[Cite as *State v. Ash*, 2015-Ohio-4974.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 15CA1
vs.	:	
TY A. ASH,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

James R. Kingsley, Circleville, Ohio, for appellant.

Judy C. Wolford, Pickaway County Prosecuting Attorney, and Jayme Hartley Fountain, Pickaway County Assistant Prosecuting Attorney, Circleville, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 11-13-15
ABELE, J.

{¶ 1} This is an appeal from a Pickaway County Common Pleas Court judgment of conviction and sentence. Ty A. Ash, defendant below and appellant herein, entered a "no contest" plea to the manufacture of drugs in violation of R.C. 2925.04(A). Appellant assigns the following error for review:

> "DID THE TRIAL COURT COMMIT PREJUDICIAL ERROR WHEN IT DENIED DEFENDANT'S MOTION TO SUPPRESS?"

{¶ 2} During the evening of July 24, 2014, the Pickaway County Sheriff's Department received an anonymous complaint of a strange odor emanating from a mobile home on

Hayesville Road. Deputies Hunter Lane and Jason Park, who were watching a different suspected drug house, were dispatched to Hayesville Road. When they arrived, they approached the front door, knocked and announced themselves. After no one responded to their knock or to their request to come to the door, Deputy Lane proceeded to the rear of the residence to attempt to contact the occupants. In so doing, Lane passed a window that contained a box fan blowing air from inside the residence[1] and he detected "a chemical smell, ammonia smell," that he later testified is indicative of "a meth operation." Deputy Park also went to the rear of the residence and he, too, detected the chemical smell. From this vantage point, the deputies observed the two individuals in the mobile home (apparently one crawling on the floor and the other peeking from the front door).

{¶ 3} When the deputies returned to the front of the residence, Jeffrey Ash (appellant's brother) came outside and was detained and handcuffed. Deputy Park then asked for permission to search the residence. Ash, however, refused to give permission and explained "there was bad stuff inside." Soon, another deputy had arrived and had taken control of Ash while Lane and Park left the scene in order to obtain a search warrant.

{¶ 4} After Lane and Park returned several hours later, they found that appellant had also exited the residence. During the execution of the search warrant, the deputies found "multiple components that are [or were] commonly associated with meth operations."

{¶ 5} Subsequently, the Pickaway County Grand Jury returned an indictment that

[1] Testimony at the suppression hearing revealed that this practice is consistent with a methamphetamine lab operation because dangerous gases and chemicals rapidly accumulate and the area must be ventilated.

charged appellant with the illegal manufacture of drugs and the illegal possession of chemicals for such manufacture. Appellant and his brother filed a "joint motion to suppress" and argued that the deputies had exceeded their constitutional authority by proceeding to the rear entrance of the residence, and this improper conduct caused them to pass the window and notice the interior air with the chemical smell. At the hearing on the motion, both deputies Lane and Park recounted their versions of the events. The Ash brothers also testified.

{¶ 6} After hearing the evidence, the trial court denied the motion to suppress. The court opined that the deputies were justified in proceeding to the residence's rear door in light of (1) the anonymous complaint of the smell, (2) the fact that they were present "on legitimate business," (3) the noises from inside and, (4) their observation of the silhouettes of individuals inside the residence that justified moving to the rear door.

{¶ 7} After the trial court's decision, appellant entered a "no contest" plea in exchange for the dismissal of the second count of the indictment. The trial court accepted appellant's plea, found him guilty and sentenced him to serve a "mandatory period" of three years in prison. This appeal followed.

I

{¶ 8} In his sole assignment of error, appellant asserts that the trial court erred by overruling his motion to suppress evidence. Before we address the merits of the assignment of error, we first consider the appropriate standard of review that we must apply to the trial court's ruling.

{¶ 9} Appellate review of a decision on a motion to suppress evidence involves mixed questions of law and fact. *State v. Grubb*, 186 Ohio App.3d 744, 930 N.E.2d 380,

2010-Ohio-1265, at ¶12 (3rd Dist.); *State v. Book*, 165 Ohio App.3d 511, 847 N.E.2d 52, 2006-Ohio-1102, at ¶9 (4th Dist.). In hearing such motions, trial courts assume the role of trier of fact and are best situated to resolve factual disputes and to evaluate witness credibility. *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665, 850 N.E.2d 1168, at ¶100; *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, at ¶8. Generally, appellate courts will accept a trial court's factual finding if competent and credible evidence supports that finding. *State v. Little*, 183 Ohio App.3d 680, 918 N.E.2d 230, 2009-Ohio-4403, at ¶15 (2nd Dist.); *State v. Metcalf*, 111 Ohio App.3d 142, 145, 675 N.E.2d 1268 (4th Dist. 1996). However, appellate courts will review de novo a trial court's application of the law to those facts. *State v. Higgins*, 183 Ohio App.3d 465, 917 N.E.2d 363, 2009-Ohio-3979, at ¶14 (5th Dist.); *State v. Poole*, 185 Ohio App.3d 38, 923 N.E.2d 167, 2009-Ohio-5634, at ¶18 (11th Dist.).

II

{¶ 10} The Fourth Amendment to the United States Constitution protects citizens from unreasonable searches and seizures within the privacy of their homes. The curtilage is the area around a home that a resident may reasonably expect to enjoy the sanctity and privacy of the home. *Oliver v. United States* (1984), 466 U.S. 170, 104 S.Ct. 1735. Generally, the extent of a home's curtilage is determined under four main factors: (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 use to which the area is put; and (4) the steps taken to protect the area from observation by passersby. *U.S. v. Dunn* (1987), 480 U.S. 294, 301, 107 S.Ct. 1134, 94 L.Ed.2d 326.

{¶ 11} A law enforcement officer, absent a warrant, has no greater rights on another's

property than any other visitor. Thus, police may only go upon private property in areas impliedly open to the public. *State v. Tallent* 2011-Ohio-1142, 6th Dist. citing *State v. Rigoulot* (1992), 123 Idaho 267, 846 P.2d 9181, 1 LaFave, Search and Seizure (2004) 600-602, Section 2.3(f). The state may not intrude into areas where people have legitimate expectations of privacy without a search warrant. *State v. Vondenhuevel* 2004-Ohio-5348 (3rd Dist.).

{¶ 12} In the case sub judice, appellant characterizes the deputies' approach to the residence as a "knock and talk" encounter. The Fourth Amendment to the United States Constitution[2] permits this "knock and talk" investigative technique when law enforcement approaches a front door of a residence without a search warrant. See *State v. Young*, 12th Dist. Warren No. CA2014–05–074, 31 N.E.3d 178, at ¶24; also see *United States v. Jones*, 239 F.3d 716 (5th Cir. 2001). Thus, no search warrant is needed to simply approach the front door of a residence. When a law enforcement officer without a warrant knocks on a door, they may do no more than any other private citizen might do. *State v. Morgan* 2014-Ohio-1900, (5th Dist.); *State v. Miller* 2012-Ohio-5206, 982 N.E.2d 739; *State v. Kinsell* 2010-Ohio-3854 (9th Dist.). Also, an occupant has absolutely no duty to open the door or to speak with the officer.

{¶ 13} In *Tallent*, an officer investigating gun shots in the neighborhood walked up a driveway to a home's rear door area because no one answered his knock at the front door. The officer saw no privacy fence or any barriers or trespassing signs at the rear of the house. The court concluded that the officer's discovery of shell casings next to the back door did not violate

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[2] Fourth Amendment protections are applicable to the states through the Fourteenth Amendment Due Process Clause. See *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). Section 14, Article I, Ohio Constitution, offers substantially the same protections, see e.g. *State v. Jaeger*, 4th Dist. Washington No. 92CA30, 1993 WL 248605 (Jul. 1993).

the defendant's Fourth Amendment rights. Other cases also stand for the proposition that an officer may approach a home's rear door if it appears that the public is also permitted to approach the home or the back door. See, e.g., *United States v. Hammett* (C.A.9, 2001), 236 F.3d 1054; *Miller v. State* (2000), 342 Ark. 213, 27 S.W.3d 427; *State v. Hilton 2009-Ohio-5744 (2nd Dist.); State v. Edwards* 2010-Ohio-826 (11th Dist.); *State v. Morgan* 2014-Ohio-1900 (5th Dist.). Absent some indication that a property owner desires to prohibit access to the rear of the home, an officer may approach the back door area. For example, a property owner could erect a fence, a gate, shrubs or plants, post no trespassing signs or make clear statements that access to the back door area is prohibited. See, e.g., *Tallent*; *State v. Woljevach* 160 Ohio App.3d 757, 2005-Ohio-2085.

{¶ 14} In the case sub judice, our review of the evidence adduced at the hearing on the motion to suppress evidence reveals that appellant's mobile home (appellant's co-defendant brother apparently leased the residence) sat on a lot in the unincorporated village of Whisler. The home had no electrical or water service and the residents used a gasoline generator. The nearest dwelling is approximately one hundred yards away. Also, apparently no driveway or sidewalk leads to the home and apparently no other buildings, fences, shrubs or other objects are located near the home. The officers first approached the small front porch and knocked and announced their presence, but after no one answered the door, the officers walked to the rear of the mobile home. During this, time the officers detected the chemical odor coming from a window. Several hours later, after the officers obtained a search warrant, officers found in the home multiple items commonly used to manufacture methamphetime, including blister packs, Coleman fuel, cold packs, liquid fire draino, rubber gloves and cooking vessels (plastic bottles).

{¶ 15} Appellant cites *Florida v. Jardines* 569 U.S. ___, 133 S.Ct. 1409 (2013) in support of his argument that law enforcement authorities may not approach a suspect's front porch area with the intent to conduct a search. However, in *Jardines* the officers did not simply approach the front porch and door area themselves as they and any visitor would be free to do, but instead brought with them a drug detection dog in order to detect the presence of controlled substances. The court held that although visitors may enter a person's front porch to communicate with the home's occupants, police officers may not go beyond the scope of that invitation and enter a porch to conduct a search that requires a broader license than commonly given to the general public. In the case sub judice, the deputies approached the mobile home's door without the assistance of a drug detection dog or other invasive detection equipment.

{¶ 16} Appellant also cites *State v. Bradford*, 4th Dist. Adams No. 09CA880, 2010-Ohio-1784, for the proposition that someone cannot "climb a ladder or stand upon a bucket to gain a view of the inside" of a residence. Here, however, we find no evidence in the record that the deputies stood on a ladder, bucket or any other object to observe the interior of the residence.

{¶ 17} In the final analysis, we agree with the trial court's well-reasoned decision to reject appellant's motion to suppress the evidence. The trial court relied, in part, on *United States v. Anderson*, 552 F.2d 1296 (8th Cir.1977) wherein the Eighth Circuit held that it is not "clearly erroneous" for law enforcement to walk around to the rear door of the residence during which walk they observe contraband (or in this case, suspicious activity) through an open window. Id. at 1330 & fn. 3. The trial court also relied on *Miller v. State*, 27 S.W.3d 427 (Ark.2002) wherein the Arkansas Supreme Court held that law enforcement is not barred from

going to the back door of a residence when they are legitimately on the premises. Id. at 432. This is consistent with other cases that have held that police do not violate the Fourth Amendment by going to a backdoor when there is no answer at the front door. See, generally, *United States v. Shuck,* 713 F.3d 563, 567 (10th Cir.2013); *Hardesty v. Hamburg, Twp.*, 461 F.3d 646, 684 (6th Cir.2006); *United States v. Hooper*, 58 Fed.Appx. 619, 623-624 (6th Cir. 2003).

{¶ 18} In the case at bar, the deputies were initially properly situated on the premises. While there, and during the course of their investigation, they proceeded to the residence's rear door. At that point, they smelled a chemical odor emanating from an open window that gave rise to the belief that criminal activity was afoot. As the United States Supreme Court held in *Katz v. United States*, 389 U.S. 347, 351 (1967) "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." As did the trial court, we see no violation of appellant's Fourth Amendment right to privacy and freedom from unreasonable searches and seizures.

{¶ 19} Accordingly, based upon the foregoing, we hereby overrule appellant's assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pickaway County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hoover, P.J. & McFarland, A.J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.