**[Cite as *State v. Doyle*, 2016-Ohio-5742.]**

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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| STATE OF OHIO | : | JUDGES: |
| | : | Hon. Sheila G. Farmer, P.J. |
| Plaintiff-Appellee | : | Hon. W. Scott Gwin, J. |
| | : | Hon. Craig R. Baldwin, J. |
| -vs- | : | |
| | : | |
| MICHAEL J. DOYLE | : | Case No. 16 CA 05 |
| | : | |
| Defendant-Appellant | : | O P I N I O N |

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| CHARACTER OF PROCEEDING: | Appeal from the Court of Common Pleas, Case No. 15CR08-0132 |
| JUDGMENT: | Affirmed |
| DATE OF JUDGMENT: | August 29, 2016 |

APPEARANCES:

| For Plaintiff-Appellee | For Defendant-Appellant |
|---|---|
| CHARLES T. McCONVILLE<br>117 East High Street<br>Suite 234<br>Mount Vernon, OH 43050 | STEPHEN T. WOLFE<br>1350 West Fifth Avenue<br>Suite 124<br>Columbus, OH 43212 |

*Farmer, P.J.*

{¶1} On May 27, 2015, Ohio State Highway Patrol Trooper Paul Swan was dispatched to the scene of a one-vehicle accident. The vehicle was upside down on its roof, partially blocking the roadway. No occupants were present. The airbags had deployed, glass was shattered, and blood was discovered on the passenger side airbag. Trooper Swan discovered the vehicle was registered to appellant, Michael Doyle. Two addresses came back for appellant, one on Syler Road and one on Yankee Street. EMS informed Trooper Swan that they had gone to the Syler Road address, but found no one home. Trooper Swan, together with Knox County Sheriff's Deputy Durbin, went to the Syler Road address and knocked on the front, side, and rear doors of the house. No one responded to the knocks. Trooper Swan smelled the odor of raw marijuana coming through an open window. Because he observed a light on in the detached garage, he walked over and knocked on the man door to the garage. No one answered. Trooper Swan smelled raw marijuana and observed a ventilation system. He left the premises and obtained a search warrant, whereupon marijuana was discovered inside the residence and a growing operation was discovered inside the garage.

{¶2} On August 4, 2015, the Knox County Grand Jury indicted appellant on one count of illegal cultivation of marijuana in violation of R.C. 2925.04 with a forfeiture specification in violation of R.C. 2941.1417.

{¶3} On September 29, 2015, appellant filed a motion to suppress, claiming an illegal search and seizure. Appellant argued Trooper Swan trespassed onto the curtilage of his residence and illegally obtained evidence for probable cause to receive

the subsequent search warrant. A hearing was held on November 16, 2015. By judgment entry filed November 24, 2015, the trial court denied the motion, finding exigent circumstances existed to justify Trooper Swan going to the residence, and based upon the trooper's observations, there was probable cause for the issuance of the search warrant.

{¶4} On January 15, 2016, appellant pled no contest to the charge and the specification. The trial court found appellant guilty. By sentencing entry filed February 24, 2016, the trial court sentenced appellant to three years of community control and ordered the forfeiture of $1,700.00 in U.S. currency.

{¶5} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶6} "THE TRIAL COURT ERRED IN FINDING THAT THE WARRANTLESS SEARCH BY LAW ENFORCEMENT OFFICERS WAS JUSTIFIED BY EXIGENT CIRCUMSTANCES."

II

{¶7} "THE TRIAL COURT ERRED IN FINDING THAT THE ACTIONS OF A POLICE OFFICER IN TRESPASSING ON THE CURTILAGE OF APPELLANT'S HOME WITHOUT A WARRANT DID NOT VIOLATE THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 14, OF THE OHIO CONSTITUTION."

III

{¶8} "THE TRIAL COURT ERRED IN FINDING THAT A WARRANT OBTAINED AFTER WARRANTLESS POLICE ENTRY WAS ISSUED ON VALID PROBABLE CAUSE."

I, II, III

{¶9} Appellant claims the trial court erred in denying his motion to suppress as there were no exigent circumstances, the police officers trespassed on his property without a warrant, and the subsequent search warrant was not predicated on valid probable cause. We disagree.

{¶10} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether said findings of fact are against the manifest weight of the evidence. *State v. Fanning,* 1 Ohio St.3d 19 (1982); *State v. Klein,* 73 Ohio App.3d 486 (4th Dist.1991); *State v. Guysinger,* 86 Ohio App.3d 592 (4th Dist.1993). Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. *State v. Williams,* 86 Ohio App.3d 37 (4th Dist.1993). Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in

any given case. *State v. Curry,* 95 Ohio App.3d 93 (8th Dist.1994); *State v. Claytor,* 85 Ohio App.3d 623 (4th Dist.1993); *Guysinger*. As the United States Supreme Court held in *Ornelas v. U.S.,* 517 U.S. 690, 116 S.Ct. 1657, 1663 (1996), "…as a general matter determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal."

{¶11} In its November 24, 2015 judgment entry denying the motion to suppress, the trial court found the following:

> The Court finds the exigent circumstances justified Trooper Swan going to the Defendant's residence. The crash scene and the information provided by Fredericktown EMS personnel gave the trooper reasonable cause to conclude that at least one occupant of the vehicle had been injured. He had reason to believe the Defendant was at his residence and should be contacted to ascertain his condition.
>
> The officers had the right to conduct a "knock and talk" investigation. While at the front door, Trooper Swan detected the odor of raw marijuana from an open window. The trooper testified that through training and experience he is able to identify the smell of both raw and burnt marijuana.
>
> The observation of the light on in the detached garage justified Trooper Swan going to the garage in an attempt to locate the Defendant. The trooper went to the garage by the driveway and knocked on the door.

> When he arrived at the garage, he again noticed the smell of raw marijuana coming from the vent fans.
>
> Neither officer entered the residence or the garage during their initial "knock and talk" investigation. Being unable to locate the Defendant and having discovered what they believed to be evidence of criminal activity, they left the premises and obtained a search warrant.
>
> The Court finds there was probable cause for the issuance of a search warrant and the Defendant's rights pursuant to the U.S. Constitution's Fourth Amendment were not violated***.

{¶12} Appellant challenges the trial court's conclusions on the theories of exigent circumstances, curtilage, and probable cause.

{¶13} It is axiomatic that the Fourth Amendment to the United States Constitution prohibits warrantless searches and seizures, rendering them "per se unreasonable" unless an exception applies. *Katz v. United States,* 389 U.S. 347, 357 (1967).

{¶14} The exigent circumstances exception "is founded on the premise that the existence of an emergency situation, demanding urgent police action, may excuse the failure to procure a search warrant." *State v. Cheadle,* 2d Dist. Miami No. 00CA03, 2000 WL 966167, *2 (July 14, 2000). "Whether exigent circumstances are present is determined through an objective test that looks at the totality of the circumstances confronting the police officers at the time of the entry." *State v. Enyart,* 10th Dist. Franklin Nos. 08AP-184, 08AP-318, 2010-Ohio-5623, ¶ 21.

{¶15} "The curtilage is an area around a person's home upon which he or she may reasonably expect the sanctity and privacy of the home. For Fourth Amendment purposes, the curtilage is considered part of the home itself." *Oliver v. United States,* 466 U.S. 170, 180 (1984). "Thus, it has been held that the only areas of the curtilage where officers may go are those impliedly open to the public. This area includes walkways, driveways, or access routes leading to the residence." *State v. Cook,* 5th Dist. Muskingum Nos. 2010-CA-40, 2010-CA-41, 2011-Ohio-1776, ¶ 65. "The extent of a home's curtilage is resolved by considering 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." *State v. Mechling,* 5th Dist. Ashland No. 12-COA-040, 2013-Ohio-3327, ¶ 13.

{¶16} As explained by our brethren from the Twelfth District in *State v. Landis,* 12th Dist. Butler No. CA2005-10-428, 2006-Ohio-3538, ¶ 12:

> In determining whether probable cause exists for the issuance of a warrant, courts employ a "totality-of-the-circumstances" test, requiring an issuing judge "to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. George* (1989), 45 Ohio St.3d 325, 329, quoting *Illinois v. Gates* (1983), 462 U.S. 213, 238.

{¶17} During the suppression hearing, Trooper Swan testified to the events on May 27, 2015. He was dispatched to the scene of an accident and upon his arrival, he observed an overturned vehicle partially blocking the roadway. T. at 9. No occupants were present. *Id.* Trooper Swan opined the vehicle had rolled between "one and one-and-a-half times before coming to rest on its hood." T. at 10. The airbags had been deployed, glass was shattered, and a small amount of blood was found on the passenger side airbag. T. at 10-11. Trooper Swan ran a LEADS check to determine the owner of the vehicle which came back to appellant. T. at 11. Two addresses were found for appellant, one via the LEADS check (Syler Road) and one via a wallet found inside the vehicle (Yankee Street). T. at 11-12. The Syler Road address "was in the direction that the vehicle was already heading prior to the crash" and the Yankee Street address "was several miles away in the opposite direction." T. at 13. In an attempt to locate appellant, Trooper Swan chose "to start with the logical of the two, which was the residence in which the direction of the vehicle was heading," the Syler Road address. *Id.* Also found inside the vehicle were "several sandwich-sized plastic Ziplock bags that had a small amount of marijuana in them" and "a white kitchen-sized trash bag***that had a very strong odor of raw marijuana." T. at 12.

{¶18} EMS personnel informed Trooper Swan that they had gone to the Syler Road address, but no one was home. T. at 13-14. They indicated the "TV was on and there was a dog barking." T. at 14. Trooper Swan and Deputy Durbin went to the Syler Road premises and observed an open gate and a common gravel driveway servicing the house and the detached garage. T. at 14-15; State's Exhibit 1. The officers knocked on the front, side, and rear doors, but no one answered the knocks. T. at 16-

17. A dog inside the house was barking. T. at 17. While at the front door, Trooper Swan detected "a very strong odor of raw marijuana coming from inside the house" through an open window. *Id*.

{¶19} The officers noticed a light on in the detached garage which was located approximately twenty yards from the house. T. at 18. The officers walked on the gravel driveway between the house and the garage and Trooper Swan knocked on the man door, but no one answered. T. at 18-19. Trooper Swan's purpose to go over to the garage "was to make sure there wasn't an injured individual passed out on the floor injured." T. at 35. While standing near the garage, he noticed a "[v]ery strong odor of raw marijuana." T. at 19. The garage had a "pretty loud ventilation system" from which the odor emanated. *Id*. Neither officer entered the garage, and Trooper Swan left the premises to obtain a search warrant. *Id.*

{¶20} Present in this case was a very badly damaged vehicle containing blood on the passenger side airbag with no occupants present at the scene. The address chosen to locate appellant was the address closest to the scene and in the same direction that the vehicle was headed. We find these facts justify further investigation at the Syler Road address in an attempt to locate a driver or passengers who could have been involved in the crash and injured. The knocking at the doors was clearly within the spectrum of an auto accident investigation with the issue of possible injury.

{¶21} The detached garage was located on the residential premises and shared a common gravel driveway with the house. There was a light from within, so it was logical to assume that appellant could have been in the garage. Based upon the totality

of the circumstances, we agree with the trial court's conclusion that exigent circumstances existed in this case and the "knock and talk" investigation was not illegal.

{¶22} As for the search warrant, this court's review of the issuance of a search warrant "is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed." *State v. George,* 45 Ohio St.3d 325 (1989), paragraph two of the syllabus. The search warrant was predicated on facts observed personally by Trooper Swan who was trained in drug detection, including the smell of raw marijuana. T. at 7-8. The accident was caused by some sort of erratic driving, there was a marijuana odor coming from the vehicle, an odor of raw marijuana was coming from the house and the garage of the vehicle's owner, and the garage had a loud ventilation system. We find these personal observations supported a finding of probable cause to issue the search warrant.

{¶23} Upon review, we find the trial court did not err in denying the motion to suppress.

{¶24} Assignments of Error I, II and III are denied.

{¶25} The judgment of the Court of Common Pleas of Knox County, Ohio is hereby affirmed.

By Farmer, P.J.

Gwin, J. and

Baldwin, J. concur.

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