

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0080**

State of Minnesota,
Respondent,

vs.

William Arnold Lindeman,
Appellant.

**Filed February 1, 2021
Affirmed
Jesson, Judge**

St. Louis County District Court
File No. 69HI-CR-18-221

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

Mark S. Rubin, St. Louis County Attorney, Jessica J. Fralich, Assistant County Attorney,
Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Jesson, Judge; and
Slieter, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Following a bank robbery in which two bank tellers were sprayed with bear mace, police spotted appellant William Lindeman walking with a black garbage bag from his house into the woods on his property. After Lindeman returned empty handed, police

searched the black bag and a nearby cooler, which contained bundles of cash, weapons, and clothes matching the description of the bank robber. Lindeman moved to suppress this evidence, arguing it was obtained through an illegal search. The district court denied the motion. Lindeman appeals that decision, and also contends the district court improperly gave two convictions for aggravated robbery that should instead be considered a single crime with a single conviction. Because the items were found in an “open field” outside the scope of the Fourth Amendment, and the sentencing guidelines allow for multiple convictions for aggravated robbery, we affirm.

FACTS

A man described as five foot seven and stocky, later determined to be appellant William Lindeman, robbed a bank in Orr in March 2018.¹ Donning a grey ski mask and black goggles, Lindeman approached the teller’s counter and sprayed both tellers with bear mace in order to access the cash drawer and take the money. He fled the scene on an ATV with a cooler mounted on the back. An eyewitness reported that a male matching the description of the suspect drove up the driveway of Lindeman’s property shortly after the bank robbery. Lindeman’s property is 12-and-a-half mostly wooded acres. Other than his house, there are no structures, fences, retaining walls, or other artificial barriers on his property. The driveway is several hundred yards long and curves from the house down to a state highway.

¹ The facts described are a summary of those provided at a contested omnibus hearing.

Officers from multiple law enforcement departments arrived roughly half an hour after the robbery, but initially remained at the driveway's end. An ATV was parked in plain view outside Lindeman's home. As officers planned on how best to approach the property, an officer spotted a man walking down the driveway carrying a black garbage bag, and then heading into the adjoining woods. The officers approached the man, now identified as Lindeman, as he returned from the woods no longer holding the black bag. The black bag could be seen from the driveway. It was placed on the ground in the woods roughly 200 yards from Lindeman's house and 100 yards from the highway. An officer followed boot prints in the snow to the black bag where he spotted a white blanket covering an unknown object. Believing it could possibly cover a person involved in the robbery, the officer lifted the blanket to reveal a green cooler, which he also opened. A search warrant was then obtained for the house and other items, including the cooler. The black bag and cooler were later seized and searched. The black bag contained a ski mask, goggles, and clothes matching the description of those worn at the bank robbery. The cooler contained a loaded 9mm handgun, chemical spray (bear mace), \$8,077 in cash, and a loaded rifle.

Lindeman was arrested and charged with one count of first-degree aggravated robbery. Minn. Stat. § 609.245, subd. 1 (2016). In an amended complaint, an additional count of first-degree aggravated robbery was added to reflect one count of aggravated robbery for each of the bank tellers who was sprayed with mace.

Before trial, Lindeman objected to the observation of the black bag in the woods, the removal of the white blanket covering the cooler, and the opening of the cooler as

infringements of his Fourth Amendment protections against unreasonable searches and seizures. Following a contested omnibus hearing in July 2019, the district court denied Lindeman’s motion to suppress the evidence. The district court concluded that the ATV was within the curtilage of Lindeman’s home but that it was in the plain view of the driveway.² As for the cooler and black bag, the district court determined that those items were found in an “open field,” ultimately concluding that their discovery was not a search.³

Following a jury trial, the jury found Lindeman guilty of two counts of first-degree aggravated robbery for each of the bank tellers. The district court imposed concurrent sentences of 48 months and 58 months. Lindeman appeals.

DECISION

On appeal, Lindeman raises two issues. First, he argues that the district court erred by denying a motion to suppress evidence obtained without a warrant, which we view through the lens of the Fourth Amendment. Second, he contends that the district court improperly imposed multiple convictions for aggravated robbery, arguing that spraying two bank tellers with bear mace constitutes the same course of conduct. We address each issue in turn.

² Lindeman is not appealing the discovery of the ATV.

³ The district court alternatively concluded that the items were protected by warrant exceptions due to exigent circumstances and the independent-source doctrine.

I. The district court did not err in refusing to suppress the evidence found in an open field.

Lindeman challenges the district court's conclusion that the discovery of the black plastic bag and blanket-covered cooler was permissible because it took place in an "open field."

When reviewing a district court's pretrial order on a motion to suppress evidence, this court reviews "the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). When the facts are not in dispute, as is the case here, "we review a pretrial order on a motion to suppress de novo and determine whether the police articulated an adequate basis for the search or seizure at issue." *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011).

The United States Constitution guarantees an individual's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV. Generally, an unlawful search or seizure under the Fourth Amendment occurs when an individual's reasonable expectation of privacy is invaded. *Katz v. United States*, 389 U.S. 347, 353, 88 S. Ct. 507, 512 (1967). And evidence unconstitutionally seized must be suppressed. *State v. Jackson*, 742 N.W.2d 163, 177-78 (Minn. 2007). The special protection by the Fourth Amendment only applies to "persons, houses, papers, and effects," and is not extended to "open fields," a broad term that has been applied to a range of circumstances, including wooded areas, deserts, vacant lots in urban areas, open beaches, reservoirs and open waters, or even when the evidence discovered was not in plain view. *Oliver v. United States*, 466 U.S. 170, 176-

77, 104 S. Ct. 1735, 1740 (1984); *see also State v. Sorenson*, 441 N.W.2d 455, 460 (Minn. 1989). But the Fourth Amendment does apply to the curtilage of a home. *State v. Crea*, 233 N.W.2d 736, 739 (Minn. 1975). Curtilage is an area immediately and intimately connected to the home, providing a reasonable expectation of privacy to the resident. *State v. Chute*, 908 N.W.2d 578, 584-85 (Minn. 2018), *cert. denied*, 139 S. Ct. 413 (2018) (citing *United States v. Dunn*, 480 U.S. 294, 301, 107 S. Ct. 1134-39 (1987)). Accordingly, we look to whether the area in which Lindeman’s items were found was within the curtilage of his home. *Dunn*, 480 U.S. at 301, 107 S. Ct. at 1139.

To determine whether this area is located within the curtilage of the property—as opposed to an open field—we consider whether 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; *see also 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”). And while most boundaries of curtilage are “clearly marked,” exceptions abound. *Oliver*, 466 U.S. at 182 n.12, 104 S. Ct. at 1743 n.12. Minnesota courts utilize a four-factor analysis to determine the extent of curtilage, particularly when the boundaries are not clear. To do so we weigh (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. *State v. Krech*, 403 N.W.2d 634, 636-37 (Minn. 1987) (citing *Dunn*, 480 U.S. at 301, 107 S. Ct. at 1139).

Turning to the first factor—proximity—the record shows that the evidence was relatively far from the home. The black bag and cooler were estimated to be 200 yards from the house, twice as far as they were to the major highway. In contrast, the barn in question in *Dunn* was 60 yards from the house, which was described by that court as a “substantial distance.” 480 U.S. at 302, 107 S. Ct. at 1140. We discern that the distance between the items and the house supports no inference that the woods “should be treated as an adjunct of the house.” *Id.*

But Lindeman argues that because the items were close to the driveway, which is within the curtilage, this fact suggests that the items were also within the curtilage. We are not convinced. Lindeman does not point to—nor does caselaw support—a holding that because an area of property is touching curtilage, the curtilage expands to that area as well. And for good reason. Such an argument would endlessly extend curtilage, and this first factor considers the proximity “*to the home*,” not to other areas within the curtilage. *Id.* at 301, 107 S. Ct. at 1139.

Second, none of the items in question were found in an enclosed area. There were no structures, fences, retaining walls, or other artificial boundaries on Lindeman’s property.⁴

⁴ Still, Lindeman argues that his home, located in a rural, remote, wooded area, should not be held to the standards of an urban or suburban community. Lindeman cites to a Sixth Circuit case to explain that natural barriers such as woods and hedges are entitled to the same protection as those formed by artificial barriers. *Daughenbaugh v. City of Tiffin*, 150 F.3d 594, 599 (6th Cir. 1998). But that case dealt with a cleared backyard framed by trees, unlike the wooded area here. As a result, it is unpersuasive.

Nor does the nature of the use of the area where the items were found weigh in favor of a curtilage assessment. *See United States v. Wells*, 648 F.3d 671, 673, 679 (8th Cir. 2011) (stating that a fenced-in backyard obscured from public view is within the curtilage). This court looks to examples like fire pits, evidence of recreational activities, livelihood, or other activities “closely related to the home and associated with the privacies of life” when considering this factor. *Chute*, 908 N.W.2d at 585. Here, the wooded area appeared unused and Lindeman offers no examples of a discernable use of this area that would suggest it is within the curtilage of his home.

Finally, with regard to the fourth factor, there is no evidence that Lindeman took steps to obscure the wooded area from the public. One result of this lack of protection: the black bag was visible from the highway.

Weighing the four factors, we are convinced that the items were not found within the curtilage. Taken as a whole, the items appear to be in an area that no reasonable officer would mistake for an area meant for intimate activity necessitating privacy. Without this showing, the police articulated an adequate basis for the search or seizure at issue, and the district court properly concluded that Lindeman’s constitutional rights were not violated as to justify a motion to suppress.⁵

⁵ Lindeman also argues that the items searched were not protected by either the exigent-circumstances exception or the independent-source doctrine. Similarly, Lindeman cites to *United States v. Mallory*, 765 F.3d 373 (3d Cir. 2014) to say that because the officers secured the premises before searching the cooler, the exigency of the moment was abated and the warrant requirement reattached. However, because the area where these items were found was an open field, we need not address those arguments. *See State v. Henning*, 666 N.W.2d 379, 386 (Minn. 2003) (stating that because the court reached a conclusion on one Fourth Amendment issue, it did not need to reach the other raised arguments).

II. The district court properly entered multiple convictions for aggravated robbery because Lindeman caused bodily harm to two separate victims in the same course of conduct.

Next, Lindeman contends that the court erred when it entered two convictions for two counts of aggravated robbery. The robbery, he asserts, was a “single behavioral incident,” for which he can only be convicted once under Minnesota Statutes section 609.04 (2016). “Whether a defendant commits multiple-victim crimes is a question of law, which this court reviews de novo.” *State v. Skipintheway*, 717 N.W.2d 423, 426 (Minn. 2006).

Under section 609.04, “a defendant cannot be convicted twice for the same offense *against the same* victim on the basis of the same act.” *State v. Goodridge*, 352 N.W.2d 384, 389 (Minn. 1984) (emphasis added). If the defendant commits the same offense against multiple victims as part of the same behavioral incident, then multiple convictions are permissible. *State v. Mendoza*, 297 N.W.2d 286, 288 (Minn. 1980). While the multiple-victims exception is more commonly used in cases involving multiple sentences, Minnesota courts also recognize the exception’s application to multiple convictions, particularly when they are crimes against persons. *See, e.g., State v. Notch*, 446 N.W.2d 383, 385 (Minn. 1989); *State v. Mitjans*, 408 N.W.2d 824, 835 (Minn. 1987).

Turning to this case, Lindeman was convicted for aggravated robbery for separately spraying two different tellers with bear mace during the same robbery. Minn. Stat. § 609.245, subd. 1. For a conviction of aggravated robbery, the property that is taken does not have to be from the person that receives bodily harm, because simple robbery is defined as being *in the presence of another*. Minn. Stat. § 609.24 (2016). As applied to

Lindeman, while he only took the property of the bank, he did so in the presence of two individuals who he then sprayed with bear mace in order to gain access to the cash drawers. Unlike convictions for simple robbery, concurrent sentences for multiple first-degree aggravated-robbery convictions are permissive under the Minnesota Sentencing Guidelines. Minn. Sent. Guidelines 2.F.2.a.(1)(ii), 6 (2016). Despite occurring during the same robbery, both the Minnesota Sentencing Guidelines and the multiple-victims rule allow for multiple convictions.

To attempt to convince us otherwise, Lindeman cites to a case where the Minnesota Supreme Court reasoned that it could not allow three burglary convictions “simply because three people were present in the house when it was burglarized.” *State v. Hodges*, 386 N.W.2d 709, 711 (Minn. 1986). In *Hodges*, the supreme court stated that because the crime of burglary is classified in the criminal code as a property crime, a burglary of a dwelling with multiple people should only justify one burglary conviction for the purposes of section 609.04. *Id.* But, it added that “[u]nder this approach, the commission of other crimes, such as assault or *robbery*” could justify additional convictions and sentences per victim. *Id.* (emphasis added). We are not persuaded with Lindeman’s reliance on *Hodges*, as he was convicted of aggravated robbery—a crime against a person—instead of burglary. Additionally, the amended complaint charged two counts of robbery—for each act against one of the bank tellers—and the jury verdicts reflect that they found him guilty for aggravated robbery against each individual teller.

Because two convictions are permitted for first-degree aggravated robbery, the district court acted appropriately when entering judgments of conviction for both counts and imposing concurrent sentences.

Affirmed.