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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,
Plaintiff-Respondent,

Case No. 2018AP2299CR

v.

BRETT C BASLER
Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

ON NOTICE OF APPEAL FROM AN ORDER DENYING
DEFENDANT'S MOTION TO DISMISS ENTERED AUGUST 27, 2018
IN THE WINNEBAGO COUNTY CIRCUIT COURT
THE HONORABLE KAREN L. SEIFERT, PRESIDING

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I. Statement of Issues Presented for Review

- 1) Whether a knock on a door is a search?

Trial Court Answered: No.

- 2) Whether the enclosed porch at 38 W. South Park Avenue was curtilage?

Trial Court Answered: No.

II. Statement on Oral Argument and Publication

The State is requesting neither publication nor oral argument, as this matter involves only the application of well-settled law to the facts of the case.

III. Statement of the Case

The State believes Mr. Basler’s recitation of the facts of the case is sufficient, and pursuant to Wis. Stat. 809.19(3)(a)(2), omits a repetitive statement of the case.

IV. Argument

- 1) A knock on a door is not a search.**

The only thing Officer Wilson did on the defendant’s porch was knock on the door. A knock on the door is not a search. “There is no legal

requirement of obtaining a warrant to knock on someone's door." *State v. Robinson*, 2010 WI 80, ¶32, internal citations omitted.

Police activity only implicates the fourth amendment if it represents a search under the fourth amendment. *State v. Whitrock*, 161 Wis.2d 960, 971 (1991).

The Court found "[t]here is no evidence to suggest that had the officer knocked on the other door of the porch that the circumstances would have been any different." R (record) 36:P (page) 3. The officer knocked on what he believed was the defendant's front door, the defendant came out, and an OWI investigation and arrest ensued.

The knock on the defendant's door was not a search, and fourth amendment doctrine on search and seizure is not properly applied to police conduct in this case.

2) The enclosed porch was not part of the home itself for fourth amendment purposes

"The protection provided by the Fourth Amendment to a home also extends to the curtilage of a residence. The curtilage is the area to which extends the intimate activity associated with the sanctity of a [person's] home and the privacies of life and therefore has been considered part of

[the] home itself for Fourth Amendment purposes.” *State v. Dumstrey*, 2016 WI 3, ¶ 23 (internal citations omitted).

Dumstrey sets forth a four part test to determine if a space is curtilage.

- (1) The proximity of the 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 observation by people passing by.

Id., at ¶32

A court does not mechanically apply these factors as part of a finely tuned formula. Instead, the factors are useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration—whether the area in question is so intimately tied to the home itself that it should be placed under the home's ‘umbrella’ of Fourth Amendment protection. *Id.*

Mr. Basler’s enclosed porch is not constitutionally protected curtilage. While it is attached to his house and enclosed, so are virtually all

porches, including the smallest of concrete pads with a decorative or functional arm rail around it.

The photographic evidence shows this porch is used as a porch. There is furniture for lounging, and in fact a doormat can be clearly seen in front of the French doors where Wilson knocked and encountered the defendant. Br. of Def-App., P8.

There is no evidence the residents of 38 W. South Park took any steps to protect the area from observation from passersby. There are no window coverings, “no trespassing” signs, or any evident steps to keep the area secret from anyone. There is a doorbell on the outside of the first door to the enclosed porch, but other than that feature there is no message to the public, or to the police, that Mr. Basler considers the first door the entry to his private residence. *Id.*, at 9.

Officer Wilson entered Mr. Basler’s porch and knocked at what he reasonably believed was the defendant’s front door. The area in question in this case is not so intimately tied to the home itself that it should be placed under the home's ‘umbrella’ of Fourth Amendment protection. He made no illegal trespass to 38 W. South Park’s curtilage, and the defense motion was properly denied.

V. Conclusion

For the reasons set forth above, Officer Wilson conducted no search by knocking on the defendant's front door. Mr. Basler's front porch was not constitutionally protected curtilage. The trial court did not err in denying the defendant's motion to dismiss.

Dated at Oshkosh, Wisconsin this March 26, 2019

By: _____
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CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 769 words.

I further certify pursuant to Wis. Stat. § 809.19(b)(12)(f) that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of person, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

I further certify that on the date of signature I routed this brief to our office station for first class US Mail Postage to be affixed and mailed to:

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