COURT OF APPEALS
DECISION
DATED AND FILED

March 8, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

Nos. 00-0430-CR
00-0431-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

NO. 00-0430-CR

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

MARK CONNERS,

DEFENDANT-RESPONDENT.

NO. 00-0431-CR

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

CHASE CONNERS,

DEFENDANT-RESPONDENT.

APPEALS from an order of the circuit court for Dane County: STEVEN D. EBERT, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Mason, JJ.[1]

¶1 PER CURIAM. The State appeals from an order suppressing evidence. This prosecution of Mark Conners and his son, Chase Conners, depends on evidence of drug possession seized from their residence. The issue on appeal is whether the trial court properly suppressed the evidence, after finding that it resulted from a violation of the curtilage of the Conners' residence. We affirm.

¶2 The relevant facts are not in dispute. On August 2, 1999, several police officers went to the Conners' residence, a mobile home, to investigate reports of drug trafficking on the premises. On arrival the officers encountered Chase in the driveway, some distance from the mobile home. He told them that his father was at work, and no one was in the mobile home. Deputy Endl asked Chase for permission to search the mobile home, and Chase denied his request.

¶3 Endl told Officer McLay that Chase refused to consent to a search. Endl then phoned Mark. Mark also denied Endl's request for permission to search and said he would come right home.

¶4 Meanwhile, McLay climbed up the steps to the porch and peered through the screen door into the mobile home. He did so, he later testified, as a safety precaution. He saw no one in the mobile home but did see drug paraphernalia in the mobile home's living room.

[1] Circuit Judge James M. Mason is sitting by special assignment pursuant to the Judicial Exchange Program.

¶5 When Mark arrived home, the officers again asked him for permission to search the premises, and he again denied it. Mark was not permitted to enter his residence to use the toilet without police escort. Ultimately, Mark consented to the officers' entry into his residence and turned over to them a quantity of marijuana.

¶6 Because the mobile home was elevated three to four feet above the ground, access to the mobile home through its main entrance required one to climb steps to a small porch enclosed on three sides by a handrail. The porch and entrance doors were on the long side of the mobile home and did not face the street in front of it though they were visible from the street. The porch was at least thirty-five feet from the street. There was no public sidewalk up to the porch. Officers standing in the driveway, in the yard, or on the approach to the steps could not see into the mobile home. There was another door to the mobile home on its other side, also elevated three to four feet off the ground but without steps or a porch.

¶7 The Conners moved to suppress the marijuana and drug paraphernalia that the officers seized, contending that it derived from McLay's illegal intrusion onto their porch. They contended that the intrusion, without consent, probable cause, or a warrant, violated the Fourth Amendment. The trial court determined the controlling issue was whether the porch was part of the curtilage of the residence and thus a protected zone under the Fourth Amendment, giving the Conners a reasonable expectation of privacy there. The court concluded that it was and therefore suppressed the State's evidence.

¶8 The curtilage is the area immediately adjacent to a home to which the inhabitants extend the intimate activities associated with the privacies of life.

Oliver v. United States, 466 U.S. 170, 180 (1984). Its extent is determined by whether the inhabitant could reasonably expect the area in question to be treated as the home itself. ***United States v. Dunn***, 480 U.S. 294, 300 (1987). The factors considered in determining whether an area is in the curtilage are: (1) the proximity of the area to the home; (2) whether the area is within an enclosure surrounding the home; (3) the nature of the uses to which the area is put; and (4) the steps the resident takes to protect the area from observation by passers-by. ***Id.*** at 301. Applying these constitutional principles to the undisputed facts of this case is a question of law we decide independently. ***State v. Wilson***, 229 Wis. 2d 256, 262-63, 600 N.W.2d 14 (Ct. App. 1999).

¶9 We conclude that the trial court properly suppressed the evidence found in the Conners' home. In ***Wilson***, an officer went to the back door of a home where he detected evidence of marijuana use, although the inhabitants had, on a prior occasion, told the officer to come to the front door. ***Wilson***, 229 Wis. 2d at 260. This court held that the officer's coming to the back door was an unconstitutional invasion of the home's curtilage. ***Id.*** at 266. Here, the circumstances were substantially similar. The porch in question was immediately adjacent to the home and was not accessible without climbing steps.

¶10 There was also a form of enclosure about the porch. One end of the enclosing handrail was attached to the mobile home. The use of the porch was clearly tied to the use of the mobile home. Although the porch and door constituted the primary entrance into the mobile home, they did not front on the street or on a public sidewalk; they were thirty-five feet away from the public way and passers-by; a private, not public, approach led to the entrance, porch, and door. It was not possible to see into the mobile home from the approach, the adjoining driveway, or the surrounding yard.

¶11 Arguably, there may have been implied consent. The porch may have been open to the public for such limited purposes as "knock and talk" by neighbors, evangelists, salespeople, or even law enforcement officers; however, that limited purpose disappears when the available resident tells the officers no one else is home, that his father is at work, and that the officers may not search the residence. Chase's and Mark's refusals to allow a search of the premises must be given the same legal effect as the refusal in ***Wilson*** to allow police to approach the back door. The Conners could reasonably expect that the officers would not enter their home or its curtilage.

¶12 To conclude that the front porch did not constitute a place of activity intimately related to the integrity of a person's home and privacy of one's life would be to say that the police can stand on anyone's front porch and peer in the door or the windows, whether the resident consents or not. The concept of curtilage acknowledges the resident's reasonable expectation of privacy.

¶13 The trial court found that ***Wilson*** controlled the outcome of its decision; we agree and affirm.

By the Court.—Order affirmed.

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