FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2907

GREGORY PERNELL ROBINSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Bay County.
Christopher N. Patterson, Judge.

October 13, 2021

LEWIS, J.

Appellant, Gregory Pernell Robinson, appeals his judgment and sentence for trafficking in fourteen grams or more of methamphetamine, possession of hydrocodone, and possession of paraphernalia, challenging the trial court's denial of his motion to suppress. We affirm.

Appellant was residing in room 5 of the Youngstown Motel, which is a single-story, multi-unit building with a common exterior walkway running from one side of the building to the other, traversing in front of each motel room door. Law enforcement obtained a search warrant for room 5 based in part on a K-9 sniff of the motel's common exterior walkway that gave a positive alert for illegal drug odors emanating from Appellant's room. During

the ensuing search, the police found methamphetamine, hydrocodone, and a digital scale and meth pipe. In moving to suppress the evidence, Appellant argued that the warrantless dog sniff violated his Fourth Amendment right to be free from unlawful searches. The trial court denied the motion upon finding that the K-9 sniff was lawful, and the search warrant was valid, because "[p]ursuant to the holding of [*Nelson v. State*, 867 So. 2d 534 (Fla. 5th DCA 2004)], the Defendant had no legitimate expectation of privacy in the common areas of the motel, including the walkway in front of his motel room door." A jury ultimately found Appellant guilty as charged, and this appeal followed.

In reviewing a trial court's ruling on a motion to suppress, we defer to the trial court's findings of fact if supported by competent, substantial evidence, but review *de novo* the application of the law to those facts. *Channell v. State*, 257 So. 3d 1228, 1232 (Fla. 1st DCA 2018). This case presents the question of whether a dog sniff conducted on the common external walkway outside of a motel room constitutes a search under the Fourth Amendment, which is an issue of law to be reviewed *de novo*.

The Fourth Amendment of the United States Constitution guarantees that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated and that no warrants shall be issued, except upon probable cause. Amend. IV, U.S. Const.; *see also* Art. I, § 12, Fla. Const. The Fourth Amendment protects people, not places, and whether it affords protection depends on (1) whether the person has exhibited an actual, subjective expectation of privacy in the object of the search, and (2) whether society is prepared to recognize that expectation as reasonable. *Jardines v. State*, 73 So. 3d 34, 39–40 (Fla. 2011) (citing *Katz v. United States*, 389 U.S. 347, 361 (1967)), *aff'd sub nom. Florida v. Jardines*, 569 U.S. 1 (2013). "A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed." *Purifoy v. State*, 225 So. 3d 867, 871 (Fla. 1st DCA 2017).

A person's private residence is accorded a special status under the Fourth Amendment, and a substantial government intrusion into the sanctity of the home constitutes a search within the Fourth Amendment. *Jardines*, 73 So. 3d at 36–37, 45. A hotel or

motel room is considered the private dwelling of the occupant so long as he or she is there legally, and the occupant is entitled to the same rights *inside* the hotel/motel room as the resident of a private permanent dwelling. *See Sheff v. State*, 301 So. 2d 13, 16 (Fla. 1st DCA 1974), *aff'd*, 329 So. 2d 270 (Fla. 1976); *Jackson v. State*, 18 So. 3d 1016, 1028 (Fla. 2009); *Rebello v. State*, 773 So. 2d 579, 580 n.2 (Fla. 4th DCA 2000); *Sturdivant v. State*, 578 So. 2d 869, 870 (Fla. 2d DCA 1991). "However, areas which are outside of a hotel room, such as hallways, which are open to use by others may not be reasonably considered as private" as they are public areas where officers have a right to be present. *Brant v. State*, 349 So. 2d 674, 675 (Fla. 3d DCA 1977).

In *Nelson v. State*, as in this case, the police conducted a sniff test in the hallway outside of the appellant's hotel room and used the K-9's positive alert to obtain a search warrant for his room. 867 So. 2d 534, 535 (Fla. 5th DCA 2004). The Fifth District affirmed the denial of the appellant's motion to suppress, rejecting his argument that the police did not have a right to walk the hotel's hallways in search of drugs. *Id.* The court recognized the general rule that constitutional rights that apply to occupants of private dwellings also apply to hotel guests, but found the rule inapplicable because the appellant "did not have a valid expectation of privacy" as "[a]reas outside of a hotel room, such as hallways, which are open to use by others may not be reasonably considered as private." *Id.* "[T]he hallway was on the premises controlled by the hotel management and was a common walkway for the use of hotel guests, visitors, employees and probably by the general public"; "the Fourth Amendment was not even applicable to any action that took place in the hallway where the police had the right to be." *Id.* at 535–36. *Cf. State v. Rabb*, 920 So. 2d 1175, 1177 (Fla. 4th DCA 2006) (affirming the granting of the appellant's motion to suppress where the police obtained a search warrant for his home based on a K-9 walking from the public roadway in front of his private residence up to the front door and alerting to the presence of drugs; emphasizing that a firm line is drawn at the entrance of the house for the purposes of the Fourth Amendment; and concluding that *Nelson* neither controlled nor conflicted with its holding, in part because the principle that occupants of a hotel room are entitled to the same Fourth Amendment protections as

occupants of a house is not without limitation given that a hotel room is neither as private, nor as sacrosanct as a house).

Appellant's reliance on *Jardines* is misplaced. There, the Florida Supreme Court held that a dog sniff test conducted at the front door of a private residence is a search under the Fourth Amendment and requires a showing of probable cause of wrongdoing. 73 So. 3d at 36–37, 49, 54. The Court emphasized that a citizen's home is accorded a special, sacred status and the Fourth Amendment draws a firm line at the entrance to the house, and reasoned in part that a sniff test conducted at a private home can be an intensive and intrusive procedure that entails a degree of public humiliation for the resident. *Id.* at 36, 45–48, 55–56.

The Supreme Court of the United States agreed that the dog sniff at Jardines's front door constituted a search and held that the government's use of a police dog to investigate the home and the areas immediately surrounding and associated with the home—referred to as curtilage—is a search within the Fourth Amendment. *Florida v. Jardines*, 569 U.S. 1, 5, 11–12 (2013) (noting that the front porch is a classic example of a curtilage, an area adjacent to the home to which the activity of home life extends). The Court reasoned that "when it comes to the Fourth Amendment, the home is first among equals," and "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion" "would be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity." *Id.* at 6.

We have explained that "[t]he central inquiry in determining if an area constitutes curtilage is whether the area harbors the 'intimate activity associated with the 'sanctity of a man's home and the privacies of life,'" which determination requires the weighing of four factors: "1) the proximity of the area at issue to the home; 2) whether the area is within the enclosure surrounding the home; 3) the particular use of the area; and 4) the steps taken to protect the area from observation from individuals passing by." *Davis v. State*, 257 So. 3d 1159, 1161 (Fla. 1st DCA 2018) (quoting *Oliver v. United States*, 466 U.S. 170, 180 (1984), and *United States v. Dunn*, 480 U.S. 294 (1987)). Applying this test, the Second District has concluded that the parking space in front of motel rooms was not

a curtilage even though the hood of the appellant's car was only about three feet from the motel door because there was no indication that the area was enclosed, that the occupants of the rooms took any steps to protect the parking space from observation by people passing by, or that the parking space could not have been used by anybody visiting the motel. *Shannon v. State*, 252 So. 3d 358, 360, 362 (Fla. 2d DCA 2018).

Based on the foregoing case law, the dog sniff conducted on the common external walkway in front of Appellant's motel room did not constitute a search under the Fourth Amendment. The walkway was open to use by others, including other motel guests, visitors, and employees, and it was in the nature of a public, not private, area. Just as other persons, the police could walk down the motel walkway without a warrant. Case law distinguishes common areas outside a hotel/motel room from the curtilage of a home. While a resident of a private home has a reasonable expectation of privacy on the front porch or in the backyard, a motel guest does not have a reasonable privacy expectation in a common area. The walkway in front of a motel room is not curtilage, and Appellant does not contend otherwise, because it does not harbor the intimate activity associated with the sanctity of a home and the privacies of life. While the walkway was in close proximity to Appellant's motel room, it was not within an enclosure surrounding his room/residence only, it was for use by the public, and there was no evidence that Appellant took any steps to protect it from observation by people passing by or that it was used for other purposes by him. As such, *Jardines* and other cases involving a dog sniff on the curtilage of a private home do not apply here.

Therefore, we affirm the denial of Appellant's motion to suppress.

AFFIRMED.

ROWE, C.J., and WINOKUR, J., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jessica J. Yeary, Public Defender, and Maria Ines Suber, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Damaris E. Reynolds, Assistant Attorney General, Tallahassee, for Appellee.