

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0937**

State of Minnesota,
Respondent,

vs.

Derek Ronald Shaw,
Appellant.

**Filed April 15, 2019
Reversed
Smith, John, Judge***

Steele County District Court
File No. 74-CR-17-971

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Daniel A. McIntosh, Steele County Attorney, James S. Cole, Assistant County Attorney,
Owatonna, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Adam G. Chandler, Special Assistant Public Defender, Samuel N. Louwagie (certified
student attorney), Briggs and Morgan, Minneapolis, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Rodenberg, Judge; and
Smith, John, Judge.

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

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We reverse appellant Derek Ronald Shaw's convictions of second-degree driving while impaired (DWI) because police did not obtain a search warrant before entering a fish house located on the curtilage of Shaw's home and no exceptions to the warrant requirement apply.

FACTS

Respondent State of Minnesota charged Shaw with second-degree DWI—operating a motor vehicle under the influence of alcohol; second-degree DWI—operating a motor vehicle with an alcohol concentration of 0.08 or more within two hours of driving; and failure to notify owner of property damage by leaving the scene of an accident.¹ Shaw moved to suppress the evidence obtained from a warrantless search of a fish house, arguing that he had an expectation of privacy in the fish house and no exceptions to the warrant requirement applied.

After a contested omnibus hearing, the district court denied Shaw's motion to suppress based on the following findings of fact: on May 31, 2017, police received a report that a vehicle had struck a utility pole in Medford and that there were possible injuries. Police were also informed that the vehicle had left the scene and were given its license plate number. They determined that the vehicle was registered to Shaw and that Shaw resided in Medford.

¹ The failure-to-notify offense was later dismissed.

Deputies Chad Forystek, Darrin Helget, and Chet Macht of the Steele County Sheriff's Office went to Shaw's residence. Deputy Helget testified that he wanted to find the driver because he was "concerned about possible injuries." They knocked on the front door and spoke with the homeowner, Shaw's mother. She stated that Shaw did not "technically" live at the home, but she also stated that he stayed in one of the bedrooms. She refused to allow the deputies to search inside the home because she did not want police to scare the children in the daycare that she ran.

It is undisputed that Shaw's mother gave consent for police to search the garage attached to the home. Deputy Macht testified that Shaw's mother gave the deputies permission to search on the property outside of the area where the children were. Deputy Macht also testified that the officers did not specifically ask for consent to search outbuildings on the property. Deputy Forystek testified that Shaw's mother allowed the deputies to search her bedroom as well as the garage. The district court found that Shaw's mother consented to a search of the property outside the presence of the children, including the backyard and the fish house.

The deputies searched the garage but did not find Shaw. The deputies observed Shaw's vehicle, the one involved in the accident, parked in the grass behind the home. Deputy Macht noted that the engine was warm to the touch, indicating that it had recently been driven, and he testified that he also observed patches of dead grass indicating that a vehicle had been parked in the backyard at other times. Behind the home, the deputies also found an old, dilapidated fish house with grass growing around it. The grass in front of the fish house was matted down, indicating that someone had recently entered it. A deputy

approached the fish house and called out for Shaw, who did not respond. The deputy opened the door to the fish house and discovered Shaw inside. Shaw subsequently failed field sobriety tests and was arrested on suspicion of DWI.

The district court denied Shaw's motion to suppress, holding that although he had standing to challenge the search, he had no expectation of privacy in the fish house and the fish house was not within the curtilage of the home, and in the alternative that the consent, hot-pursuit, and emergency-aid exceptions to the warrant requirement applied. After Shaw stipulated to the prosecution's case to obtain review of the district court's ruling on his motion to suppress under Minn. R. Crim. P. 26.01, subd. 4, the district court found Shaw guilty of both DWI offenses, entered judgment of conviction on those two offenses, and sentenced him to serve 365 days in jail, with all but 30 days stayed. Shaw appeals.

D E C I S I O N

The United States and Minnesota Constitutions guarantee "[t]he right of the people to be secure in their persons, houses, papers, and effects" against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. "Generally, warrantless searches are per se unreasonable." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). Evidence seized in violation of the U.S. or Minnesota Constitutions must be suppressed. *Terry v. Ohio*, 392 U.S. 1, 12-13, 88 S. Ct. 1868, 1875 (1968); *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). When reviewing a district court's pretrial order on a motion to suppress evidence, appellate courts review the district court's factual findings for clear error and its legal determinations de novo. *Gauster*, 752 N.W.2d at 502.

I.

Shaw contends that the district court erred by concluding that he did not have a reasonable expectation of privacy in the fish house because it was not being used for ice fishing and because it was not on the curtilage of his mother's home.

Usage of Fish House

A search occurs when an officer intrudes upon an area where a person has a reasonable expectation of privacy. *State v. Wiggins*, 788 N.W.2d 509, 514 (Minn. App. 2010), *review denied* (Minn. Nov. 23, 2010).

Minnesota courts apply a two-step analysis to determine whether a defendant has a legitimate expectation of privacy in a particular area. At the first step, we ask whether the defendant exhibited an actual subjective expectation of privacy in a particular place. At the second step, we ask whether that expectation of privacy is reasonable.

State v. Luhm, 880 N.W.2d 606, 612 (Minn. App. 2016) (quotation and citation omitted).

In *State v. Larsen*, the supreme court considered whether a person has a reasonable expectation of privacy in a fish house. 650 N.W.2d 144, 149 (Minn. 2002). In *Larsen*, a Minnesota conservation officer was patrolling fish houses on a lake, stopping at occupied fish houses to check licenses. *Id.* at 145-46. The officer stopped at Larsen's fish house, knocked on the door, announced himself, and entered without Larsen's consent. *Id.* at 146.

The supreme court considered “the nature of the premises [in *Larsen*]—a fish house, erected and equipped to protect its occupants from the elements and often providing eating, sleeping, and other facilities—as providing privacy for activities recognized and permitted by society.” *Id.* at 149 (quotation omitted). The supreme court noted that “[w]hile clearly

not a substitute for one's private dwelling, during the period of occupancy important activities of a personal nature take place" within a fish house. *Id.* The supreme court concluded that Larsen had a reasonable expectation of privacy in his fish house. *Id.*

The district court in this case concluded that *Larsen* was inapplicable because it was factually distinct, noting that Shaw's fish house "was not on a lake where it was providing privacy for ice fishing" but rather was "sitting in a backyard, apparently rotting." Therefore, the district court held, Shaw did not have a reasonable expectation of privacy in the fish house.

Shaw argues that "the district court misconstrued *Larsen*," because that case "conditions the expectation of privacy upon neither a fish house's upkeep nor its actual use for ice fishing. Instead, *Larsen* holds that a fish house provides an expectation of privacy because it is built for a person to occupy." However, the supreme court in *Larsen* stated that activities of a personal nature "during the period of occupancy" create a reasonable expectation of privacy in a fish house. *Id.* The record here does not suggest that Shaw was living in the fish house. Moreover, a dilapidated, overgrown fish house located in the backyard of a residence does not provide "eating, sleeping, and other facilities" as a fish house located on a lake would. *Id.* This case is distinguishable from *Larsen*, and therefore Shaw did not have a reasonable expectation of privacy in the fish house.

Curtilage

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, 1742 (1984). To determine whether an area is located

within the curtilage of the property, appellate courts 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. 1134, 1140 (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. at 1742 (quotation and citation 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. at 1743 n.12.

The United States Supreme Court has identified four relevant factors to use when determining 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. at 1139.

The district court, relying on *Garza v. State*, 632 N.W.2d 633, 639 (Minn. 2001), and without discussing the four *Dunn* factors, determined that the fish house was not located on the curtilage of Shaw’s home because it was not “immediately and intimately connected to the home,” but rather “out back, behind the house and overgrown with grass.” In *Garza*, the Minnesota Supreme Court, noting that “[a] dwelling’s curtilage is generally the area so immediately and intimately connected to the home that within it, a resident’s

reasonable expectation of privacy should be respected,” held that “[a] reasonable expectation of privacy would extend to a storage shed if located within the curtilage” and that “absent a showing of necessity, authorities making an unannounced entry into a storage building within the curtilage of a dwelling must have a valid warrant to do so.” *Id.* at 639. Thus, if the record shows that the fish house was within the curtilage of Shaw’s home, he had a reasonable expectation of privacy in it and the deputies were required to obtain a warrant before entering it.

The fish house was located in the backyard of a residential, single-family home. “The backyard and driveway of a home are often considered to be within the curtilage of a home.” *State v. Chute*, 908 N.W.2d 578, 584 (Minn. 2018). Like the defendant in *Chute*, Shaw “does not live on a large piece of rural property” but rather “lives in a single-family home.” *See id.* Thus, the first *Dunn* factor—proximity to the home—weighs in Shaw’s favor.

The record is less clear regarding the remaining *Dunn* factors. There was no testimony as to whether the property was enclosed by a fence, shielded by trees, or otherwise protected from observation. “The curtilage of a home, however, need not be completely shielded from public view.” *Id.* at 585. Thus, the second and fourth factors are neutral. As to the third *Dunn* factor, one deputy testified that it appeared from patches of dead grass that a vehicle had been parked in the backyard before, and the deputies discovered Shaw’s vehicle parked in the backyard that day. This indicates that Shaw may have used the backyard as a place to park his vehicle, and this kind of use is “closely related to the home and associated with the privacies of life.” *See id.* (concluding that portion of

defendant's backyard where he had parked a camper was curtilage). Therefore, this factor weighs in Shaw's favor.

In sum, consideration of the *Dunn* factors demonstrate that the backyard in which the fish house was located was within the curtilage of Shaw's home, he had a reasonable expectation of privacy in it, and the deputies therefore were required to obtain a warrant to search the fish house unless one of the exceptions to the warrant requirement applied.

II.

Shaw's second argument is that the district court erred by concluding that the consent, hot-pursuit, and emergency-aid exceptions to the warrant requirement applied. 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, 514 (1967).

Consent

"Consent is an exception to the warrant requirement. For a search to fall under the consent exception, the State must show by a preponderance of the evidence that consent was given freely and voluntarily." *Diede*, 795 N.W.2d at 846 (quotations and citations omitted). If a third-party consents to the warrantless search of another individual's personal items or dwelling, that third party must possess "common authority over or other sufficient relationship to the premises or effects sought to be inspected." *State v. Frank*, 650 N.W.2d 213, 217 (Minn. App. 2002) (quotation omitted).

It is undisputed that Shaw's mother owned the property and therefore had authority to consent to a search of the home, including the backyard. However, the parties contest

the scope of her consent. Shaw contends that his mother “consented only to a search of her garage,” but the state argues that the deputies “were not allowed in the home but could search elsewhere,” including all areas “outside the home.”

“A search that exceeds the authorized consent is unreasonable” and violates the Fourth Amendment. *State v. Bunce*, 669 N.W.2d 394, 399 (Minn. App. 2003), *review denied* (Minn. Dec. 16, 2003). Conflicting testimony regarding consent requires the district court to make a credibility determination, *see id.*, and this court defers to the district court’s determinations of credibility. *State v. Olson*, 884 N.W.2d 906, 911 (Minn. App. 2016), *review denied* (Minn. Nov. 15, 2016). But we review the district court’s factual findings for clear error. *Gauster*, 752 N.W.2d at 502. “Findings of fact are clearly erroneous if, on the entire evidence, [an appellate court is] left with the definite and firm conviction that a mistake occurred.” *Diede*, 795 N.W.2d at 846-47.

The district court found that “Shaw’s mother consented to the search of the fish house.” The record does not support this finding. Although the parties agree that Shaw’s mother gave permission for the deputies to search the garage attached to her home, the testimony at trial regarding the scope of her consent was inconsistent. The district court found that Deputies Macht and Helget testified that she gave them permission to search on the property outside of the area where the children were. However, Deputy Helget only testified that Shaw’s mother did not allow the deputies inside the home and consented to a search of the garage. Deputy Helget also admitted that he never asked her about searching the outbuildings located in the backyard. Deputy Forystek testified that Shaw’s mother

allowed the deputies to search her bedroom as well as the garage, but Deputy Helget testified that she searched the bedroom herself. Shaw's mother did not testify.

The record establishes that Shaw's mother consented only to a search of the garage, and the district court's findings to the contrary are clearly erroneous. Although we defer to the district court's credibility determinations, we are convinced that the district court was mistaken when it found that "Deputy Macht and Deputy Helget both testified that [Shaw's mother] gave them permission to search the property outside of the area the children were in." Shaw's mother did not consent to a search of the backyard or the fish house, and the consent exception to the warrant requirement does not apply.

Hot pursuit

Another exception to the warrant requirement involves the "presence of probable cause that an individual has committed a felony and exigent circumstances related to its investigation." *State v. Lussier*, 770 N.W.2d 581, 586 (Minn. App. 2009), *review denied* (Minn. Nov. 17, 2009). One such exigent circumstance is the hot pursuit of a fleeing felon. *Id.* at 587. Police in hot pursuit of a fleeing suspect do not need a warrant before entering a dwelling that the fleeing suspect has entered. *State v. Koziol*, 338 N.W.2d 47, 48 (Minn. 1983). "Hot pursuit" means "some sort of a chase, but it need not be an extended hue and cry in and about the public streets." *State v. Morin*, 736 N.W.2d 691, 695 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Sept. 18, 2007). Put another way, "a person may not defeat a warrantless arrest that has been set in motion in public by entering into a dwelling." *Id.* The state bears the burden of proving that the hot-pursuit exception applies. *Lussier*, 770 N.W.2d at 586.

The district court found that the deputies were in hot pursuit of Shaw because they “were responding to the accident scene when Shaw fled,” tracked Shaw to his mother’s home, and found his truck “with its motor still warm.” However, there is no indication that the deputies were in “hot pursuit” of Shaw. They did not find him at the scene of the accident, attempt to effect a traffic stop, or in any way interact with him until they found him in the fish house. They had no information indicating that Shaw had been drinking before he failed field sobriety tests. Shaw did not flee from a traffic stop or attempt to “defeat a warrantless arrest that [had] been set in motion in public by entering into a dwelling.” *See Morin*, 736 N.W.2d at 695; *see also State v. Paul*, 548 N.W.2d 260, 265 (Minn. 1996) (finding that police were in hot pursuit of defendant where officer activated his squad car lights and followed defendant, ordered defendant to stay in his vehicle, and ordered defendant to stop after he exited the vehicle); *Koziol*, 338 N.W.2d at 47-48 (finding that police were in hot pursuit of defendant where officer attempted traffic stop, defendant “unexpectedly sped away,” and “[a] chase ensued”).

Because the deputies did not have probable cause that Shaw had committed a felony and there were no exigent circumstances relating to their investigation, this case is distinguishable from the typical hot-pursuit case and that exception to the warrant requirement does not apply.

Emergency aid

Police “may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.” *State v. Lemieux*, 726 N.W.2d 783, 787-88 (Minn. 2007) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403, 126

S. Ct. 1943, 1947 (2006)). In applying the emergency-aid exception to the warrant requirement, “two principles must be kept in mind: first, that the burden is on the state to demonstrate that police conduct was justified under the exception; and second, that an objective standard should be applied to determine the reasonableness of the officer’s belief that there was an emergency.” *Id.* at 788.

The supreme court uses a two-part test to determine whether a search was reasonable under the emergency-aid exception. *Ries v. State*, 920 N.W.2d 630, 632 (Minn. 2018) (citing *Lemieux*, 726 N.W.2d at 788). First, the police must have “reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.” *Id.* (quoting *Lemieux*, 726 N.W.2d at 788). And second, “[t]here must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.” *Id.* (alteration in original) (quoting *Lemieux*, 726 N.W.2d at 788). “Under the emergency-aid exception, it does not matter if officers have reason to believe some criminal activity is afoot as long as they are objectively motivated by the need to give aid.” *Id.* (citing *Brigham City*, 547 U.S. at 404, 126 S. Ct. at 1948).

Police in this case received information that a vehicle had struck a utility pole, snapping one of the wires that anchors it to the ground, and that the driver may be injured. They were also informed that the driver had left the scene. One deputy testified that when responding to Shaw’s home, he was trying to determine if Shaw had been injured in the accident. The deputies found Shaw’s still-warm truck parked near a fish house, and the matted-down grass in front of the fish house suggested that someone had recently entered

it. The district court found that, based on these circumstances, the emergency-aid exception applied.

The state has met its burden of proof as to the second part of the *Lemieux* test: the deputies had a reasonable basis to associate Shaw's possible injuries with his residence, and in particular with the fish house, because that is where their investigation led them to believe he would be found. However, the state has not proved the existence of reasonable grounds to believe that an emergency existed. The deputies were only informed that there were "possible injuries" from a single-vehicle accident and that the driver had left the scene. They did not have any information regarding the severity of the damage, if any, to the vehicle, or whether the driver was in fact injured. When the deputies found the truck, there was no testimony that it was heavily damaged or in any way indicated that the driver might have been injured. Moreover, when the deputies arrived at Shaw's home, they did not insist on entering in order to ascertain whether he was injured, but rather accepted his mother's limited permission to search the garage. On this record, the state has not established the existence of an emergency that would require application of the emergency-aid exception.

In sum, no exception to the warrant requirement applied to the search of the fish house, and the deputies were therefore required to obtain a warrant before searching it. Because they did not do so, we reverse.

Reversed.