

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 24, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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

No. 98-0702-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARK J. NAGEL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Juneau County:
JOHN W. BRADY, Judge. *Affirmed.*

Before Eich, Vergeront and Roggensack, JJ.

PER CURIAM. Mark Nagel appeals from a judgment convicting him of manufacturing a controlled substance. The issue is whether Nagel's right under the Fourth Amendment to be free from unreasonable searches and seizures was violated when the police seized evidence on his property. We conclude that it was not and affirm.

Deputy Sheriff Steve Coronado and Detective Kim Strompolis went to Nagel's rural home to assist Nagel's former girlfriend in recovering her belongings. When they arrived on the forty-acre property, each in a separate car, Strompolis followed a dirt driveway that wound past a trailer owned by Nagel's father and ended at Nagel's trailer. Officer Coronado initially began down the dirt driveway, but followed a secondary path when he saw a person jog away from Nagel's trailer in that direction. Finding no one, he parked his squad car and took a foot path to Nagel's trailer.

When the officers arrived at the trailer, Nagel told them that his former girlfriend had already moved out. The officers informed Nagel that there were warrants for his arrest for unpaid traffic tickets and arrested him. Officer Strompolis took Nagel to the jail in his squad car. Officer Coronado retraced his steps along the foot path back to his car. In so doing he saw three pails that were placed in a strip of high grass between the yard around Nagel's trailer and a cornfield that was located fifty or sixty feet from Nagel's home. He recognized the plants in the pails as marijuana. Based on his observations, he obtained a warrant to search Nagel's property and seized marijuana and other evidence.

Nagel was charged with manufacturing a controlled substance. He moved to suppress the evidence seized pursuant to the search warrant. The trial court granted the motion to suppress evidence taken from automobiles located on Nagel's property on the ground that the search warrant did not authorize a search of the vehicles. However, the court rejected Nagel's argument that the search warrant was invalid because it was based on information obtained by violating Nagel's rights under the Fourth Amendment. The court therefore denied the motion to suppress the marijuana and other evidence found in Nagel's yard and

the adjacent cornfield. Nagel pleaded no contest to the charge and received a two-year term of imprisonment.

Whether a police officer's conduct violates Fourth Amendment prohibitions on unreasonable searches and seizures is a question of law that we review de novo. *State v. Edgeberg*, 188 Wis.2d 339, 344-45, 524 N.W.2d 911, 914 (Ct. App. 1994). "A search occurs when the police infringe on an expectation of privacy that society considers reasonable." *Id.* at 345, 524 N.W.2d at 914. If an item is in plain view of the police, there is no search. *State v. Bell*, 62 Wis.2d 534, 540, 215 N.W.2d 535, 539 (1974).

The plain view exception has three prerequisites. The officer must have a prior justification for being in the position from which the "plain view" discovery was made; the evidence must have been in plain view of the discovering officer; and the item seized, in itself or in itself with facts known to the officer at the time, provides probable cause to believe there is a connection between the evidence and the criminal activity.

Edgeberg, 188 Wis.2d at 345, 524 N.W.2d at 911.

Nagel contends that the first requirement is not met—that Officer Coronado had no justification for leaving through Nagel's backyard and returning to his car the way he had come. We do not agree. Officer Coronado parked on a secondary road on Nagel's property and followed a foot path to Nagel's home. Officer Coronado followed the same foot path, the shortest route, when returning to his car. In this situation, we believe it was reasonable for Officer Coronado to return to his car the way he had come, rather than taking a longer, circuitous route back down the main driveway and up the secondary road. Because Officer Coronado was justified in walking out the back and down the path toward his car, we conclude that the marijuana plants growing between Nagel's yard and the

cornfield were in plain view and were not subject to Fourth Amendment protection. We conclude that the warrant to search Nagel's property was properly based on Officer Coronado's observations.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

