COURT OF APPEALS
DECISION
DATED AND FILED

March 15, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-0631-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

NIKKI J. REICHHOFF,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: C. WILLIAM FOUST, Judge. *Affirmed.*

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

¶1 PER CURIAM. Nikki Reichhoff appeals a judgment convicting her of possession of THC with intent to deliver, as a party to a crime. The issue is whether the trial court properly denied Reichhoff's motion to suppress evidence

found in her home and in her car. We conclude that the evidence was admissible and affirm.

¶2 A police dog at a UPS distribution center in Milwaukee reacted to a package being sent to Jason Albert, 1509 McKenna Boulevard, Apt. 3, Madison, Wisconsin, indicating that it might contain marijuana. The police obtained a warrant to search the package in Milwaukee County. They found over 13,000 grams of marijuana. The police resealed the package and delivered it.

¶3 The package was delivered to an apartment that was rented by Nikki Reichhoff and Jason Elkington. The police then executed a warrant they had previously obtained to search the premises. They searched Reichhoff's apartment and her car, which was parked approximately twenty feet from her apartment. They found the package and drug paraphernalia in the apartment and five pounds of marijuana in Reichhoff's car.

¶4 Reichhoff moved to suppress the search of her home on the grounds that there were insufficient facts to establish probable cause for the issuance of the search warrant in Milwaukee County. She moved to suppress the items found in her car as the fruit of the illegal search of her apartment. Shortly thereafter, she filed a supplemental motion, arguing that the items found in her car should be suppressed because the search of her car exceeded the scope of the warrant.

¶5 Based on ***State v. Ramirez***, 228 Wis. 2d 561, 598 N.W.2d 247 (Ct. App. 1999), the trial court denied the motion to suppress the items found in the apartment, concluding that Reichhoff had no standing to challenge the Milwaukee County search warrant because she had no reasonable expectation of privacy in a package addressed to "Jason Albert" at her residence. The trial court also denied

the motion to suppress the items in the car, concluding that the vehicle was properly searched under ***State v. O'Brien***, 223 Wis. 2d 303, 588 N.W.2d 8 (1999).

¶6 Reichhoff first argues that she had standing to challenge the search of the package at the UPS distribution center in Milwaukee because she had a reasonable expectation of privacy in the package. We disagree. In ***Ramirez***, we explained that "Fourth Amendment rights are personal, and thus may not be asserted vicariously." ***Id.*** at 566. We held that a case-by-case assessment is required to determine whether a resident has a reasonable expectation of privacy in a package delivered to the resident's address with a different name. ***Id.*** at 568. We explained that in order for a court to find such an expectation of privacy, the resident would need to present some reason why he or she would expect that the package, when it came, was intended for him or her. ***Id.*** at 568-69. Here, Reichhoff did not offer any evidence that she received mail under the name "Jason Albert" or otherwise used the name. Therefore, she did not have standing to challenge the search and seizure of the package at the post office.

¶7 Reichhoff next argues that the search of her car was unreasonable because her car was located outside the "curtilage" of her apartment. We agree with the trial court that the police had the authority to search the car under ***O'Brien***. In ***O'Brien***, the supreme court held that a warrant to search the premises of a rural duplex allowed the police to search a car parked 200 feet from the duplex, near an outbuilding on the property. ***Id.*** at 315-16. The court applied the "physical proximity" test, concluding that the search was authorized by the

warrant because the car was close enough to the residence to have been a plausible repository for the objects named in the search warrant. ***Id.*** at 318.[1]

¶8 Reichhoff's car was located between thirteen and twenty feet from her apartment in one of only five spaces that were restricted to use by the occupants of the building. The police had a warrant to search the premises and knew the car was registered to Reichhoff, an occupant of the apartment they had just searched. Under ***O'Brien***, the search was within the scope of the warrant because the car was sufficiently close to the apartment to be a plausible repository for the objects named in the warrant.

¶9 Reichhoff contends that a different result is dictated by ***State v. Martwick***, 2000 WI 5, 231 Wis. 2d 801, 604 N.W.2d 552. ***Martwick*** turns on different facts. The issue in ***Martwick*** was whether plants seized on a path fifty to seventy-five feet from a home were within the curtilage of the home. ***Id.*** at ¶14. No search warrant had been issued in that case when the police initially searched Martwick's property. ***Id.*** at ¶¶9-10. Here, a search warrant was issued and the controversy centers on *the scope of the search warrant* and whether a vehicle was on the "premises" for purposes of the warrant. ***Martwick*** does not dictate a different result.

By the Court.—Judgment affirmed.

[1] Under the physical proximity test, the police "can search all items found on the premises that are plausible repositories for objects named in the search warrant." ***State v. O'Brien***, 223 Wis. 2d 303, 317, 588 N.W.2d 8 (1999) (citation omitted).

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5. (1999-2000).