[Cite as *State v. Birdsall*, 2010-Ohio-2382.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WILLIAMS COUNTY

State of Ohio — Court of Appeals No. WM-09-016

Appellee — Trial Court No. 09 CR 034

v.

Paul D. Birdsall — **DECISION AND JUDGMENT**

Appellant — Decided: May 28, 2010

* * * * *

Thomas A. Thompson, Williams County Prosecuting Attorney,
and Katherine Middleton, Assistant Prosecuting Attorney, for appellee.

E. Charles Bates and Spiros Cocoves, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Paul D. Birdsall, appeals from a decision of the Williams County Court of Common Pleas denying his motion to suppress evidence. For the reasons that follow, we affirm.

{¶ 2} On February 25, 2009, appellant was indicted on one count of illegally manufacturing drugs, a violation of R.C. 2925.04(A) and a felony of the second degree. Appellant entered a plea of not guilty. On May 15, 2009, he filed a motion to suppress. A suppression hearing commenced on May 26, 2009.

{¶ 3} Deputy Greg Ruskey of the Williams County Sheriff's Department testified that on February 17, 2009, he was acting as an agent with the multi-area narcotics task force where he primarily investigated drug cases. On February 17, the sheriff's department received an anonymous phone call informing them that a methamphetamine lab was illegally operating on Manito Trail in Montpelier, Ohio. Deputy Ruskey testified he then proceeded to the residence. The garage of the residence was a separate building from the house, with the house located approximately five feet to the left. Ruskey pulled into the driveway where he could hear loud music coming from the garage. Ruskey knocked on the garage door and was met by Michael Patrias who stepped outside of the garage and shut the door behind him. Ruskey identified himself as a sheriff's deputy and told Patrias he was there to investigate a complaint of an illegal drug lab.

{¶ 4} Ruskey testified that Patrias seemed very nervous. When Ruskey asked him if he was carrying any weapons or contraband, Patrias pulled lithium batteries, two syringes and an aluminum foil bowl out of his pockets. Ruskey recognized the batteries and the foil bowl as methamphetamine drug paraphernalia. Ruskey asked Patrias for permission to search his car and Patrias signed a consent form. In the car, Ruskey found a

digital scale with white powder residue on it and a cold pack which he identified as something used in the manufacturing of methamphetamine.

{¶ 5} Ruskey testified that as he was talking to Patrias, appellant's live-in girlfriend, Emily Koch, stepped out of the house and asked what was going on. Ruskey identified himself as a sheriff's deputy and explained why he was there. He then asked Koch to walk him through the garage. She agreed and they walked through. Ruskey testified that in the garage he saw some ingredients used to make methamphetamine. Ruskey testified he followed Koch into the house where appellant's daughter was. Both Koch and appellant's daughter signed consent forms to search the house. Koch even asked Ruskey to search her bedroom because she wanted to "make sure there's not anything meth-related" in there.

{¶ 6} Koch testified that on February 17, 2009, she was inside the house on Manito Trail when she heard someone knocking on the garage door. She opened the door and saw Ruskey by the garage. She testified that Ruskey identified himself and told her why he was there. He then asked her to go back into the house while he was talking to Patrias. Later, Ruskey came to the door to the house and asked Koch for permission to search the house.

{¶ 7} The trial court denied appellant's motion to suppress. He entered a no contest plea to the charge and he was sentenced to three years in prison. Appellant now appeals, setting forth the following assignment of error:

{¶ 8} "The trial court erred to the prejudice of appellant by denying his motion to suppress an illegal search and seizure and any evidence derived from that illegal search and seizure, in violation of his right to due process and to be free from unreasonable searches and seizures as guaranteed by the 4th, 5th, 6th and 14th amendments to the United States Constitution and Article 1, Section 10 of the Ohio Constitution."

{¶ 9} Review of a ruling on a motion to suppress involves a mixed question of law and fact. *State v. Davis* (1999), 133 Ohio App.3d 114, 117. The trial court acts as the trier of fact; therefore, that court alone weighs the evidence and determines the credibility of the witnesses. The reviewing court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Brooks* (1996), 75 Ohio St.3d 148, 154. Having accepted the facts as true, the appellate court must independently determine as a matter of law, without deference to the trial court's conclusion, whether the facts met the appropriate legal standard. *State v. Anderson* (1995), 100 Ohio App.3d 688, 691.

{¶ 10} Appellant contends that Ruskey's action in knocking on the garage door constituted an unlawful, warrantless search and seizure because the garage was protected cartilage.

{¶ 11} "Warrantless searches are 'per se unreasonable under the Fourth Amendment-subject only to a few specially established and well-delineated exceptions.' " *State v. Kessler* (1978), 53 Ohio St.2d 204, 207. Warrants may not be required, however, if the interest is not protected by the Fourth Amendment or if a recognized exception

applies. The Fourth Amendment does not apply to things exposed to public view. *Katz v. United States* (1967), 389 U.S. 347, 351, 88 S.Ct. 507, 19 L.Ed.2d 576

{¶ 12} The curtilage is an area around a person's home upon which he or she may reasonably expect the sanctity and privacy of the home. For Fourth Amendment purposes, the curtilage is considered part of the home itself. *Oliver v. United States* (1984), 466 U.S. 170, 180, 104 S.Ct. 1735, 80 L.Ed.2d 214. The extent of a home's curtilage is resolved by considering four main factors: (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 use to which the area is put; and (4) the steps taken to protect the area from observation by passersby. *U.S. v. Dunn* (1987), 480 U.S. 294, 301.

{¶ 13} Absent a warrant, police have no greater rights on another's property than any other visitor has. Thus, it has been held that the only areas of the curtilage where officers may go are those impliedly open to the public. This area includes walkways, driveways, or access routes leading to the residence. *State v. Dyreson* (Wash.App. 2001), 17 P.3d 668; *State v. Pacheco* (Mo.App. 2003), 101 S.W.3d 913, 918; *State v. Johnson* (N.J. 2002), 793 A.2d 619. The guiding principal is that a police officer on legitimate business may go where any "reasonably respectful citizen" may go. *Dyreson*, supra; see, also, *State v. Tanner* (Mar. 10, 1995), 4th Dist. No. 94CA2006. Police are privileged to go upon private property when in the proper exercise of their duties. See *State v. Chapman* (1994), 97 Ohio App.3d 687.

{¶ 14} As the Second District Court of Appeals aptly noted:

{¶ 15} "In the course of urban life, we have come to expect various members of the public to enter upon such a driveway, e.g., brush salesmen, newspaper boys, postmen, Girl Scout cookie sellers, distressed motorists, neighbors, friends. Any one of them may be reasonably expected to report observations of criminal activity to the police, * * * . If one has a reasonable expectation that various members of society may enter the property in their personal or business pursuits, he should find it equally likely that the police will do so. " *State v. Alexander* (Oct. 6, 2000), 2d Dist. No. 2000-CA-6.

{¶ 16} Ruskey testified that as he pulled into appellant's driveway, he saw the garage directly in front of him. The house was located five feet to the left. He testified that appellant's driveway was standard sized, approximately 25 feet long. He approached the garage because he heard music coming from inside and he thought that someone might be there. There is no evidence of an enclosure around the garage and there is no evidence that the garage was hidden from street view. Ruskey, in entering appellant's property and knocking on the garage door was acting much like any "reasonably respectful citizen" would. The fact that Ruskey was there based on information he received from an uncorroborated anonymous tip is irrelevant for our purposes here. Accordingly, appellant's sole assignment of error is found not well-taken.

{¶ 17} On consideration whereof, we find substantial justice has been done the parties complaining and the judgment of the Williams County Court of Common Pleas is affirmed. Appellants are ordered to pay costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
CONCUR.
JUDGE