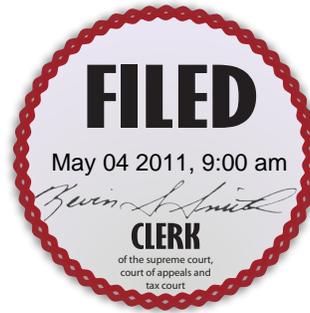


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

JOHN PINNOW
Special Assistant to the State Public Defender
Greenwood, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

MARJORIE LAWYER SMITH
Special Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL BRACKEN,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)

No. 23A05-1010-CR-667

APPEAL FROM THE FOUNTAIN CIRCUIT COURT
The Honorable Susan Orr Henderson, Judge
Cause No. 23C01-0912-FB-616

May 4, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Michael Bracken appeals from his conviction for Class B felony Methamphetamine Manufacture and the finding that he is a Habitual Substance Offender. Bracken contends that the trial court abused its discretion in admitting evidence seized from a barn on his property pursuant to a search warrant. We affirm.

FACTS AND PROCEDURAL HISTORY

On December 30, 2009, Fountain County Sheriff's Chief Deputy Dana Jeffries arrived at the scene of a fire on Bracken's property. Once the fire was suppressed sufficiently, Deputy Jeffries approached the southwest corner of the home, where the fire department had indicated the fire had started. Deputy Jeffries found a twenty-pound propane tank with the valve missing and two cans of Coleman heating fuel with "necks that had been punched off, punched out of them" and detected a strong odor of anhydrous ammonia. Supp. Tr. p. 11. Based on the discoveries, Deputy Jeffries concluded that there "could be a possibility of a methamphetamine lab in that area." Supp. Tr. p. 12. Deputy Jeffries also noticed footprints in the snow leading from the burned house to a barn approximately 200 feet away.

When Bracken refused to consent to a search of the barn and a mobile home that was also nearby, Deputy Jeffries decided to obtain a search warrant. The warrant application read in relevant part as follows:

Chief Deputy Dana Jeffries of the Fountain County Sheriff's Department swears that he believes and has probable cause to believe that certain property, hereinafter described, is located in or upon the following described premises, to-wit: **the burned-out home, mobile home, and barn located on the rural property at 2331 W 840S Covington, IN in Fountain County, Indiana. The structures are the first house on the south side of CR840S east of the south end of the Stringtown Road.**

The mobile home, which may share the same address as the home (or vice versa) is a short distance east of the home. The mobile home does not appear to have utilities in place. There is a two story barn directly south of the mobile home. The home has been almost totally destroyed by a fire.

A search warrant is requested relating to the crimes of Arson, ... dealing (manufacturing) methamphetamine..., possession of methamphetamine..., possession of precursors..., improper storage handling, use, or transportation of anhydrous ammonia..., and maintaining a common nuisance....

In support of your affiant's assertion of probable cause, your affiant would show the Court the following information:

Shortly after 7:00 a.m. December 30, 2009, I heard Attica Radio dispatch Kingman fire department to the Mike Bracken residence. When I arrived, I saw the home completely engulfed in flames and collapsing in a heap. Perrysville and Wallace Fire Departments assisted.

When I first got to the scene, I noticed a lot of footprints in the snow leading from the house toward the barn. While I was watching the fire departments battle the blaze, Mike Bracken came to the scene riding in a Jeep driven by another person. Sharon Vale, an EMS person on the scene, said Mike's girlfriend Tracie Hayman, who lived with Mike, was at the Jim Kochell residence east of Bracken's. I asked Mike where Tracie was and he said he knew she got out of the house and was safe but he didn't know where she had gone.

When the fire had been reduced to the point where we could start a preliminary inspection as to the cause and origin of the fire, I found a 20 lb. propane cylinder with the valve missing and two Coleman fuel cans with the filler spouts completely missing from the cans. They were in the porch area on the southeast corner of the house. Mike said it was the porch. When I asked him about the tank and Coleman cans he said he had a frozen waterline on the porch and had put a propane heater there to thaw it. He said he was using Coleman fuel for heat.

While we were looking around the debris on the porch area, Sheriff Bass, Deputy Brandon Swaney, and I all smelled what we recognized as anhydrous ammonia but due to the fire still burning could not search for the source of the ammonia smell. Fire department members indicated it was their initial impression the fire started in the porch area.

I asked Mr. Bracken for consent to search the property and he refused to allow a search of any of the property. Mr. Bracken was barefoot so I put him in Deputy Swaney's car so he would not be subjected to the weather.

Therefore, your affiant respectfully requests the Court issue a search warrant directing the search for and seizure of any evidence relating to the crimes listed above at the above-described [location].

Supp. Ex. 1.

A magistrate issued the requested search warrant, and a search of the barn revealed several hydrochloric acid (“HCl”) generators and cans of Coleman fuel. Inside the barn was a locked room, in which police found a large dog. Inside the room police also found more Coleman fuel and HCl generators, pill dough, an air tank commonly used with anhydrous ammonia, and other indications of methamphetamine manufacture.

On January 4, 2010, the State charged Bracken with Class B felony methamphetamine manufacture and Class D felony possession of precursors with intent to manufacture and alleged that he was a habitual substance offender. On March 29, 2010, Bracken filed a motion to suppress evidence found in the barn, which motion the trial court denied after a hearing. At trial, evidence regarding the items found in Bracken’s barn was admitted over his objection. On September 15, 2010, a jury found Bracken guilty of methamphetamine manufacture and possession of precursors with intent to manufacture. On September 30, 2010, the trial court found Bracken to be a habitual substance offender. On October 20, 2010, the trial court sentenced Bracken to fifteen years of incarceration for methamphetamine manufacture and enhanced the sentence by eight years by virtue of his status as a habitual substance offender.

DISCUSSION AND DECISION

Whether the Trial Court Abused its Discretion in Admitting Evidence Seized from Bracken’s Barn

The admissibility of evidence is within the sound discretion of the trial court. *Curley v. State*, 777 N.E.2d 58, 60 (Ind. Ct. App. 2002), *trans denied*. We will reverse a trial court's decision on the admissibility of evidence only upon a showing of an abuse of that discretion. *Id.* An abuse of discretion may occur if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Id.* The Court of Appeals may affirm the trial court's ruling if it is sustainable on any legal basis in the record, even though it was not the reason enunciated by the trial court. *Moore v. State*, 839 N.E.2d 178, 182 (Ind. Ct. App. 2005), *trans. denied*. We do not reweigh the evidence, and consider the evidence most favorable to the trial court's ruling. *Hirsey v. State*, 852 N.E.2d 1008, 1012 (Ind. Ct. App. 2006), *trans. denied*.

Bracken contends that the evidence seized from his barn should have been suppressed because the search warrant issued for the barn was not supported by probable cause. The Fourth Amendment to the United States Constitution provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The Supreme Court of the United States has explained the purpose of th[e] requirement [that the warrant particularly describe the place to be searched and the persons or things to be seized] as the prevention of general or wide-ranging exploratory searches. *See [Maryland v. Garrison*, 480 U.S. 79, 84 (1987)]. Thus, the lawful scope of a search is “defined by the object of the search and the places in which there is probable cause to believe it may be found.” *Id.* at 84, 107 S.Ct. 1013 (quoting *United States v. Ross*, 456 U.S.

798, 824, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982)). It is sufficient that a warrant describe the place to be searched in terms that an officer “can with reasonable effort ascertain and identify the place intended.” *Steele v. United States*, 267 U.S. 498, 503, 45 S.Ct. 414, 69 L.Ed. 757 (1925).

Sowers v. State, 724 N.E.2d 588, 589-90 (Ind. 2000).

Bracken contends that the search warrant issued due to items found at his home should not have also allowed a search of his barn. “As a general proposition, a search of multiple units at a single address must be supported by probable cause to search each unit and is no different from a search of two or more separate houses.” *Figert v. State*, 686 N.E.2d 827, 830 (Ind. 1997). As the State points out, however, the exception to this rule is that it does not apply to units that are not dwellings, such as barns, garages, or sheds. In *Sowers v. State*, 724 N.E.2d 588 (Ind. 2000), the Indiana Supreme Court held that a search warrant for a home authorized a search of a tent within the home’s curtilage. “Every value furthered by the Fourth Amendment remains intact if a proper warrant for the search of a single residence also permits a search of the yard or curtilage at the designated address.” *Id.* at 590. The *Sowers* court noted that:

the authorities seem unanimous in permitting similar searches. “Curtilage” originally appears to have meant the area within a fence surrounding a structure, but is now used in this context without regard to whether what is usually termed the “yard” is fenced or not. *See, e.g., United States v. Brown*, 822 F.Supp. 750, 754 (M.D.Ga. 1993), *aff’d*, 50 F.3d 1037 (11th Cir. 1995) (table) (“The search warrant in this case authorized intrusion into the area of highest expectation of privacy. It seems logical and reasonable that a search warrant that authorizes intrusion on this greater area of privacy would include authorization for intrusion in the lesser area of privacy, the backyard.”); *Barton v. State*, 161 Ga. App. 591, 288 S.E.2d 914, 915 (1982) (observing that “[p]remises” contemplates the entire living area used by occupant” and upholding search of a shed twenty feet behind the house); *State v. Basurto*, 15 Kan. App. 2d 264, 807 P.2d 162, 165 (1991), *aff’d*, 249 Kan. 584, 821 P.2d 327 (1991) (upholding search of a shed in the backyard

of a residence, observing “[t]here appears to be little doubt that a search warrant which describes only the residence of a defendant will authorize the search of any vehicles or buildings within the ‘curtilage’ of that residence”); *State v. Vicars*, 207 Neb. 325, 299 N.W.2d 421, 425-26 (1980) (upholding search of calf shed located on the other side of a chain link fence and 100 feet from residence); *State v. Trapper*, 48 N.C. App. 481, 269 S.E.2d 680, 684 (1980) (holding that a warrant for search of house trailer also permitted search of tin shed approximately thirty feet from trailer); *State v. Stewart*, 129 Vt. 175, 274 A.2d 500, 502 (1971) (upholding search of a tree located in the backyard of a residence).

Id. at 590-91.

The question, then, is only whether the barn was within the curtilage of Bracken’s residence. Bracken does not argue that the barn was without the residence’s curtilage, only that *Figert* controls. As previously mentioned, however, the *Figert* rule applies to multiple buildings or units on the same property that are residences, and it is undisputed that the barn is not a residence and no indication that it appeared to be one. In any event, the information in the probable cause affidavit clearly establishes that the barn was part of the residence’s curtilage. The affidavit avers that the burned home and barn (along with a mobile home) were both “located on the rural property at 2331 W 840S Covington, IN in Fountain County, Indiana[,]” that the mobile home was “a short distance east of the home[,]” and that the barn was “directly south of the mobile home.” Supp. Ex. 1. Moreover, Bracken’s refusal to allow a search of the barn, which we decline to view as evidence that he had something to hide, was nonetheless another clear indication that the barn was associated with the burned residence; had the barn not been his, it is reasonable to assume that he would have said so. Finally, the footprints between the home and the barn are yet more evidence that the two structures were related. We

conclude that the probable cause affidavit was sufficient to establish that the barn was within the curtilage of the burned residence. The trial court did not abuse its discretion in admitting evidence seized from the barn. As such, we need not address the State's arguments that the good faith exception to the warrant requirement would allow admission of the evidence or that the admission was harmless even if erroneous.

The judgment of the trial court is affirmed.

BAKER, J., and MAY, J., concur.