STATE OF WISCONSIN

IN SUPREME COURT

No. 2013AP0857-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

BRETT W. DUMSTREY,

Defendant-Appellant-Petitioner.

ON PETITION FOR REVIEW OF A DECISION OF THE COURT OF APPEALS, AFFIRMING A JUDGMENT OF CONVICTION AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE ENTERED IN THE CIRCUIT COURT FOR WAUKESHA COUNTY, THE HONORABLE DONALD J. HASSIN, JR., PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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BRIEF OF PLAINTIFF-RESPONDENT

STATEMENT OF THE ISSUES

1. Is the underground communal apartment parking lot Dumstrey shares with twenty-nine other tenants of the apartment building, part of his apartment home's curtilage?

   - The trial court did not specifically answer this question but held that Dumstrey did not have a

reasonable expectation of privacy in the parking garage area.

- The court of appeals answered this question no.

2. Did Dumstrey demonstrate a Fourth Amendment violation under either a trespass or reasonable expectation of privacy theory?

   - The trial court did not address the trespass issue but held that Dumstrey did not have a reasonable expectation of privacy in the communal parking area.

   - The court of appeals answered this question no as to both theories.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

As in any case important enough to have the certification granted by this Court, the State requests both oral argument and publication of the court's opinion.

STATEMENT OF FACTS

The State has no quarrels with Dumstrey's recitation of facts in his appellant's brief. The State does add the following facts that it deems relevant to the controversy:

Officer DeJarlais pursued Dumstrey into a decent sized apartment complex. The complex consisted of five or six buildings, thirty apartments to each building, and each with a parking garage of thirty stalls (16:26). In the parking garage where Dumstrey went into, there were multiple cars present (*id*.).

ARGUMENT

I. INTRODUCTION

An off-duty officer trespassed into the underground parking area that Dumstry shared with twenty-nine other tenants. The officer seized Dumstrey in the parking garage and ultimately Dumstrey was arrested for operating while intoxicated (O.W.I.). Dumstrey moved the trial court to suppress the evidence generated from his seizure, arguing that the entry into the garage, without a warrant, probable cause, or consent, violated his Fourth Amendment rights. The trial court denied Dumstrey's motion, reasoning that Dumstrey did not have a reasonable expectation of privacy in the communal parking area.

Dumstrey appealed to the court of appeals arguing that the officer had unlawfully trespassed into his curtilage. The court of appeals affirmed the trial court, opining that the parking garage was not within Dumstrey's curtilage and that Dumstrey did not have a reasonable expectation of privacy in the parking area. Dumstrey now appeals to this Court reprising his core argument that he was unlawfully seized pursuant to a trespass into his curtilage.

This is a case where there is little controversy about the relevant facts; rather the dispute is over how these facts should be interpreted within a constitutional context. Dumstrey contends that the underground parking garage he shares with twenty-nine other tenants, who reside in his apartment building, is his curtilage. Dumstrey argues that whether he has an expectation of privacy in the parking garage is irrelevant to a curtilage determination. Put another way, Dumstrey is alleging that even with no reasonable expectation of privacy in the communal parking garage, he can still effectively maintain that this area is within his curtilage. Consequently Dumstrey argues that the police, without probable cause, a warrant, or

consent, trespassed on his curtilage, triggering the Fourth Amendment protections generated in *United States v. Jones*, 565 U.S. ___, 132 S. Ct. 945 (2012), the case that resurrected the trespass doctrine as a basis for asserting a Fourth Amendment violation.

The State agrees that this case turns on whether or not the parking structure is considered curtilage. Curtilage is a well established protected zone in Fourth Amendment law. So, trespass into such a zone is a Fourth Amendment violation under *Jones*. Conversely, if the underground parking lot is not curtilage, it is akin to open fields, an equally well established unprotected zone. Under *Jones*, trespass to open fields does not implicate the Fourth Amendment. *Jones*, 132 S. Ct. at 953. Thus, the battle lines are clearly drawn; if the parking garage is curtilage Dumstrey must prevail and if the area is not curtilage and akin to open fields, the court of appeals' decision must be affirmed.

The State believes the parking lot area is not curtilage because it is shared by at least twenty-nine unrelated people, is a walk through a hallway and an elevator ride away from Dumstrey's apartment, and is not an area routinely associated with the sanctity of the home and the privacies of life. So divorced is this parking area from intimate family activity, it is governed by traffic laws prohibiting O.W.I. and reckless driving. *See* Wis. Stat. § 346.61.

The State submits that the officer in this case trespassed into an area that is not constitutionally protected. Hence, the trespass is not a Fourth Amendment violation under *Jones* and its progeny. Alternatively, for many of the same reasons that leads to the conclusion that the parking lot is not curtilage, the parking area is not a place where Dumstrey could have an expectation of privacy that society would deem as reasonable.

II. THE UNDERGROUND PARKING LOT IS NOT CURTILAGE AND THUS THE POLICE TRESPASS INTO THE AREA DOES NOT IMPLICATE THE FOURTH AMENDMENT

A. Applicable Law

The denial of a defendant's motion to suppress is a two-part standard of review: 1) the trial court's findings of fact are to be upheld unless clearly erroneous; and 2) the application of those facts to the constitutional issue involved is reviewed *de novo*. *State v. Popp*, 2014 WI App 100, ¶ 13, 357 Wis. 2d 696, 855 N.W.2d 471.

Curtilage is the area which extends the intimate activity associated with the sanctity of the home and the privacies of life. *State v. Davis*, 2011 WI App 74, ¶ 9, 333 Wis. 2d 490, 798 N.W.2d 2d 902. A person's expectation of privacy in his or her dwelling extends to the curtilage of the dwelling. *Id*.

The United States Supreme Court articulated the four factors a reviewing court should consider in determining whether an area is within the curtilage of the home. These four factors are: 1) the proximity of area claimed to be curtilage to the home; 2) whether the area is included within an enclosure surrounding the home; 3) the nature of the uses to which the area is put; and 4) the steps taken by the resident to protect the area from observations by people passing by. *United States v. Dunn*, 480 U.S. 294, 301 (1987). The *Dunn* factors are not to be mechanically applied but rather are to be used as analytical tools. *Id*.

The extent of the curtilage depends on the nature of the premises, and might be interpreted more liberally in the case of a rural single-owner home, as opposed to an urban apartment. *Davis*, 333 Wis. 2d 490, ¶ 9.

In *Oliver v. United States*, 466 U.S. 170 (1984), the United States Supreme Court opined that an officer's intrusion into an "open field" did not constitute a Fourth Amendment intrusion even though it is a trespass under common law. *Id.* at 183. An open field, unlike the curtilage of a home, is not one of those protected areas enumerated in the Fourth Amendment. *Id.* at 176-77.

Two seemingly different but somewhat interrelated methods of identifying protectable interests have evolved into Fourth Amendment jurisprudence. First, is the traditional expectation of privacy analysis, *Katz v. United States*, 389 U.S. 347, 361 (1967), and second is the trespass test recently energized by the United States Supreme Court in *Jones*, 132 S. Ct. 945, and *Florida v. Jardines*, 569 U.S. ___, 133 S. Ct. 1409, 1417-18 (2013). *See Popp*, 357 Wis. 2d 696, ¶ 18. The trespass test focuses on whether the government has intruded into a constitutionally protected area. *Id.* The government's physical intrusion into open fields is of no Fourth Amendment significance. *Jones*, 132 S. Ct. at 953.

A fair summary of the law is that a curtilage/open fields analysis is subject to the *Dunn* factors: 1) proximity to the home 2) uses of the area, 3) whether the area is within a dwelling enclosure, and 4) the ease with which the area can be observed by casual passersby. The definition of curtilage is more liberally applied in a rural setting than in an urban one, and to a home as opposed to a multi-family complex.

A subject can assert a successful Fourth Amendment claim in an area where he may not have a reasonable expectation of privacy, by demonstrating a police intrusion into a constitutionally protected area. Open fields are not a constitutionally protected area.

B. Application of the Facts to the Law

Again, there is little dispute as to the facts surrounding the curtilage issue in this case but ample discord over how the facts are to be interpreted, and as to the meaning of the pertinent law. The relevant facts are as follows:

- Dumstrey's apartment complex contained approximately five or six buildings with thirty apartments in each building (16:26);

- Each building has an underground parking garage, and each garage contains approximately thirty parking stalls (16:26);

- In order to get to his apartment from the parking garage, Dumstrey had to enter another hallway and take an elevator to his apartment's floor (16:40-41);

- The underground parking lot was used exclusively for parking vehicles (16:42);

- Entry into the parking garage was effected by using a remote control. Therefore, the parking garage was intended for the exclusive use of the residents, and presumably their invitees, of the thirty apartments (19:7, 12);

The test for determining whether an area is curtilage is articulated in the seminal case of *Dunn*, 480 U.S. 294. The *Dunn* curtilage test looks at the proximity of the area to the home, the usage of the area, whether the area is enclosed, and the ease with which the area is viewed by passersby. *Id.* at 301. The *Dunn* test is not a mechanical one, and there is no requirement that all four factors must be met for a curtilage determination. The State maintains that a closer look at the *Dunn* factors, and their application to the facts of this case, shows that Dumstrey's

communal parking lot is not part of the curtilage of his apartment home.

1. Proximity to the home

The parking garage is not immediately adjacent to Dumstrey's apartment home. In order to get to his residence from his parked car, Dumstrey would have to go through another hallway and take an elevator. Moreover, the breadth of curtilage in an urban apartment setting is smaller than that for a single home in either an urban or a rural environment. *See Davis* 333 Wis. 2d 490, ¶ 9.

2. Uses of the area

This is the part of the *Dunn* curtilage test where the parking lot area falls most short. The parking garage was used exclusively for parking cars. It was not used for any of the private activities typically associated with a home. It is difficult to envision any person feeling comfortable engaging in any intimate family activity in a communal parking area shared with twenty-nine other residents, and where there is no obstacle from a person in one stall seeing what is going on in any of the other stalls.

Dumstrey argues that he passes the "use of the area" part of the *Dunn* curtilage test, relying on Judge Reilly's dissent in the court of appeals (Dumstrey's brief at 16-17). Dumstrey quotes Judge Reilly, who wrote:

> Third, Dumstrey uses his garage in many of the same ways that middle America utilizes its garages in the "privacies of life"—the keeping and storing of his vehicle in a secure setting, the ability to have a relatively warm vehicle during Wisconsin's frigid winters, the avoidance of wind and rain when accessing his vehicle, the safety and security of an elevator from garage to residence, and the avoidance of crime in the open city streets.

State v. Dumstrey, 2015 WI App 5, ¶ 23, 359 Wis. 2d 624, 859 N.W.2d 138 (Reilly, J., dissent). The State respectfully contends that using an area for refuge from the elements or criminal activity is not engaging in an intimate family activity. A parking garage is a sterile environment offering shelter and cannot reasonably be viewed as a place where a person would feel free to participate in intimate family activities associated with the sanctity of the home and the privacies of life.

Judge Reilly and Dumstrey's attempt to carve out an apartment parking lot as an area of intimate private family activity is undermined by Wisconsin law. Specifically, Wis. Stat. § 346.61 extends jurisdiction for enforcing Wisconsin prohibitions against drunken driving and reckless driving to "all premises provided to tenants of rental housing in buildings of 4 or more units for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof." Areas where traffic laws are applicable and can be enforced are not typically viewed as areas where the sanctity and privacy of the home are enjoyed.

3. Enclosure

While the parking lot in this case is underground, it is not within an enclosure surrounding Dumstrey's apartment. The nature of an underground parking lot is to restrict its access and to protect vehicles from the weather; not to shield each parking stalls occupants from observation. The State concedes that this is the portion of the *Dunn* test, which most supports a curtilage finding, but argues that it pales to the other factors that point conclusively to the parking lot area not being viewed as curtilage.

4. Ease by which viewed by passersby

The parking area cannot be viewed by the public at large. But, each stall can easily be seen by the other twenty-nine

residence occupants. The parking garage is best described as a common and shared area of a multiple dwelling building. As the Seventh Circuit found in *Harney v. City of Chicago*, 702 F.3d 916, 925 (7th Cir. 2012), there is typically no expectation of privacy in a communal, multiple dwelling area and this is true even when the common area is otherwise locked to exclude persons that are not tenants of the building.

Also, Dumstrey could not really do much to protect his stall from visual observation from the other tenants and their invitees. This is so because he does not have exclusive control or dominion over the communal parking structure.

Aside from the *Dunn* test, Dumstrey seemingly seeks support for his position that the parking area is curtilage in a creative but, in the State's view, unpersuasive reliance on the dynamic nature of Fourth Amendment law. Dumstrey starts his brief with a rather lengthy discussion of recent significant cases that have changed the contours of long standing Fourth Amendment jurisprudence. Dumstrey reminds us of new limitations in the search incident to arrest doctrine, *Arizona v. Gant*, 556 U.S. 332 (2009), of the new restriction on the government in collecting blood evidence in O.W.I. investigations, *Missouri v. McNeely*, 569 U.S. ___, 133 S. Ct. 1552 (2013), of the new requirement for a warrant pursuant to a GPS installation on a vehicle in a public place, *Jones*, 132 S. Ct. 945, and of new prohibitions against a warrantless police canine intrusion into the front door area of a home, *Jardines*, 133 S. Ct. 1409.

The State recognizes and appreciates that the Fourth Amendment has spawned a dynamic and vigorous body of case law that retracts and expands over time as society and the world we live in changes. Indeed we very recently received another reminder of Fourth Amendment vitality in *Rodriquez v. United States*, No. 13-9972 (U.S. Apr. 21, 2015), where the high

court curtailed the opportunity for the government to conduct a canine sniff during a routine traffic stop. While it is true that these recent decisions have favored individual rights over police investigatory objectives, it does not follow, as Dumstrey seemingly claims, that we have a "New Fourth Amendment" whose force of momentum is opening up vistas for previously unprotected zones to become constitutionally protected areas.

Gant and *Jones* deal with intrusions to a vehicle, *McNeeley* with an intrusion to the person, *Jardines* with a trespass to the front door area of a home, and *Rodriquez* with the detention of an individual. All of these cases, no matter how revolutionary their outcomes, involve what the government can and cannot do in historically constitutionally protected areas. None of these cases purport to transform a previously unprotected area into constitutionally protected space.

Yes, *Jones* allows for a subject to assert a Fourth Amendment violation, without regard to whether he/she has an expectation of privacy in the area intruded upon, but *Jones* also makes clear that the trespass must be to a constitutionally protected area. So, whether Jones had an expectation of privacy about what a GPS unit might reveal was immaterial; since the trespass was to a vehicle, a constitutionally protected object. Similarly, it is irrelevant as to whether Jardines had a reasonable expectation of privacy as to what a canine sniff would reveal about the interior of his home, as the trespass was to his front door area, his curtilage, an area long protected by the Fourth Amendment. Accordingly, Dumstrey's "New Fourth Amendment" will only protect him, if the intrusion into his parking lot was an intrusion into his curtilage. As the State has argued above, the parking lot is not curtilage, and therefore the trespass into the area does not implicate Fourth Amendment protections.

The State submits that the parking lot in this case is open fields. While the normal language use of the term "open fields" conveys a different image than an underground parking lot, such a characterization is consistent with the legal meaning of the term. For an area to be characterized as open fields it need not be open nor a field, as those terms are used in common speech. *Dow Chemical Co. v. United States*, 476 U.S. 227, 236 (1986). Land can be categorized into one of three groups for Fourth Amendment purposes: 1) open fields, 2) curtilage, or 3) a home/residence dwelling. *State v. Martwick*, 2000 WI 5, ¶¶ 25-29, 231 Wis. 2d 801, 604 N.W.2d 552. The protections of the Fourth Amendment do not attach to lands beyond the curtilage of a home, including public areas and what is referred to as open fields. *Id*. ¶ 28.

The State's contention that the *Jones* trespass doctrine does not extend to intrusions into open fields is supported by *Jones* itself. *Jones* reaffirmed *Oliver*, when it stated, "Quite simply, an open field, unlike the curtilage of a home, is not one of those protected areas enumerated in the Fourth Amendment. The Government's physical intrusion on such an area-unlike it's intrusion on the 'effect' [a vehicle] at issue here-is of no Fourth Amendment significance." *Jones*, 132 S. Ct. at 953 (citations omitted).

Dumstrey also seeks support for his position that the parking lot he shares with twenty-nine others is curtilage from Wisconsin law that pre-dated the creation of the *Dunn* curtilage test. First, Dumstrey looks at *Watkins v. State*, 59 Wis. 2d 514, 208 N.W.2d 449 (1973), in which the court held that a police entry into a storage room in the basement of the defendant's apartment building was lawful because the defendant did not have a reasonable expectation of privacy in the area.

Then Dumstrey cited *Conrad v. State*, 63 Wis. 2d 616, 218 N.W.2d 252 (1974), where in passing this Court referenced

Watkins and observed that the common storage area dealt with in *Watkins* was clearly curtilage. *See Conrad*, 63 Wis. 2d at 633. This reliance on *Conrad* for assistance in determining what is curtilage and what is not is outdated and misplaced. In *Watkins*, there was no discussion of curtilage. In *Conrad*, this Court correctly held that even if a person has a subjective expectation of privacy in an area, the expectation is not reasonable if the area is open fields and not curtilage. True, the *Conrad* Court cited *Watkins* in supporting its reasonable expectation of privacy analysis and in doing so referred to the storage area in *Watkins* as curtilage. But this characterization was not germane to the core *Conrad* holding that a person cannot have an expectation of privacy in open fields. Also *Conrad* was written fourteen years before *Dunn* established the curtilage test. The *Watkins* Court described the storage area as a place that was easily accessible to the public and passersby, a place whose door was always open and a place not for the exclusive use of the defendant. *Watkins*, 59 Wis. 2d at 514. The *Watkins* storage area does not come close to fitting within the *Dunn* curtilage parameters, and if the *Watkins* or *Conrad* Courts had the benefit of the *Dunn* calculus, it is highly unlikely they would characterize the storage area as curtilage.

Dumstrey also seeks support from *United States v. Carriger*, 541 F.2d 545 (6th. Cir. 1976), and Dumstrey quotes at length from Justice Jackson's concurrence in *McDonald v. United States*, 335 U.S. 451 (1948). These cases involved shared living and were decided against the government on reasonable expectation of privacy grounds. However, again, these cases predate *Dunn*, and involved the police gaining vantage points to observe the home. The State believes the most logical way to make a curtilage determination is to apply the *Dunn* factors to the facts present, and that such an application in the instant case shows that the communal parking lot area is not curtilage.

Dumstrey also references the post-*Dunn* case of *State v. Larson*, 977 P.2d 1175 (Or. Ct. App. 1999), where the court held that the backyard area of an apartment building is within the curtilage. The *Larson* Court made much of the backyard area being a traditional privacy zone, noting that is an area where people are more likely to keep things of a private nature. *Larson* 977 P.2d. at 1179. Also, *Larson* involved the police, after being denied consent, using the backyard area as a vantage point to peer into a ventilation system in the window screen of the defendant's apartment. The State submits that a backyard, where the police can observe the home, creates a much stronger privacy interest than does a parking garage area, offering no opportunity for home snooping.

The court of appeals cited numerous cases to support its holding. *Dumstrey*, 359 Wis. 2d 624, ¶¶ 12-13. While these cases were decided on expectation of privacy grounds and not under the trespass theory they are very supportive of the position that the parking lot is not curtilage. Dumstrey argues that a reasonable expectation of privacy analysis is irrelevant to an evaluation of his Fourth Amendment claim. This is clearly true under *Jones* and *Jardines*. But it does not follow that a privacy analysis is not relevant to a curtilage determination. Dumstrey criticizes the court of appeals for looking at "reasonable expectation of privacy" issues and states that the proper way to look at this case is as follows: "To address whether Dumstrey's parking garage was part of the curtilage of his apartment home, we look to factors used to examine curtilage" (Dumstrey's brief at 16). This is true enough, but this formula seeks to mask any relationship between curtilage and privacy. Yet the relationship between curtilage and privacy is palpable. Indeed the four *Dunn* factors, proximity to the home, uses of the area, enclosure, and ability of the area to be seen by passersby, all implicate privacy or the lack of privacy. Dumstrey seeks to avoid any expectation of privacy review by claiming that the only issue is whether there was a trespass to his curtilage. But

you cannot determine the curtilage issue without looking at facts endemic to privacy.

The State does recognize that *Jones* and *Jardines* change the terrain as to police intrusions onto the curtilage. In a post-*Jones* world this Court is free to suppress the evidence discovered in Dumstrey's communal parking garage if it determines the parking area to be curtilage, without regard to whether Dumstrey has a reasonable expectation of privacy in the area. But the State argues that it is difficult to envision an area that can meet the curtilage test, yet be an area where the defendant does not have an expectation of privacy, and also be an area the police trespassed upon.

For example, in *Jardines*, the court clearly identified the front door area of a private home as curtilage, and Jardines did not have an expectation of privacy in that area, So, under *Jones* it would seem that a police intrusion into the front door curtilage area would be a Fourth Amendment violation but it is not one, because the qualifying trespass component is missing. This is why the *Jardines* Court specifically mentioned that the police entry into the curtilage was fine, *see Jardines*, 133 S. Ct. at 1415-16; it was the introduction of a police canine into the equation that was the violation. Our case is the inverse of *Jardines*; in *Jardines* the area was the curtilage but there was no police officer trespass, where in this case there was trespass but it was not onto the curtilage. In either case the police conduct is not unlawful under *Jones*.[1]

[1] As mentioned earlier, there was a violation in *Jardines*, the bringing of the canine into the curtilage. That constituted the trespass. However, *Jardines* makes clear that the officer coming to the front door by himself would not have been a trespass, so, the police entry without the dog would not have implicated *Jones.*

The State submits that it is a rare case where a police officer would be committing a trespass onto the curtilage, and the defendant would not have a reasonable expectation of privacy in the curtilage. This case is not such a case, because the parking area Dumstrey shared with twenty-nine other tenants is not curtilage. The parking garage does not meet the *Dunn* test for curtilage; the parking area is not a reasonable extension of the sanctity and privacy of the home. Dumstrey himself illustrates the problem in viewing the parking garage as curtilage when he writes, "Perhaps one of the other twenty-nine tenants could have granted him [Officer DeJarlais] permission to enter, but none did. Perhaps one of the other twenty-nine tenants *would* have granted him permission to enter, but none was asked" (Dumstrey's brief at 21-22). It is incompatible with curtilage principles for so many people, unrelated to the person claiming curtilage, to have the ability to trump a person's privacy interest in the area.

III. DUMSTREY DOES NOT HAVE A REASONABLE EXPECTATION OF PRIVACY IN THE PARKING AREA

Dumstrey does not seem to argue that he has a reasonable expectation of privacy in the parking lot area. Indeed he chides both the court of appeals and the State for looking at this issue (Dumstrey's brief at 12-13). Nevertheless, not only is a privacy discussion integrated with a curtilage analysis, it is also another way for Dumstrey to assert his claim if his trespass argument fails. Dumstrey has no reasonable expectation of privacy in the parking area he shares with twenty-nine other people, all of whom can easily see what he might choose to do in the lot; he does not have complete dominion and control of the area or the right to exclude others. Dumstrey does not put the area to private use other than parking a car, and any claim of privacy in such an area is not consistent with historical notions of privacy. The State submits

that Dumstrey has no reasonable expectation of privacy in the parking area.

In this case the police did not trespass into Dumstrey's curtilage. Instead the officer trespassed into his open fields and such an intrusion does not implicate Fourth Amendment protections. Also Dumstrey did not have a reasonable expectation of privacy in the parking lot area. The court of appeals summed it up correctly when it wrote:

> Applying the guiding principles and factors discussed above, we conclude that under the totality of circumstances the parking garage was not curtilage. The common or shared area analysis applies to this case. There was unrefuted testimony that there were thirty stalls in the parking garage, an area that was used exclusively for parking cars. While the underground garage was connected to Dumstrey's apartment building, and the outside access was limited to tenants and shielded from the general public with entry by remote control, Dumstrey shared the garage with the landlord and the other tenants who park there and their invitees. Many others, including strangers to Dumstrey, regularly had access. Given Dumstrey's lack of complete dominion and control and inability to exclude others, including the landlord and dozens of tenants and their invitees, we conclude that the parking garage was not curtilage of Dumstrey's home. Such a space, open to and shared with dozens of other people for the sole purpose of parking cars, was not an area in which Dumstrey would reasonably feel free to carry on "the intimate activity associated with the sanctity of [one's] home and the privacies of life." *Oliver*, 466 U.S. at 180 (citation omitted).

Dumstrey, 359 Wis. 2d 624, ¶ 14 (footnote omitted).

The State respectfully asks this Court to affirm the court of appeals.

CONCLUSION

For the foregoing reasons, Dumstrey's judgment of conviction, the trial court's denial of his motions to suppress, and the appellate courts affirmance of the trial court, should be affirmed.

Dated this 5th day of May, 2015.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,878 words.

Dated this 5th day of May, 2015.

_____

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Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 5th day of May, 2015.

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DAVID H. PERLMAN
Assistant Attorney General