

STATE OF MICHIGAN  
IN THE WASHTENAW COUNTY TRIAL COURT

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff,

CASE NO. CRW 12-663 FC

v.

HON. MELINDA MORRIS

JOSEPH BAILEY,  
Defendant.

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**BRIAN L. MACKIE (P25745)**  
Washtenaw County Prosecuting Attorney  
Attorney for Plaintiff  
P.O. Box 8645  
Ann Arbor, MI 48107-8645  
(734) 222-6620

**ROBERT KILLEWALD (P39023)**  
Attorney for Defendant

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above case to each of the addresses of record herein at their respective addresses disclosed on the pleadings on 9/6/12  
By:            U.S. Mail            Express Mail             
           Hand Delivered            Fax            Inter Office  
Signature:           

**PEOPLE'S RESPONSE TO MOTION TO SUPPRESS**

Now come the People of the State of Michigan by and through Brian L Mackie, Prosecuting Attorney for the County of Washtenaw and in response to MOTION TO SUPPRESS filed in the above captioned matter states as follows:

1. Admit;

FILED  
SEP 6 2012  
CLERK OF COURT  
JUDICIAL BRANCH 1  
ANN ARBOR, MI

2. Admit in part-admit that detective Fitzpatrick went to 2523 Adrienne to look for defendant and met with his mother Laura Bailey. Neither admit nor deny whether Ms Bailey is a live-in aide for Dana Custodio;
3. Admit circumstances indicated that defendant had a bedroom at the listed residence neither admit nor deny any financial contribution he may make to the household or any other of the allegations contained in paragraph number 3;
4. Admit;
5. Deny consent to search was without authority see attached memorandum of Law;
6. Admit a cursory search of defendants bedroom was conducted;
7. Deny Mrs. Bailey lacked authority to allow the brief search of the room for the reasons stated in attached Memorandum of Law. Deny that merely checking behind the door in any way exceeded the consent given to check the defendant's room for him.;
8. Deny any search was pre-textual. The brief entry into defendant's bedroom at issue merely involved detective Fitzpatrick briefly entering the room, closing the door to look behind it. At which point the distinctive skeleton hoodie was plainly visible. Upon viewing that item The detective immediately left the room and went and obtained a search warrant. PE page 27.
9. Deny that the brief search of defendant's room at issue in any way exceed the consent given to look in his room.
10. Deny;
11. Deny.

12. Deny. However since the issue of consent and scope of consent was not addressed in detail at preliminary examination a evidentiary hearing is required;

WHEREFORE the People ask this court to set the matter for an evidentiary hearing.

Dated: 9/6/12

Respectfully submitted:



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Paul M. Barnett (P45458)  
Assistant Prosecuting Attorney

STATE OF MICHIGAN  
IN THE WASHTENAW COUNTY TRIAL COURT

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MEMORANDUM OF LAW

Facts

On April 9 2012 at around 10:00 p.m. two masked men walked into the Broadway party store located at 1027 Broadway in Ann Arbor. One was brandishing what appeared to be a short barreled shotgun. This person was wearing a very distinctive set of clothing including a skeleton hoodie. He pointed the gun at the victim and demanded cash from the register- the other person took the money from the open cash drawer and both fled the store. The next day a short barreled shotgun was recovered a short distance from the store by a neighbor. Review

of the in store video by police revealed that the person wearing the already distinctive skeleton mask was also wearing very distinctive set of clothing including a vest PE page 31, pants with distinctive pattern on the thigh PE page 33. During the investigation Detective Fitzpatrick received information that defendant may be involved in the robbery. As a result, in an effort to make contact with defendant he went to defendant's mother's address, where based on his prior contacts with defendant he believed defendant to reside. Upon arrival at that address Detective Fitzpatrick made contact with the defendant's mother who allowed him into residence and allowed him to search the defendant's room to see if he was present. Upon entry into the room Detective Fitzpatrick closed the door to look behind it and noticed a hoodie that appeared to match the distinctive skeleton hoodie from the robbery. At that point he immediately left the residence and obtained a search warrant. Search pursuant to that warrant secured the hoodie as well as other clothing that appeared to match the clothing worn by the robbery suspect.

#### Legal Analysis

The consent to search the defendant's bedroom given by his mother was valid and results of the search should not be suppressed at trial.

Both the United States Constitution and the Michigan Constitution guarantee the right against unreasonable searches and seizures. *People v. Taylor*, 253 Mich.App 399, 403; 655 NW2d 291 (2002); US Const, Am IV; Const 1963, art 1, § 11. "Searches conducted without a warrant are unreasonable per se, unless the police conduct falls under one of several specifically established and well-delineated exceptions." *People v. Gonzalez*, 256 Mich.App 212, 232; 663 NW2d 499 (2003); *People v. Wagner*, 114 Mich.App 541, 546-547; 320 NW2d 251

(1982). Valid consent is a recognized exception to the search warrant requirement. *People v. Borchard-Ruhland*, 460 Mich. 278, 294; 597 NW2d 1 (1999); *Wagner, supra* at 548. Usually, the affected person must give consent; however, a third party may consent to the search under certain circumstances. *People v. Goforth*, 222 Mich.App 306, 311; 564 NW2d 526 (1997). A search is valid if the third party parent giving consent has common authority, i.e., joint access and control, over a child's room. *Id.* at 315-316, citing *United States v. Matlock*, 415 U.S. 164, 171 n 7; 94 S Ct 988; 39 L.Ed.2d 242 (1972). Moreover, a search without a warrant is valid if, based on the totality of the circumstances, a police officer reasonably believes that the consenting third party has common authority over the premises, even if that third party does not. *Goforth, supra* at 312-313; *People v. Grady*, 193 Mich.App 721, 723-726; 484 NW2d 417 (1992). The reasonableness of the officer's belief must be measured objectively. *Goforth, supra* at 312, quoting *Illinois v. Rodriguez*, 497 U.S. 177, 181; 110 S Ct 2793; 111 L.Ed.2d 148 (1990).

In this case the police officers went to the address that they had for defendant and upon arrival they contacted his mother. The detective was familiar with defendant and his mother from prior contacts. PE page 27. Detective Fitzpatrick asked for and obtained the mother's consent to search defendant's room to see if he was present. There were no signs on the door indicating "Keep Out, there were no locks on the door or any other suggestion that defendant in any way limited access to his room, or that his mother was not allowed access to it or that his control over the room was exclusive. They performed a brief search of the room looking behind the door at which point they noticed the distinctive skeleton sweatshirt. Upon noticing that item they immediately left the premises and obtained a search warrant. PPE page 42. Given the circumstances it was reasonable for the police officer to assume that defendant's

mother had control and occupancy over the premises, and thus reasonable for the officer to rely on the consent given by defendant's mother. As a result the consent search of the room was valid. However since the issues surrounding the consent were not fully explored at the preliminary examination a full evidentiary hearing is required to provide the context of the consent and to determine if the officer's actions were reasonable under those circumstances.

Dated:

9/6/2

Respectfully submitted:



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Paul M. Barnett (P45458)  
Assistant Prosecuting Attorney

M/A

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

STATE OF MICHIGAN,  
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vs.

Case No. 12-663-FH  
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Washtenaw County Prosecutor  
ROBERT J. KILLEWALD P39023  
Attorney for Defendant

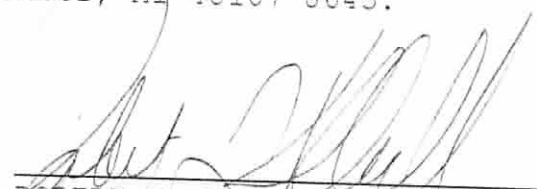
NOTICE OF HEARING AND  
PROOF OF SERVICE

TO: BRIAN L. MACKIE  
Washtenaw County Prosecutor  
200 N. Main, Ste. 300  
Ann Arbor, MI 48104

FILED  
AUG 30 2012  
WASHTENAW COUNTY, MI  
CLERK OF THE COURT

PLEASE TAKE NOTICE that Defendant's Motion To Suppress in the above-captioned matter will be brought on for hearing before the Honorable Melinda Morris on Monday, September 10, 2012 at 3:00 pm in her Courtroom, Washtenaw County Courthouse, 101 E. Huron, Ann Arbor, MI 48107-8645.

Dated: August 30, 2012

  
ROBERT J. KILLEWALD P39023  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on 8/30/12 20

By:  U.S. Mail       FAX  
 Hand Delivered       Overnight Courier  
 Certified Mail       Other

Signature Robert J. Killewald  
ROBERT J. KILLEWALD P39023