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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1928**

Brian Bruce Hoeft, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed June 17, 2013
Reversed
Kirk, Judge**

Mille Lacs County District Court
File No. 48-CV-12-1153

Mark D. Kelly, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, James E. Haase, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Chutich, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

On appeal from the district court's order sustaining the revocation of his driver's license, appellant argues that the district court erred by determining that: (1) the arresting officer had a reasonable and articulable suspicion of criminal activity when he seized

him; and (2) appellant did not have standing to challenge the officer's warrantless entry into his friend's garage. Because we conclude that the district court erred by determining that appellant did not have standing to challenge the officer's warrantless entry in the garage, and we determine that the officer's entry violated the Fourth Amendment, we reverse.

FACTS

At approximately 1:30 a.m. on March 24, 2012, Sergeant Daniel Holada was on duty in the town of Bock when he heard a vehicle loudly squeal its tires. Sergeant Holada looked up and saw a darker-colored pickup truck squealing its tires and sliding as it drove north on Wall Avenue toward Highway 23. Sergeant Holada was concerned about the driving conduct because it occurred around bar-closing time near a busy highway where people might be present. Sergeant Holada observed the truck cross Highway 23 and then turn east on Haystack Road.

Deputy Bradley Hunt was parked about a block away from Sergeant Holada and also heard, but did not see, a vehicle squeal its tires. Deputy Hunt drove toward the sound and pulled out in front of Sergeant Holada. Using his radio, Sergeant Holada advised Deputy Hunt of the direction in which he saw the truck drive. As they pursued the truck, Sergeant Holada and Deputy Hunt observed 15-to-20-foot-long skid marks on the road by a bar and across Highway 23. After Sergeant Holada and Deputy Hunt turned on to Haystack Road, they observed acceleration marks in the gravel that appeared to be fresh. Neither Deputy Hunt nor Sergeant Holada ever activated their emergency lights or sirens.

As Deputy Hunt turned the corner where Haystack Road becomes 65th Avenue, he observed a vehicle parked in a driveway near a garage with its taillights or brake lights on. Deputy Hunt observed a person standing by the vehicle's door and a light on in the vehicle's cab. As Deputy Hunt pulled into the driveway approximately five seconds later, he observed a person wearing a black hooded sweatshirt with red lettering walk into the garage through the open garage door. Deputy Hunt observed several people inside the garage, and he got out of his squad car and approached the garage. As he did so, the garage door started going down; he was unable to see who activated the door but was confident that it was not the person he pursued to the house. When the garage door was almost closed, Deputy Hunt used his foot to trip the safety mechanism, causing the garage door to rise. Deputy Hunt saw the man wearing the black sweatshirt with the red lettering inside the garage. He said something similar to "You in the black sweater," and motioned to the man with his finger to step outside the garage. The man complied and, as he did so, Deputy Hunt recognized him as a family friend, appellant Brian Bruce Hoeft.

Sergeant Holada was a few seconds behind Deputy Hunt, and he parked his vehicle behind Deputy Hunt's vehicle in the driveway and got out. Sergeant Holada saw a person walk from the area of a dark-colored vehicle to the open garage door. He observed the door start to close, and then saw the garage door rise while Deputy Hunt was standing nearby. Sergeant Holada saw a man come out of the garage who he recognized from the community; the man was later identified as Hoeft. Both Sergeant

Holada and Deputy Hunt knew that Hoeft did not live in the home. Sergeant Holada knew that a different man, A.B., lived in the home.

Once Hoeft was outside the garage, Sergeant Holada and Deputy Hunt began talking to him. Hoeft admitted that he squealed his tires. While they were talking, Deputy Hunt smelled a strong odor of alcohol and observed that Hoeft's eyes were bloodshot and watery. Deputy Hunt asked Hoeft if he had been drinking and Hoeft responded, "To be honest with 'ya, I'm probably over." Deputy Hunt performed field sobriety tests, and then placed Hoeft under arrest for suspected driving while impaired.

In May 2012, respondent Commissioner of Public Safety ordered the revocation of Hoeft's driver's license under the implied consent law. Hoeft petitioned for judicial review of the revocation of his driver's license. The district court held a hearing, and Sergeant Holada, Deputy Hunt, and Hoeft testified. Hoeft testified that he drove to the home of his friend, A.B., in the early morning on March 24 because A.B. had invited him to the home for a party and told him he could stay there if he wanted. Hoeft testified that he did not close the garage door; instead, he believed A.B. closed the garage door. Hoeft testified that, when the garage door opened, he recognized Deputy Hunt and complied with his command to exit the garage although he did not know what Deputy Hunt wanted. Hoeft testified that he admitted he squealed his tires and had been drinking.

The district court sustained the revocation of Hoeft's driver's license, finding that Hoeft was seized when he exited A.B.'s garage and that his seizure was based on the police officer's reasonable and articulable suspicion. The district court found that Hoeft

did not have standing to challenge Deputy Hunt's entry into A.B.'s garage because Hoeft did not have a reasonable expectation of privacy in the garage. This appeal follows.

D E C I S I O N

Hoeft argues that the district court erred by denying his motion to suppress the evidence that was obtained as the result of Deputy Hunt's warrantless entry into the garage. Hoeft contends that the district court erred by determining that he did not have standing to challenge Deputy Hunt's warrantless entry into the garage because he did not have a reasonable expectation of privacy in the garage. When the facts are undisputed and the district court's decision is a question of law, this court "independently review[s] the facts and determine[s], as a matter of law, whether the evidence need be suppressed." *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

"[T]he Fourth Amendment is a personal right that must be invoked by an individual." *Minnesota v. Carter*, 525 U.S. 83, 88, 119 S. Ct. 469, 473 (1998). To invoke the protections of the Fourth Amendment, an individual must demonstrate that (1) he or she has a subjective expectation of privacy in the place searched, and (2) his or her expectation of privacy is reasonable. *In re Welfare of B.R.K.*, 658 N.W.2d 565, 571 (Minn. 2003). In considering "whether a person has exhibited a subjective expectation of privacy, courts should focus their inquiry on the individual's conduct and whether the individual sought to preserve something as private." *Id.* (quotation omitted).

Hoeft argues that he had an expectation of privacy in A.B.'s garage because he was an overnight guest in A.B.'s home. The United States Supreme Court has held that an overnight guest has a reasonable expectation of privacy in his host's home. *Minnesota*

v. Olson, 495 U.S. 91, 98-99, 110 S. Ct. 1684, 1689 (1990). The Supreme Court observed that “[s]taying overnight in another’s home is a longstanding social custom that serves functions recognized as valuable by society.” *Id.* at 98, 110 S. Ct. at 1689. In a subsequent case, the Supreme Court held that a person who is merely present at a home with the consent of the homeowner or who is at the home for a short amount of time for a business transaction does not have a reasonable expectation of privacy. *Carter*, 525 U.S. at 90-91, 119 S. Ct. at 473-74. In *B.R.K.*, the Minnesota Supreme Court analyzed *Olson* and *Carter* before concluding that short-term social guests have a reasonable expectation of privacy in their host’s home. 658 N.W.2d at 576.

Here, Hoeft testified that he went to A.B.’s home at approximately 1:30 a.m. because A.B. had told him he “was gonna have a little get-together and [Hoeft] could stay there if [he] wanted.” Hoeft’s counsel asked him, “So you were intending to socialize and spend the evening there?” And Hoeft replied, “Yes.” The district court did not discredit Hoeft’s testimony. Given the time of night that Hoeft arrived at A.B.’s home and his testimony that he went to A.B.’s home because A.B. told him he could “stay there,” Hoeft’s uncontradicted testimony establishes that he planned to stay overnight at A.B.’s home. *Cf. B.R.K.*, 658 N.W.2d at 574 (noting that “B.R.K. does not contend that he was an overnight guest”). Thus, we conclude that, as an overnight guest, Hoeft had a reasonable expectation of privacy in A.B.’s home. *See Olson*, 495 U.S. at 98-99, 110 S. Ct. at 1689. Accordingly, the district court erred by determining that Hoeft did not have standing to challenge Deputy Hunt’s entry into the garage because he did not have a reasonable expectation of privacy in the garage.

Hoefl next contends that Deputy Hunt's use of his foot to prevent the garage door from closing constituted a warrantless search of the garage. While the district court did not reach this issue because it determined that Hoefl did not have standing to challenge the search, we address it here in the interests of judicial economy. When the facts are not in dispute, the validity of a search is a question of law that this court reviews de novo. *Haase v. Comm'r of Pub. Safety*, 679 N.W.2d 743, 745 (Minn. App. 2004). This court independently analyzes the undisputed facts to determine whether evidence obtained as a result of the search should be suppressed. *Id.*

The protection of the Fourth Amendment "extends to all places where an individual has a reasonable expectation of privacy, including the home and its curtilage." *Id.* at 746. A garage is included within a home's curtilage. *State v. Crea*, 305 Minn. 342, 345, 233 N.W.2d 736, 739 (1975). Subject to a few exceptions, warrantless searches violate the Fourth Amendment. *Othoudt*, 482 N.W.2d at 221-22. In general, evidence obtained as the result of an illegal search is inadmissible. *Tracht v. Comm'r of Pub. Safety*, 592 N.W.2d 863, 865 (Minn. App. 1999), *review denied* (Minn. July 28, 1999).

Hoefl asserts that this case is governed by *Haase*. In that case, the police received a call from a witness who reported that a vehicle had crossed the center line of the road several times. *Haase*, 679 N.W.2d at 745. The witness provided a description of the vehicle and the vehicle's license plate number. *Id.* A police officer responded to the call but was initially unable to locate the vehicle. *Id.* The officer ran the license plate and learned that the vehicle was registered to Haase. *Id.* The police officer drove to the address listed on Haase's driver's license, and he observed the vehicle pulling into the

garage. *Id.* The police officer parked, walked to the threshold of the open garage, and waited for the driver of the vehicle to exit the vehicle. *Id.* Haase caused the garage door to go down, and the officer stopped it from closing by using his leg to trigger the safety mechanism, causing the garage door to rise. *Id.* Haase was surprised by the officer's presence when he got out of the vehicle. *Id.* After interviewing Haase inside the garage, the officer arrested him for driving while impaired. *Id.* Haase's driver's license was subsequently revoked, he moved for reconsideration, and the district court upheld the revocation. *Id.* On appeal, this court determined that Haase did not abandon his reasonable expectation of privacy in his garage merely because he briefly opened the garage door to enter the garage. *Id.* at 747. Because this court concluded that the police officer's entry into Haase's garage was unreasonable, it determined that the fruits of the warrantless entry should be suppressed. *Id.*

We agree with Hoeft that, under *Haase*, Deputy Hunt violated the Fourth Amendment when he used his foot to stop the garage door from closing. Like the officer in *Haase*, Deputy Hunt intruded on a constitutionally protected area without a warrant. And the parties do not contend that an exception to the warrant requirement applies because the police were in hot pursuit of Hoeft. Because a garage is included in a home's curtilage, we note that Deputy Hunt's actions in this case are no different than if Deputy Hunt had followed Hoeft to the home's open front door and then used his foot to stop the homeowner from closing the front door of the home. We conclude that Deputy Hunt's action in this case constituted an unreasonable entry into A.B.'s garage.

The commissioner attempts to distinguish this case from *Haase* by arguing that Haase was the homeowner, while Hoeft is only a guest in another person's home. But we determine that Hoeft, like Haase, had a reasonable expectation of privacy in the home. Accordingly, we conclude that the district court erred by denying Hoeft's motion to suppress evidence obtained as a result of Deputy Hunt's warrantless entry into the garage and by sustaining the revocation of Hoeft's driver's license on that basis. Because we reach this conclusion, we need not address Hoeft's argument that the district court erred by determining that Deputy Hunt had a reasonable and articulable suspicion of criminal activity when he seized Hoeft.

Reversed.