COURT OF APPEALS
DECISION
DATED AND FILED

February 8, 2012

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP3080-CR **Cir. Ct. No. 2007CF474**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT I. ROBINSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County: EMILY S. MUELLER, Judge. *Affirmed*.

Before Neubauer, P.J., Reilly, J., and Neal Nettesheim, Reserve Judge.

¶1 PER CURIAM. Robert I. Robinson appeals from a judgment convicting him of thirty-eight counts of possessing child pornography. He contends that the circuit court erred in denying his motion to suppress evidence

gathered at his home. Because we conclude that the police's initial discovery of the child pornography was authorized under the plain view exception to the Fourth Amendment, we affirm.

¶2 On April 23, 2007, Officer Christopher Paulson visited Robinson's home in response to an "unwanted party" complaint from a local church. Paulson was following up with Robinson to inform him that he was no longer welcome at that church. According to Paulson, such notification needed to be made in person because if Robinson were to return to the church, he would be arrested for trespassing.

¶3 Paulson first arrived at Robinson's home in the afternoon of April 23. As he approached the front door, he saw a note on it telling visitors "to go around to the back and use that door, knock on that door." Paulson proceeded to walk through the lawn to the back of the home, where he knocked and rang the doorbell but received no response. Paulson left his business card on the back door, called and left a message on the answering machine, and then left.

¶4 Six or seven hours later, Paulson again attempted to make contact with Robinson at his home. As he approached the front door, he saw the same note directing visitors to the back of the home. Paulson proceeded to walk through the lawn to the back of the home, where he knocked and rang the doorbell but received no response. He noticed, however, that his business card had been removed.

¶5 Paulson returned to the front of the home and saw through the unobstructed front window that the television was on and that someone was lying under a blanket on a couch. Paulson attempted to get that person's attention by

knocking on the front door and directing his flashlight on the couch through the front window. His efforts were unsuccessful.

¶6 Undeterred, Paulson walked to the unobstructed east window of the home, which was situated next to the couch, to try to get the person's attention. While illuminating his flashlight on the person, Paulson could see on a table right below the window what appeared to be a pornographic picture of an underage girl. After seeing that image, Paulson shined his light on other portions of the room and saw two large posters featuring what appeared to be two nude underage girls.

¶7 Following his discovery, Paulson called an investigator and explained what he saw. The investigator arrived with at least one other officer, and Paulson directed them to the east window of the home to confirm his observations. They did so, and that information led to police obtaining a warrant to search Robinson's home. The subsequent search yielded numerous photographs and downloaded images of child pornography.

¶8 Before trial, Robinson filed a motion to suppress the evidence gathered at his home. Specifically, he complained that before obtaining the warrant to search his home, Paulson entered the curtilage of Robinson's home—an illegal vantage point that allowed him to see inside—which in turn provided the basis for the warrant.

¶9 The circuit court rejected Robinson's argument, concluding that Paulson was justified in being where he was when he made his discovery. Accordingly, it denied Robinson's motion under the plain view exception to the Fourth Amendment.

¶10 The case proceeded to trial, and the jury returned guilty verdicts on the thirty-eight counts it considered. The circuit court subsequently sentenced Robinson to a total of eighteen years of initial confinement and twenty-four years of extended supervision. This appeal follows.

¶11 The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution protect persons from unreasonable searches and seizures. Whether a police officer's conduct violates the prohibition on unreasonable searches and seizures is a question of law we review without deference to the circuit court. ***State v. Davis***, 2011 WI App 74, ¶8, 333 Wis. 2d 490, 798 N.W.2d 902. However, we will uphold the circuit court's factual findings unless they are clearly erroneous. ***Id.***

¶12 Whether police conduct constitutes an unreasonable search and seizure "depends, in the first place, on whether the defendant had a legitimate, justifiable or reasonable expectation of privacy that was invaded by the government action." ***State v. Rewolinski***, 159 Wis. 2d 1, 12, 464 N.W.2d 401 (1990). A person has no reasonable expectation of privacy in an item that is in plain view of an officer who has a right to be in the position to have the view. ***State v. Edgeberg***, 188 Wis. 2d 339, 345, 524 N.W.2d 911 (Ct. App. 1994).

¶13 The plain view exception has three prerequisites: (1) the officer had a prior justification for being in the position from which he or she made the plain view discovery, (2) the evidence was in plain view, and (3) there is probable cause to believe that the item viewed is connected to criminal activity. *See* ***Edgeberg***, 188 Wis. 2d at 345.

¶14 On appeal, Robinson does not challenge the circuit court's conclusions that the second and third prongs of the plain view exception were met

(i.e., that the picture on the table was within plain view and that it was a pornographic picture of an underage girl). However, he does challenge the court's conclusion that Paulson had a prior justification for being at the east window when he made his plain view discovery. According to Robinson, Paulson had no reason to be in the position he was in and his actions violated Robinson's reasonable expectation of privacy.

¶15 It is true that the protections of the Fourth Amendment extend beyond the walls of the home to the "curtilage" or "land immediately surrounding and associated with the home." ***State v. Walker***, 154 Wis. 2d 158, 182, 453 N.W.2d 127 (1990) (quoting ***Oliver v. United States***, 466 U.S. 170, 180 (1984)). However, law enforcement is not completely prohibited from entering this area. ***Davis***, 333 Wis. 2d 490, ¶10. Officers approaching a residence with legitimate police business may access any area of the curtilage impliedly available to the public. *See* ***Edgeberg***, 188 Wis. 2d at 347. Thus, it is not a Fourth Amendment search for police to see from that vantage point something inside the home. ***Id.***

¶16 Examining the actions of Paulson in this case, we conclude that his presence within the curtilage of Robinson's home did not violate Robinson's reasonable expectation of privacy. As the circuit court found, Paulson went to Robinson's home on legitimate police business to inform him of his unwanted status at a local church and the potential consequences (i.e., arrest for trespass) if he returned to the church. During his visits, Paulson saw a note on the front door directing visitors to the back of the home. That note provided Paulson with implied permission to access the back door by walking through the yard and around the home next to the window at issue.

¶17 We further conclude that Paulson's position at the east window was justified under the circumstances. During his second visit to Robinson's home, Paulson had reason to believe that someone was inside. Not only did he see that his business card had been taken from the back door, but he also saw through the unobstructed front window that the television was on and that someone was lying under a blanket on a couch. Because that person was unresponsive to Paulson's earlier knocks, doorbell rings, and illuminating flashlight, it was reasonable—and consistent with this purpose of making contact with Robinson—for Paulson to attempt to contact the person from the window nearest the couch. Again, Paulson had implied permission to approach this window based on the note on the front door. It was from this position, while illuminating his flashlight on the person on the couch, that Paulson made his plain view discovery.

¶18 Based on the foregoing, we conclude that the requirements of the plain view exception were satisfied and, therefore, the information obtained from Paulson's discovery was properly included in the subsequent search warrant. Accordingly, the circuit court did not err in denying Robinson's motion to suppress.

By the Court.—Judgment affirmed.

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