908 N.W.2d 578
Supreme Court of Minnesota.

STATE of Minnesota, Appellant,
v.
Quentin Todd CHUTE, Respondent.

A15-2053
|
Filed: March 14, 2018

Attorneys and Law Firms

Lori Swanson, Attorney General, Saint Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Adam E. Petras, Assistant County Attorney, Saint Paul, Minnesota, for appellant.

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, Saint Paul, Minnesota, for respondent.

Syllabus by the Court

The police officer's warrantless entry onto the curtilage of respondent's home and subsequent investigation of a camper trailer was objectively a nonconsensual search that violated respondent's Fourth Amendment rights, not a permissible "knock-and-talk" procedure.

Affirmed.

OPINION

CHUTICH, Justice.

Respondent Quentin Todd Chute was convicted of possession of a stolen camper trailer. He challenges the district court's denial of his motion to suppress evidence obtained when an officer entered his property, examined the stolen camper, and then, after obtaining Chute's consent, searched his home. Chute contends that the officer's examination of the camper violated his Fourth Amendment rights and tainted his subsequent consent to the officer's search of his home. The district court concluded that the officer's entry onto Chute's property was lawful because the camper was on a driveway that was impliedly open to the public, and that the officer had authority to seize the camper under the plain-view doctrine. The court of appeals reversed, and the State sought review. We conclude that because the officer's conduct objectively amounted to a search and was not a permissible "knock-and-talk,"[1] the warrantless search violated Chute's Fourth Amendment rights. We therefore affirm the court of appeals.

FACTS

In July 2011, Maplewood resident B.F. discovered that his pop-up tent camper had been stolen, and he

[1] "Knock-and-talk" is 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." *Florida v. Jardines*, 569 U.S. 1, 21, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013).

reported the theft to the police. Several months later, B.F. was driving on County Road D in Maplewood when he saw what he thought was his camper sitting in Chute's backyard.

Chute's house is located between two other houses on County Road D, facing north. His lot is bordered on three sides by a tall, opaque fence on the east side, a small pond on the south side, and some trees on the west side. The north side of the property is unfenced and borders County Road D, which has no curb.

The district court found that the property has two driveways. The first, on the west side of the house, is a short asphalt driveway leading to a detached garage. The second is a dirt driveway accessed from the county road, running along the home's east side, and looping around in the backyard. The district court found that the dirt driveway is "well-worn" and forms "a turna-round or circle" in the backyard. The camper was parked at the end of the dirt driveway, near the south-east corner of the backyard. Two other cars were parked near the camper on the dirt driveway. A second garage is located in the back of the house on the west side of the lot.

After spotting the camper, B.F. made a U-turn and drove past again to verify that it was his stolen camper. B.F. later testified that he could recognize the camper from County Road D because he could see a series of bolts that he had installed along the rear overhang of the roof when making repairs on the camper. B.F. called the police.

When the responding officer arrived, he verified from the end of the dirt driveway, while still on County Road D, that the camper on Chute's property matched the description of the stolen trailer in the police report made at the time of the theft. The officer then drove onto the dirt driveway and parked his squad car approximately halfway down the driveway, which he estimated to be about 200 feet from County Road D. The officer and B.F. then walked to the camper. At some point before they reached the camper, B.F. told the officer about the unique set of bolts on the trailer.

When he reached the camper, the officer noticed that the camper's license plate and vehicle identification number (VIN) had been removed. He called the manufacturer and learned that a partial VIN was stamped on the camper's frame. The officer located the partial VIN, which was consistent with that of B.F.'s stolen camper. The officer then entered the camper and located an item of B.F.'s personal property.

The officer testified that, once he verified that the camper was the one stolen from B.F., he "tried to make contact with the homeowner." He started walking toward the back of the home to knock on the door, but when he heard voices from the garage in the backyard, he decided to knock there instead. Chute answered the door and, after a discussion, allowed the officer to search the garage. After finding several items of B.F.'s personal property from the camper in the garage, the officer asked Chute for permission to search his home, and Chute consented. The officer found additional

items of personal property belonging to B.F. in Chute's home.

The State charged Chute with possession of stolen property valued at over $1,000. *See* Minn. Stat. § 609.53, subd. 1 (2016); Minn. Stat. § 609.52, subd. 3(3)(a) (2016). Chute moved to suppress "all evidence found by police pursuant to a warrantless search" of his property. After a hearing, the district court made the findings described above. Without explicitly finding that the dirt driveway was within the curtilage of Chute's home, the district court found that, even if it were part of the curtilage, the driveway was "impliedly open to the public" because it appeared that "the area in question was regularly used by cars carrying persons seeking a back door entrance to the house and garage." The court relied on evidence that the area was a "well-worn dirt area," that a "definable pathway" existed leading to the turnaround area at the back of the house, and that two other vehicles were parked near the camper. The district court further found that "it is very clear to the court that the unique bolts on the camper were visible from the driveway, and after seeing the bolts, it was immediately apparent that the camper was the one stolen" from B.F.

The district court concluded that, under the plain-view doctrine, the officer had authority to seize the camper "provided he had lawful right of access to it." Because the camper was located on a driveway that was "impliedly open to the public to access [Chute's] home," the district court concluded that the officer "had a lawful right of access to the camper." As a result, the

court denied Chute's motion to suppress. After a trial, a jury found Chute guilty of possessing stolen property. *See* Minn. Stat. § 609.53, subd. 1.

The court of appeals reversed in relevant part. *State v. Chute*, 887 N.W.2d 834 (Minn. App. 2016). The court of appeals held that the plain-view doctrine did not justify the officer's search of the camper because he did not have a lawful right of access to it. *Id.* at 843. Although the driveway was within the home's curtilage, the court said, and "[g]enerally, police may not search the curtilage without a warrant," *id.* at 841 (citing *State v. Milton*, 821 N.W.2d 789, 799 (Minn. 2012)), "police with legitimate business may enter areas within the curtilage of the home if those areas are impliedly open to the public," *id.* (citing *State v. Crea*, 305 Minn. 342, 233 N.W.2d 736, 739 (1975)). Whether an officer's entry onto curtilage is legitimate, the court stated, is "determined by considering the scope of the implied license that homeowners extend to visitors." *Id.* (citing *Florida v. Jardines*, 569 U.S. 1, 6-11, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013)). The court concluded that the officer exceeded the scope of the implied license to enter the driveway because he entered with the purpose to conduct a search. *Id.* at 842.

The court further held that the unlawful search of the camper tainted Chute's subsequent consent to the search of his home, and therefore all evidence from that search should also be suppressed. *Id.* at 843-44. The court of appeals declined to address whether the remaining evidence was sufficient to support Chute's

conviction and remanded to the district court. *Id.* at 846-47.

The State filed a petition for review, arguing that the court of appeals erred when it held that the officer's examination of the camper was an unlawful search. We granted review.

ANALYSIS

I.

When reviewing a pretrial order denying a motion to suppress, we review the district court's factual findings for clear error and its legal determinations de novo. *Milton*, 821 N.W.2d at 798. At issue is whether the officer's examination of the camper violated the Fourth Amendment.

The Fourth Amendment to the Constitution of the United States protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Warrantless searches are presumed to be unreasonable unless one of "a few specifically established and well delineated exceptions" applies. *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967); *see also State v. Licari*, 659 N.W.2d 243, 250 (Minn. 2003) (citing *Katz* for the same proposition).

Although the parties agree that the officer acted without a warrant, they disagree as to whether the officer's actions were a "search" within the meaning of

the Fourth Amendment. Under the Fourth Amendment, a search occurs when government agents seek to obtain information by invading a person's reasonable expectation of privacy, *Katz*, 389 U.S. at 360, 88 S.Ct. 507 (Harlan, J. concurring), or by trespassing upon one of the kinds of property enumerated in the Fourth Amendment, *United States v. Jones*, 565 U.S. 400, 404-05, 411, 132 S.Ct. 945, 181 L.Ed.2d 911 (2012).[2]

The parties disagree about whether the officer performed a trespassory search of Chute's home when he entered the property to examine the camper. This question requires us to consider whether the camper was located on property that was afforded the constitutional protections of the home. If we conclude that the camper was located on such property, known as the "curtilage," we must then consider whether an exception to the warrant requirement would allow the officer

[2] Although the parties discuss the plain-view exception, it is not relevant to our analysis because it is an exception to the warrant requirement for a *seizure*, not for a *search*, of property. The plain-view doctrine enables law enforcement to make a warrantless seizure if officers are "lawfully in a position from which they view [the] object, if [the object's] incriminating character is immediately apparent, and if the officers have a lawful right of access to the object." *Minnesota v. Dickerson*, 508 U.S. 366, 375, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993). As the Court stated in *Horton v. California*, "[i]f 'plain view' justifies an exception from an otherwise applicable warrant requirement, . . . it must be an exception that is addressed to the concerns that are implicated by seizures rather than by searches." 496 U.S. 128, 134, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990). No seizure occurred here.

to examine the camper without a warrant.[3] We address each question in turn.

A.

The State contends that the camper was parked too far from Chute's home to be protected by the Fourth Amendment. The "land immediately surrounding and associated with the home," the curtilage, is "part of the home itself for Fourth Amendment purposes." *Oliver v. United States*, 466 U.S. 170, 180, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984). If the camper was located on the curtilage, the officer's actions must comply with the Fourth Amendment. If the camper was outside the curtilage, however, the Fourth Amendment would not govern the officer's examination. *See id.* at 183, 104 S.Ct. 1735 (concluding that a governmental intrusion on an open field is not a "search" within the meaning of the Fourth Amendment).

To determine whether the camper was located within the curtilage of the property, we look to "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." *United States v. Dunn*, 480 U.S. 294, 301, 107 S.Ct.

[3] Although the district court assumed without deciding that the camper was located on the curtilage, the court's factual findings and the exhibits in the record are more than sufficient for us to determine, as a matter of law, whether the camper was located within the curtilage. We note that neither party requested a remand and both briefed the curtilage issue based on the findings and the record.

1134, 94 L.Ed.2d 326 (1987). An area has a sufficiently close connection to the home if it harbors the "intimate activity associated with the sanctity of a [person's] home and the privacies of life." *Oliver*, 466 U.S. at 180, 104 S.Ct. 1735 (citation omitted) (internal quotation marks omitted). "[F]or most homes, the boundaries of the curtilage will be clearly marked; and the conception defining the curtilage—as the area around the home to which the activity of home life extends—is a familiar one easily understood from our daily experience." *Id*. at 182 n.12, 104 S.Ct. 1735.

The Supreme Court has identified four relevant factors to determine whether a disputed area falls within the curtilage: "[1] the proximity of the area claimed to be curtilage to the home, [2] whether the area is included within an enclosure surrounding the home, [3] the nature of the uses to which the area is put, and [4] the steps taken by the resident to protect the area from observation by people passing by." *Dunn*, 480 U.S. at 301, 107 S.Ct. 1134. This test is not a rigid one, *see id*., but is designed to "determine whether an individual reasonably may expect that an area immediately adjacent to the home will remain private." *Oliver*, 466 U.S. at 180, 104 S.Ct. 1735. Applying these factors to Chute's backyard and dirt driveway, we conclude that the camper was parked in the curtilage of the single-family home.

The first *Dunn* factor—"the proximity of the area claimed to be curtilage to the home"—weighs in Chute's favor. 480 U.S. at 301, 107 S.Ct. 1134. The part of Chute's dirt driveway on which the trailer was

parked is in close proximity to his suburban home. Aerial photos show that Chute does not live on a large piece of rural property; he lives in a single-family home in a Saint Paul suburb. His dirt driveway runs directly next to the eastern side of the home and then forms a turnaround behind Chute's home in the backyard. The backyard and driveway of a home are often considered to be within the curtilage of a home. *See*, *e.g.*, *State v. Lewis*, 270 N.W.2d 891, 897 (Minn. 1978) (holding that "the driveway to a house is part of its curtilage for purposes of executing a search warrant"); *Crea*, 233 N.W.2d at 739-40 (recognizing that the driveway of a home was within the curtilage); *see also United States v. Carter*, 360 F.3d 1235, 1241 (10th Cir. 2004) (recognizing the backyard as part of the curtilage of the home); *Dow Chem. Co. v. United States*, 749 F.2d 307, 314 (6th Cir. 1984), *aff'd*, 476 U.S. 227, 106 S.Ct. 1819, 90 L.Ed.2d 226 (1986) ("The backyard and area immediately surrounding the home are really extensions of the dwelling itself."); *State v. Walker*, 154 Wis.2d 158, 453 N.W.2d 127, 138 (1990) (holding that a backyard was within the curtilage of the home), *abrogated on other grounds by State v. Felix*, 339 Wis.2d 670, 811 N.W.2d 775, 790 (2012).

The second *Dunn* factor—"whether the area is included within an enclosure surrounding the home"—weighs slightly in Chute's favor. 480 U.S. at 301, 107 S.Ct. 1134. Aerial photographs admitted at trial show that the backyard and dirt driveway are bordered on three sides by a tall, opaque fence on the east side, quite close to where the trailer was parked, a wooded

area with a pond to the south, and trees to the west side. Although a privacy fence runs along only one side of Chute's property, the fence, pond, and trees clearly demark Chute's backyard and provide privacy. *See Daughenbaugh v. City of Tiffin*, 150 F.3d 594, 599 (6th Cir. 1998) (explaining that enclosures formed by natural barriers are entitled to the same protection as those formed by artificial barriers); *United States v. Reilly*, 76 F.3d 1271, 1277-78 (2nd Cir. 1996) (holding that a dilapidated fence, hedgerows, and woods were an enclosure).

The third *Dunn* factor—"the nature of the uses to which the area is put"—weighs heavily in Chute's favor. 480 U.S. at 301, 107 S.Ct. 1134. The district court found that the driveway and turnaround were "regularly used by cars carrying persons seeking a back door entrance to the house and garage." From its well-worn appearance, the dirt driveway and turnaround suggest that Chute's main route of entering his home was through the backyard and back door. Moreover, photographs showed that Chute stored scrap materials near the turnaround. In addition, the district court specifically found that the area of Chute's backyard where the camper was located was "part of a turnaround or circle that is part of the driveway." An exhibit shows that in the center of that turnaround was a fire pit with a horizontal log upon which persons could sit to enjoy a fire. These activities are closely related to the home and associated with the privacies of life. *See Widgren v. Maple Grove Twp.*, 429 F.3d 575, 582 (6th Cir. 2005) (relying, in part, on the existence of a fire pit in area

near a house in holding that the area was within the curtilage).

The last factor—"the steps [Chute took] to protect the area from observation by people passing by"—is less conclusive. 480 U.S. at 301, 107 S.Ct. 1134. The camper was protected from view on three sides by a privacy fence to the east and by trees to the south and west. Chute's home partially blocked the view of his backyard from the north, but the dirt driveway where the camper was parked is visible from County Road D if an observer stands at its northern end and looks directly down it. The curtilage of a home, however, need not be completely shielded from public view. Homeowners "may expose portions of the curtilage of [their] home[s] to public view while still maintaining some expectation of privacy in those areas." *United States v. Wells*, 648 F.3d 671, 678 (8th Cir. 2011).

Applying the *Dunn* factors to the unique facts of this case and then balancing them, we conclude that the area of Chute's backyard on which the camper was parked was "so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protections." *Dunn*, 480 U.S. at 301, 107 S.Ct. 1134. It was curtilage.

B.

Having concluded that the camper was located on the curtilage of Chute's property and within the protections of the Fourth Amendment, we must next consider whether the officer's investigation "was

accomplished through an unlicensed physical intrusion." *Jardines*, 569 U.S. at 7, 133 S.Ct. 1409. Central to this question is whether Chute had given the officer express or implied license to enter onto the curtilage. *Id.* at 8, 133 S.Ct. 1409.

The Supreme Court has examined Fourth Amendment protections using two separate analytical frameworks: the reasonable-expectation-of-privacy analysis and, more recently, a property-rights analysis. The government might violate the Fourth Amendment by intruding into a space where the defendant has a "reasonable expectation of privacy," *Katz*, 389 U.S. at 360, 88 S.Ct. 507 (Harlan, J., concurring), or by "physically intruding on a constitutionally protected area" to gain information, *Jones*, 565 U.S. at 406 n.3, 132 S.Ct. 945. The latter form of Fourth Amendment violation has been referred to as the "classic trespassory search,"[4] *Jones*, 565 U.S. at 412, 132 S.Ct. 945, violating the "property-rights baseline" of Fourth Amendment protection, *Jardines*, 569 U.S. at 11, 133 S.Ct. 1409.

In *Jardines*, the Supreme Court recognized that a person is typically invited to "approach the home by the front path, knock promptly, wait briefly to be received and then (absent invitation to linger longer)

---

[4] This term "trespassory search" is a misnomer because a violation of the Fourth Amendment can occur without triggering a separate violation of a state's laws governing criminal trespass. *See*, *e.g.*, Minn. Stat. § 609.605, subd. 1(b)(3) (2016) ("A person is guilty of a misdemeanor if the person intentionally: . . . trespasses on the premises of another and, without claim of right, refuses to depart from the premises on demand of the lawful possessor. . . .").

leave." 569 U.S. at 8, 133 S.Ct. 1409. The scope of the implied license to approach includes all routes by which homeowners accept visitors to their property. *United States v. Shuck*, 713 F.3d 563, 567 (10th Cir. 2013). 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. *See id.* at 568 (finding route to back door was a "normal route of access" for visitors).

In this case, the district court found that Chute had given members of the public an implied license to access his land to seek "a back door entrance to the house and garage" by using the driveway and turnaround area on which the camper was parked. The court supported this factual finding by noting that the driveway was a "well-worn dirt area" that exhibited a "definable pathway," and that two other vehicles were parked near the camper. *Cf. N. States Power Co. v. Franklin*, 265 Minn. 391, 122 N.W.2d 26, 30 (1963) (stating that whether a landowner impliedly consented to allow another to enter his or her land is a question of fact). Because the district court's finding that Chute granted the public an implied license to access his land by using this dirt driveway is supported by the record, it is not clearly erroneous. *State v. Jenkins*, 782 N.W.2d 211, 223 (Minn. 2010) ("We review the district court's factual findings for clear error. . . .").

Because Chute had impliedly granted the public access to his backyard to seek "a back door entrance to the house and garage," we must next consider whether the officer acted within the scope of this implied license

while on the property. The scope of the implied license "is limited not only to a particular area but also to a specific purpose." *Jardines*, 569 U.S. at 9, 133 S.Ct. 1409. The license, therefore, has a spatial limitation and a purpose limitation. To determine whether the officer acted within the limitations of this implied license, we must determine the officer's purpose, objectively, for entering the curtilage. *See id.* at 10, 133 S.Ct. 1409 (looking to the behavior of an officer to determine whether, objectively, the officer's purpose complied with the implied license). Based on the evidence, we conclude that the officer's intrusion violated the limitations of the implied license to enter Chute's property.

Viewed objectively, the evidence demonstrates that the officer's purpose for entering the curtilage was to conduct a search. Photographs in the record show that the camper was parked at the end of Chute's driveway, past the house, in the back corner of Chute's backyard. To inspect the camper, the officer had to deviate substantially from the route that would take him to the back door of the house or to the garage. The officer walked directly to the camper, inspected it thoroughly, both inside and out, and only turned back toward the house when he was satisfied that the camper was stolen. Anyone observing the officer's actions objectively would conclude that his purpose was not to question the resident of the house, but to inspect the camper, "which is not what anyone would think he

had license to do."[5] *Jardines*, 569 U.S. at 10, 133 S.Ct. 1409; *see also Crea*, 233 N.W.2d at 739 (holding that the intrusion of police onto a driveway, notwithstanding that the driveway was part of the curtilage, did not violate the Fourth Amendment because police had license to cross the driveway to contact the homeowner).

The federal circuits have split as to whether an implied license requires an officer to first approach the front door of a house when attempting a "knock-and-talk."[6] In *United States v. Wells*, the Eighth Circuit Court of Appeals held that officers violated the scope of an implied knock-and-talk license when they "made no attempt to raise Wells at the front door," and instead

---

[5] In some cases, circumstances may imply that a person has consent to approach and to investigate objects on the curtilage of a home. For example, a prominently placed "For Sale" sign could signal an invitation to inspect the merchandise. *Cf. State v. Hiebert*, 156 Idaho 637, 329 P.3d 1085, 1092 (Idaho Ct. App. 2014) (holding that a visitor to defendant's home, which was also a salvage yard, would reasonably "feel free to look around and closely inspect items they may be interested in purchasing"). The State has presented no evidence that visitors to Chute's property were impliedly invited to inspect the camper.

[6] *Compare Covey v. Assessor of Ohio Cty.*, 777 F.3d 186, 193 (4th Cir. 2015) ("An officer may also bypass the front door (or another entry point usually used by visitors) when circumstances reasonably indicate that the officer might find the homeowner elsewhere on the property."), *and Shuck*, 713 F.3d at 568 ("Here, the evidence showed that by approaching the back door as they did, the officers used the normal route of access, which would be used by anyone visiting this trailer."), *with Carman v. Carroll*, 749 F.3d 192, 199 (3d Cir. 2014) ("The 'knock and talk' exception requires that police officers begin their encounter at the front door, where they have an implied invitation to go."), *rev'd on other grounds*, ___ U.S. ___, 135 S.Ct. 348, 190 L.Ed.2d 311 (2014).

walked directly "to the back corner of the home from where they had a view of the entire backyard." 648 F.3d at 680. The court explained: "To the extent that the 'knock-and-talk' rule is grounded in the homeowner's implied consent to be contacted at home, we have never found such consent where officers made no attempt to reach the homeowner at the front door." *Id.* at 679.

Like the Eighth Circuit, we have never held that a "knock-and-talk" license allows officers to proceed to the backyard of the property before attempting to contact the resident at the front door. But even assuming that the officer was permitted to bypass the front door of Chute's house, he was not permitted to stray from a visitor's normal route of access. As even the dissent in *Jardines* recognized, "[a] visitor cannot traipse through the garden, meander into the backyard, or take other circuitous detours that veer from the pathway that a visitor would customarily use." 569 U.S. at 19, 133 S.Ct. 1409 (Alito, J., dissenting); *accord id.* at 9, 133 S.Ct. 1409 (explaining that "social norms that invite a visitor to the front door do not invite him there to conduct a search"). By moving away from the path that a visitor would reasonably use to access the house or garage, the officer violated the spatial limitations of the implicit license.

The officer also violated the temporal limitations of the implicit license. In *Jardines*, the Court noted that an implied license authorizes visitors to enter the curtilage "briefly," unless they receive an "invitation to linger longer." *Id.* at 8, 133 S.Ct. 1409. The dissent also focused on temporal limitations, stating that the

license "is limited to the amount of time it would customarily take to approach the door, pause long enough to see if someone is home, and (if not expressly invited to stay longer), leave." *Id.* at 20, 133 S.Ct. 1409 (Alito, J., dissenting). Although the record does not clearly show how long the officer remained by the camper, he was there long enough to inspect the missing license plate and VIN sticker, call the manufacturer and locate the partial VIN on the frame, and go inside the camper to search for B.F.'s personal property. The officer spent several minutes, at the very least, inspecting the camper, which exceeds the amount of time that visitors were impliedly invited to stay on Chute's property before actively seeking him out. The officer, therefore, also violated the time limitations of the implicit license.

In sum, under *Jardines*, the officer's implied license to enter Chute's property was limited to what "any private citizen might do" when visiting another's property. 569 U.S. at 8, 133 S.Ct. 1409 (citation omitted) (internal quotation marks omitted). Just as a private citizen would not be impliedly invited to explore Chute's backyard and snoop in a parked camper, the officer had no right to inspect the camper without attempting to contact Chute first. *See id.* at 9 n.3, 133 S.Ct. 1409. That conduct is beyond the objectively reasonable scope of any implied license to enter Chute's property.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

McKEIG, Justice (dissenting).

In July 2011, Maplewood resident B.F. inadvertently spotted his stolen pop-up camper as he was driving by the home of defendant Quentin Todd Chute. Although the camper was parked on Chute's property, it was located some distance away from Chute's house and was plainly visible from the public roadway. B.F. called the police and an officer responded to Chute's residence. Together, B.F. and the officer walked down the dirt driveway adjacent to Chute's home and verified that this was the stolen camper belonging to B.F. before approaching the home.

The majority holds that the officer committed a warrantless search in violation of the Fourth Amendment because the officer entered the "curtilage" of Chute's home with the purpose of conducting a search. Because I do not agree that the officer trespassed onto Chute's protected curtilage before approaching the home to speak to him, I respectfully dissent.

Not all law enforcement investigations conducted on private property constitute a "search" in violation of the Fourth Amendment. Warrantless investigations conducted in "open fields"—areas of a defendant's

property which are not included in the home or its curtilage—do not violate the Fourth Amendment. *Oliver v. United States*, 466 U.S. 170, 176, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984). Accordingly, the first step in determining whether a Fourth Amendment search occurred on Chute's property is determining whether the officer conducted an investigation within the curtilage of Chute's home.

To determine whether an area is curtilage, we apply the four factors articulated by the Supreme Court in *United States v. Dunn*: "[1] the proximity of the area claimed to be curtilage to the home, [2] whether the area is included within an enclosure surrounding the home, [3] the nature of the uses to which the area is put, and [4] the steps taken by the resident to protect the area from observation by people passing by." 480 U.S. 294, 301, 107 S.Ct. 1134, 94 L.Ed.2d 326 (1987). The curtilage determination is thus a fact-intensive one, and our conclusion that an area is curtilage must rely on facts developed in the district court record. *Cf. Garza v. State*, 632 N.W.2d 633, 639 (Minn. 2001) (remanding to the trial court when record was insufficient to determine whether an area was curtilage); *State v. Sorenson*, 441 N.W.2d 455, 458 (Minn. 1989) (noting that "it is impossible to determine from the scant trial court record" whether the area in question was curtilage).

Here, the district court did not make a curtilage determination before deciding that the officer had a lawful right to enter Chute's driveway and examine the camper. Instead, the district court relied on our

decisions in *State v. Krech*, 403 N.W.2d 634 (Minn. 1987), and *State v. Crea*, 305 Minn. 342, 233 N.W.2d 736 (Minn. 1975), to conclude that the unpaved area surrounding Chute's home was a "driveway," and therefore "impliedly open to use by the public," rendering the officer's presence and conduct within the space lawful. The district court did not consider whether any or all of the driveway was included in Chute's curtilage.[1] For that reason, the district court's factual

---

[1] Conspicuously, the majority does not address whether, following *Florida v. Jardines*, 569 U.S. 1, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013), the district court applied the correct legal standard. As the majority notes, *Jardines* introduced a "purpose limitation" on an officer's implied license to trespass on the curtilage. Under *Jardines*, officers may not trespass on the curtilage with the purpose to investigate or search, with the exception that they may walk to the front door with the purpose of soliciting the resident. *Id.* at 8-10, 133 S.Ct. 1409. Other behavior—such as peering through the windows or snooping through the garden—exceeds the scope of the officer's implied license to trespass on the curtilage. *Id.* at 6, 133 S.Ct. 1409.

Krech, and to a greater degree, *Crea*, authorize a much broader range of conduct. In *Crea*, the officers entered the defendant's driveway with the purpose to investigate two purportedly stolen trailers parked therein. 233 N.W.2d at 739. We said that when police are present in areas that are "impliedly open to use by the public," like a driveway, they are "free to keep their eyes open." *Id*. "Because of this, we have no difficulty sustaining the initial intrusion of the police, specifically, their walking onto the driveway *and their examination of the trailers in plain sight*." *Id.* (emphasis added). *Krech*, citing *Crea*, stated that "police do not need a warrant or even probable cause to approach a dwelling *in order to conduct an investigation* if they restrict their movements to places visitors could be expected to go (e.g. walkways, driveways, porches)." 403 N.W.2d at 637 (emphasis added) (internal quotations omitted). Thus, under *Krech* and *Crea*, the key inquiry is whether the area in question is "an area impliedly open to use

findings are not particularly helpful for the purpose of applying the *Dunn* factors.

If we look beyond the limited findings of the district court, the facts that are in the record suggest that the area where the camper was parked, and the path leading up to it, were not included in the curtilage. Based on aerial photographs of Chute's property, it is fair to estimate that the camper was parked approximately 50 feet away from Chute's home, near the far south-eastern corner of the gravel driveway, which looks to be about 20 feet wide and 80-100 feet long. A fence abuts the eastern side of the property, and the back side of the property is lined with trees. Photographs and testimony from the suppression hearing demonstrate that two cars were parked near the camper, but there is no evidence that the driveway or the edge of Chute's property was used for any purpose other than a turn-around or extra parking.[2] It is clear that the camper, the area where it was parked, and the

---

by the public"—in which case investigative behavior is theoretically permissible—not whether an area is within the curtilage. Because these cases set only *spatial* limitations on the implied license to enter the curtilage and suggest that there are no *purpose* limitations on the license, they may require reconsideration in light of *Jardines*.

[2] The majority notes the presence of a "fire pit" situated between Chute's house and the area where the camper was parked. One photograph of Chute's property shows what might generously be called a "burn pile" and a portion of a large log is also visible. Absent findings from the district court, it is impossible to tell whether this area was used as a traditional "fire pit" or gathering place as the majority's comparison to *Widgren v. Maple Grove Twp.*, 429 F.3d 575, 582 (6th Cir. 2005), suggests.

path from the street to the back of the drive were plainly visible and accessible from the street.

Applying the *Dunn* factors, the facts in the record weigh against a conclusion that the area in question was a part of Chute's curtilage. It can be argued that two of the factors—proximity of the area to the home and enclosure of the area—weigh in favor of determining that the area is curtilage, but only narrowly. The majority points out that the driveway "runs directly next to" Chute's house, but that fact is not dispositive of whether the driveway was included in the curtilage. *See United States v. Beene*, 818 F.3d 157, 162 (5th Cir. 2016) (holding that the driveway proximate to the house was not included in the curtilage); *United States v. Wells*, 648 F.3d 671, 678 (8th Cir. 2011) (observing that a driveway alongside house was not entirely within the curtilage).

For the enclosure factor, the majority notes that the area in question was "bordered on three sides by a tall, opaque fence on the east side, a small pond on the south side, and some trees on the west side." Even assuming that a fence on one side and an indeterminate number of trees on two other sides constitute an "enclosure" (which I am not certain that they do) any weight from this factor is completely counter-balanced by the fourth *Dunn* factor—the steps taken by the resident to obscure the area from passers-by. 480 U.S. at 301, 107 S.Ct. 1134. This record makes plain that Chute took absolutely no steps to obscure the camper or the driveway leading to it from the view of passers-by. B.F. discovered his camper by happenstance while

driving past Chute's residence. Such would not be possible unless the camper was plainly visible from the public roadway. Yet, the majority characterizes the area where the camper was parked as "visible from County Road D if an observer stands at its northern end and looks directly down it," suggesting that the area is obscured unless an observer is standing directly in front of Chute's driveway. The record demonstrates otherwise.

Finally, I disagree with the majority's determination that the third *Dunn* factor—"the nature of the uses to which the area is put"—"weighs heavily in Chute's favor." The majority relies on the district court's findings that the "driveway and turnaround were 'regularly used by cars carrying persons seeking a backdoor entrance to the house and garage,'" and that the driveway was well-worn. These findings only speak to the fact that the area in question was part of a driveway; they do not speak to any "intimate" use to which the area was put.

The majority also cites *United States v. Wells* for the proposition that individuals "may expose portions of the curtilage of [their] home[s] to public view while still maintaining some expectation of privacy in those areas." 648 F.3d at 678. In *Wells*, the Eighth Circuit reviewed a district court determination that the *backyard*, including "part of the driveway" *behind* the defendant's home, was included in the protected curtilage of his home. *Id.* at 674, 677. The district court had found that "the backyard area was fenced in on three sides," and "the backyard could not be viewed from the

street." *Id.* at 674. Applying the *Dunn* factors, the Eighth Circuit agreed that the area where law enforcement trespassed and searched was within the curtilage because it was "just behind the home and only a few feet from it." *Id.* at 677. The court noted that the record contained ample evidence that the backyard was put to intimate use—"it contain[ed] a child's wagon and sled, a boat, a lawnmower, a rabbit hutch, and a burn barrel." *Id.* The court credited the fact that the backyard was not visible from the street, and that officers had to walk around the house via the unpaved drive in order to access the area in which they stood. *Id.* Notably, the court said, "Wells certainly exposed his unpaved driveway to public view, and therefore *could not reasonably expect that members of the public would not observe whatever he might do there*." *Id.* at 678 (emphasis added). In so stating, the court clearly distinguished the unpaved driveway, which was fully visible and accessible from the street, from the obscured part of the backyard where law enforcement executed an unlawful search. *Id.*

United States v. Beene provides a useful comparison. In that case, the Fifth Circuit determined that the defendant's driveway, though proximate to the home, was *not* included in the curtilage:

> [O]nly the driveway's proximity to the residence weighs in favor of a finding that it was part of the curtilage of the home. The driveway was open and could be observed from [the] [s]treet. Although fences encircled part of the driveway, nothing blocked its access or

> obstructed its view from the street. Finally, neither [the defendant nor his wife] took steps to protect their privacy, such as posting "no trespassing" signs.

818 F.3d at 162. Despite the proximity factor, the court was clear: based on the *Dunn* factors, "Beene's driveway qualifies as an open field." *Id.* at 163.

We have said that "the term 'curtilage' defies precise definition," *Sorenson*, 441 N.W.2d at 458, but whether an area is constitutionally protected ultimately comes down to whether the defendant possesses an "actual expectation of privacy" in the area that "society is prepared to recognize as reasonable." *State v. Colosimo*, 669 N.W.2d 1, 5 (Minn. 2003) (quoting *Bond v. United States*, 529 U.S. 334, 338, 120 S.Ct. 1462, 146 L.Ed.2d 365 (2000)). It is not sufficient to simply call an area a "backyard" or "driveway" and categorically presume that it is curtilage. Based on this record, I cannot conclude that the area of Chute's property where B.F.'s stolen camper was parked and the path leading to it from the street were included in Chute's curtilage. For that reason, I would hold that the officer lawfully conducted his investigation in "open fields" and then entered Chute's curtilage with the purpose of seeking him out, as is permitted under *Florida v. Jardines*. *See* 569 U.S. at 6, 133 S.Ct. 1409. On these grounds, I respectfully dissent.

GILDEA, Chief Justice (dissenting).

I join in the dissent of Justice McKeig.

887 N.W.2d 834
Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,
v.
Quentin Todd CHUTE, Appellant.

No. A15-2053.
|
Nov. 21, 2016.
|
Review Granted Feb. 14, 2017.
|
Stay Granted Feb. 14, 2017.

Syllabus by the Court

When a police officer enters the curtilage of a home for the purpose of conducting a warrantless search, the officer's position within the curtilage is not lawful and the warrantless search violates the Fourth Amendment.

Attorneys and Law Firms

Lori Swanson, Attorney General, and John Choi, Ramsey County Attorney, Adam E. Petras, Assistant County Attorney, St. Paul, MN, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, MN, for appellant.

Considered and decided by CLEARY, Chief Judge; WORKE, Judge; and ROSS, Judge.

OPINION

CLEARY, Chief Judge.

Appellant Quentin Todd Chute challenges his conviction for receiving stolen property. Appellant argues that the district court erred by denying his motion to suppress the evidence obtained from the warrantless search of his property, by denying his motion to dismiss for violation of his speedy-trial right, and by holding that the evidence was sufficient to support his conviction. We affirm in part, reverse in part, and remand.

FACTS

On October 22, 2011, B.W.F. called the police to report that he located the camper that he had reported stolen in July 2011. An officer met B.W.F. near a residential property on County Road D in Maplewood. The property had two driveways. The first was at least partially asphalt and led to a garage, and the second was dirt and appeared to be used by cars carrying persons seeking a backdoor entrance to the house and garage. B.W.F. pointed out his camper to the officer from a location on County Road D at the end of the dirt driveway. The officer confirmed that the make and model of the camper matched those of the camper that B.W.F. had reported stolen.

The officer parked his squad in the dirt driveway and walked with B.W.F. down the driveway toward the camper. Before arriving at the camper, B.W.F. told the officer that he had repaired the front of the camper,

leaving a unique set of bolts. These bolts were visible from the dirt driveway. At a spot on the driveway next to the camper, the officer could determine that its license plate was removed. The camper's vehicle identification number (VIN) was also removed. The officer called the camper's manufacturer to determine if the VIN was stamped in another location, learned that a partial VIN was stamped on the metal frame, and located the partial VIN, which matched the VIN of the camper stolen from B.W.F. The officer went into the camper and located an item of personal property belonging to B.W.F.

The officer heard a noise coming from the garage, walked to the garage door, and knocked. Appellant answered and identified himself as the property owner. When the officer asked appellant if he owned the camper, appellant said he was storing it for a friend. Appellant consented to the officer's request to search the garage. After finding personal property from the camper in the garage, the officer asked appellant for permission to search the basement and house. Appellant consented, and additional items of personal property from the camper were found in the basement and house.

The State of Minnesota charged appellant with receiving stolen property. Appellant moved to suppress all evidence obtained by police as a result of the warrantless search and to dismiss for violation of his speedy-trial right. The district court denied appellant's suppression motion, holding that the officer's warrantless search of the camper was permissible under the

plain-view doctrine and that appellant consented to the searches of his garage, basement, and house. The district court also denied appellant's motion to dismiss for violation of his speedy-trial right. After a trial, the jury found appellant guilty of receiving stolen property. Appellant filed a motion for a judgment of acquittal, arguing that the evidence was insufficient to sustain a conviction. The district court denied appellant's motion. This appeal followed.

ISSUES

I. Did the district court err by denying appellant's motion to suppress the evidence obtained from the warrantless search of his property?

II. Did the district court err by denying appellant's motion to dismiss for denial of his right to a speedy trial?

III. Did the district court err by holding that the evidence was sufficient to convict appellant of receiving stolen property?

ANALYSIS

I.

Appellant argues that the district court erred by denying his motion to suppress the evidence that police obtained from the warrantless search of his property. "When reviewing a pretrial order on a motion to suppress, we review a court's factual findings under our clearly erroneous standard" and its "legal

determinations, including a determination of probable cause, de novo." *State v. Milton*, 821 N.W.2d 789, 798 (Minn.2012) (citation omitted). A factual finding is clearly erroneous if it lacks evidentiary support in the record, if it was induced by an erroneous view of the law, or if we are left with the definite and firm conviction that a mistake has been made. *State v. Roberts*, 876 N.W.2d 863, 868 (Minn.2016).

The United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. A warrantless seizure is presumptively unreasonable unless an exception applies. *Milton*, 821 N.W.2d at 798.

A.

The district court found that the officer's actions with respect to the camper were permissible under the Fourth Amendment, because the plain-view doctrine was satisfied. Under the plain-view doctrine, police may seize an object that they believe to be the fruit or instrumentality of a crime without a warrant if (1) the object's incriminating nature is immediately apparent; (2) the police are legitimately in the position from which they view the object; and (3) the police have a lawful right of access to the object. *Id.* at 799.

To seize an item under the plain-view doctrine, the police must have probable cause to believe the item seized is of an incriminating nature. *State v. Holland*, 865 N.W.2d 666, 671 (Minn.2015). "Police have

probable cause to seize an object in plain view if the facts available to the officer would warrant a [person] of reasonable caution in the belief that certain items *may* be . . . useful as evidence of crime." *Id.* (quotation omitted). To determine whether an object may be useful as evidence of a crime, an officer may consider background information that casts light on the nature of the object. *Id.* at 672.

Appellant argues that the camper's incriminating nature became immediately apparent only after the officer and B.W.F. saw the bolts on the camper from his dirt driveway. Respondent contends that the plain-view doctrine was satisfied when the officer and B.W.F. viewed the camper from County Road D. While on County Road D, B.W.F. pointed out the camper to the officer. The record suggests that the officer, from a position on County Road D, confirmed that the make and model of the camper on appellant's property matched those of the camper that B.W.F. reported stolen. But these facts were insufficient to warrant a person of reasonable caution in the belief that the camper might be evidence of a crime. The district court's analysis supports this conclusion, as it determined "that the unique bolts on the camper were visible from the driveway, and after seeing the bolts, it was immediately apparent that the camper was the one stolen from B.W.F." The camper's incriminating nature became immediately apparent only after the officer and B.W.F. entered appellant's dirt driveway.

Next, we must determine whether the officer's position on the dirt driveway was lawful. Appellant

argues that the driveway is curtilage and that the officer had no right to be present on it for the purpose of examining the camper. Respondent argues that the officer was legitimately present on the driveway, as the driveway is beyond the curtilage or, alternatively, impliedly open to the public.

"Although the Fourth Amendment refers only to 'persons, houses, papers and effects,' courts generally have held that it applies also to the 'curtilage.'" *State v. Crea*, 305 Minn. 342, 345, 233 N.W.2d 736, 739 (Minn.1975). The curtilage is an area immediately and intimately connected to the home, such that a resident has a reasonable expectation of privacy in it. *Florida v. Jardines*, ___ U.S. ___, 133 S.Ct. 1409, 1414-15, 185 L.Ed.2d 495 (2013); *Milton*, 821 N.W.2d at 799; *Garza v. State*, 632 N.W.2d 633, 639 (Minn.2001). The Minnesota Supreme Court has recognized that the driveway to a house is within a home's curtilage. *State v. Lewis*, 270 N.W.2d 891, 897 (Minn.1978); *Crea*, 305 Minn. at 346, 233 N.W.2d at 739. In *Crea*, the court recognized that police officers entered the curtilage when they walked onto the property's driveway. *Crea*, 305 Minn. at 346, 233 N.W.2d at 739. In *Lewis*, the court held, "the driveway to a house is part of its curtilage for purposes of executing a search warrant." *Lewis*, 270 N.W.2d at 897. By entering appellant's dirt driveway, the officer and B.W.F. entered the curtilage of appellant's home.

Generally, police may not search the curtilage without a warrant. *Milton*, 821 N.W.2d at 799. However, police with legitimate business may enter areas within the curtilage of the home if those areas are

impliedly open to the public. *Crea*, 305 Minn. at 346, 233 N.W.2d at 739. The impliedly-open exception permits police to "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." *Id.* "[I]n such a situation the police are free to keep their eyes open and use their other senses." *Id.*

The district court cited *State v. Krech*, 403 N.W.2d 634 (Minn.1987), for the proposition that "police do not need a warrant or even probable cause to approach a dwelling in order to conduct an investigation if they restrict their movements to places visitors could be expected to go (e.g. walkways, driveways, porches)" and concluded that the officer had a legitimate right to be on appellant's driveway under the impliedly-open exception. *Krech*, 403 N.W.2d at 637 (quotation omitted). Appellant argues that the impliedly-open exception cannot support the officer's entry into his driveway in light of the United States Supreme Court's decision in *Jardines*. *See State v. Brist*, 812 N.W.2d 51, 54 (Minn.2012) ("Supreme Court precedent on matters of federal law, including the interpretation and application of the United States Constitution, is binding on this court."). In *Jardines*, the Supreme Court explained that the legitimacy of an officer's entry into the curtilage is determined by considering the scope of the implied license that homeowners extend to visitors. *Jardines*, 133 S.Ct. at 1415-17. Like private citizens, an officer without a warrant has an implied license to enter the curtilage for the purpose of knocking on the home's door. *Id.* at 1415-16. However, police do not

have a license to enter the curtilage where "their behavior objectively reveals a purpose to conduct a search." *Id.* at 1417. If the police enter the curtilage for the purpose of conducting a warrantless search, that search violates the Fourth Amendment. *Id.* at 1413, 1417-18.

This court has similarly recognized that the legitimacy of an officer's entry into the curtilage depends on his purpose for entering. In *Tracht v. Commissioner of Public Safety* and *Haase v. Commissioner of Public Safety*, we were asked to determine whether police officers violated the Fourth Amendment by their warrantless entries into defendants' garages. *Haase v. Comm'r of Pub. Safety*, 679 N.W.2d 743, 744-45 (Minn.App.2004); *Tracht v. Comm'r of Pub. Safety*, 592 N.W.2d 863, 864-65 (Minn.App.1999), *review denied* (Minn. July 28, 1999). Like a driveway, a garage is within a home's curtilage. *Haase*, 679 N.W.2d at 746; *Tracht*, 592 N.W.2d at 865.

In *Tracht*, officers received a report of a motor vehicle accident and a description of the vehicles involved. *Tracht*, 592 N.W.2d at 864. About two blocks from the accident scene, the officers found a pickup truck registered in Tracht's name that was leaking radiator fluid and had a broken window and exploded airbag. *Id.* The driveway in which the truck was parked led to an attached garage, which had its large, overhead door open. *Id.* The officers entered the garage through the large doorway, knocked on the service door, and explained that they wished to speak with Tracht. *Id.* Because we determined that "[t]he officers entered

the garage for the purpose of knocking on the service door and were not looking for evidence in the garage," we concluded that the officers' warrantless entry into the garage did not violate the Fourth Amendment. *Id.* at 865.

We reached a different conclusion in *Haase.* In *Haase*, an officer responded to a call that a vehicle had crossed the center line several times. *Haase*, 679 N.W.2d at 745. The officer ran a license-plate check, learned that the vehicle was registered to Haase, and went to Haase's residence, where he saw the reported vehicle pulling into the garage. *Id.* The officer parked, walked to the open garage, and stood at the garage's threshold, waiting for the driver to emerge. *Id.* While the officer was waiting, Haase caused the garage door to begin to close. *Id.* The officer interrupted its closing by kicking his leg out to trip the auto-reverse sensor. *Id.* After Haase exited the vehicle, the officer interviewed Haase, who exhibited signs of intoxication. *Id.* We determined that "the officer did not enter the garage to access a door to the home, but to investigate whether Haase was driving while impaired" and concluded that the officer's entry was unreasonable. *Id.* at 747.

Whether the officer was legitimately on appellant's dirt driveway depends upon his purpose for entering the property. The district court did not expressly determine for what purpose the officer entered appellant's driveway. However, the district court's order and the record establish that the officer entered the driveway for the purpose of conducting a search.

The district court found that appellant's property contained two driveways. One driveway was at least partially asphalt and led to a garage, while the other was dirt and appeared to be used by cars carrying persons to the backdoor entrance to appellant's house and garage. After B.W.F. pointed to the camper from a spot on County Road D at the end of the driveway, the officer parked his squad some way into the dirt driveway. Rather than immediately approaching the front entrance of appellant's house, the officer chose to walk with B.W.F. down the dirt driveway toward the camper. This choice suggests that the officer entered appellant's property for the purpose of conducting a search.

The officer also performed several acts to identify the camper as B.W.F.'s stolen property before attempting to contact appellant. After arriving at a spot on the driveway next to the camper, the officer determined that the license plate had been removed. He checked the front of the camper, noted that the VIN was removed, and called the camper manufacturer to determine if the VIN might be stamped in another location. The officer learned that a partial VIN was stamped on the metal frame and located it. The officer went into the camper and found an item of personal property belonging to B.W.F. The officer then heard a noise coming from the garage, walked to the garage door, and knocked. The officer testified, "Once I verified it was the stolen camper, [I] tried to make contact with the homeowner." The officer's behavior in inspecting and entering the camper before seeking the property owner objectively reveals that he entered appellant's

property to conduct a warrantless search. Because the officer entered the dirt driveway for an improper purpose, his presence there was not lawful and the plain-view exception does not apply. The officer's search of the camper violated the Fourth Amendment.

B.

Appellant argues that all observations, evidence, and statements that the officer and B.W.F. obtained while on appellant's property must be suppressed under the exclusionary rule. Under the exclusionary rule, any evidence seized during an unlawful search cannot be used as proof against the victim. *Wong Sun v. United States*, 371 U.S. 471, 484, 83 S.Ct. 407, 416, 9 L.Ed.2d 441 (1963). The exclusionary rule extends to indirect products of invasions and can be used to bar both physical and verbal evidence. *Id.* at 484-86, 416, 83 S.Ct. 407.

The district court concluded that the evidence obtained from the searches of appellant's garage, basement, and house was admissible. Relying upon its conclusion that the officer's actions with respect to the camper were permissible, the district court held that appellant's consent to the searches was not tainted by unlawful behavior and denied appellant's motion to suppress the evidence. Appellant argues that his consent was ineffective, because it was the fruit of an unlawful invasion.

A person's consent to a search is a well-settled exception to the warrant requirement. *State v. Barajas*,

817 N.W.2d 204, 217 (Minn.App.2012), *review denied* (Minn. Oct. 16, 2012). However, we must consider whether police misconduct tainted the consent. *Id.*

> When the police obtain a person's consent to search after unlawful police conduct has occurred, the state must demonstrate both (1) that the subsequently obtained consent was voluntarily given and (2) that the connection between the unlawful conduct and the evidence is so attenuated as to dissipate the evidence of the 'taint' of the unlawful conduct.

Id. Whether consent is voluntary is a question of fact that must be determined by considering the totality of the circumstances. *Id.* at 218. To determine whether taint is purged, "we consider (1) the temporal proximity between the illegal search or seizure and the consent; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct." *Id.* (quotation omitted).

The record does not clearly establish whether appellant's consent was voluntary. Even assuming it was voluntary, respondent must additionally demonstrate that the connection between the unlawful conduct and the challenged evidence is so attenuated as to dissipate the taint of the unlawful conduct. *Id.* Respondent cannot meet its burden.

We first consider the temporal proximity between the unlawful search and appellant's consent. After the officer inspected and entered the camper, he walked to the garage door and knocked. Appellant answered and

identified himself as the property owner. The officer asked if appellant owned the camper, and appellant explained that he was storing it for a friend. According to the officer's testimony, he told appellant and another man who was in the garage that the camper was stolen property, and he learned that the propane tank from the camper had been moved into the garage. The officer asked appellant if he could search the garage, and appellant consented. Because only this conversation separated the officer's unlawful search of the camper and appellant's consent to the search of his garage, the temporal proximity factor weighs against finding the taint purged.

We next determine whether intervening circumstances would have led the police to independently discover the evidence. *Id.* It is unclear whether the officer would have questioned appellant about the camper and requested to search his property but for the illegal search of the camper. This factor weighs slightly against finding the taint purged.

Finally, we consider the purpose and flagrancy of the police misconduct. *Id.* "[P]ermitting the police to obtain consent *after* conducting an unlawful search so as to circumvent the exclusionary rule, even if the police conducted the unlawful search in good faith, would undermine the constitutional limitation on unreasonable searches and seizures and the purpose of the exclusionary rule." *Id.* Because the record shows that the officer entered appellant's property for the purpose of conducting a warrantless search, the final factor weighs against finding the taint purged.

All three factors indicate that the taint of the unlawful search of the camper had not been purged when appellant gave his initial consent to the search of his property. Because respondent cannot show that the taint was purged, respondent cannot claim the consent exception to the warrant requirement. The district court erred by admitting the evidence obtained from the searches of appellant's garage, basement, and house.

Appellant argues that the district court's failure to suppress the unlawfully-obtained evidence requires reversal. We agree. It appears that the vast majority of the evidence obtained was due to the illegal searches, requiring reversal.

II.

Appellant asserts that the district court erred by denying his motion to dismiss for violation of his right to a speedy trial. "Criminal defendants have the right to a speedy trial under the constitutions of both the United States and Minnesota." *State v. Taylor*, 869 N.W.2d 1, 19 (Minn.2015) (citing U.S. Const. amend. VI; Minn. Const. art. I, § 6). We review claims of Sixth Amendment violations de novo. *Id.* Minnesota has adopted the *Barker* test, under which "we must consider: (1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted his or her right to a speedy trial; and (4) whether the delay prejudiced the defendant." *Id.* (quotation omitted). No

factor is necessary or sufficient; all must be considered with other relevant circumstances. *Id.*

"The delay in speedy-trial cases is calculated from the point at which the sixth amendment right attaches: when a formal indictment or information is issued against a person or when a person is arrested and held to answer a criminal charge." *State v. Jones*, 392 N.W.2d 224, 235 (Minn.1986). A delay of seven months is long enough to trigger the consideration of the other *Barker* factors. *Id.* Respondent filed its complaint on December 5, 2011, and appellant's trial commenced on September 22, 2014. Over 33 months passed between the attachment of appellant's Sixth Amendment right and the commencement of the trial. This delay triggers consideration of the other *Barker* factors.

When considering the delay, "the key question is whether the government or the criminal defendant is more to blame." *Taylor*, 869 N.W.2d at 19 (quotation omitted). "Delays caused by defense motions generally weigh against the defendant." *State v. Hahn*, 799 N.W.2d 25, 32 (Minn.App.2011), *review denied* (Minn. Aug. 24, 2011). When the defendant's actions cause the overall delay in bringing the case to trial, there is no speedy-trial violation. *State v. DeRosier*, 695 N.W.2d 97, 109 (Minn.2005). When the delay weighs against the state, different weights should be assigned to different reasons. *Taylor*, 869 N.W.2d at 20. "[A] [d]eliberate delay to hamper the defense weighs heavily against the prosecution, while neutral reason [s] such as negligence or overcrowded courts weigh less heavily." *Id.* (quotations omitted). "[A]dministrative delay,

by itself, is generally insufficient to violate a defendant's speedy-trial right in the absence of a deliberate attempt to delay trial." *Hahn*, 799 N.W.2d at 32.

The delay of appellant's case had several causes, some chargeable to respondent and others chargeable to appellant. The record indicates that the officer who searched appellant's property was unavailable on the originally scheduled date of the suppression hearing. The delay caused by the officer's unavailability is chargeable to respondent. *Taylor*, 869 N.W.2d at 20 (finding the delay caused by the unavailability of the state's witness was attributable to the state). The district court's congestion and calendaring difficulties also contributed to the delay. This delay is similarly chargeable to respondent.

However, appellant also significantly contributed to the delay. Appellant concedes that approximately seven months of delay is attributable to him, as his original trial date was moved mainly to accommodate the schedule of his attorney and her untimely motion. Appellant is also responsible for the delay caused by his counsel's decision to leave the public defender's officer and her request to reschedule the case. Finally, the delay caused by appellant's counsel's request for a continuance, unavailability, and selection of the later trial date offered by the district court is similarly chargeable to the appellant.

In sum, the officer's unavailability and court congestion caused considerable delay. Because there is no evidence of an intent to hamper the defense, this delay

weighs less heavily against respondent. However, a significant amount of the delay is chargeable to appellant, as substantial delay was caused by his counsel's late motion for suppression and unavailability, as well as changes in appellant's counsel. The second *Barker* factor only slightly favors appellant.

A defendant's assertion of his right to a speedy trial is entitled to strong evidentiary weight in determining whether the right has been deprived. *State v. Friberg*, 435 N.W.2d 509, 515 (Minn.1989). "[T]he Supreme Court has looked for any action whatever . . . that could be construed as the assertion of the speedy trial right." *State v. Windish*, 590 N.W.2d 311, 317 (Minn.1999) (quotation omitted). However, a defendant's statement that he is ready to go to trial now, without more, is not clear enough to be construed as an assertion of the right to a speedy trial. *State v. Rhoads*, 802 N.W.2d 794, 806 (Minn.App.2011), *rev'd on other grounds*, 813 N.W.2d 880 (Minn.2012).

Appellant argues that he asserted his speedy-trial right at the November 18, 2013 hearing when his counsel said, "We're prepared for trial." However, this statement does not constitute a demand. Because appellant does not argue that he asserted his right at any other time, he failed to demand a speedy trial. "When a defendant moves for dismissal, but does not move for a speedy trial, this factor will not favor the defendant." *State v. Cham*, 680 N.W.2d 121, 125 (Minn.App.2004), *review denied* (Minn. July 20, 2004). Because appellant moved for dismissal without demanding a speedy trial, the third *Barker* factor weighs against appellant.

We consider three interests to determine "whether a defendant suffered prejudice: (1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3) preventing the possibility that the defense will be impaired." *Taylor*, 869 N.W.2d at 20 (quotation omitted). The final interest, preventing the possibility of impairing the defendant's case, is the most serious. *Id.* at 20. Because it is difficult to prove exactly how a case was impaired by delay, a defendant is not required to prove specific prejudice. *State v. Griffin*, 760 N.W.2d 336, 341 (Minn.App.2009).

Oppressive pretrial incarceration is not at issue here, as appellant was granted a release on his own recognizance. Appellant asserts he was prejudiced, because he suffers from renal failure, and the anxiety and concern he endured while awaiting trial for over 33 months affected his health. Appellant does not argue that his case was impaired by the delay. Where a defendant's only argument regarding the final *Barker* factor is a bare assertion that he suffered anxiety and concern over his future and the handling of his case, the defendant has failed to show that he was prejudiced by the delay. *Hahn*, 799 N.W.2d at 32-33. Although appellant's assertion of prejudice is based upon the stress he experienced while awaiting trial, he explains that this stress affected his health and offers more than a bare assertion of anxiety. Considering all of the prejudice factors together, appellant has shown that he suffered a minimal amount of prejudice. The final *Barker* factor only slightly favors appellant.

In sum, the *Barker* factors show that appellant's right to a speedy trial was not violated. Although the 33-month period between the filing of the complaint and trial is significant, appellant contributed to much of the delay, failed to demand a speedy trial, and offered only his increased anxiety and poor health to show prejudice. The district court did not err by denying appellant's motion to dismiss for violation of his speedy-trial right.

III.

Appellant argues that the evidence was insufficient to convict him of receiving stolen property, because the evidence failed to prove that he knew or had reason to know that the camper was stolen property. Because we hold that the district court erred by denying appellant's motion to suppress the evidence obtained from the warrantless search of appellant's property, we do not determine whether the evidence produced at trial was sufficient to convict appellant.

DECISION

The district court erred by denying appellant's motion to suppress the evidence obtained from the warrantless search of his property. Because the officer entered appellant's property for the improper purpose of conducting a warrantless search, the plain-view doctrine cannot justify the search of the camper. Appellant's consent to the search of his property was tainted

by the unlawful search of the camper and cannot justify the searches of his garage, basement, and house.

We hold that the district court did not err by denying appellant's motion to dismiss for violation of his speedy-trial right, as the balancing of the *Barker* factors shows that no violation occurred. Because we conclude that the district court should have suppressed the evidence obtained from the warrantless search, we reverse and we do not determine whether the evidence produced at trial was sufficient to convict appellant.

Affirmed in part, reversed in part, and remanded.

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Quentin Todd Chute,

Defendant.

Case No. 62-CR-11-9695

FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

(Filed Oct. 4, 2013)

This matter came before the court on the Defendant's Motions to Suppress. A hearing was held on September 20, 2013. Ellen Seesel appeared on behalf of Defendant. Jada Lewis appeared on behalf of the State. Based upon the files, records, exhibits, testimony, and arguments of counsel, the Defendant's Motion to Suppress is DENIED. The court's findings and analysis is set out below.

FINDINGS OF FACT

1. On July 19, 2011, Maplewood Police responded to a call to the residence of B.W.F. B.W.F. reported to police that his Jayco camper trailer had been stolen along with various items of personal property that were in the camper.

2. On October 22, 2011, B.W.F. was driving on County Road D in Maplewood, not far from his house, when he saw his camper at the end of a driveway for the residence at 1134 County Road D in Maplewood. B.W.F. called the police and reported the he

had located his stolen camper. Police dispatch told B.W.F. to park in the area and await the police.

3. Shortly thereafter, Maplewood Police officer Tommy Kong arrived near 1134 County Road D and met up with B.W.F.

4. Exhibits 2-5 show an aerial view of the residence. The exhibits all show, but exhibit 3 shows most clearly that the residence has two driveways. One driveway is at least partially asphalt and terminates in a garage. The other driveway is dirt, but appears well worn. There is no curbing on County Road D and therefore no curb cut for either driveway at 1134 County Road D. In exhibit 3 one can see a car parked behind the house that appears to have used the dirt driveway.

5. Exhibit 7 depicts the location of the camper at the end of the driveway.

6. From a location on County Road D at the end of the dirt driveway, B.W.F. pointed out the stolen camper to Officer Kong. Officer Kong confirmed through a check of Maplewood police records that the make and model of the camper matched that B.W.F. had been reported stolen.

7. Officer Kong parked his squad some way into the driveway. Officer Kong and B.W.F. Then walked down the driveway toward the camper.

8. At some point before they arrived at the camper, B.W.F. had related to Officer Kong that he recognized the camper as his because, in addition to the make and model, B.W.F. had performed repair work on the front of the camper that involved attached a fairly unique set of bolts.

9. Exhibit 10 is a photograph that shows a view taken from the driveway in which the bolts are visible.

10. Comparing exhibit ten and exhibit 7, the court concludes that the bolts depicted in exhibit 10 would have been visible from the driveway, given the orientation of the camper in exhibit 7.

11. Upon arriving at a spot on the driveway next to the camper, Officer Kong could determine that the license plate had been removed from the camper. This view is depicted in exhibit 14.

12. Officer Kong then checked the front outside of the camper and noted that the vehicle identification number (VIN) sticker had been removed. Officer Kong called the camper manufacturer to determine if the VIN might be also stamped on the camper at a different location. Officer Kong learned that a partial VIN was stamped on the metal camper frame. Officer Kong located the partial VIN and that is depicted in exhibit 12. The partial VIN matched that on the camper stolen from B.W.F.

13. Officer Kong then went into the camper and located an item of personal B.W.F.'s personal property.

14. Officer Kong then heard noise coming from the garage of the residence, walked to the garage door and knocked.

15. The defendant answered and identified himself as the property owner.

16. Officer Kong asked defendant if he owned the camper. Defendant replied that he was storing the camper for a friend, Diane Munger.

17. Officer Kong asked Defendant if he could search the garage. Defendant consented to the search.

18. After finding several items of personal property from the camper in the garage, Officer Kong asked Defendant for permission to search the basement and house. Defendant consented.

19. In the basement and house, Officer Kong found numerous items of personal property that had been in the camper when it was stolen.

MEMORANDUM

The Fourth Amendment of the United States Constitution and Article 1 Section 10 of the Minnesota Constitution prohibit unreasonable searches and seizures. Warrantless searches are ordinarily unreasonable. *Katz v. United States*, 389 U.S. 347, 358 (1967). The plain view doctrine is an exception. *Horton v. California*, 496 U.S. 128, 134 (1990). Under the plain view doctrine, police may, without a warrant, seize an object they believe to be the fruit or instrumentality of a crime provided three conditions are met. First, the police must view the object from a place and position they have a legitimate right to be. Second, the object's nature as a fruit or instrumentality of a crime must be immediately apparent. Third, police must have a lawful right of access to the object in order to seize it. See e.g., *State v. Zanter*, 535 N.W.2d 624, 631 (Minn. 1995);

In re Welfare of G.M., 560 N.W.2d 687, 692 (Minn. 1997).

As to the first requirement, the zone of privacy entitled to Fourth Amendment protection extends beyond the walls of the home itself and may include the curtilage or surrounding areas and outbuildings of the property. See, e.g., *State v. Krech*, 403 N.W.2d 634, 637 (Minn. 1987). Certain areas surrounding a home, however, "are impliedly open to use by the public." *Krech*, 403 N.W.2d at 637 (quoting *State v. Crea,* 233 N.W.2d 737, 739). A driveway may be such an area. See *State v. Krech*, 403 N.W.2d at 637("police do not need a warrant or even probable cause to approach a dwelling in order to conduct an investigation if they 'restrict their movements to places visitors could be expected to go (e.g. walkways, driveways, porches)'", quoting *1 W LaFave*, Search and Seizure sec. 2.3(f) at 512 (1987)); *State v. Crea*, 233 N.W.2d at 739.

Examining exhibits 2-5, the court finds that the camper was located at the end of a driveway that was "impliedly open to the public." From the exhibits, it looks to the court as if the area in question was regularly used by cars carrying persons seeking a back door entrance to the house and garage. Exhibits 2-5 show a well-worn dirt area by cars turning onto the property off of County Road D. County Road D lacks curbs and curb cuts, but the exhibits nonetheless depict a definable pathway "impliedly open to the public." Exhibit 7, taken shortly after Officer Kong entered, shows two other vehicles that were not law enforcement parked in the area around where the camper was kept. In

addition, exhibits 2-5 show the area were the camper was located was part of a turnaround or circle that is part of the driveway. Accordingly, the Court finds that the camper was located at the end of a driveway; a place Officer Kong had a legitimate right to be.

Moreover, the court credits the testimony of B.W.F. and Officer Kong that from the driveway, it was immediately apparent that the camper they were looking at was the one stolen from B.W.F. and was therefore, the fruit of a crime. B.W.F. testified that having owned the camper for many years, he could determine from County Road D that the camper was his. Indeed, B.W.F. was sufficiently certain based on his view from the road that he immediately contacted the police. More importantly, it is very clear to the court that the unique bolts on the camper were visible from the driveway, and after seeing the bolts, it was immediately apparent that the camper was the one stolen from B.W.F.

Having determined that the camper was the fruit of a crime, Officer Kong had the authority to seize it provided he had a lawful right of access to it. Defendant argues the camper was in the yard, not in the driveway, and, therefore, Officer Kong could not search or seize the camper. However the court finds, based on exhibits 7, 8, and 13 that the camper was, in fact at the end of the dirt roadway defining the driveway and not in the yard. The Defendant's driveway is impliedly open to the public to access Defendant's home. Accordingly, the court finds that Officer Kong had a lawful right of access to the camper.

Finally, this case is distinguishable from the United States Supreme Court's decision in *Florida v. Jardines*, 133 S.Ct. 1409 (2013). The Court in *Jardines* held that police officers' use of specially trained drug sniffing dog on a homeowner's porch was an impermissible search under the Fourth Amendment because the customary implied invitation to the public to access a home does not include "using trained police dogs around the home in hopes of discovering incriminating evidence. . . ." *Id.* at 1416. In contrast to the officers in *Jardines*, Officer Kong was not using specialized police equipment or animals to "detect" whether or not the camper was stolen. Officer Kong could have plainly seen the unique set of bolts on the camper from his vantage point on the driveway using just his eyes. Furthermore, while in the driveway, Officer Kong was able to view the camper's scratched-off VIN number and the camper's partial VIN number stamped on an area in plain view, without initiating a search. *See State v. Hanson*, C5-01-686, 2002 WL 109373 (Minn. Ct. App. Jan. 29, 2002) ("[T]he mere inspection of an exposed VIN is not a search because where a VIN is exposed, 'an automobile owner can have no reasonable expectation of privacy with respect to the car's VIN.' " (quoting *United States v. Polk*, 433 F.2d 644, 647 (5th Cir.1970)). Therefore, Officer Kong's observations would have been more akin to the officers in *Jardines* had they been able to clearly smell drugs on a homeowner's porch without the assistance of a drug sniffing dog.

Having found that Officer Kong's actions with respect to the camper were within the bounds of the

Fourth Amendment and Article 1 section 10, the court finds the subsequent consent searches of the garage, basement, and house were not tainted by unlawful behavior and were valid.

ORDER

Therefore, based upon the Court's file, and records in the proceeding as well as the arguments of Counsel:

IT IS HEREBY ORDERED,

Defendant's motion challenging the search of the garage, basement, and house, and the admissibility of all evidence resulting from that search is DENIED.

Dated: /s/ Patrick Diamond
Patrick Diamond
Judge of District Court

STATE OF MINNESOTA **SUPREME COURT**

JUDGMENT

State of Minnesota, Appellant, vs. Quentin Todd Chute, Respondent

(Filed Apr. 6, 2018)

Appellate Court #A15-2053

Trial Court # 62-CR-11-9695

Pursuant to a decision of the Minnesota Supreme Court duly made and entered, it is determined and adjudged that the decision of the Ramsey County District Court, Criminal Division herein appealed from be and the same hereby is affirmed in part, reversed in part, and remanded. Judgment is entered accordingly.

Dated and signed: April 6, 2018

FOR THE COURT

Attest: AnnMarie S. O'Neill
Clerk of the Appellate Courts

By: /s/ AnnMarie S. O'Neill
Clerk of the Appellate Courts