STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0903
A19-1029

Susan Mary Paulson, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent (A19-0903)

and

State of Minnesota,
Respondent (A19-1029),

vs.

Susan Mary Paulson,
Appellant.

Filed March 2, 2020
Affirmed
Reyes, Judge

Blue Earth County District Court
File Nos. 07-CV-19-57; 07-CR-18-5381

Jacob M. Birkholz, Birkholz & Associates, L.L.C., Mankato, Minnesota (for appellant)

Keith Ellison, Attorney General, Charles Roehrdanz, Alexandria Mountain, Assistant Attorneys General, St. Paul, Minnesota; and

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Larkin, Judge; and Reyes, Judge.

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

REYES, Judge

In this consolidated appeal from her conviction of driving while intoxicated (DWI) and the district court's order sustaining the revocation of her driver's license by the Commissioner of Public Safety (commissioner), appellant argues that the district court improperly concluded that the warrantless entry into her open garage did not violate her Fourth Amendment rights. We affirm.

FACTS

In the morning of December 23, 2018, police responded to a victim's report of a hit-and-run collision involving appellant Susan Mary Paulson. The victim followed a maroon vehicle to a garage at appellant's residence and provided the police with a description of the vehicle and its license-plate number. Appellant sat in her car in her open garage for approximately two minutes before the police arrived. When Officer Reinbold arrived, he could clearly see her car and the inside of her garage from the street. Officer Reinbold approached the garage, stood near the back of appellant's vehicle, began questioning her about the hit and run with the intent "to get the information for the other driver and facilitate that exchange between the two," and stepped into the garage during the conversation that followed. A second officer arrived several minutes later.

Appellant admitted to officer Reinbold that she hit another car and drove away. During the conversation, officer Reinbold smelled alcohol and noticed her slow reactions

and slurred speech. Appellant had parked too close to the vehicle next to her and could not open her door, so the officers helped her exit her vehicle. Officer Reinbold administered a field sobriety test inside the garage, which she failed. Both officers then escorted appellant to a squad car, where she requested a preliminary breath test, which resulted in a 0.261 alcohol concentration. The officers took appellant to the police station and read her the Minnesota Breath Test Advisory. Appellant waived her right to speak with an attorney and agreed to take the test, which resulted in a 0.26 alcohol concentration.

Based on appellant's alcohol concentration, the commissioner revoked appellant's driving privileges under Minn. Stat. §§ 169A.50-.53 (2018). The State of Minnesota charged appellant with two counts of second-degree gross misdemeanor DWI under Minn. Stat. § 169A.20, subd. 1(1), (5) (2018) and one count of misdemeanor traffic collision under Minn. Stat. § 169.09, subd. 2 (2018). The district court held a combined contested omnibus and implied-consent hearing at which both officers and appellant testified. By an order following the hearing, the district court denied appellant's motion to suppress the evidence of the DWI in the criminal complaint and sustained the commissioner's revocation of her license. The district court then held a stipulated-evidence trial under Minn. R. Crim. P., Rule 26.01, subdivision 4, at which the parties stipulated to the police cruiser footage and the district court's findings from its pretrial order. The district court found appellant guilty of all three misdemeanor counts, and sentenced her to 365 days in jail. This appeal from the conviction and order denying rescission follows.

D E C I S I O N

Appellant argues that the evidence of her intoxication resulted from an unconstitutional warrantless search of her garage because (1) she did not leave the garage impliedly open to use by the public and (2) even assuming the police had an implied license to enter the garage, they violated its purpose, time, and spatial limitations. We disagree.

When the facts are not in dispute, as here, the validity of a search is a question of law that we review de novo. *See State v. Bauman*, 586 N.W.2d 416, 419 (Minn. App. 1998), *review denied* (Minn. Jan. 27, 1999). We overturn conclusions of law only if the district court erroneously applied the law to the facts of the case. *Dehn v. Comm'r of Pub. Safety*, 394 N.W.2d 272, 273 (Minn. App. 1986).

I. Appellant left the garage impliedly open to use by the public.

The United States and Minnesota constitutions prohibit police from entering constitutionally protected areas without a warrant, with limited exceptions. U.S. Const. amend. IV; Minn. Const. art. I, § 10; *In re Welfare of B.R.K.*, 658 N.W.2d 565, 578 (Minn. 2003). This constitutional protection extends to all places where an individual has a reasonable expectation of privacy, including the home and its curtilage. *See State v. Chute*, 908 N.W.2d 578, 583 (Minn. 2018); *B.R.K.*, 658 N.W.2d at 572. Garages adjoining the home fall within the definition of curtilage.[1] *See State v. Crea*, 233 N.W.2d 736, 739 (Minn. 1975); *Haase v. Comm'r of Pub. Safety*, 679 N.W.2d 743, 746 (Minn. App. 2004) ("This principle is so well grounded that many courts do not undertake any expectation-of-

[1] While the garage was not attached to the home in this case, both parties consider it curtilage.

privacy analysis."). To justify a warrantless entry into a home or its curtilage, the state must show either consent or probable cause and exigent circumstances, without which we must suppress the fruits of the search. *Wong Sun v. United States*, 371 U.S. 471, 484, 83 S. Ct. 407, 415-16 (1963); *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992).

If curtilage is "impliedly open" for public use, then police may enter it if they have legitimate business reasons. *Crea*, 233 N.W.2d at 739. In determining whether curtilage is impliedly open, courts analyze (1) whether the curtilage invites members of the public to seek and establish contact with a resident and (2) whether an objectively reasonable person would use that curtilage to do so. *See Florida v. Jardines*, 569 U.S. 1, 8 n.2, 133 S. Ct. 1409, 1415-16 (2013); *Chute*, 908 N.W.2d at 586. Different areas of curtilage may meet these criteria based either on customary norms or the particular circumstances. *See Jardines*, 569 U.S. at 8, 133 S. Ct. at 1415 (noting that front-door knocker provides public with implied license to use front path to approach door and knock); *Tracht v. Comm'r of Pub. Safety*, 592 N.W.2d 863, 865 (Minn. App. 1999), *review denied* (Minn. July 28, 1999) (implying that open garage provided public with implicit license to enter to knock on door within garage that led to home).

Here, appellant sat in her car in an open garage. Relying on *Jardines* and *Tracht*, we see no distinction between establishing contact by using the curtilage to knock on a door and establishing contact by approaching an open garage with appellant sitting in plain sight.

Appellant appears to argue that sitting in her garage for two minutes did not render it impliedly open because she did not have enough time to close it before the police arrived.

As an initial matter, the district court made a credibility determination that appellant had enough time to close the garage door, to which we defer. Minn. R. Civ. P. 52.01 ("[D]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.").

Moreover, curtilage does not become impliedly open when a person "briefly opens a door to enter." *Haase*, 679 N.W.2d at 745, 747 (describing police following defendant into momentarily open garage and preventing door from closing by triggering sensor). In *Haase*, the resident revoked any implied license to enter the open garage by attempting to close the door soon after entering. *Id.* By contrast, from the moment police arrived, appellant sat in her open garage without making an effort to close the door and revoke the implied license. As a result, an objectively reasonable person would have believed the garage was impliedly open and continued that conversation inside the garage.

II. The police did not violate the purpose, time, or spatial limitations of the implied license to enter the garage.

Appellant argues that, even if she left the garage impliedly open, police violated the purpose, time, and spatial limitations of the license. We are not persuaded.

Determining whether curtilage is impliedly open requires examining the scope of the implied license. *See Jardines*, 569 U.S. at 9-10, 133 S. Ct. at 1416-17. The scope of an implied license must comply with purpose, temporal, and space limitations. *Chute*, 908 N.W.2d at 586, 588. We examine each in turn.

A. No purpose-limitation violation

Appellant argues that the police entered the garage to conduct a search, an illegitimate law-enforcement objective that violates the "knock-and-talk rule." We disagree.

The purpose limitation allows the police to enter curtilage only to establish contact with the homeowner. *See Jardines* at 10, 133 S. Ct. at 1417. The knock-and-talk rule normally requires that a police officer proceed to a door to establish contact with the homeowner. *See id.* at 8, 133 S. Ct. at 1415-16 (portraying knock-and-talk rule as allowing police to access curtilage to contact resident without their activity qualifying as a search). But when in impliedly open curtilage, "police are free to keep their eyes open and use their other senses." *Crea*, 233 N.W.2d at 739; *see also California v. Ciraolo*, 476 U.S. 207, 213, 106 S. Ct. 1809, 1812 (1986) (noting that officers may observe clearly visible areas of curtilage from lawful vantage points even when "an individual has taken measures to restrict some views").

Here, the officers approached and entered the garage for the legitimate purpose of inquiring about the hit and run. Then, the officers perceived the smell of alcohol, slurred speech, and delayed reactions, which appropriately expanded the purpose of their entrance to a possible DWI investigation. Even though officer Reinbold testified to having enough information to issue appellant a citation after obtaining her insurance information and license, at that point, the interaction had already turned into a DWI investigation, enabling him to investigate further. *See Crea*, 233 N.W.2d at 739-40 (remarking that once police

are in impliedly open areas of curtilage, they may use their senses to investigate evidence of potential crimes in plain sight).

B. No temporal-limitation violation

Appellant appears to argue that the police violated the temporal limitation by remaining in the garage for too long. We disagree.

The temporal limitation restricts the police to entering the curtilage for a short amount of time, "unless they receive an 'invitation to linger longer.'" *Chute*, 908 N.W.2d at 588 (quoting *Jardines*, 569 U.S. at 8, 133 S. Ct. at 1415). But the police do not need an invitation to linger longer if they enter impliedly open curtilage and observe evidence of potential crimes in plain sight. *See Crea*, 233 N.W.2d at 739-40.

Moreover, the Minnesota Supreme Court has held that an officer spending several minutes investigating stolen property located on curtilage violates the time limitations of the implied license to access that curtilage. *Chute*, 908 N.W.2d at 588. But the supreme court characterized this length of time as a violation because it "exceed[ed] the amount of time that visitors were impliedly invited to stay on [defendant's] property *before* actively seeking him out." *Id.* (emphasis added). By contrast, even though the officers remained in the garage for about eight minutes, they entered to converse immediately with appellant, with whom they interacted the entire time.

C. No spatial-limitation violation

Appellant appears to argue that the police violated the spatial limitation by moving around inside to the garage too much. We disagree.

The supreme court has held that police violate the spatial limitation "[b]y moving away from the path that a visitor would reasonably use to access the house or garage." *Id.* at 586, 588 (concluding that homeowner gave public implied license to access his land because driveway functioned as "definable pathway" to back-door entrance to house and garage). Here, by contrast, the police followed a path that a visitor would reasonably use by entering the garage directly from the driveway and standing only next to appellant's vehicle.

In sum, the police entered an impliedly open area of curtilage and kept their interaction within a sufficiently limited scope. Under the particular facts of this case, we conclude that the police did not violate appellant's Fourth Amendment rights. Because the district court appropriately considered evidence of appellant's intoxication, we affirm appellant's conviction and the commissioner's revocation of her driver's license.

Affirmed.