

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 2204

STATE OF LOUISIANA

VERSUS

JUSTIN H. ROSIER

Judgment Rendered: JUN 17 2011

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Docket Number 473533

Honorable Martin E. Coady, Judge Presiding

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Justin H. Rosier

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

GUIDRY, J.

The defendant, Justin H. Rosier, was charged by bill of information on count one with production of marijuana, a Schedule I controlled dangerous substance, and on count two with possession of a firearm while in possession of marijuana,¹ violations of La. R.S. 40:966A(1) and La. R.S. 14:95E. The defendant entered a plea of not guilty on both counts. The trial court denied the defendant's motions to suppress evidence and statements. This court denied the defendant's writ application seeking review of the trial court's denial of the motions to suppress. State v. Rosier, 10-0675 (La. App. 1st Cir. 5/20/10) (unpublished writ action). The defendant withdrew his former plea and entered a plea of guilty as charged on both counts pursuant to State v. Crosby, 338 So. 2d 584, 588 (La. 1976). The defendant was sentenced to five years imprisonment at hard labor on both counts, to be served concurrently. The defendant now appeals, challenging the trial court's denial of his motions to suppress. For the following reasons, we affirm the convictions and sentences.

STATEMENT OF FACTS

While the defendant entered a guilty plea to the charges, foregoing a trial, the following integral facts and circumstances unfolded during the motion to suppress hearing. On or about July 2, 2009, law enforcement officers with the St. Tammany Parish Sheriff's Office went to a residence located in a cul-de-sac on 84653 Camus Lane in Covington, Louisiana to execute an arrest warrant for the defendant's brother, Jason Rosier. While on the property, Lieutenant Keith Rogers discovered suspected marijuana plants cultivated near a structure described as a shed, shop, or outbuilding separate from the home. The officers then obtained and executed a search warrant for the property.

¹ See La. R.S. 40:964, Schedule I(C)(19).

DISCUSSION

In his sole assignment of error, the defendant challenges the trial court's denial of his motions to suppress evidence and statements. The defendant specifically argues that the arrest warrant for Jason Rosier did not justify the warrantless intrusion onto his property that resulted in the discovery of marijuana plants, which was the basis for the search warrant subsequently obtained. The defendant further argues that the area where the evidence was discovered is part of the curtilage of his home. The defendant notes that his property was surrounded by fences and thick woods, and that the private dirt road leading to his property displayed signs prohibiting trespassing and/or designating the property as private. The defendant acknowledges that the gate was open, but notes that the home and area where the marijuana plants were found were not visible from the public road; the plants were visible only after the officers travelled past the signs, gate, and around a curve in the private drive. The defendant also notes that there was no reason to suspect any illegal activity was taking place at his address.

The defendant contends that the State was unable to provide any evidence whatsoever to support the assumption that Jason Rosier was likely to be found at the location. The defendant describes the expedition as a "hunt," as opposed to a pinpoint arrest mission. In this regard, the defendant notes that when the officers first arrived on the property, his employee informed them that the property belonged to the defendant. The defendant further notes that the license plates on vehicles and trailers observed prior to the discovery of the marijuana substantiated his ownership of the property. The defendant contends that the officers did not have consent or exigent circumstances to justify entering the property. The defendant contends that the issue presented herein was addressed by the U.S. Supreme Court in Steagald v. United States, 451 U.S. 204, 212-16, 101 S.Ct. 1642, 1648-50, 68 L.Ed.2d 38 (1981), holding that a search warrant was required to search the home of a third party for the

subject of an arrest warrant. Citing State v. Byers, 359 So. 2d 84 (La. 1978), the defendant concludes that the plain view and open fields doctrines are inapplicable in the instant case.

The Fourth Amendment to the United States Constitution and Article I, Section 5 of the Louisiana Constitution protect persons against unreasonable searches and seizures. A defendant adversely affected may move to suppress any evidence from use at a trial on the merits on the ground that it was unconstitutionally obtained. La. C. Cr. P. art. 703A. The Fourth Amendment extends to protect the "curtilage" of a home from unconstitutional searches. "[T]he extent of the curtilage is determined by factors that bear upon whether an individual reasonably may expect that the area in question should be treated as the home itself." United States v. Dunn, 480 U.S. 294, 300, 107 S.Ct. 1134, 1139, 94 L.Ed.2d 326 (1987). In determining whether an area outside the home is curtilage, courts consider: the proximity of the area to the home, whether the area is within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from outside observation. Dunn, 480 U.S. at 301, 107 S.Ct. at 1139. The U.S. Supreme Court explained that these factors are not to be mechanically applied; instead they are helpful to the extent they shed light on the ultimate inquiry of "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." Dunn, 480 U.S. at 301, 107 S.Ct. at 1139-40. Not all locations are protected by the Fourth Amendment. Unless specific steps have been taken to exclude the public from the area searched, the defendant has no reasonable expectation of privacy. See Byers, 359 So. 2d at 87.

Absent exigent circumstances or consent, a law enforcement officer cannot legally search for the subject of an arrest warrant in the home of a third party without first obtaining a search warrant. Steagald, 451 U.S. at 213, 101 S.Ct. at 1648. However, as noted in Payton v. New York, 445 U.S. 573, 602-03, 100 S.Ct. 1371,

1388, 63 L.Ed.2d 639 (1980), an arrest warrant alone will suffice to enter a suspect's own residence to effect his arrest. Specifically, an arrest warrant, founded on probable cause, gives law enforcement officers "the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." Payton, 445 U.S. at 603, 100 S.Ct. at 1388; State v. Barrett, 408 So. 2d 903, 904-05 (La. 1981). See also La. C. Cr. P. art. 224.

In accordance with the plain view doctrine, a law enforcement officer who has a right to be where he is may seize objects in plain view. See Coolidge v. New Hampshire, 403 U.S. 443, 465-66, 91 S.Ct. 2022, 2037-38, 29 L.Ed.2d 564 (1971). The plain view doctrine renders a warrantless search reasonable: (1) if the police officer is lawfully in the place from which he views the object; (2) where the object's incriminating character is immediately apparent; and (3) the officer has a lawful right of access to the object. See Horton v. California, 496 U.S. 128, 136-37, 110 S.Ct. 2301, 2307-08, 110 L.Ed.2d 112 (1990).

A trial court's ruling on a motion to suppress the evidence is entitled to great weight, because the court had the opportunity to observe the witnesses and weigh the credibility of their testimony. State v. Jones, 01-0908, p. 4 (La. App. 1st Cir. 11/8/02), 835 So. 2d 703, 706, writ denied, 02-2989 (La. 4/21/03), 841 So. 2d 791. Correspondingly, when a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion, i.e., unless such ruling is not supported by the evidence. See State v. Green, 94-0887, p. 11 (La. 5/22/95), 655 So. 2d 272, 281; Jones, 01-0908 at 4, 835 So. 2d at 706. However, a trial court's legal findings are subject to a de novo standard of review. See State v. Hunt, 09-1589, p. 6 (La. 12/1/09), 25 So. 3d 746, 751.

In this case, the officers were attempting to execute an arrest warrant for the defendant's brother, Jason Rosier, that was issued in Florida. This was the sole basis

for the officers' arrival at the location in question, 84653 Camus Lane. Lieutenant Rogers testified that prior to the instant incident, he went to the residence in question concerning child custody issues, but was unaware of the names of the individuals involved and only knew that "a large family" lived there. Further, Lieutenant Rogers was familiar with the defendant from non-legal sporting activities, but did not know the defendant by his first name and was unaware of the fact that he lived at the residence in question. Based on a copy of his Louisiana driver's license record and information received from a law enforcement database called "Think Stream," the officers concluded that Jason Rosier lived at this address. This address was also provided when the officers indirectly accessed records from a database identified as NCIC from the laptop computer in their police car. The officers acknowledged that the databases could have also included several other possible addresses for Jason Rosier, as multiple addresses per individual were common. The officers were unaware of the issue date of the driver's license for Jason Rosier, for which they had a print-out, or of when the information they accessed in the databases had been entered or updated.

When the officers first arrived in the area, they stopped a vehicle that they observed as it was departing Camus Lane. The driver identified himself as an employee of Justin Rosier and indicated that an individual named Justin Rosier was a resident of the Camus Lane address, but did not specifically mention anyone named Jason. Deputy Jeremy Church testified that he and the other officers still believed Jason Rosier lived at the residence after speaking with the defendant's employee. Camus Lane extends through a wooded area and comes to a dead end with driveways extending from the roadway at different angles. The residence in question was bordered by a barbed wire fence with a gate that was open when the officers arrived. The officers went down the unpaved driveway before the home came into view, as it was not visible from the road. Lieutenant Rogers could not remember if all of the

“private property” and “no trespassing” signs, depicted in photographs submitted by the defense, were posted on the date in question. Deputy Church recalled a sign being on the telephone pole on the date in question.

The officers concluded that no one was in the home at the time of their arrival, as no one responded when Deputy Church knocked on the door. Lieutenant Rogers testified that he was not sure if the structure on the property was another residence, a storage shed, or an auto shop when he approached the door. Like the home, no one was present in the structure at the time. Lieutenant Rogers walked back to the home to inform the other officers that no one was in the structure. As he stood on the porch of the home, Lieutenant Rogers saw the suspected marijuana plants toward the rear of the structure. Lieutenant Rogers walked toward the plants for a closer observation and called Deputy Church over to also observe them. The plants were not visible from the driveway.

In its reasons for judgment, the trial court found that there was no constitutionally cognizable “intrusion” onto the private property of another and noted that the officers did not search the home before obtaining a search warrant. The trial court noted that while a fence surrounded the entire property, the gate to the fence was open when the officers approached. The court further found that the area where the plants were discovered was not immediately adjacent to or used for the intimate activities of the home, but rather near another building on the property, not included within an enclosure immediately surrounding the home.

In Steagald, the facts reflect that pursuant to an arrest warrant for an individual named Ricky Lyons, Drug Enforcement Administration agents entered the residence of a third party, Gary Steagald, to search for Lyons without first obtaining a search warrant. In the course of searching the home, the agents found cocaine and other incriminating evidence, but did not find Lyons. Steagald was then arrested and indicted on federal drug charges. His pre-trial motion to suppress all evidence

uncovered during the search of his home, on the ground that it was illegally obtained because the agents had failed to obtain a search warrant, was denied by the trial court, and Steagald was convicted. The U.S. Fifth Circuit Court of Appeals affirmed. The U.S. Supreme Court granted certiorari. The U.S. Supreme Court narrowed the issue to whether an arrest warrant -- as opposed to a search warrant -- is adequate to protect the Fourth Amendment interests of persons not named in the warrant, when their homes are searched without their consent and in the absence of exigent circumstances. The U.S. Supreme Court reversed the judgment of the Fifth Circuit Court of Appeals, concluding that in order to render the search in that case reasonable under the Fourth Amendment, a search warrant was required. Steagald, 451 U.S. at 222, 101 S.Ct. at 1653.

The instant case is factually distinguishable from Steagald. Unlike Steagald, in this case, the officers did not enter the defendant's residence before obtaining a search warrant. Instead, while in the course of attempting to execute the arrest warrant for the defendant's brother, the officers noticed marijuana plants being grown outside the defendant's home, near a separate structure. Moreover, regardless of whether the residence and property were owned by the defendant, the officers obtained information that led them to believe that the subject of the arrest warrant, Jason Rosier, resided at the address in question. Testimony indicated that the "Think Stream" database was customarily used by law enforcement and was highly reliable. The same address was on a copy of a Louisiana driver's license record for Jason Rosier. Acting on that information, the officers went to Camus Lane, which, as noted by Deputy Church, was within their jurisdiction, to execute the arrest warrant. The testimony presented at the motion to suppress hearing reflects that the officers believed that the residence on Camus Lane was Jason Rosier's residence. We find that the officers' reliance on the information obtained from the database and from Jason Rosier's Louisiana driver's license record was reasonable. It is also worth

noting that, unlike in the instant case, the officers in Steagald obtained the address where the subject of the arrest warrant was supposedly temporarily located as a guest, as opposed to a resident, from a confidential informant (who lived in a different state from that of the subject of the warrant), as opposed to a government source.

In Byers, a hunter was trespassing on a 640-acre tract of land owned by Burt and Rollin Williams in October 1976, when the hunter observed what he suspected to be marijuana and reported his suspicion to local law enforcement. The chief of police and the unnamed hunter returned to the private property. Later, the chief of police and a deputy went on the property and looked at the plants. Both of these entries on the land were made without a search warrant and without the consent of the owner. In early 1977, one of the officers returned to the Williams' property again to determine whether marijuana was still being cultivated. This entry was also made without a warrant or consent. The officer concluded that there were signs of cultivation and instituted surveillance of the property. On May 26, 1977, officers again went on the property and observed several vehicles parked on a private logging road near the plots of marijuana. The officers proceeded to the area they knew to be cultivated, saw the defendants, and arrested all but one of them without a warrant. The remaining defendant was arrested the following day. Byers, 359 So. 2d at 85. The defendants' motions to suppress, which were filed on the ground that the warrantless search and seizures violated both the Fourth Amendment of the U.S. Constitution and the Louisiana Constitution, were denied. Byers, 359 So. 2d at 86. The defendants filed writs of certiorari. The Louisiana Supreme Court noted the marijuana was not visible from the public road, posted signs announced that the logging road was private and prohibited entry of the land, and a chain barred access to the private road, though it was down at the time of the arrest and seizure. The Court concluded that, under those circumstances, the defendants had a legitimate expectation of privacy. Byers, 359 So. 2d at 86.

Regarding the State's reliance upon the plain view doctrine, the Court in Byers noted, in pertinent part, that the doctrine does not apply if the view is from a place that the officers have no right to be. The Court found that the officers observed the marijuana from a point of observation where they had no right to be without a search warrant and, accordingly, concluded that the plain view doctrine was inapplicable. Byers, 359 So. 2d at 87.

The facts in Byers are distinguishable from the instant case. Herein, the officers were lawfully at the defendant's home, as they were attempting to execute an arrest warrant at that address, which they reasonably believed to be the address of the defendant's brother, the subject of the arrest warrant. An arrest may be made on any day and at any time of the day or night, and at any place. La. C. Cr. P. art. 216. Under these circumstances, the officers did not need a search warrant or the owner's consent to enter the property. Thus, contrary to the defendant's assertion, the plain view doctrine does apply here. The marijuana plants were in plain view, as they were visible from the porch of the home. Lieutenant Rogers did not have to move anything to be able to view the plants, and the incriminating nature of the plants was readily apparent. The officers were reasonable in approaching the home in an attempt to determine if the suspect was within. When an officer observes evidence of a crime from a vantage point that does not intrude upon a protected area or when that protected area is entered with prior justification, there is no violation of the search-warrant rule, because there has been no search. State v. Brown, 370 So. 2d 525, 527 (La. 1979). Accordingly, we find that the trial court did not err or abuse its discretion in denying the motions to suppress. This sole assignment of error lacks merit.

CONVICTIONS AND SENTENCES AFFIRMED.