STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0358

Larry Francis Stevens, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed November 23, 2020
Affirmed
Gaïtas, Judge

Wabasha County District Court
File No. 79-CV-19-964

Jay S. Adkins, Godwin Dold, Rochester, Minnesota (for appellant)

Keith Ellison, Attorney General, William Young, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Hooten, Judge; and Gaïtas, Judge.

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

GAÏTAS, Judge

Appellant Larry Stevens appeals the district court's order sustaining the revocation of his driver's license after his arrest for impaired driving. Specifically, Stevens alleges that a state trooper violated his federal and state constitutional right to be free from unreasonable searches and seizures by (1) entering the deck of his home without first

obtaining a search warrant and (2) unlawfully seizing him by knocking on his sliding-glass door and asking him to step outside. Because the trooper reasonably believed that the deck facing the driveway was an entrance open to the public, and the trooper did not unlawfully seize Stevens by knocking on the door and asking him to talk, we conclude that Stevens's constitutional rights were not violated. We affirm.

FACTS[1]

On the night of September 5, 2019, a Minnesota State Patrol Trooper was dispatched to an accident in Elgin. Dispatch informed the trooper that a single vehicle had crashed and the driver was potentially impaired. When the trooper arrived at the scene, he observed a pickup truck that had been removed from a ditch and was now parked in a nearby driveway. He spoke with a medical technician who was still on scene. The medical technician told the trooper that the driver had walked up the driveway to his house. According to the medical technician, the driver admitted he had been at a bar in Elgin. Preparing for a possible drunk-driving investigation, the trooper asked another officer who was en route to bring a preliminary-breath-test unit to the house at the top of the driveway. Then, the trooper walked up the dark driveway to make contact with the driver.

The property had a unique layout. The driveway was long and steep, leading to a two-story house on a hill. On the left side of the house, stairs went up to an unlit door on the second level. The driveway ended near an attached garage with a deck on top. A darkened door next to the garage appeared to enter the garage. The deck, located directly

[1] Our summary of the facts is based on the evidence presented at Stevens's implied-consent hearing before the district court.

above the garage, was visible from the driveway. It was accessed via a short walkway alongside the house, which led to a small gate and stairway. On the deck, the house could be entered from a door and a separate sliding-glass door. That night, the only light on the property was emanating from the sliding-glass door.

The trooper approached the house from the walkway on the right side, which led to the deck. He chose this route because the "light was on, and it just seemed like a natural way to approach the house." He could not recall whether the gate leading to the steps was open or closed.

When the trooper reached the deck, he could see Stevens through the sliding-glass door. Stevens was sitting at a table, slumped over. The trooper knocked on the glass. Stevens seemed unsteady as he stood up from the table and approached the door. He slid the door open.

The trooper, who had Stevens's car keys, told Stevens that he was there to talk about the crash. Stevens seemed confused at first, denying any crash. The trooper asked Stevens to step outside to discuss the accident. He requested Stevens's identification and told him that he needed to file an accident report. During their interaction, the trooper noticed that Stevens smelled of alcohol and was slurring his speech. Stevens eventually admitted that he had been at a bar in Elgin, but he said he could not recall how much he had to drink. Ultimately, Stevens exited the home and the trooper conducted field sobriety tests, assisted by other officers who had arrived. Stevens was then arrested for driving while impaired.

Following his arrest, the commissioner of public safety revoked Stevens's driving privileges under Minn. Stat. §§ 169A.50-.53 (2018).[2] Stevens requested an implied-consent hearing and moved to suppress the evidence, arguing that the trooper had violated his federal and state constitutional right to be free from unreasonable searches and seizures by entering his deck without a search warrant and seizing him. The district court held an evidentiary hearing on Stevens's motion. The trooper and Stevens's son testified at the hearing. After the hearing, the district court denied Stevens's motion to suppress and sustained the revocation of Stevens's driving privileges. This appeal followed.

D E C I S I O N

The United States and Minnesota Constitutions prohibit law enforcement officers from conducting "unreasonable searches and seizures." U.S. Const. amend IV; Minn. Const. art. I, § 10. In a challenge to the constitutionality of a search or seizure, the government has the burden of establishing that the evidence was lawfully obtained. *State v. Edstrom*, 916 N.W.2d 512, 517 (Minn. 2018).

The district court concluded that the commissioner of public safety satisfied this burden. First, the court determined that Stevens's deck was an area open to public use, and that the trooper entered the deck to perform a valid "knock and talk," which did not amount to a search requiring a warrant. Second, the district court held that the trooper had probable cause to arrest Stevens, and therefore, there was no unlawful seizure.

[2] Additionally, the state charged Stevens with one count of third-degree driving while impaired in violation of Minn. Stat. § 169A.20, subd. 2 (2018) (refusal), and one count of fourth-degree driving while impaired in violation of Minn. Stat. § 169A.20, subd. 1 (2018).

Stevens challenges the district court's legal conclusions. In reviewing a district court's order denying a motion to suppress, appellate courts review factual findings for clear error and legal determinations de novo. *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012).

I. The trooper did not perform a search that required a search warrant when he entered Stevens's deck.

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." *See State v. Chute*, 908 N.W.2d 578, 583 (Minn. 2018). "[W]hen it comes to the Fourth Amendment, the home is first among equals." *Florida v. Jardines*, 569 U.S. 1, 6, 133 S. Ct. 1409, 1414 (2013). Given the sanctity of the home, the constitutional protection against government intrusion also encompasses the area "immediately surrounding and associated with the home." *Id.* (quoting *Oliver v. United States*, 466 U.S. 170, 180, 104 S. Ct. 1735, 1742 (1984)). This area is often called the curtilage. *Id.* An area is considered curtilage for the purpose of the Fourth Amendment if it "harbors the 'intimate activity associated with the sanctity of a [person's] home and the privacies of life.'" *Chute*, 908 N.W.2d at 584 (quoting *Oliver*, 466 U.S. at 180, 104 S. Ct. at 1742).

The parties agree that Stevens's outdoor deck, which abuts his home, is part of the curtilage. There is no dispute, therefore, that the deck garnered constitutional protection.

The next question in evaluating Stevens's constitutional claim is whether the trooper's act of entering the deck—the curtilage of Stevens's home—was a search that required a warrant. A search occurs when law enforcement officers seek evidence by invading an individual's reasonable expectation of privacy or by trespassing on private property. *Chute*, 908 N.W.2d at 583 (citing *Katz v. United States*, 389 U.S. 347, 360, 88 S. Ct. 507, 516 (1967) (Harlan J. concurring) and *United States v. Jones*, 565 U.S. 400, 404-05, 411, 132 S. Ct. 945, 949 (2012)). Although the home is sacrosanct, not all intrusions onto the curtilage of the home are constitutionally offensive. The law recognizes that homeowners typically grant an "implied license" for visitors to approach the home for ordinary business, such as delivering mail. *Jardines*, 569 U.S. at 8, 133 S. Ct. at 1415. Even when a visitor is a police officer, an intrusion onto the curtilage may not be a search. *See id.* An officer may enter the curtilage of a home without a search warrant so long as the officer remains within the scope of any implied license and has a legitimate reason to be there. *See Chute*, 908 N.W.2d at 586; *see also State v. Crea*, 233 N.W.2d 736, 739 (Minn. 1975) ("[P]olice may walk on the sidewalk and onto the porch of a house and knock on the door if they are conducting an investigation and want to question the owner . . . .").

As an initial matter, the district court found that Stevens's deck was impliedly open for public use. In determining whether curtilage is impliedly open, courts should consider customary social norms. *Jardines*, 569 U.S. at 8-9, 133 S. Ct. at 1415-16. A door knocker, for example, implies an invitation or license to approach the door. *Id.* (citation omitted). Additionally, courts must consider the individual features of the property at issue. "The particular layout and use of a property may show that the homeowner allows visitors to

seek them out from the back door or other locations on the property." *Chute*, 908 N.W.2d at 586 (citing *United States v. Shuck*, 713 F.3d 563, 568 (10th Cir. 2013)).

We agree with the district court that the deck was impliedly open for public use. Although there were multiple doors to Stevens's house, each accessible in some fashion from the driveway, none of these doors were illuminated as the trooper made his way toward the house in the dark to make contact with the pickup truck driver. The deck area was illuminated, however. This was not a deck in the rear of the house. It was atop the garage, which intersected the driveway. And because it was plainly visible from the driveway, anyone entering the property could see the deck area. Moreover, the deck appeared to be a central access point to the home, if not *the* central access point. The trooper was certainly under the impression that he was approaching the front door when he walked to the deck. According to his testimony, this seemed to be the "natural way" to get to the house. Given the particular layout of Stevens's house, the district court did not err in concluding that the deck was impliedly open for public use.

Next, we must consider whether the trooper acted within the scope of the implied license when he entered the deck and approached the sliding-glass door. An implied license to enter the curtilage of a home does not allow unfettered access to the property. The scope of an implied license is limited. There is a "spatial limitation"—an officer cannot deviate from the path that a visitor to a home might reasonably take. *See Chute*, 908 N.W.2d at 586-87 (citing *Jardines*, 569 U.S. at 10, 133 S. Ct. at 1416). There is a "purpose limitation"—an officer's purpose must be limited to what a "private citizen might do" when visiting the property, such as knocking on the door to make contact with the

property owner. *Id.* at 588. And there is a temporal limitation—an officer can enter the curtilage only briefly unless invited to stay longer. *Id.* at 588.

The district court concluded that the trooper engaged in a valid "knock-and-talk," noting that he went directly to the illuminated sliding-glass door he observed from the driveway with the sole purpose of investigating the accident. *See Chute*, 908 N.W.2d at 581 n.1 (stating that a "knock-and-talk"—"a procedure used by law enforcement officers that involves 'knocking on the door and seeking to speak to an occupant for the purpose of gathering evidence'"—is not a search (quoting *Jardines*, 569 U.S. at 21, 133 S. Ct. at 1423 (Alito, J. dissenting))).

We agree with the district court that the trooper did not exceed the limitations of the implied license. First, the trooper's path up the driveway, up the walkway, through the gate, and onto the deck was within the spatial scope of the implied license. The trooper went directly to the most obvious place to make contact with the homeowner—a lit area that appeared to be a primary access point to the house. Likewise, his decision to approach the illuminated sliding-glass door was within the scope of the license. A visitor hoping to find the homeowner after dark likely would have selected the door where the light was coming from, which was just steps from the doorway on the deck.

Second, the trooper complied with the purpose limitation of the implied license. The purpose limitation requires police to enter a home's curtilage only to establish contact with the homeowner. *See Jardines*, 569 U.S. at 10, 133 S. Ct. at 1417. Here, the trooper's sole purpose in approaching the sliding-glass door was to make contact with Stevens, which he immediately did.

Finally, the trooper complied with the temporal limitation of the implied license. The time spent on Stevens's property was brief and lasted only as long as necessary to investigate the accident.

Considering all the circumstances, including the layout of Stevens's home and the fact that the trooper entered Stevens's property to investigate an accident that had just occurred near the end of Stevens's driveway, we agree with the district court that there was no trespassory search requiring a warrant. The trooper did not violate the federal or state constitutions in accessing the home via the deck.

II. The trooper did not unlawfully seize Stevens.

Under the Minnesota Constitution, which offers more protection than the Fourth Amendment, a seizure occurs when, "in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter."[3] *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) (quoting *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995)); *see Florida v. Royer*, 460 U.S. 491, 497-98 (1983); *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). Some of the circumstances suggesting that an individual has been seized include (1) the presence of multiple officers, (2) the display of a weapon, (3) physical touching of the individual, (4) the use of language or tone indicating that compliance with

[3] In *California v. Hodari D.*, 499 U.S. 621, 626, 111 S. Ct. 1547, 1551 (1991), the United States Supreme Court held that a seizure occurs under the Fourth Amendment when the police use physical force or a person submits to a police show of authority. Following the *Hodari* decision, our supreme court declined to follow this holding, concluding that the Minnesota Constitution affords more protection than the federal constitution. *In re E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993).

the police may be compelled. *Harris*, 590 N.W.2d at 98 (citing *Mendenhall*, 446 U.S. at 554-55). Absent any such evidence, "otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person." *Id.* at 98 (quotation omitted).

We do not believe that the trooper's conduct amounted to a seizure. A seizure occurs "when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *Cripps*, 533 N.W.2d at 391 (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16, 88 S. Ct. 1868, 1879 n.16 (1968)). The trooper's act of knocking on the sliding-glass door and asking Stevens to come outside did not restrain Stevens's liberty.

Even if the trooper did seize Stevens, however, not every seizure automatically violates the constitution. Where an officer has probable cause to believe that a driver is impaired, the officer can lawfully seize and arrest the driver. *See State v. Laducer*, 676 N.W.2d 693, 697-98 (Minn. App. 2004); Minn. Stat. § 629.34, subd. 1 (2018) (authorizing a warrantless arrest when an officer has probable cause to believe person arrested committed a crime). Probable cause to arrest exists when the objective facts are such that "a person of ordinary care and prudence, viewing the totality of the circumstances objectively, would entertain an honest and strong suspicion that a specific individual has committed a crime." *State v. Ortega*, 770 N.W.2d 145, 150 (Minn. 2009) (emphasis omitted); *In re Welfare of G.M.*, 560 N.W.2d 687, 694-95 (Minn. 1997).

We agree with the district court that the trooper had probable cause to arrest Stevens for driving while impaired at the outset of their encounter. The trooper knew that a driver had left the scene of a single-car accident and walked to the home. He was aware that the

driver had admitted to coming from a bar. The only light emanating from the home was at the sliding-glass door, where the trooper found Stevens. And while the trooper stood outside the door, he saw that Stevens—who was slumped over a table, and then was unsteady on his feet—appeared to be impaired. Given these circumstances, the trooper was entitled to seize Stevens without a warrant. *See Heuton v. Comm'r Pub. Safety*, 541 N.W.2d 361, 363 (Minn. App. 1995) (finding that a single-car accident, in conjunction with a medical professional's report of an odor of alcohol on the driver's breath, provided probable cause to arrest driver).

The record supports the district court's factual findings, and the district court correctly concluded that the trooper did not conduct a search and had probable cause to arrest Stevens for impaired driving. Thus, we affirm the district court's order denying Stevens's motion to suppress and sustaining the revocation of his driver's license.

Affirmed.