

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 17, 1998

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. 97-3152-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KIMY E. TROTTER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Rock County: JAMES WELKER, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

PER CURIAM. Kimy Trotter appeals a judgment convicting her of possession of cocaine with intent to deliver and an order denying her motion for postconviction relief. She argues that evidence seized from her should have been suppressed because the warrant that served as the basis for the search was overbroad in its description of the vehicles and residence to be searched, that the

search was outside the scope of the warrant, and that the warrant was not supported by probable cause. We conclude that the warrant was not overbroad in its description of the vehicles to be searched, that the police acted within the scope of the warrant when they stopped Trotter several blocks from her home, and that Trotter has waived the right to raise the other arguments. Accordingly, we affirm.

After informants told the police that Trotter and her family were selling cocaine, the police obtained a search warrant for Trotter's home and any vehicles "pertaining to" or "near" the home. While the police were watching the residence, Trotter drove up, parked her car in the driveway, and went into the home. After verifying that the car was registered to Trotter, one officer went to get additional officers to execute the warrant, while another officer continued to watch the home. After a short time, the remaining officer observed Trotter get back into her car to leave. The officer followed her, but let her drive about four or five blocks away from the home before stopping her. The delay in stopping Trotter was purposeful—to ensure the safety of the officers who were about to execute the warrant. Cocaine was found in Trotter's purse. The trial court denied Trotter's motion to suppress the evidence.

Trotter first argues that the search warrant was overbroad in its description of the vehicles to be searched because it left to the searchers' discretion whether a vehicle "pertain[ed] to" the premises and whether a vehicle was "near" the premises.

We conclude that the warrant was not overbroad. Although the warrant gave the police some discretion in deciding whether a particular vehicle was involved in the activity at the residence, the terms "pertaining to" and "near" can be reasonably defined based on the circumstances of the situation without

giving the police unbridled authority to search. And, under the facts at issue here, the car driven by Trotter clearly “pertain[ed]” to the premises because it was Trotter’s car and it stopped at the home immediately before it was searched.

Trotter next argues that the search was outside of the scope of the warrant because it took place several blocks away from her home. We disagree. Under the circumstances presented, the car was sufficiently “near” the home when it was searched to fall within the scope of the warrant. It was reasonable for the police to conclude that it would be a safety risk to simultaneously search the car in the driveway and execute the warrant to the house, especially because the additional officers who were going to execute the warrant for the house had not yet arrived. The officer’s decision to stop the car somewhat away from the house both provided a measure of safety and ensured that anyone in the home would not have advance notice before the warrant was executed. Under these circumstances, the police officer’s search several blocks from the home fell within the scope of the warrant.

Trotter next argues that the warrant, as it pertained to the premises, was not supported by probable cause and that it was overbroad in its description of the residence to be searched. Trotter did not, however, raise these arguments with specificity until after she had been convicted. In fact, Trotter conceded at the suppression hearing that there was probable cause to support the issuance of the warrant as it pertained to the residence. Because Trotter did not timely raise these issues, we conclude that she has waived her right to have the arguments

considered during postconviction proceedings and on appeal. *Cf. State v. Caban*, 210 Wis.2d 598, 604-05, 563 N.W.2d 501, 505 (1997).¹

By the Court.—Judgment and order affirmed.

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

¹ Trotter also requests that we use our discretionary authority under § 752.35, STATS., to reverse. We decline to do so.

