COURT OF APPEALS
DECISION
DATED AND FILED

January 9, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1120-CR **Cir. Ct. No. 2011CF192**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JANN M. WILLARD,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for La Crosse County: ELLIOTT M. LEVINE, Judge. *Affirmed.*

Before Blanchard, P.J., Lundsten, Kloppenburg, JJ.

¶1 PER CURIAM. Jann Willard appeals a judgment of conviction. The main issue is whether she had a reasonable expectation of privacy on her back porch. We conclude she did not. We affirm.

¶2 Willard pled no contest to one felony count of operating with a prohibited blood alcohol content. Before doing so, she moved to suppress certain evidence because it was obtained as a result of a police officer making a warrantless entry to an area where Willard asserts that she had a reasonable expectation of privacy. The circuit court held an evidentiary hearing and denied the motion. This appeal follows under WIS. STAT. § 971.31(10) (2011-12).[1]

¶3 The sequence of the officer's actions appears to be undisputed. After receiving the registered street address of a suspected hit-and-run vehicle, the officer went to that address. The street address is on Franklin Street, but the house is on a corner lot, with the driveway entering from Clark Street. The officer parked on Clark, found the suspect car outside of a detached garage, inspected it, found damage, and then walked to the back door of the house to make contact. To make that walk, the officer used a sidewalk that runs from the garage to the back door. Seeing no doorbell or other device outside, he walked inside what is basically an enclosed back porch to knock on the inner door to the house. From that location, through the inner door the officer began to observe evidence that Willard moved to suppress.

¶4 The layout of the property and the location of the back porch outer door are important in our analysis, and therefore we state our understanding of those facts in detail. Our understanding is based on the police testimony and the photographs Willard submitted at the suppression hearing.

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶5 We start from the first photo on exhibit B of the affidavit submitted by Willard's attorney at the suppression hearing. The photo is taken from a position directly facing the back door. To the right side of the photo we can see part of the house's yard and a street running alongside the yard. The street must be either Franklin or Clark. The back door is on the corner of the house that is closest to the street. If that street is Franklin, the door in question would actually be a side door, and would be in a peculiar location on the front corner of the house. Therefore, we conclude that the street in that photo is Clark.

¶6 We further conclude that Franklin Street must be on the other side of the house from the photographer, because if Franklin were instead on the same side, this door would be a front door. Therefore, the photograph we are describing is taken from the back yard of the house, facing the back of the house, and the yard seen in that photo is the side yard. We further understand that the garage and driveway are somewhere next to or behind the photographer, in the back yard, based on the testimony about the location of the suspect vehicle, the detached garage, and the officer's movement to reach the back door.

¶7 Thus, we understand the back yard of the house to be generally exposed to Clark Street on the side. A person walking on Clark Street, approaching the house from the rear, but looking forward and to the left towards the house, would at some point have a view into the back yard, and be able to see the driveway, garage, and back door.

¶8 To the extent our description of the property differs from the circuit court's findings, we conclude that those findings were clearly erroneous. For example, the court stated that the back door was "an entranceway that's on a street." If by this the court meant that the entranceway faced a street, as opposed

to being close to or exposed to a street, that does not appear to be supported by the record. The back door faced the back yard, which was open to the street on one side.

¶9 Willard argues that the officer improperly invaded the curtilage of her house by stepping inside the back porch. The parties agree that the legal question is whether she had a reasonable expectation of privacy on the porch. We conclude she did not.

¶10 In our view, one essential fact is that Willard's back yard and back door are partially exposed to the street. That is to say, this is not a typical back yard with lots on both sides. This exposure to the street diminishes the expectation of privacy that the occupants have at that door, in the absence of fencing, signage, or other deliberate impediments to being contacted at that door. When a house is situated like Willard's, we conclude that a substantial percentage of persons will attempt to contact the occupants at that door. This is true even if there is also another door, not visible from that side, that might be a front door. A door in this location in relation to the street has the effect of inviting contact. Therefore, Willard lacked a reasonable expectation of privacy from attempts to make contact at this door.

¶11 The second essential fact is that there was no external doorbell or other similar device outside the back door. We conclude that Willard's reasonable expectation would have been the following. When persons attempt to make contact at this door, and then discover there is no summoning device, a significant percentage of persons will then step inside the porch area to knock on the interior door. Therefore, Willard also lacked a reasonable expectation of privacy in the back porch area.

¶12 To summarize, we conclude that the back porch area was not curtilage because the only reasonable expectation the occupants can have is that people will attempt to make contact with them at the back door, and will also then step inside the back porch to knock at the inner door after discovering that there is no outer door bell.

¶13 Willard argues that this should not be viewed as a curtilage issue because the back porch is actually a part of the structure, and therefore it should be considered part of the home itself, rather than curtilage. This distinction does not change our analysis of the situation. Even if her back porch is considered part of the home itself, the reasonable expectation of privacy in this situation remains the same. It cannot reasonably be contended that a person has a reasonable expectation of privacy on a *front* porch when there is no external door bell. *See* ***State v. Edgeberg*** , 188 Wis. 2d 339, 346-47, 524 N.W.2d 911 (Ct. App. 1994) (no expectation of privacy on front porch entryway). The analysis is no different when the back door is one at which the occupants must regularly expect contact.

¶14 Finally, Willard makes a separate argument that the circuit court erred in concluding that she was not under arrest when she was removed from her residence and placed in a police car. However, even if we were to agree that the court erred in that conclusion, Willard does not explain what follows from there. She does not argue that the arrest would have been without probable cause. Nor does Willard explain how changing the conclusion about arrest would lead to suppression of evidence. The State points out these omissions in its brief, but following that Willard's reply brief is silent on the arrest issue. Given Willard's lack of explanation of how this issue affects the conviction, we cannot conclude that this argument is a basis for reversal.

By the Court.—Judgment affirmed.

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