STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0455

Scott Thomas LaClair, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed October 26, 2020
Reversed
Frisch, Judge

Anoka County District Court
File No. 02-CV-19-5176

Adam Kujawa, Ambrose Law Firm, PLLC, Minneapolis, Minnesota (for appellant)

Keith Ellison, Attorney General, Leah M.P. Hedman, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Cleary, Judge.*

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

FRISCH, Judge

Appellant challenges the district court's order sustaining the revocation of his driver's license, arguing that he was unlawfully seized when an officer parked in front of

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

appellant's driveway, entered the curtilage of appellant's property, and opened the car door without first knocking or announcing the presence of law enforcement. We reverse.

FACTS

While on normal patrol around midnight on August 31, 2019, Officer Jacob Cree of the Lino Lakes Police Department noticed a vehicle parked in a residential driveway with its headlights illuminated. When he again drove by an hour later, the headlights were still illuminated. Officer Cree parked at the end of the driveway and activated his squad car's spotlight and arrow stick. He walked up the driveway, intending to knock on the front door.

Officer Cree noticed a puddle in the driveway, which he suspected was urine, and footprints leading toward the vehicle. He turned and walked toward the vehicle. When he reached the passenger side of the vehicle, he turned on his flashlight and saw appellant Scott Thomas LaClair in the driver's seat and slumped over the console. Officer Cree observed that LaClair was breathing but thought LaClair's body should be repositioned to keep his airway open.

Officer Cree called dispatch and walked over to the driver's side of the vehicle. Without first knocking or announcing his presence, Officer Cree opened the driver's-side door, startling LaClair awake. When asked why he was sleeping in his car, LaClair responded that he had "too much to drink" but "got home safe." Officer Cree administered field sobriety tests and arrested LaClair on suspicion of driving while impaired.

LaClair contested his resulting license revocation. The district court held an implied-consent hearing and sustained the revocation. This appeal follows.

D E C I S I O N

LaClair argues that Officer Cree unlawfully seized him without constitutional justification. In pertinent part, LaClair challenges Officer Cree's initial entry onto the driveway of the residence. The commissioner argues that Officer Cree was free to enter the driveway without a warrant because that area is traditionally open to the public. We review the issue of whether a driver's Fourth Amendment rights were violated de novo where the facts are undisputed. *See Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010).

The United States and Minnesota Constitutions prohibit law enforcement from unreasonably seizing an individual. U.S. Const. amend. IV; Minn. Const. art. I, § 10; *State v. Lopez*, 698 N.W.2d 18, 21 (Minn. App. 2005). Police must have a warrant to enter a constitutionally protected area, subject to limited exceptions. U.S. Const. amend. IV; Minn. Const. art. I, § 10; *Haase v. Comm'r of Pub. Safety*, 679 N.W.2d 743, 746 (Minn. App. 2004). "If police enter a constitutionally protected area without a warrant, that entry is presumed to be unreasonable, and evidence obtained as a result must be suppressed" if no exception applies. *Haase*, 679 N.W.2d at 747.

These protections extend to the "curtilage," or the area adjacent to a home. *Florida v. Jardines*, 569 U.S. 1, 6, 133 S. Ct. 1409, 1414 (2013). The path to the front door, however, invites visitors to approach and knock, and an officer may use this implied license just as any other citizen. *Id.* at 7, 133 S. Ct. at 1415. The relevant question is whether an officer's behavior falls within the scope of the implied license that extends to any member of the public. *See id.* ("Complying with the terms of that traditional invitation does not

require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters."). The scope of an implied license is limited in time and purpose as determined by social norms. *See State v. Chute*, 908 N.W.2d 578, 586-88 (Minn. 2018) (concluding that officer violated social norms by taking a circuitous route and by lingering too long).[1]

The implied license to approach a home does not extend through all hours of the night. *See Jardines*, 569 U.S. at 20, 133 S. Ct. at 1422 (Alito, J., dissenting) ("Nor, as a general matter, may a visitor come to the front door in the middle of the night without an express invitation."); 569 U.S. at 9 n.3, 133 S. Ct. at 1416 n.3 (accepting dissent's view that "quite rightly" concluded that a nighttime knock would be "a cause for great alarm" and outside the scope of an implied invitation to approach). A late-night approach does not fall within the purview of an implied license absent an emergency or some evidence that the homeowner accepts visitors during those hours. *United States v. Lundin*, 817 F.3d 1151, 1159-60 (9th Cir. 2016); *People v. Frederick*, 895 N.W.2d 541, 546-47 (Mich. 2017) (discussing *Jardines*, 569 U.S. at 8, 133 S. Ct. at 1415); *see also United States v. Quintero*,

[1] The commissioner relies on *State v. Crea*, in which officers entered a curtilage because they observed a vehicle that had just been seen transporting stolen property. 233 N.W.2d 736, 738 (Minn. 1975). But in *Crea*, the officers entered the curtilage for the purpose of conducting "legitimate business," and the court concluded, in part, that the officers had probable cause to investigate. *See id.* at 739-40 (concluding that officers had "very strong probable cause" and acted reasonably when shining flashlight into window). Moreover, the supreme court later clarified the standard: an officer's implied license to enter a curtilage is "limited to what 'any private citizen might do' when visiting another's property." *Chute*, 908 N.W.2d at 588 (quoting *Jardines*, 569 U.S. at 8, 133 S. Ct. at 1415). Here, Officer Cree testified that he entered the property merely for the purpose of notifying the homeowners that their headlights were left on, and the commissioner concedes that this did not constitute an emergency.

648 F.3d 660, 667 (8th Cir. 2011) (concluding that the time of day is a relevant circumstance when analyzing whether a consent to search is voluntary).

Here, the district court reasoned that a driveway "is a place that an ordinary visitor would be expected to go" for the purpose of "notify[ing] the homeowner that his or her headlights were still on." The district court did not consider that Officer Cree approached the home at 1:00 a.m. or conclude that an ordinary visitor would be expected to enter a driveway at that time to notify a homeowner of illuminated headlights. The record shows, and the commissioner concedes, that there was no sign of emergency when Officer Cree entered LaClair's driveway or approached the residence. LaClair was not visible in his vehicle. Officer Cree did not testify that anyone else was present. He did not observe any indication of imminent danger to anyone. There is no evidence that the lights in the home were illuminated or of any other sign that the occupants of the home would welcome visitors during sleeping hours. And the circumstances observed by Officer Cree before his entry onto the property did not give rise to any reasonable suspicion of criminal activity. Instead, Officer Cree testified that he entered the property only to alert the homeowner of the potential for a dead car battery, which the commissioner concedes is a non-emergency. These are not the circumstances where an ordinary citizen would approach a home in the middle of the night. Accordingly, Officer Cree entered a constitutionally protected area without a warrant or an implied license, and evidence obtained thereafter must be suppressed.

Although we need not reach the remaining questions of whether Officer Cree unconstitutionally seized LaClair by (1) parking his squad car in a manner that purportedly

blocked LaClair's vehicle from exiting the driveway[2] or (2) opening LaClair's car door without first knocking or announcing the presence of law enforcement, we note that the commissioner conceded at oral argument that certain of these actions were not consistent with "best practices."

Reversed.

[2] The parties dispute whether Office Cree actually blocked LaClair's vehicle from leaving the driveway. We need not reach the question of whether the district court clearly erred in its factual findings given our disposition.