

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 18, 2017**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2015AP2544-CR**

**Cir. Ct. No. 2014CF750**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JIMMIE E. HANSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Sheboygan County: L. EDWARD STENGEL, Judge. *Affirmed.*

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

¶1 PER CURIAM. Jimmie E. Hanson appeals a judgment convicting him of attempted armed robbery and two counts of armed robbery. He contends tainted information in an affidavit authorizing a search of his house, detached

garage, and vehicle stripped the warrant of probable cause to believe that evidence of crimes would be found on the premises. For the reasons that follow, we affirm.

¶2 Around 7:15 p.m. on December 2014, a person wielding a handgun held up a City of Sheboygan BP gas station. The two clerks said the robber was garbed in dark clothing and appeared to be wearing white facial makeup beneath a partial ski mask. Both said the robber wore a wig; one said he believed the robber was a black male. The store's camera captured the robbery.

¶3 Outdoor surveillance cameras showed a "brownish or tannish" van driving through the parking lot, without stopping at the store or pumps, at 6:30 p.m. The video captured a partial license plate: the numerals 22 and the letters WTW. The van appeared to be a Chevrolet Venture. A nearby resident reported seeing an unfamiliar, gold-colored van with rust parked on a dead-end street behind the gas station at 6:50 p.m. and that the van was gone at 7:40 p.m.

¶4 The gun in the BP surveillance videos appeared similar to the gun used twelve days earlier in an unsolved armed robbery of a Sheboygan Citgo gas station. Citgo surveillance videos showed the robber wearing a "Scream" mask. Both perpetrators were similar in height and build as each other and Hanson.

¶5 A Department of Transportation database identified the Venture—license plate 220-WTW—as being registered to Jimmie Hanson and a woman. Another database revealed the pair's Sheboygan address. At that address, police observed a van matching the description the resident had given parked in a detached garage.

¶6 Armed with a search warrant issued based, in part, on having seen the van in the garage, police searched Hanson's residence, garage, and van. They

recovered clothing, shoes with a unique tread, gloves, a ski mask, a wig, a mask from the movie “Scream,” and a gun with a barrel extension as described by the various gas station clerks and/or shown in the videos. Hanson admitted to the BP and Citgo robberies and to the attempted robbery of a third gas station.

¶7 Hanson moved to suppress the evidence seized in the search. He argued that the warrant affidavit was based on an unlawful, warrantless search of his garage, and that, without the illegally obtained information from the garage, the affidavit lacked probable cause. The State responded that, even without information gleaned from looking in the garage, there was probable cause in the four corners of the affidavit with reasonable inferences to substantiate it. The court similarly found that probable cause existed without considering the officer’s allegedly illegal observation of the van in Hanson’s garage and denied Hanson’s motion. He pled no contest to the three charges.

¶8 On appeal, Hanson renews his challenge to the search warrant. When reviewing the denial of a motion to suppress, we uphold the trial court’s findings of fact unless they are clearly erroneous but independently review the application of the law to those facts. *State v. Gralinski*, 2007 WI App 233, ¶13, 306 Wis. 2d 101, 743 N.W.2d 448. Even assuming that the search warrant affidavit contained some tainted evidence, the warrant nonetheless may be valid if the affidavit presents sufficient untainted evidence. *State v. St. Martin*, 2011 WI 44, ¶17, 334 Wis. 2d 290, 800 N.W.2d 858.

¶9 The Fourth Amendment to the United States Constitution and art. I, § 11 of the Wisconsin Constitution guarantee that persons shall be free from unreasonable searches and seizures. “It is a ‘basic principle of Fourth Amendment law’ that searches and seizures inside a home without a warrant are presumptively

unreasonable.” *State v. Dumstrey*, 2016 WI 3, ¶22, 366 Wis. 2d 64, 873 N.W.2d 502 (citation omitted).

¶10 Fourth Amendment protections extend to a home’s curtilage. *State v. Martwick*, 2000 WI 5, ¶26, 231 Wis. 2d 801, 604 N.W.2d 552. An attached garage clearly is part of the curtilage. *State v. Davis*, 2011 WI App 74, ¶12, 333 Wis. 2d 490, 798 N.W.2d 902. Whether Hanson’s detached garage was part of his home’s curtilage is less clear.<sup>1</sup>

¶11 When defining the extent of a home’s curtilage, a court should consider four factors:

the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.

*United States v. Dunn*, 480 U.S. 294, 301 (1987). A nonevidentiary hearing was held on Hanson’s suppression motion. The trial court thus did not undertake a *Dunn* analysis to determine whether the detached garage could be considered part of the home’s curtilage, and the record does not otherwise shed light in that regard. Accordingly, we will assume without deciding that the “search” of the garage did not pass constitutional muster.

¶12 A search warrant “may issue only upon a finding of probable cause by a neutral and detached magistrate.” *State v. Ward*, 2000 WI 3, ¶21, 231 Wis. 2d 723, 604 N.W.2d 517 (citation omitted). Probable cause exists if the warrant-

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<sup>1</sup> Further, the warrant affidavit states only that the police officer “had occasion to observe the vehicle in question in the garage,” but it does not indicate from what vantage point—i.e., whether he entered the garage or simply looked in an open door.

issuing magistrate was “apprised of sufficient facts to excite an honest belief in a reasonable mind that the objects sought are linked with the commission of a crime, and that the objects sought will be found in the place to be searched.” *State v. Starke*, 81 Wis. 2d 399, 408, 260 N.W.2d 739 (1978). A finding of probable cause is a commonsense test based on the totality of the circumstances in the individual case. *Gralinski*, 306 Wis. 2d 101, ¶15. We give great deference to the magistrate’s determination that probable cause supports issuing a search warrant and will uphold the probable cause determination if there is a substantial basis for it. *Ward*, 231 Wis. 2d 723, ¶21.

¶13 The officer’s observations in looking into the garage did not factor into the trial court’s determination that the affidavit established probable cause. Rather, it considered:

the observations of the neighbor as to the van being parked at a suspicious location, the observations of the officers in viewing the video, seeing this van that bears a[] resemblance, similarities to the van being parked at the suspicious location, the time in question, the ability to detect a partial license plate, and the observations of the individual in the video at the time of the robbery[.]

The court concluded that “when the officer follows up on all of these facts and circumstances ... the affidavit does put together a very logical sequence of this investigation[.]”

¶14 Viewing the totality of the circumstances, we must agree. Surveillance camera footage from the two robberies showed the perpetrator wielding what appeared to be the same weapon, an “odd” handgun with a barrel extension. In the Citgo heist, the robber wore a “Scream” mask; in the BP robbery, he wore white makeup and a black half ski mask. A citizen reported an unfamiliar van parked in a suspicious area behind the BP station shortly after a

video showed a similar van driving through the gas station lot without stopping. Using the make and model of the van and the nearly complete license plate number, the DOT database tied the vehicle to Hanson; another database revealed his address. The robber as seen on video and as described by the clerks was “very similar” to Hanson’s height and build. Finally, Hanson has served time in Illinois for a prior armed robbery. There was a substantial basis for the magistrate’s commonsense finding that the affidavit stated probable cause.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

