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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1557**

State of Minnesota,
Respondent,

vs.

John Joseph Robinson,
Appellant.

**Filed September 8, 2020
Affirmed
Worke, Judge**

Olmsted County District Court
File No. 55-CR-18-7446

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

Jason T. Loos, Rochester City Attorney, Brent R. Carlsen, Assistant City Attorney,
Rochester, Minnesota (for respondent)

William L. French, Rochester, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his misdemeanor conviction for failing to maintain an open area of his premises, arguing that the state intentionally destroyed exculpatory evidence, and the ordinance is unconstitutionally vague. We affirm.

FACTS

In December 2017, a Rochester building-safety inspector received a complaint regarding appellant John Joseph Robinson's property. The inspector visited Robinson's property and issued him a warning notice. The notice informed Robinson of the following conditions on his property in violation of section 35.21 of the Rochester Code of Ordinances:

- All wood, lumber, plastic, strewn about in back yard.
- Wires and cables to camper. Rochester Housing Codes does [sic] not allow using campers in driveways of residential properties.
- Both sets of scaffolding along sides of house. These have been up for over the 180 day permit period.
- Install or build a set of steps to front door that meet code. Currently there is an 8" gap between the top step and the door.¹

See Rochester, Minn., Code of Ordinances (RCO) § 35.21, subd. 2 (2018). The notice stated that the items specified in the warning needed to be removed by February 14, 2018.

In September 2018, after determining that Robinson's unresolved violations were still pending, the manager of Rochester Housing Inspection Services went to Robinson's property and took photographs of the junk and debris in Robinson's backyard and behind his garage. The city issued Robinson a second violation notice detailing the conditions to be corrected on his property and setting an October 15, 2018 deadline to bring the property into compliance. The second notice informed Robinson that he needed to:

¹ The reference to the gap in the front steps pertained to an alleged violation of RCO section 35.05, which was dismissed by the state prior to trial and therefore is not implicated by the present appeal.

1. Remove or store within a building all wood, tarps, plastic and other miscellaneous items in the backyard as per Rochester City Ordinance 35.21.
2. Remove both sets of scaffolding along the sides of the residence in accordance with Rochester City Ordinance 35.21.
3. Install or build a set of steps in the front door that meet code. Currently there appears to be an 8” gap between the top step and the entrance door as per Rochester Ordinance 35.05.

The manager inspected Robinson’s property a final time on October 16, 2018, and photographed the nonconforming conditions which remained unchanged from her previous inspection. The city subsequently filed a complaint, charging Robinson with a misdemeanor for violating sections 35.21, subdivision 2, and 35.05 of the RCO.² *Id.*, .05 (2018).

Robinson moved to suppress the photos of his property taken by the manager in September and October 2018, asserting that they were obtained as a result of an unconstitutional search of his property. Robinson also moved to sanction the city for spoliation of evidence due to the city’s failure to retain the digital files of the photographs. Finally, Robinson moved to dismiss count one of the complaint on the basis that section 35.21 is unconstitutionally vague.

Because of the criminal nature of the proceedings, the district court construed Robinson’s spoliation motion as an assertion that the city violated his due-process rights by failing to preserve potentially exculpatory evidence. The district court found that the

² After the complaint was filed, section 35.21 was recodified as RCO § 7-3-21 (2019), and section 35.05 was recodified as RCO § 7-3-5 (2019).

potential exculpatory value of the metadata contained in the digital files was not apparent at the time the digital files were deleted and denied Robinson's due-process motion.

However, the district court suppressed the photographs that it determined were taken on Robinson's property in violation of his Fourth Amendment rights. As a result, the state dismissed count two of the complaint pertaining to the alleged gap in his front steps. The district court denied Robinson's motion to suppress the photos taken from the public sidewalk and from what the manager reasonably believed to constitute Robinson's neighbor's property.³ Finally, the district court determined that section 35.21, subdivision 2, is not unconstitutionally vague and, accordingly, denied Robinson's motion to dismiss.

Following a court trial, the district court found Robinson guilty of violating section 35.21, subdivision 2. This appeal followed.

D E C I S I O N

Destruction of evidence

Robinson argues that the district court erred by determining that the state did not violate his due-process rights by failing to preserve the digital files of the September and October 2018 photographs. "[I]n criminal cases, the state has an affirmative duty to disclose evidence that is favorable and material to the defense." *State v. Williams*, 593 N.W.2d 227, 234 (Minn. 1999) (citing *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194,

³ Robinson erected his fence 2.3 feet inside his property line, and thus, it is possible that a person standing on the neighbor's side of Robinson's fence would still be on Robinson's property.

1196-97 (1963)). “A defendant’s right to due process of law is implicated when the [s]tate loses, destroys, or otherwise fails to preserve material evidence.” *State v. Jenkins*, 782 N.W.2d 211, 235 (Minn. 2010).

Appellate courts consider “whether the destruction was intentional and whether the exculpatory value of the lost or destroyed evidence was apparent and material.” *Id.* (quotation omitted). The failure to preserve potentially useful evidence does not constitute a due-process violation unless the defendant shows that it was the result of “bad faith on the part of the police.” *State v. Nissalke*, 801 N.W.2d 82, 110 (Minn. 2011) (quotation omitted). We review whether a discovery violation occurred de novo. *State v. Palubicki*, 700 N.W.2d 476, 489 (Minn. 2005).

While the state preserved and produced the physical copies of the photographs taken by the manager on her Iphone in September and October 2018, the digital files of the photos were deleted. Robinson asserts that the digital files possessed exculpatory value because the GPS metadata contained therein would purportedly reveal the precise location of where the manager was standing when she took the photographs.

Robinson does not assert that the digital files possessed exculpatory value regarding whether he was guilty of violating section 35.21, subdivision 2. Instead, Robinson maintains that the GPS metadata was relevant to his related suppression motion, where he asserted that the photographs should have been suppressed because they were obtained in violation of his Fourth Amendment rights.

Crucially, Robinson does not challenge the district court’s ruling on his Fourth-Amendment-suppression motion. In that ruling, the district court suppressed the

photographs taken on the front steps of Robinson's property, and the state dismissed the charge related to this violation of the city ordinance. The district court determined that the photographs taken from the public sidewalk were not obtained in violation of his Fourth Amendment rights, and Robinson does not claim any error regarding photos taken from the public sidewalk. Finally, the district court determined that the photographs taken from what the manager reasonably believed to be Robinson's neighbor's property were not obtained in violation of Robinson's Fourth Amendment rights because even if the manager was on Robinson's property, it was as a result of an honest, reasonable mistake of fact. See *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003) (stating that "searches based on honest, reasonable mistakes of fact are unobjectionable under the Fourth Amendment"). Because Robinson has not challenged these rulings on appeal, they remain controlling.

Robinson argues that the district court erred by denying his discovery-sanction motion because if the manager's precise location could be established via the GPS metadata, the district court would have suppressed more of the photographs. However, even if it was proven via the GPS metadata at the omnibus hearing that the manager was standing on the 2.3 feet of Robinson's property beyond his fence line, it would not alter the district court's suppression rulings. This is because Robinson does not challenge the district court's determination that such an intrusion onto his property was the result of a reasonable, honest mistake of fact that Robinson's fence constituted the property line.

The district court correctly determined that the state did not violate Robinson's due-process rights through destruction of the digital files of the September and October 2018 photographs. First, Robinson fails to point to any evidence which establishes or calls into

question whether there was any bad faith when the manager destroyed the digital files, which she preserved in physical copies. The district court found that the destruction was not done in bad faith because the value of the metadata was not apparent at the time the digital files were deleted. Second, Robinson fails to show that the digital files were materially relevant to his defense given his failure to challenge the Fourth-Amendment-suppression rulings. Therefore, we agree with the district court that the deletion of the digital files and their accompanying metadata did not violate Robinson’s right to due process.

Vagueness

Robinson also argues that his conviction should be reversed because section 35.21, subdivision 2, of the RCO is unconstitutionally vague. “The constitutionality of an ordinance presents a question of law that we review de novo.” *State v. Eide*, 898 N.W.2d 290, 297 (Minn. App. 2017). “We presume that ordinances are constitutional, and the appellant typically bears the burden of proving beyond a reasonable doubt that a law is unconstitutional.” *Id.* (citation omitted).

Section 35.21, subdivision 2, provides that:

All open areas and parts of premises shall be maintained and kept in a reasonably clean and neat condition. This requirement shall include the removal of dead trees and brush; the removal of inoperable machines, appliances, fixtures and equipment; the removal of lumber piles and building materials not being used in actual construction on the premises unless such premises are being used by a business dealing in or requiring the use of such lumber and materials, and the storage of these materials for business use is allowed or permitted by ordinance; the removal of tin cans, broken glass, broken furniture, mattresses, box springs, boxes, crates, cardboard,

tires, and other garbage and debris; and the removal of furniture and other items of the type not designed or intended to be stored outside or in such a manner that they are exposed to weather and climatic conditions.

Robinson argues that the ordinance is unconstitutionally vague because neither the phrase “reasonably clean and neat condition,” nor its component terms, are defined and do not adequately convey what activity is prohibited.

“The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *State v. Bussmann*, 741 N.W.2d 79, 83 (Minn. 2007) (quotation omitted). The district court determined that the ordinance is not void for vagueness because the clauses following the requirement that open areas be kept in a “reasonably clean and neat condition” adequately inform an ordinary person what conduct is prohibited.

The clauses following the “reasonably neat and clean condition” requirement provide specific examples that inform an ordinary person what is required in the maintenance of open areas of property. The ordinance specifically requires a land owner to remove “building materials not being used in actual construction on the premises,” which would include the requirement that Robinson remove the scaffolding on the sides of his home which had been up since 2014. The ordinance also specifically requires a landowner to remove “lumber piles” which would include the requirement that Robinson remove the wood strewn about his backyard.

While the ordinance does not specifically reference plastic debris, it does require a landowner to remove “tin cans, broken glass, broken furniture . . . boxes, crates, cardboard, tires, and other garbage and debris” which would reasonably inform an ordinary person that the storage of miscellaneous debris, including plastic, in an open area is prohibited. Therefore, the district court appropriately determined that section 35.21, subdivision 2, is not unconstitutionally vague.

Affirmed.