STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0073

State of Minnesota,
Respondent,

vs.

David Dale Spies,
Appellant.

Filed December 16, 2013
Affirmed
Halbrooks, Judge

Nobles County District Court
File No. 53-CR-11-940

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Kathleen Kusz, Nobles County Attorney, Travis J. Smith, Assistant County Attorney, Worthington, Minnesota (for respondent)

Melissa Sheridan, Assistant State Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

On appeal from his fifth-degree controlled-substance conviction, appellant challenges the district court's denial of his motion to suppress evidence, arguing that

certain evidence was discovered during an unlawful search of his property and the subsequent search warrant lacked probable cause without this evidence obtained in violation of his constitutional rights. We affirm.

FACTS

In October 2011, local law enforcement received two anonymous tips regarding a marijuana-grow operation on appellant David Spies's property. In response to the tips, agents of the Buffalo Ridge Drug Task Force (BRDTF), including Agent Ryan Kruger, went to Spies's house to conduct a "knock and talk." Spies's house and seven outbuildings are on acreage. The house is on the north side of a long driveway. The relevant outbuildings—a barn and what appears to be a shed or chicken coop—are located south of the driveway, about 25-30 yards from the house.

When BRDTF agents arrived at the house, there were two vehicles parked in the driveway. The basement windows were covered. Agents knocked, but no one answered the door. Because of the vehicles in the driveway, Agent Kruger "assumed there was probably somebody outside at the outbuildings." BRDTF agents crossed the driveway and walked across the grass toward the two outbuildings "to see if [they] couldn't make contact with someone." Agent Kruger testified that, in Nobles County, it is a common practice to walk around acreage to contact someone.

In between the two outbuildings, agents observed a two-and-one-half to three-foot tall marijuana plant. Agent Kruger concluded that the plant was being cultivated because it was staked, tied, and growing out of potting soil. Through an open door to an outbuilding, agents saw five-gallon buckets with the bottoms cut out. Agent Kruger

testified, based on his experience, that marijuana growers use these buckets to protect their plants.

Agents did not locate anyone in or near the outbuildings. Agent Kruger left the property and sought and obtained a search warrant. Agents then executed the warrant and found marijuana plants in outbuildings and in the house. They subsequently arrested Spies.

Spies was charged with two counts of felony fifth-degree marijuana sale (manufacture) in violation of Minn. Stat. § 152.025, subd. 1(a)(1) (2010), and two counts of felony fifth-degree marijuana possession in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2010). He moved to suppress all evidence on the bases that (1) the discovery of the marijuana plant between the two outbuildings resulted from an unlawful search and (2) the search warrant was not supported by probable cause without the evidence that Spies claims was obtained in violation of his Fourth Amendment rights. The district court denied Spies's motion, concluding that "the officer was in a position that he had a lawful right to be in" and that the search warrant was supported by probable cause.

Spies pleaded not guilty, waived his right to a jury trial, and stipulated to the state's case. A bench proceeding was held pursuant to Minn. R. Crim. P. 26.01, subd. 4, preserving the district court's pretrial ruling for review. The district court found Spies guilty of one count of fifth-degree marijuana sale (manufacture), dismissed the remaining charges, stayed imposition of his sentence, and placed him on probation. This appeal follows.

D E C I S I O N

When reviewing a pretrial order on a motion to suppress evidence, we examine the district court's factual findings under a clearly erroneous standard and the district court's legal determinations, including a determination of probable cause, de novo. *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012).

A. Fourth Amendment

The United States Constitution guarantees an individual's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV. Generally, an unlawful search or seizure under the Fourth Amendment occurs when an individual's reasonable expectation of privacy is invaded. *Katz v. United States*, 389 U.S. 347, 353, 88 S. Ct. 507, 512 (1967). And generally, evidence unconstitutionally seized must be suppressed. *State v. Jackson*, 742 N.W.2d 163, 177-78 (Minn. 2007).

In order to contest a search of his property, Spies "must establish a legitimate expectation of privacy relating to the area searched." *See State v. Licari*, 659 N.W.2d 243, 249 (Minn. 2003) (quotation omitted). Spies claims that he has a reasonable expectation of privacy in the area of the outbuildings because it lies within the curtilage of his home.

Minnesota courts utilize a four-factor analysis to determine the extent of curtilage: (1) the proximity of the area claimed to be curtilage to the home, (2) whether the area is included within an enclosure surrounding the home, (3) the nature of the uses to which the area is put, and (4) the steps taken by the resident to protect the area from observation by people passing by. *State v. Krech*, 403 N.W.2d 634, 636-37 (Minn. 1987) (citing

United States v. Dunn, 480 U.S. 294, 301, 107 S. Ct. 1134, 1139 (1987)). The purpose of this four-factor analysis is to aid the courts in determining "whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." *Krech*, 403 N.W.2d at 637 (quoting *Dunn*, 480 U.S. at 301, 107 S. Ct. at 1140).

In this instance, the outbuildings are located 25-30 yards from the house. "A dwelling's curtilage is generally the area so immediately and intimately connected to the home that within it, a resident's reasonable expectation of privacy should be respected." *Garza v. State*, 632 N.W.2d 633, 639 (Minn. 2001). In *Dunn*, the United States Supreme Court held that a 60-yard distance between a barn and house was a "substantial distance" supporting a conclusion that the barn was outside the curtilage. 480 U.S. at 302, 107 S. Ct. at 1140. Although the outbuildings here are closer to the house, they are distant enough that it would be reasonable to conclude that they are not used for "intimate activity associated with the 'sanctity of [the] home and the privacies of life.'" *See Oliver v. United States*, 466 U.S. 170, 180, 104 S. Ct. 1735, 1742 (1984). The need to cross the driveway to reach the outbuildings also supports this conclusion.

It is not clear in the record whether there is a fence or other enclosure surrounding the house. But if there is an enclosure, the outbuildings are necessarily outside of it because of their location across the driveway. The outbuildings here are a barn and a smaller outbuilding that appears to be either a chicken coop or a shed. Spies does not argue that a barn, shed, or chicken coop is by its nature associated with the intimate activities of the home, or that these outbuildings are in fact so used. Furthermore, Spies

has taken no steps to protect the area from observation. There are no physical obstructions preventing a person in the driveway from seeing the marijuana plant, and some of the doors to the outbuildings were open. Agent Kruger testified that after he saw the marijuana plant up close, he realized that it was visible from the driveway.

Taking the four factors together, the outbuildings were not within the area "so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." *See Dunn*, 480 U.S. at 301, 107 S. Ct. at 1140. Consequently, the area was outside the curtilage.

We therefore conclude that the marijuana plant and buckets were not within an area in which Spies had a reasonable expectation of privacy. Accordingly, agents did not violate Spies's Fourth Amendment rights when they approached the outbuildings and observed the marijuana plant and buckets.

B. Search warrant

We now turn to the validity of the search warrant, which must be supported by probable cause. *See* U.S. Const. amend. IV; Minn. Const. art. I, § 10. A search warrant is supported by probable cause "if there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Fort*, 768 N.W.2d 335, 342 (Minn. 2009) (quotation omitted). We consider the totality of the circumstances when evaluating whether probable cause exists. *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985). We afford great deference to the issuing judge's determination of probable cause. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001).

The search-warrant application included references to two recent anonymous tips about a marijuana-grow operation on Spies's property, the marijuana plant between the outbuildings, the bottomless buckets, the covered basement windows,[1] a locked outbuilding, and information from 2009 about a marijuana-grow operation on Spies's property. Because we have concluded that the observations of the marijuana plant and bottomless buckets did not violate Spies's Fourth Amendment rights, the plant and buckets present a proper basis for the search warrant. *See State v. Akers*, 636 N.W.2d 841, 843 (Minn. App. 2001). Considering this evidence within the totality of the circumstances, we conclude that the search warrant was supported by probable cause. Because agents discovered the marijuana plant and buckets in the open fields and the search warrant was supported by probable cause, the district court did not err in denying Spies's motion to suppress the evidence.

Affirmed.

[1] In Agent Kruger's experience, covered basement windows are consistent with a marijuana-grow operation.