COURT OF APPEALS OF VIRGINIA

Record No. 1482-25-3

WARREN BAILEY ANDERSON, JR.
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Causey, Raphael and Duffan

Opinion Issued September 29, 2026*

FROM THE CIRCUIT COURT OF CAMPBELL COUNTY
John T. Cook, Judge

(Jason W. Todd, Jr.; The Law Office of J.W. Todd, PLLC, on brief), for appellant. Appellant submitting on brief.

(Jason S. Miyares,[1] Attorney General; Elizabeth Kiernan Fitzgerald, Assistant Attorney General, on brief), for appellee.

MEMORANDUM OPINION
PER CURIAM

Following a bench trial, the trial court convicted Warren Bailey Anderson, Jr. of possessing a firearm after conviction of a non-violent felony, possessing a Schedule I or II controlled substance, and simultaneously possessing illegal drugs and a firearm. The trial court sentenced Anderson to 12 years of imprisonment with 10 years suspended. On appeal, Anderson contends that the trial court erred in denying his motion to suppress because the police unlawfully entered his residence and seized evidence. Anderson also contends that the trial court erred in convicting him

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

[1] Jay C. Jones succeeded Jason S. Miyares as Attorney General on January 17, 2026.

of possessing a firearm while in possession of illegal drugs. We find no trial court error and affirm the judgment.[2]

BACKGROUND[3]

The motion to suppress

A Campbell County grand jury indicted Anderson for grand larceny of a firearm, possessing a firearm after conviction of a non-violent felony, possessing a Schedule I or II controlled substance, and simultaneously possessing a controlled substance and a firearm "on or about his person" in violation of Code § 18.2-308.4(B). Anderson moved to suppress the evidence against him, alleging that the police unlawfully approached and entered a shed where he lived without a warrant, exigent circumstances, or permission. He maintained that the officer entered the shed without first obtaining voluntary consent to do so. Anderson also contended that any statement he made after the illegal entry should be suppressed as a result of the Fourth Amendment violation.

At the hearing on Anderson's motion to suppress, the evidence proved that on October 13, 2024, Brookneal Police Officer Tanner received a call about the theft of a tablet and firearm. The caller identified Anderson as the suspected culprit. At around midnight, Officer Tanner

[2] While the appellant waived oral argument, the Commonwealth did not. However, having examined the briefs and record in this case, the panel unanimously agrees that oral argument is unnecessary because "the dispositive issue or issues have been authoritatively decided, and the appellant has not argued that the case law should be overturned, extended, modified, or reversed." *See* Code § 17.1-403(ii)(b); Rule 5A:27(b).

[3] "In accordance with familiar principles of appellate review, the facts will be stated in the light most favorable to the Commonwealth, the prevailing party at trial." *Stillwell v. Commonwealth*, 80 Va. App. 278, 280 n.1 (2024) (quoting *Gerald v. Commonwealth*, 295 Va. 469, 472 (2018)). "On appeal, we discard any of appellant's conflicting evidence, and regard as true all credible evidence favorable to the Commonwealth and all inferences that may reasonably be drawn from that evidence." *Id.*

went to 108 Claytor Road, which was the residence of Anderson's grandmother.[4] Officer Tanner was familiar with Anderson and knew that he lived in a shed behind his grandmother's home. The shed was a small space, only six by eight feet. Officer Tanner had been to the shed several times and knew that it contained tools and personal effects.

Officer Tanner knocked on the door of the shed, identified himself as the Brookneal police, and announced that he needed to talk to Anderson. The officer heard movement inside the shed, then the door "cinched . . . closed a little tighter." When the officer stated that he needed to talk to Anderson about a tablet, Anderson responded that he did not have it.[5] Anderson opened the door, and Officer Tanner saw sharp-edged weapons inside the shed. In addition, the officer saw a "short barreled AR style firearm" hanging on the right rear wall of the shed near the doorway. Because of the sharp items and potential weapon, the officer asked Anderson to step outside to talk. Anderson put on his shoes and stepped outside the shed. Officer Tanner testified that while standing outside the shed, he saw a small clear baggie containing suspected methamphetamine on the floor of the shed; the baggie either had been underneath Anderson's shoe or fell out of it.[6]

At the conclusion on the suppression hearing, Anderson argued that the "narrow issue" that the court needed to decide was whether "Officer Tanner was lawfully allowed to be where he was[.]" He asserted that the officer did not have the permission of the property owner to be on the property at midnight to investigate a theft. Anderson asserted that because the officer was

[4] The home was not posted with "no trespassing" signs, and Anderson's grandmother did not give Officer Tanner permission to enter her property.

[5] The tablet had been returned, but the owner wanted to press charges for the theft.

[6] Laboratory testing later confirmed that the baggie contained methamphetamine.

not lawfully on the premises, "[a]ll the searches, the statements, [and] any consent that was given later on in this interaction" were tainted.

The trial court found that nothing prohibited Officer Tanner from approaching the shed. The officer was acting in an investigative role when he went to the shed, where he knew Anderson lived. The trial court ruled that Officer Tanner did not violate Anderson's Fourth Amendment rights by knocking on the door and denied the motion to suppress.

Evidence at trial

Anderson's bench trial followed immediately after the suppression hearing, and the parties agreed to incorporate the evidence previously introduced.

After spotting the baggie of suspected drugs on the floor of the shed, Officer Tanner commented that he "would be seizing that." Officer Tanner entered the shed and picked up the baggie, which was on top of a sleeping bag on the floor. Anderson stated that he last used methamphetamine three days before.

When the officer asked for consent to search the shed, Anderson said that he had nothing else. After stammering and repeating that he had nothing, he consented to Officer Tanner's search. The officer found a hypodermic needle on the floor near the sleeping bag. Officer Tanner checked the AR style weapon on the wall, and found it to be a BB gun. The officer then found a shotgun, with a second sleeping bag draped over it, leaning against the wall. The shotgun was close to the door of the shed. The gun was three to four feet—and only one step away—from where Anderson had been standing in the shed.

As soon as Officer Tanner found the shotgun, Anderson began "pleading" and crying, asking the officer "not to do this." He said the gun was his grandfather's and admitted that he

was not supposed to have it in the shed.[7] Officer Tanner handcuffed Anderson while he finished the investigation. Anderson said there was one shot in the gun. He also said he had taken the shotgun from inside his grandmother's house a few weeks ago, and had planned to use it to commit suicide.

Anderson moved to strike the charge of simultaneous possession of drugs and a firearm. Anderson maintained that while the evidence showed constructive possession of the gun and the drugs, neither item was "on or about" his person, as required by Code § 18.2-308.4(B).[8] The trial court denied the motion to strike.

Anderson testified that he did not intend to steal the shotgun from his grandmother because he essentially owned it after his grandfather's death. He denied having the shotgun and the drugs in the shed at the same time.

At the conclusion of the evidence, Anderson conceded that the evidence proved he constructively possessed the methamphetamine. He also conceded that he had no "legal argument" on the charge of possessing a firearm after conviction of a felony. But defense counsel reiterated his argument that the evidence did not prove Anderson had the drugs and firearm "about his person" and said that "if anything, he's guilty of subsection A, not subsection B."

The trial court found the evidence sufficient to prove that Anderson possessed the drugs and the firearm after conviction of a felony, but acquitted him of grand larceny. The trial court

[7] The evidence proved that Anderson had prior felony convictions.

[8] Under Code § 18.2-308.4(A), it is a Class 6 felony "for any person unlawfully in possession of a controlled substance" to "simultaneously with knowledge and intent possess any firearm." Code § 18.2-308.4(B) also prohibits simultaneous possession of drugs and "any firearm on or about his person." A conviction under Code § 18.2-308.4(B) is a Class 6 felony but also carries a mandatory minimum two-year term of imprisonment. *Id.*

accepted Anderson's argument on the charge of simultaneously possessing the drugs and firearm and convicted him under Code § 18.2-308.4(A). This appeal followed.

ANALYSIS

I. Motion to Suppress

"On appeal of the denial of a motion to suppress, we view the evidence in the light most favorable to the Commonwealth." *Jones v. Commonwealth*, 71 Va. App. 375, 380 (2019) (quoting *Carlson v. Commonwealth*, 69 Va. App. 749, 757 (2019)). "[W]hen a defendant challenges the denial of a motion to suppress, he has the burden to show that the trial court's ruling constituted reversible error." *Adams v. Commonwealth*, 48 Va. App. 737, 745 (2006). "Since the constitutionality of a search and seizure under the Fourth Amendment involves questions of law and fact, we give deference to the factual findings of the trial court but independently decide whether, under the applicable law, the manner in which the challenged evidence was obtained satisfies constitutional requirements." *Jackson v. Commonwealth*, 267 Va. 666, 672 (2004).

A. Officer Tanner did not violate Anderson's Fourth Amendment rights by approaching the shed.

Anderson first contends that Officer Tanner violated his Fourth Amendment rights by approaching the shed where he lived to investigate the reported theft at around midnight.[9] The Fourth Amendment protects "[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. "It long has been recognized that, for Fourth Amendment purposes, the home includes more than the

[9] Anderson also appears to claim that the police acted unlawfully by not asking for his grandmother's permission to enter her property. But whether the police infringed on Anderson's grandmother's Fourth Amendment rights is irrelevant to our review of the trial court's denial of the motion to suppress evidence *against Anderson*. *See Alderman v. United States*, 394 U.S. 165, 174 (1969) (finding that "Fourth Amendment rights are personal rights which . . . may not be vicariously asserted").

interior of a residence: the amendment's protections also extend to 'the land immediately surrounding and associated with the home,' an area referred to as 'the curtilage[.]'" *Saal v. Commonwealth*, 72 Va. App. 413, 421-22 (2020) (alteration in original) (quoting *Oliver v. United States*, 466 U.S. 170, 180 (1984)). "Because the curtilage is 'considered part of home itself for Fourth Amendment purposes[,]' the amendment's protection against unreasonable searches [and seizures] applies to such areas." *Id.* at 422 (first alteration in original) (quoting *Oliver*, 466 U.S. at 180). "When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred. Such conduct thus is presumptively unreasonable [for purposes of the Fourth Amendment] absent a warrant." *Collins v. Virginia*, 584 U.S. 586, 593 (2018) (citation omitted).

But an exception to the warrant requirement "permits police to enter a citizen's curtilage without a warrant in order to engage in what colloquially has been called a 'knock and talk.'" *Saal*, 72 Va. App. at 422 (quoting *Robinson v. Commonwealth*, 47 Va. App. 533, 554 (2006) (en banc), *aff'd*, 273 Va. 26 (2007)). "As such, the Supreme Court has noted that there is a license 'implied from the habits of the country,' for the general public to approach a home in the hopes of speaking with a resident." *Ingram v. Commonwealth*, 74 Va. App. 59, 69 (2021) (quoting *Florida v. Jardines*, 569 U.S. 1, 8 (2013)). "Absent affirmative steps to rescind the invitation by the homeowner, the license 'typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave.'" *Id.* at 69-70 (quoting *Jardines*, 569 U.S. at 8). "This license extends to law enforcement because '[w]hen law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do.'" *Id.* at 70 (alteration in original) (quoting *Kentucky v. King*, 563 U.S. 452, 469 (2011)).

"Finally, so long as officers are within the geographic scope of the implied license, they 'are free to keep their eyes open.'" *Id.* (quoting *Robinson*, 47 Va. App. at 550). However, "whether an officer's actions fall within the implied license 'depends upon the purpose for which [he or she] entered.'" *Id.* (alteration in original) (quoting *Jardines*, 569 U.S. at 10).

Anderson contends that Officer Tanner's conduct exceeded the limits of the implied license because he went to the shed at midnight to investigate a property crime. In *Saal*, however, we rejected a bright-line rule that the implied invitation to the officer or anyone else to knock on the door of a residence "ceased to exist given the time of night." 72 Va App. at 423. That the "knock and talk" occurred during nighttime is a factor to consider, but is not dispositive of whether the police officer's actions were reasonable under the totality of the circumstances. *Id.* at 426-27. As we noted, "knocking, without more, constitutes a minimal intrusion" for Fourth Amendment purposes. *Id.* at 427.

Here, Officer Tanner approached the shed, knowing Anderson used it as his residence, to ask him about the property that had been reported stolen. The officer knocked on the door, announced his presence, and asked to speak to Anderson. "[W]hether the person who knocks on the door and requests the opportunity to speak is a police officer or a private citizen, the occupant has no obligation to open the door or to speak." *Id.* at 428 (quoting *King*, 563 U.S. at 469-70). Anderson thus had no obligation to answer Officer Tanner's knock at the door, but he did. He chose to open the door and to comply with Officer Tanner's request to exit the shed. Accordingly, considering the totality of the circumstances, the officer acted reasonably and within the scope of implied consent. The trial court did not err in finding no violation of Anderson's Fourth Amendment rights and denying the motion to suppress.

B. Anderson waived his claims that the officer unlawfully seized the methamphetamine because it was not in plain view, that he did not voluntarily consent to a search of the shed, and that his statements about the drugs and gun were inadmissible as a product of unlawful police conduct.

Anderson argues that Officer Tanner did not lawfully seize the methamphetamine under the "plain view" doctrine, his consent to search the shed was not voluntary, the officer unlawfully searched the shed and found the shotgun, and his statements about the contraband were fruits of a poisonous tree under *Wong Sun v. United States*, 371 U.S. 471 (1963). However, Anderson limited his argument at the suppression hearing to one "narrow issue"—whether Officer Tanner violated his Fourth Amendment rights by approaching his residence and knocking on the door. This was the sole issue that Anderson asserted at the suppression hearing and the only question on which the trial court ruled.

"No ruling of the trial court . . . will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice." Rule 5A:18. "The purpose of th[e] contemporaneous objection requirement [in Rule 5A:18] is to allow the trial court a fair opportunity to resolve the issue at trial, thereby preventing unnecessary appeals and retrials." *Creamer v. Commonwealth*, 64 Va. App. 185, 195 (2015). "Specificity and timeliness undergird the contemporaneous-objection rule, animate its highly practical purpose, and allow the rule to resonate with simplicity." *Bethea v. Commonwealth*, 297 Va. 730, 743 (2019). "Not just any objection will do. It must be both *specific* and *timely*—so that the trial judge would know the particular point being made in time to do something about it." *Id.* (quoting *Dickerson v. Commonwealth*, 58 Va. App. 351, 356 (2011)).

Beyond his Fourth Amendment claim concerning the officer's presence at the door of the shed, Anderson did not argue or obtain a ruling from the trial court on the additional issues he raises on appeal. It was Anderson's burden to obtain a ruling from the trial court on these issues

to preserve them for appellate review. *Teleguz v. Commonwealth*, 273 Va. 458, 470-71 (2008). Although there are exceptions to Rule 5A:18, Anderson has not invoked them, and we do not do so sua sponte. *Spanos v. Taylor*, 76 Va. App. 810, 827-28 (2023). Accordingly, Anderson waived these additional claims, and we do not consider them.

II. Sufficiency of the Evidence

Challenging the sufficiency of the evidence to sustain his conviction under Code § 18.2-308.4(B), Anderson asserts that the Commonwealth did not "demonstrate temporal overlap or knowledge" of the drugs and the shotgun. He asserts, "Nothing factually established that he exercised knowing dominion and control over both the firearm and the controlled substance at the same time." Anderson did not raise this argument at trial. Instead, he conceded that the evidence showed that he constructively possessed both the drugs and the gun on the date of the charged offenses, but maintained that the gun was not "on or about" his person, as required for conviction under Code § 18.2-308.4(B). In fact, the trial court agreed and convicted Anderson instead under Code § 18.2-308.4(A).

Anderson did not preserve for appellate review his current challenge to the sufficiency of the evidence to sustain his conviction under Code § 18.2-308.4(A), and we will not consider it for the first time on appeal.[10] Rule 5A:18. Anderson does not invoke either exception to Rule 5A:18, and we do not do so sua sponte. *Spanos*, 76 Va. App. at 827-28.

[10] In fact, contrary to his present position on appeal, at the conclusion of the trial Anderson apparently agreed that the evidence was sufficient to sustain a conviction under Code § 18.2-308.4(A). "A party may not approbate and reprobate by taking successive positions in the course of litigation that are either inconsistent with each other or mutually contradictory." *Cangiano v. LSH Bldg. Co.*, 271 Va. 171, 181 (2006). "The doctrine protects a basic tenet of fair play: No one should be permitted, in the language of the vernacular, to talk through both sides of his mouth." *W. Refin. Yorktown, Inc. v. County of York*, 292 Va. 804, 826 (2016) (quoting *Wooten v. Bank of Am., N.A.*, 290 Va. 306, 310 (2015)). We do not consider Anderson's contention for this additional reason.

CONCLUSION

For the foregoing reasons, we affirm the trial court's judgment.

Affirmed.