search of the house. The State contends that where the owner of a residence lives at the residence and is present when police arrive at the residence, and gives police authority to search some part of the interior of the residence, the police act lawfully in such a search, absent clearly identifiable indicia that that part of the house is a completely separate and controlled section that some other person has a recognized privacy interest in, and who has the right to keep all other people out of, including the owner who lives in the residence. *See e.g., United States v. Hall*, 979 F.2d 77, 79 (6th Cir. 1992) (owner of home in which defendant rented room had common authority over room and therefore



validly consented to search of defendant's room; homeowner owned all the furniture in defendant's room, door to room was never locked, and while homeowner never entered defendant's room when he was not home, homeowner had access to that room at all times); *United States v. Wright*, 971 F.2d 176, 180 (8th Cir. 1992) (homeowner possessed authority to consent to a search of his own home, including the guest bedroom where defendant spent the evening), *Commonwealth v. Gibbons*, 379 Pa. Super. Ct. 285, 549 A.2d 1296, 1300–01 (1988) (finding mother had authority to consent to search of adult son's bedroom because defendant introduced no evidence diminishing his mother's dominion over the premises); *State v. Kunkel*, 406 N.W.2d 681, 682–84 (N.D. 1987) (holding mother had sufficient authority to consent where mother owned home, and evidence was insufficient to establish landlord-tenant relationship); *State v. Worley*, 179 W.Va. 403, 410, 369 S.E.2d 706, 713 & n. 8 (1988) (father had authority to consent to search of bedroom within trailer used by son where no evidence was submitted that son took measures to limit father's authority), cert. denied, 488 U.S. 895 (1988).

In this regard, the Supreme Court has stated that a person's “status as an overnight guest is alone enough to show that [the guest] ... had an

expectation of privacy in the home that society is prepared to recognize as reasonable.” *Minnesota v. Olson*, 495 U.S. 91, 96–97 (1990). The Court has also noted, however, that “[f]rom the overnight guest's perspective, he seeks shelter in another's home precisely because it provides him with ... a place where [the guest] ... and his possessions will not be disturbed by anyone but his host and those his host allows inside.” *Id.* at 99; *See also*, *State v. Campbell*, 714 N.W.2d 622 (Iowa 2006) (“Defendant, as a frequent overnight guest at Saffold's home, enjoyed an expectation of privacy in the room where he kept some personal belongings. That expectation of privacy, however, is applicable only to the unwarranted actions of government actors. It does not ensure the guest's possessions will not be disturbed by the host and those persons for whom the host allows entry.”) (*citing Minnesota v. Olson*, 495 U.S. 91, 99 (1990))).

Andrew and Robert Lastine were not merely co-inhabitants in a residence that they shared. Robert Lastine owned the house and lived there. He let Andrew stay there, and Andrew occasionally paid rent. As the owner of the house, Robert Lastine was free to permit anyone to enter any area of the house. The exclusive authority that Robert Lastine possessed lawfully permitted the police to go see Andrew in the house.

#### **d. Apparent Authority**

If Robert Lastine did not have actual or exclusive authority to permit police to enter Andrew's room and search for him, or if Andrew did not assume the risk of his uncle's consent to search the room, Robert Lastine at least had apparent authority to authorize the search in this case. See *Rodriguez*, 497 U.S. at 179, 186 (1990) (authorizing a search for "based upon the consent of a third party whom the police, at the time of the entry, reasonably believe[d] ... possess[ed] common authority over the premises, but who in fact d[id] not do so."). "Whether an individual has apparent authority to consent to a search must be judged against an objective standard, namely, would the facts available to the officer at that moment warrant a person of reasonable caution to believe that the consenting party had authority over the property." *Taylor*, 114 Nev. at 1080, 968 P.2d at 322 (citing *Illinois v. Rodriguez*, 497 U.S. 177, 188 (1990) (citing *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968))). "Whether the basis for [authority to consent to a search] exists is the sort of recurring factual question to which law enforcement officials must be expected to apply their judgment; and all the Fourth Amendment requires is that they answer it reasonably." *Id.* (quoting *Rodriguez*, 497 U.S. at 186). "Thus, 'the Fourth Amendment does not

invalidate warrantless searches based on a reasonable mistake of fact, as distinguished from a mistake of law.” ’ *Id.* (quoting *United States v. Salinas-Cano*, 959 F.2d 861, 865 (10th Cir. 1992) (quoting *United States v. Whitfield*, 939 F.2d 1071, 1073–74 (D.C.Cir. 1991)).

Apparent authority is analyzed as follows:

First, did the searching officer believe some untrue fact that was then used to assess the extent of the consent-giver's use of and access to or control over the area searched? Second, was it under the circumstances objectively reasonable to believe that the fact was true? Finally, assuming the truth of the reasonably believed but untrue fact, would the consent-giver have had actual authority?

*Id.* (quoting *United States v. Dearing*, 9 F.3d 1428, 1429–30 (9th Cir. 1993) (citations omitted).

Here, even if the district court clearly erred in finding that Robert Lastine had actual access to or control over the room Andrew was staying in, the district court correctly found that the deputies reasonably believed Robert Lastine had apparent access to or control over the bedroom. Robert Lastine owned the property, lived there, and told the deputies they could go to Andrew's room to get him, but no more.

This case is thus similar to *Snyder v. State*, 103 Nev. 275, 738 P.2d 1303 (1987), where this Court found that police officers reasonably relied on the

apparent authority of the defendant's brothers to consent to a search of the defendant's apartment. In *Snyder*, police officers found one brother sitting outside an apartment where he had been shot, and the brother told them they could find marijuana in the apartment; the second brother let the officers in and consented to a search. *Id. at* 280-81, 738 P.2d at 1307. The Court noted, there was no indication that the second brother “told the police he was just a guest or non-occupant.” *Id. at* 281, 738 P.2d at 1307. The facts in this case demonstrate that Robert Lastine had more authority than the brother in *Snyder* had to consent to a search. Thus, the district court in this case correctly found that Robert Lastine had apparent authority to consent to a search for Andrew.

**e. Harmless Error**

If the district court erred in denying Andrew’s motion to dismiss/suppress, the error was harmless, as overwhelming evidence supports the conviction.

If the district court erred in denying the motion to suppress, the error was harmless beyond a reasonable doubt. *See Medina v. State*, 122 Nev. 346, 355, 143 P.3d 471, 477 (2006) (to hold a federal constitutional error harmless, the court must be able to conclude that it was harmless beyond a reasonable

doubt by determining beyond a reasonable doubt that the error did not contribute to the verdict (*citing Chapman v. California*, 386 U.S. 18, 24 (1967), and *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993)).

Here, police found Andrew's license plate at the accident scene where he rear-ended Ms. Green's SUV. It took one minute to drive from the accident to Robert Lastine's home. Andrew arrived at his uncle's house sometime in the afternoon or early evening. The accident occurred between five and six o'clock. Neither Robert Lastine nor his wife had driven Andrew's truck that day. Andrew had the only set of keys to his truck. The license plate at the accident scene matched the remaining one on Andrew's truck. A male was driving Andrew's truck when it struck Ms. Green's SUV. The damage on Andrew's truck matched the damage to Ms. Green's SUV. Paint from her car was on Andrew's truck. Smoke or steam was coming out of the engine of Andrew's truck when police found it at Robert Lastine's residence. Footprints from the driver's side of Andrew's truck led to the door of his room at the residence. Andrew refused to identify himself when sheriff deputies were outside his door. And then he made a spontaneous admission to Trooper Howald that tended to inculcate him. *See New York v. Harris*, 495 U.S. 14 (1990) (declining to apply the exclusionary rule to statements

made outside a suspect's home following a warrantless arrest in the home because the Court's decision in *Payton v. New York*, 445 U.S. 573 (1980), "was designed to protect the physical integrity of the home and not to grant criminal suspects protection from statements made outside their premises where the police have probable cause for arresting the suspect for committing a crime.") (*quoting Walters v. State*, 108 Nev. 186, 825 P.2d 1237 (1992)). These were essentially the same facts the State presented at trial to convict Andrew. The only difference is that the State also presented evidence of muddy footprints that were near Andrew's bed.

Given the facts the State presented at trial, which were discovered apart from the search of Andrew's room and his seizure, the Court can conclude beyond a reasonable doubt that any error in denying Andrew's motion to suppress would not have changed the jury's verdict.

**B. The search of Andrews' room and his seizure were justified by the emergency doctrine.**

Under the emergency doctrine, a law enforcement officer may constitutionally conduct a warrantless search if the law enforcement officer reasonably believes there is an urgent need to enter the private premises not to arrest or search, but to protect life or property or investigate a "substantial

threat of imminent danger.” *Koza v. State*, 100 Nev. 245, 252–53, 681 P.2d 44, 48 (1984); *Brigham City, Utah v. Stuart*, 547 U.S. 398, 404–06 (2006). Law enforcement officers must limit their search to the area associated with the emergency. *United States v. Cervantes*, 219 F.3d 882, 888 (9th Cir. 2000).

Here, deputy Gamboa was concerned about Andrew’s well-being because there had been “a major car accident” and there were footprints from Andrew’s truck to the outside door of his room (JA, Vol. 1, 67-68, 79, 83). Deputies saw damage to Andrew’s truck. Robert Lastine was also concerned about Andrew’s well-being. REMSA came to Robert Lastine’s residence at some point. Police therefore had a legitimate concern about Andrew’s physical safety and lawfully entered his room. The district court correctly denied the motion to suppress.

#### **IV. Conclusion**

For the foregoing reasons, the Court should affirm the judgment of conviction.

DATED: February 14, 2018.

CHRISTOPHER J. HICKS  
DISTRICT ATTORNEY

By: JOSEPH R. PLATER  
Appellate Deputy



## CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Constantia 14.

2. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in

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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: February 14, 2018.

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on February 14, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

John Reese Petty  
Chief Deputy Public Defender

/s/ MARGARET FORD  
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