STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 1535

STATE OF LOUISIANA

VERSUS

JOSEPH MICHAEL MOULTRIE

Judgment Rendered: OCT 2 3 2015

* * * * *

On Appeal from the
32nd Judicial District Court,
Parish of Terrebonne, State of Louisiana
Trial Court No. 586702
The Honorable David W. Arceneaux, Judge Presiding

* * * * *

Joseph Waitz, Jr.,
District Attorney
Marian M. Hamilton
Assistant District Attorney
Houma, Louisiana

Attorneys for Plaintiff/Appellee,
State of Louisiana

Margaret S. Sollars
Thibodaux, Louisiana

Attorney for Defendant/Appellant,
Joseph Michael Moultrie

* * * * *

BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

McDonald, J. dissents and assigns reasons.

CRAIN, J.

The legal issue that must be resolved in this criminal case is whether the defendant's constitutional rights were violated when a police officer, without a search warrant, opened the lid of a barbecue grill located next to a trailer that the defendant claimed as his residence and seized drug evidence found therein. Finding that the seized drug evidence was the product of an unconstitutional search, we reverse the trial court's ruling on the motion to suppress, reverse the defendant's conviction that was dependent upon the inadmissible drug evidence, vacate the defendant's habitual offender adjudication and sentence, and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

On the night of October 27, 2010, Terrebonne Parish Sheriff's Office Narcotics Task Force agents doing street-level drug enforcement were patrolling the area around the Daniel Turner Trailer Park, a known high-crime area in Houma, Louisiana. At approximately 11:00 p.m., their undercover unit turned into the trailer park where agents observed the defendant standing alone in the middle of the street. In the immediate area where the defendant was standing, two house trailers sat side by side, with a short concrete driveway located between the two trailers. The defendant, who was facing the agents, seemed to recognize the undercover unit as law enforcement and quickly walked out of the street and between the trailers. The trailer nearest the approaching undercover unit blocked the agents' sight of the defendant for a few seconds. As the undercover unit pulled in front of the driveway, the agents observed the defendant walking back toward them. The blue lights on the undercover unit were activated, and the agents exited the unit.

Agent Russell Madere made contact with the defendant at the street. At the same time, Agents Dallas Bookenberger and Joseph Renfro walked up the

driveway holding flashlights to see if the defendant had discarded drugs or a weapon. On the ground, the agents observed torn baggies, which appeared to have cocaine and marijuana residue on them.[1] As the agents continued up the driveway, they saw a barbecue grill and a dilapidated car. Agent Renfro noticed that the grill lid sat at an angle, rather than flush, and that there was "disturbed" dew on the handle of the grill lid, in contrast to undisturbed dew on most everything else. Agent Renfro lifted the grill lid and found approximately two ounces (fifty grams) of crack cocaine packaged for sale. At trial it was established that the street value of the cocaine was approximately $10,000.00.

The defendant was arrested and read his Miranda rights. Upon questioning by Agent Bookenberger, the defendant indicated that he lived at the trailer, that the barbecue grill belonged to his family, and that he had no knowledge of the drugs found by the officers.

The trial court denied the defendant's motion to suppress the drug evidence, and a jury found the defendant guilty as charged of possession with intent to distribute cocaine. *See* La. R.S. 40:967A(1). The defendant was adjudicated a second-felony habitual offender and sentenced to twenty years imprisonment at hard labor without benefit of probation or suspension of sentence. The defendant now appeals.

SUPPRESSION OF THE EVIDENCE

The defendant contends that the trial court erred in denying his motion to suppress. When a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion, i.e., unless such ruling is not supported by the evidence. *See State v. Green,* 94-0887 (La. 5/22/95), 655 So. 2d 272, 280-81. However, a trial

---

[1] The defendant was not charged with any crime related to the torn baggies, and the agents made no attempt to connect the defendant to that suspected drug evidence, but said such findings were common in high-drug areas.

court's legal findings are subject to a *de novo* standard of review. *State v. Hunt,* 09-1589 (La. 12/1/09), 25 So. 3d 746, 751. In conducting its review, the appellate court may consider not only the evidence adduced at the hearing on the motion, but also all pertinent evidence given at the trial of the case. *State v. Leger*, 05-0011 (La. 7/10/06), 936 So. 2d 108, 122.

The Fourth Amendment to the United States Constitution and Article I, Section 5, of the Louisiana Constitution protect people against unreasonable searches and seizures. It is well settled that a search and seizure conducted without a warrant issued on probable cause is *per se* unreasonable unless the State can affirmatively show that the warrantless search and seizure was justified by one of the narrowly drawn exceptions to the warrant requirement. *See* La. Code Crim. Pro. art. 703D; *State v. Thompson*, 02-0333 (La. 4/9/03), 842 So. 2d 330, 335. A search incident to an investigatory stop is one such exception. *See Minnesota v. Dickerson*, 508 U.S. 366, 373, 113 S. Ct. 2130, 2136 124 L. Ed. 2d 334 (1993); *State v. Carter*, 13-1952 (La. 12/2/13), 130 So. 3d 308, 311-12. On appeal, the defendant contends that the agents lacked justification for the investigatory stop.

An officer may stop a citizen in a public place and question him based upon a reasonable suspicion that the individual has committed or is about to commit an offense. *See* La. Code Crim. Pro. art. 215.1; *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 676, 145 L. Ed. 2d 570 (2000); *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); *State v. Summers*, 15-1363 (La. 7/29/15), ___ So. 3d ___, ___ (2015WL4724383). Whether reasonable suspicion exists requires weighing the totality of the circumstances known to the police at the time of the stop. *See State v. Gates*, 13-1422 (La. 5/7/14), 145 So. 3d 288, 302. It is well established that the reputation of an area is an articulable fact upon which law enforcement may legitimately rely, and is therefore relevant in considering whether there existed a particularized and objective basis for suspecting the defendant had

committed, or was about to commit a criminal offense. *See State v. Temple*, 02-1895 (La. 9/9/03), 854 So. 2d 856, 859-60. Further, an individual's nervous, startled behavior, or flight in a high-crime area gives rise to reasonable suspicion for an investigatory stop. *See Wardlow*, 528 U.S. at 125, 120 S. Ct. at 145; *State v. Lewis*, 00-3136 (La. 4/26/02), 815 So. 2d 818, 821.

We find that under the particular facts of this case, the agents had reasonable suspicion to stop and question the defendant. The agents were in a known high-crime area at approximately 11:00 p.m. when they observed the defendant standing alone in the middle of the street. The lighting in the area was bad. Upon recognizing the presence of law enforcement, the defendant quickly walked away, purposefully avoiding visual contact with the agents for a very brief period of time. When the agents, just seconds later, arrived at the driveway where the defendant had disappeared, the defendant reappeared, walking back toward them. Considering these facts, it was reasonable for the agents to stop and detain the defendant.

Incident to an investigatory stop, officers are justified in conducting a protective search for weapons that might be used to harm them. *See Dickerson*, 508 U.S. at 373, 113 S. Ct. at 2136; *U.S. v. Rideau*, 969 F. 2d 1572, 1575-76 (5th Cir. 1992) (on rehearing *en banc*); *Carter*, 130 So. 3d at 311-12. Such a search does not typically extend beyond a limited pat-down of the defendant's body and the area within his reach. However, rigid adherence to artificial lines defining the scope of these searches can result in the failure to consider the realities of the risks faced by these law enforcement officers. The reasonableness of the scope of such a search must be measured against the circumstances existing at the time. *Cf. Summers*, ___ So. 3d at ___; *see also Rideau*, 969 F. 2d at 1575-76.

The agents' search of the open areas where the defendant briefly disappeared before returning for questioning was a reasonable search incident to the

investigatory stop. The trailer park where the stop occurred was well-known to the agents for its high rate of drug crimes and shootings. That, coupled with the darkness of night and the defendant's suspicious disappearance then reappearance, justified the agents scanning the area for contraband. More importantly, a minimally intrusive search of the area to ensure that no-one else was present who might harm the officers while the defendant was being questioned was reasonable and appropriate.

However, a search incident to a *Terry* investigatory stop must, considering the totality of the circumstances, be narrowly tailored to ensure the safety of the officers during questioning of the individual.[2] *Cf. State v. Duhe*, 12-2677 (La. 12/10/13), 130 So. 3d 880, 886-87. At the motion to suppress hearing, the trial court stated, "If I had been a policeman on the scene that night I would have been concerned that there was a weapon in that barbecue pit within reach of that defendant." The testimony of the agents, however, established that the defendant was detained at the street, *some thirty feet from the grill.* Under the totality of the circumstances, opening the grill exceeded the limited scope of the permissible search justified by the stop.

The trial court determined that the officers were justified in opening the grill by the exigent circumstances exception to the warrant requirement. Exigent circumstances are exceptional circumstances which, when coupled with probable

---

2 In *Rideau*, the officers observed the defendant standing in the street alone in a high-crime area where public intoxication was a recurrent problem and people often carried weapons. When officers flashed their bright lights, the defendant stumbled out of the roadway, leading them to suspect he was intoxicated. Upon exiting their vehicle to investigate, the defendant acted nervous, would not answer questions, and began to back away. One officer patted down the defendant's outer clothing and felt a firearm in his front pocket. The defendant was convicted of possession of a firearm by a convicted felon. *Rideau*, 969 F.2d at 1573. The *en banc* court recognized that officers are not justified in frisking anyone they encounter on the street at night in a high-crime neighborhood, but "the reality [is] that the setting in which the police officer acts may reasonably and significantly affect his decisional calculus." *See Rideau*, 969 F.2d at 1575-76. The court concluded that "[t]he minimally intrusive action that [the officer] took to ensure his safety and that of his partner was not a violation of [the defendant's] constitutional rights. The Fourth Amendment does not require police to allow a suspect to draw first." *Rideau*, 969 F.2d at 1576.

cause, justify entry into a protected area that, without those exceptional circumstances, would be unlawful.[3] *State v. Hathaway,* 411 So. 2d 1074, 1079 (La. 1982). The Supreme Court has defined "exigent circumstances" as "a plausible claim of specially pressing or urgent law enforcement need." *Illinois v. McArthur,* 531 U.S. 326, 331, 121 S. Ct. 946, 950, 148 L. Ed. 2d 838 (2001). Exigent circumstances may arise from the need to prevent the offender's escape, minimize the possibility of a violent confrontation which could cause injury to the officers and the public, and preserve evidence from destruction or concealment. *State v. Brisban,* 00-3437 (La. 2/26/02), 809 So. 2d 923, 927-28.

An officer needs both probable cause to search *and* exigent circumstances to justify a non-consensual warrantless intrusion into private premises. *Brisban*, 809 So. 2d at 927. Probable cause for a search exists when facts within the officer's knowledge and of which he has reasonable and trustworthy information are sufficient to justify a reasonable man in the belief that the place to be searched will contain the object of the search. *State v. Ragsdale*, 381 So. 2d 492, 495 (La. 1980). Thus, it was incumbent on the State to prove that the agents had probable cause to believe that the grill contained contraband or evidence of a crime.

While law enforcement's reasonable suspicion for an investigatory stop may

---

[3] The protection against unreasonable searches and seizures extends to the curtilage of a home. *See Oliver v. United States,* 466 U.S. 170, 180, 104 S. Ct. 1735, 1742, 80 L. Ed. 2d 214 (1984); *State v. Brisban*, 00-3437 (La. 2/26/02), 809 So. 2d 923, 928. Curtilage is that area immediately surrounding and associated with the home, to which the intimate activity associated with the sanctity of a man's home and the privacies of life extend, and is therefore considered part of the home itself. *Oliver*, 466 U.S. at 180, 104 S. Ct. at 1742; *Brisban*, 809 So. 2d at 928. Although the subject grill was located on a driveway, and driveways have sometimes been found to fall outside the curtilage of particular homes, in this case, the grill was located only five feet from the trailer's front door. The testimony at trial established that the area was used for cooking, as if it were a porch. *Compare United States v. Houston*, 965 F.Supp.2d 855, 897 (E.D. Tenn. 2013) (finding the area next to a mobile home curtilage, despite only the proximity factor supporting such a finding); *contrast United States v. Thomas*, 120 F.3d 564, 571-72 (5th Cir. 1997), *cert. denied sub nom. Harmon v. United States*, 522 U.S. 1061, 118 S. Ct. 721, 139 L. Ed. 2d 660 (1998), *and cert. denied*, 522 U.S. 1061, 118 S. Ct. 721, 118 L. Ed. 2d 660 (1998); *Krause v. Penny*, 837 F.2d 595, 597 (2nd Cir. 1988); *Commonwealth v. Simmen*, 58 A.3d 811, 815-16 (Pa. Super. Ct. 2012). The subject grill was located sufficiently close to the front entrance of the trailer to support both a subjectively and an objectively reasonable expectation of privacy.

ripen into probable cause to search a closed container such as the subject grill, the State failed to prove any such facts here. *Contrast Summers*, ___ So. 3d at ___. At the time the grill was searched, the agents had not seen the defendant interact with anyone else, had not seen any other people or vehicles in the area when they arrived, had not seen the defendant holding or discarding any objects, and had not seen the defendant near the grill, much less touching the grill or placing anything into it. Once the agents activated their blue lights and exited their undercover unit, the defendant remained at the end of the driveway approximately thirty feet from the grill.

Agent Renfro testified that the lid of the grill was slightly askew and dew on its handle had been disturbed. The agents admitted, however, that they were aware of other people in the nearby trailers, although they did not see them. At the motion to suppress hearing, when asked what made him think there may be weapons, contraband, or narcotics in the area, Agent Renfro responded, "Because of the – the area is a high crime area. We found several things before." The agents' knowledge of the area supports their decision to stop and question the defendant relative to a potential crime. However, the agents did not develop probable cause to search the closed grill or to arrest the defendant until *after* the grill was opened.[4] Consequently, the warrantless search was not justified by the exigent circumstances exception. *Contrast State v. Robertson*, 14-0612 (La. App. 1

---

[4] In the recent case of *State v. Summers*, 15-1363 (La. 7/29/15), ___ So. 3d ___, ___, (2015WL4724383), police followed a person who they believed, based upon objective articulable facts, had been involved in a hand-to-hand drug transaction, and saw him "join up with the defendant," who was holding a paper bag that appeared to contain a canned drink. When the defendant saw the police approaching, he went onto a nearby porch, set the bag down, then returned. *Summers*, ___ So. 3d at ___. The supreme court found that the police had probable cause based upon them observing the hand-to-hand transaction, watching the suspect join up with the defendant, seeing the defendant holding an apparent can in a bag, then seeing the defendant leave the bag on a porch upon noticing them. *Summers*, ___ So. 3d at ___. That probable cause, combined with the exigency of securing and preserving the likely drug evidence, justified the police in entering the porch and searching the bag. *Summers*, ___ So. 3d at ___.

Cir. 11/25/14), 168 So. 3d 451, 452-56.[5]

The State also failed to affirmatively show that the search of the grill was justified under any other exception to the warrant requirement. The drug evidence was not in plain view. No-one consented to the search, and there is no evidence to support a finding that the grill was abandoned such that the officers were justified in opening it. Agents were not responding to an emergency, nor were they in hot pursuit of a fleeing felon. Finally, the drugs were not seized pursuant to an inventory search or a search incident to arrest.[6]

The search of the grill violated the defendant's constitutional rights and, under the facts presented, warrants application of the exclusionary rule barring the drug evidence seized as a result of the illegal search. We therefore reverse the ruling of the trial court and grant the defendant's motion to suppress, as well as the defendant's conviction that was dependent upon the inadmissible drug evidence. The habitual offender adjudication and sentence are vacated, and the case is remanded to the trial court for further proceedings.[7]

REVERSED, VACATED, AND REMANDED.

---

[5] In *Robertson,* the defendant was observed standing near a vehicle in the parking lot of an abandoned building at night in a high crime area, appeared startled by police presence, then fled, all of which amounted to reasonable suspicion to justify an investigatory stop. The defendant continued running after the policeman shouted "stop, police, stop," which ripened into probable cause to arrest the defendant for resisting an officer. This court found that the police were justified in conducting a warrantless search of the yard where the defendant had momentarily disappeared during the chase. The officers' belief that the defendant had disposed of something in the area was reasonable based upon the defendant's actions, and the presence of many bystanders in the area created exigencies which justified the warrantless search, which resulted in a gun being found lying in the open on the ground. *Robertson,* 168 So. 3d at 453-56.

[6] Notably, a search incident to arrest is also limited in scope. *See State v. Surtain,* 09-1835 (La. 3/16/10), 31 So. 3d 1037.

[7] On appeal, in addition to challenging the trial court's ruling on the motion to suppress, the defendant has challenged the sufficiency of the evidence, specifically arguing that someone else could have put the drugs in the grill. However, the jury reasonably rejected that defense at trial. *Contrast State v. Robertson,* 14-0945 (La. 6/30/15), ___ So. 3d ___, ___ (2015WL3972404). Further, the entirety of the evidence, both the admissible *and inadmissible,* was sufficient to support the defendant's conviction. *See State v. Hearold,* 603 So. 2d 731, 734 (La. 1992). Accordingly, the defendant is not entitled to an acquittal.

STATE OF LOUISIANA

VERSUS

JOSEPH MICHAEL MOULTRIE

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 1535

McDONALD, J. DISSENTS

I respectfully dissent from the majority's opinion that the seizure of the drugs was illegal, and I would affirm the decision of the trial court in denying the motion to suppress.

I agree with the majority that the agents had a reasonable suspicion to stop and question the defendant. Having done so, they were also justified in conducting a protective search for weapons for their own safety, sometimes referred to as a *Terry* search.[1] However, I believe the majority errs in analyzing this search as a search incident to the stop. They are correct that a law enforcement officer needs both probable cause to search and exigent circumstances to justify a non-consensual warrantless intrusion into a private premises. But, both the trial court and the majority erroneously focus on the exigent circumstance aspect of this case.

The trial court stated, "the real issue is whether or not, under the circumstances, were there such exigencies that the police were entitled to open the barbecue pit and seize the evidence that they ultimately found." The trial court was clear that the time of night; the defendant's evasive behavior; the torn baggies on the ground; the experience of the agents regarding a high-crime area with drugs and weapons; and the observation that the grill had just been handled; "were enough exigencies to justify" Agent Renfro's opening the grill in the belief that there was a weapon inside within reach of the defendant. The majority found that "...the agents did not develop probable cause to search the closed grill or to arrest

[1] *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct.1868, 20 L.Ed. 2d 889 (1968).

the defendant until *after* the grill was opened. Consequently, the warrantless search was not justified by the exigent circumstances exception." The majority reaches an inconsistent conclusion in finding that the search of the area where the defendant had disappeared (the area where the grill was located) was a reasonable search incident to the investigatory stop, but then finding that "the defendant was detained at the street, *some thirty feet from the grill.* Under the totality of the circumstances, opening the grill exceeded the limited scope of the permissible search justified by the stop." Emphasis added.

While I do not necessarily disagree with the trial court's legal findings at the motion to suppress hearing, I believe Agent Renfro had the right to seize the drugs from the grill under a separate legal theory. The critical question is whether or not the defendant had a legitimate expectation of privacy in the grill; it was the defendant's expectation of privacy that forms the legality *vel non* of Agent Renfro's actions. Both the Fourth Amendment of the United States Constitution and Article I, § 5 of the Louisiana Constitution protect only reasonable expectations of privacy. If it is determined that the defendant had no reasonable expectation of privacy in the area invaded, neither a warrant nor an exception to the warrant requirement is needed for the seized evidence to be admissible. The test by which a person's "expectation of privacy" is measured is twofold: first, the person must exhibit an actual subjective expectation of privacy and, second, the expectation must be one that society is prepared to recognize as reasonable. *State v. Paulson,* 98-1854 (La. App. 1st Cir. 5/18/99), 740 So. 2d 698, 700-01. *See Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed. 2d 576 (1967).

Agent Bookenberger had testified at the motion to suppress hearing and trial that the defendant identified his address as 2622 Daniel Turner Court. Agent Bookenberger testified on direct examination at trial that after the defendant was

Mirandized, he stated that the 2622 Daniel Turner address was family property and that the grill belonged to his family. On cross-examination at trial, Agent Bookenberger testified that he could not confirm where the defendant lived or who owned the grill. The agent further stated that they "did a criminal history report" on the defendant and that none of the addresses on the report were 2622 Daniel Turner Street.

The defendant's sister, Dominique Moultrie, testified at trial that her (and the defendant's) mother lived in the brown trailer that was the subject of the photographs taken and where the defendant had walked toward when the agents turned onto Daniel Turner Court. Dominique identified their mother's address as 2626 Daniel Turner Court. Dominique further testified that, while the defendant visited the trailer, he did not live in the trailer with his mother, he had not lived there for the past two years, and that he lived with her (his sister) some of the time, and with his brother and his child's mother at other times. The grill that Agent Renfro opened was described by him at the motion to suppress hearing as black, with four legs, and a round, kettle-type, hinged lid. The lid sat askew in its carriage before he opened it.[2] Agent Bookenberger described the grill as "a charcoal pit, just your typical circle style," the old, metal kind. The grill was not seized as evidence (as the drugs were), and the picture provided at trial (and for appellate purposes) does not contain the grill. It is not clear what happened to the grill, and Agent Bookenberger testified at trial that he had no idea what happened to it.

---

[2] Agent Renfro made clear that despite the grill cover being crooked, he could not see inside of the grill without lifting the cover; as such, the plain-view exception to the warrant requirement is not at issue here. *See Horton v. California*, 496 U.S. 128, 136-37, 110 S.Ct. 2301, 2307-08, 110 L.Ed. 2d 112 (1990); *State v. Howard*, 2001-1487 (La. App. 1st Cir. 3/28/02), 814 So. 2d 47, 53, writs denied, 2002-1485 (La. 5/16/03), 843 So. 2d 1120, 2006-2125 (La. 6/15/07), 958 So. 2d 1180.

Dominique testified that a lady named Betty stayed at the white trailer next to the defendant's mother's trailer. Defense counsel showed Dominique a picture of the trailer, which she identified as her mother's. This was identified as Exhibit D-1 (not introduced or made part of the appellate record). Dominique stated that the grill was not in the picture she was shown. The following exchange then took place regarding the grill:

> Q. -- and they found some drugs in a barbeque pit on the edge of the driveway. My question to you is does your mother normally or customarily have a barbeque pit on the edge of her driveway?
> A. No.
> Q. Why would you say that?
> A. 'Cause she barbeque all the time and she move around from the front.
> Q. Uh-huh.
> A. She, she moves it around a lot. Sometimes she had it in the backyard, sometimes by the front door. Sometimes behind the car.

This was the extent of Dominique's testimony about a grill near the trailer. Whether the black grill identified by Agent Renfro was the same grill Dominique was describing at trial is not clear. As such, it is not clear, nor was it ever made clear at either the motion to suppress hearing or the trial, who owned the black grill (the defendant's mother, Betty, or neither), or even if the grill worked. In any event, while proof of ownership was never definitively established, the defendant was clearly not the owner of the grill.

On cross-examination, the prosecutor showed Dominique a picture of her mother's trailer, which did not have the grill in it. (State Exhibit 7). This was the sole photograph made a part of the appellate record. The grill, according to Agent Renfro, was at the end of the driveway, on the concrete, several feet from the trailer door and, according to Agent Bookenberger, about thirty feet from the road. It was in front of an old, abandoned vehicle, also in the driveway. There was no testimony at the motion to suppress hearing regarding curtilage, or what might be considered to be curtilage. Curtilage is the area to which extends the intimate

activity associated with the sanctity of a man's home and the privacies of life, and therefore has been considered part of [the] home itself for Fourth Amendment purposes. *Oliver v. United States*, 466 U.S. 170, 180, 104 S.Ct. 1735, 1742, 80 L.Ed. 2d 214 (1984).

While the protection against warrantless searches extends to a home's curtilage, *see United States v. Dunn*, 480 U.S. 294, 107 S.Ct. 1134, 94 L.Ed. 2d 326 (1987), areas that are not within the curtilage are considered "open field," and searches therein are not subject to the Fourth Amendment's reasonableness requirement. *See Oliver*, 466 U.S. at 178-81, 104 S.Ct. at 1741-42.

In *Dunn* the Supreme Court found that the curtilage question should be resolved with particular reference to 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. The *Dunn* Court cautioned, however, that combining these factors did not produce a finely tuned formula that, when mechanically applied, yielded a "correct" answer to all extent-of-curtilage questions. Rather, according to the Court, "these factors are useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration--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." *Dunn,* 480 U.S. at 301, 107 S.Ct. at 1139-40.

The grill in this case was at the very end of the driveway (furthest away from the street), where the driveway ended and the grass began. An old, broken down car was on the grass, and the back of the car came right to the edge of the driveway. Thus, the grill was right next to the back of the car. At the motion to suppress hearing, Agent Bookenberger testified that the grill was "in the lawn right

past the driveway." Agent Renfro testified at the hearing that the grill "was on the driveway in front of the vehicle that was in the driveway." Despite his earlier testimony at the motion to suppress hearing, Agent Bookenberger testified at trial on direct examination that the car was in the grass and the grill was at the end of the driveway on the concrete. On cross-examination, Agent Bookenberger reiterated the grill was on the actual driveway:

> Q. Okay. Now, is it also true that the diagram that you just drew for Mr. Dagate, isn't it also true that the barbeque pit was not at the edge of the concrete or was not on the concrete, but the barbeque pit was actually on side of the trailer in the grass?
> A. No, it was not.
> Q. It was not?
> A. It was on the concrete.

Agent Renfro testified at trial that the grill was "[o]n the cement" and not the grass.

The driveway runs along the side of the trailer (lengthwise), wherein the defendant claimed to live. (State Exhibit 7, picture of trailer). Agent Bookenberger testified at trial that the defendant told him that he lived in the trailer (at 2622 Daniel Turner). Agent Bookenberger further testified that he was not able to confirm where the defendant lived, who owned the trailer, or who owned the grill.

The question, thus, is whether the driveway, or at least that portion of the driveway where the grill was located (the very edge of the driveway furthest away from the street and where the concrete ends and the grass begins), is curtilage. There was no fence around the front or side yard of the defendant's mother's trailer; as such, the trailer and property were accessible through a non-gated driveway, or from the front lawn, or from the street. Once in the driveway, the grill and anything else outside could be seen by anyone who had entered the property. There was no evidence that any measures had been taken to prevent people from entering the yard through the driveway (or any other point of entry) and

approaching the home. The grill was in close proximity to both trailers, the one in which the defendant's mother lived and the one where Betty lived. There was little evidence regarding what the area was used for. Dominique testified that her mother barbequed all the time, but in various locations and not necessarily limited to the area where the grill was found. Therefore, I do not believe the grill was located within the curtilage of the trailer. I do not believe the defendant had a reasonable expectation of privacy in illegal drug activities in the yard. *See Paulson*, 740 So. 2d at 700-01. More specifically, the defendant could not have had a reasonable expectation of privacy inside of a grill that he did not own, which was near a trailer that he did not live in. *See State v. Brumfield*, 2005-2500 (La. App. 1st Cir. 9/20/06), 944 So. 2d 588, 592-93, writ denied, 2007-0213 (La. 9/28/07), 964 So. 2d 353 (the defendant had no expectation of privacy in a trailer he followed his girlfriend into). Even if the grill at issue was owned by the defendant's mother and the grill was considered on the curtilage, the defendant as a non-owner and non-resident still had no reasonable expectation of privacy in the trailer or its yard, or in objects in the yard he did not own. *See State v. Campbell,* 93-1959 (La. App. 4th Cir. 5/26/94), 640 So. 2d 622, 627 (where the fourth circuit found that because the defendant presented no evidence that he owned or rented the house where he hid the cocaine, he had no reasonable expectation of privacy in the house or its yard, and that although the bag of cocaine was within the curtilage of the residence, the defendant had no privacy interest in the residence). *See State v. Baker*, 99-2846 (La. App. 4th Cir. 10/18/00), 772 So. 2d 225, 228-29.

State v. Stephens, 40,343 (La. App. 2nd Cir. 12/14/05), 917 So.2d 667, 673-74, writ denied, 2006-0441 (La. 9/22/06), 937 So.2d 376, addresses Louisiana's law on third-party standing. Acting on a tip that Stephens was at a certain location, the officers found him and arrested him under the carport of a residence. A

backpack was seen inside a screened porch near him and Stephens denied any knowledge or ownership of it. The officers opened the screen door, went onto the porch, opened the backpack, and found papers with Stephens name on them along with methamphetamine and a pistol. The trial court denied a motion to suppress. The court of appeal found the intrusion onto the porch to be unlawful from the perspective of the homeowner even though they found that a "front porch does not enjoy the same measure of Fourth Amendment protection as the home." The court went on further to note that "The officer's decision to search involved a greater possibility of invasion of the homeowner's privacy and property within the curtilage of the residence." In the present case the grill was located on a driveway a few feet from the trailer. There was no positive identification of the owner, other than it was not the defendant. And even if it was within the curtilage of the mother's trailer (which I do not believe is supported by the evidence) opening the grill cover involves very little possibility of invasion of the homeowner's privacy), unlike entering a screened porch and opening a backpack.

The *Stephens* court also has a good discussion of the exclusionary rule when a defendant challenges the violation of a third party's privacy rights under the Louisiana Constitution. The court determined that "the exclusionary rule has not been rigidly applied for enforcement of Louisiana's standing provision" and chose not to impose the exclusionary rule. *Id.* at 676.

For these reasons I believe the search of the grill and the seizure of the drugs was valid, not for reasons involving exigency, but because the evidence does not indicate that it involved the curtilage of the trailer. Even if it did, as the majority has found, I do not believe we should apply the exclusionary rule to these facts. The homeowner's privacy was not violated and no property of the homeowner was seized. I would affirm the denial of the motion to suppress.