

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JANUARY TERM 2005

STATE OF FLORIDA,

Appellant,

v.

EDDIE CUNNINGHAM,

Appellee.

CASE NO. 4D04-907

Opinion filed February 2, 2005

Appeal of a non-final order from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Lucy Chernow Brown, Judge; L.T. Case No. 02-10751 CFC02.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Laurel R. Wiley, Assistant Attorney General, West Palm Beach, for appellant.

V. Lynn Whitfield of Walton Lantaff Schroeder Carson LLP, West Palm Beach, for appellee.

PER CURIAM.

The trial court granted defendant's motion to suppress because a deputy came through a gate into defendant's backyard without a search warrant. The state asserted that there were exigent circumstances, however, the trial court found that there were not and granted the motion. Because the backyard was clearly within the curtilage of defendant's home, State v. Sarantopoulos, 604 So. 2d 551 (Fla. 2d DCA 1992), and there is evidence to support the findings, we affirm.

POLEN, KLEIN and SHAHOOD, JJ., concur.

***NOT FINAL UNTIL DISPOSITION OF ANY
TIMELY FILED MOTION FOR REHEARING.***