COURT OF APPEALS
DECISION
DATED AND FILED

May 26, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal Nos. 2004AP2335-CR
2004AP2336-CR

Cir. Ct. Nos. 2002CF77
2002CF101

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAMIEN BOLEN,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Langlade County: GLENN H. HARTLEY, Judge. *Affirmed*.

Before Vergeront, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Damien Bolen appeals judgments convicting him of homicide by intoxicated operation of a motor vehicle, felony hit and run, and felony bail jumping. He also appeals an order denying postconviction relief from

the judgments. Bolen entered a plea to the charges after the trial court denied his motion to suppress some of the principal evidence against him. This appeal concerns the trial court's ruling on that motion. We affirm.

¶2 Police discovered the dead victim of a hit-and-run driver, and found white paint and other evidence at the scene, indicating damage to the hit-and-run vehicle. An officer at the scene thought the paint was from a General Motors vehicle. Later that night, two informants provided information that helped identify Bolen as the hit-and-run driver. For example, the informants reported that they had observed damage to the front of Bolen's vehicle.

¶3 Acting on that information, Sheriff's Deputy Westen went to Bolen's residence and drove up the 100- to 150-yard driveway. As Westen neared Bolen's house, he saw a white General Motors pickup truck parked in front of a three-car attached garage. Westen got out of his vehicle, neared the truck, and observed significant damage to its front end. Sheriff's Deputy Lenzner arrived on the scene shortly after Westen. Westen informed Lenzner of the vehicle damage. Lenzner observed the damage, with the assistance of a flashlight, as he walked to Bolen's front door.

¶4 When Bolen came to the door, Deputy Lenzner read him his ***Miranda*** rights, and subsequently elicited inculpatory statements from Bolen. The State charged Bolen in connection with the accident, and commenced a separate prosecution a few weeks later when Bolen violated a condition of his bond.

¶5 Bolen moved to suppress the truck and his statements to Lenzner. He contended that the evidence was produced by Westen's and Lenzner's illegal search and seizure on Bolen's property. The circuit court concluded, however,

that the deputies lawfully inspected the vehicle and that the evidence produced from their inspection was admissible.

¶6 When, as here, the relevant facts are not disputed, whether a constitutional violation occurred is a question of law that we review *de novo*. ***State v. Cobbs***, 221 Wis. 2d 101, 105, 584 N.W.2d 709 (Ct. App. 1998).

¶7 The dispositive issue in this case concerns the concepts of curtilage and plain view. The curtilage is the land and buildings immediately surrounding a house, *see* ***United States v. Dunn***, 480 U.S. 294, 300 (1987), and is considered part of the home for Fourth Amendment purposes. ***Oliver v. United States***, 466 U.S. 170, 180 (1984). However, even within this protected area, evidence in plain view is subject to seizure and use as evidence. *See* ***State v. Guy***, 172 Wis. 2d 86, 101-02, 492 N.W.2d 311 (1992). For the plain view doctrine to apply, the object must be in plain view, the police officer seizing it must have a lawful right of access to the object, and the incriminating character of the object must be immediately apparent. ***Id.*** at 101. To meet the third criterion, police must show that they had probable cause to believe the object in plain view was evidence or contraband. ***Id.***

¶8 In this case, Bolen contends that he parked the truck within the curtilage of his home, and the officers therefore unlawfully inspected it. However, "[P]olice with legitimate business may enter the areas of the curtilage which are impliedly open to use by the public and in doing so are free to keep their eyes open …." ***State v. Edgeberg***, 188 Wis. 2d 339, 347, 524 N.W.2d 911 (Ct. App. 1994) (citations omitted). Areas of the curtilage impliedly open to use by the public include the front door of a home and the approaches to it. *See* ***id.*** Furthermore, the use of a flashlight did not infringe on Bolen's privacy rights. *See*

Dunn, 480 U.S. at 305 ("Finally, the plurality opinion in ***Texas v. Brown***, 460 U.S. 730, 739-740, 103 S. Ct. 1535, 1541-1542, 75 L. Ed. 2d 502 (1983), notes that it is 'beyond dispute' that the action of a police officer in shining his flashlight to illuminate the interior of a car, without probable cause to search the car, 'trenched upon no right secured ... by the Fourth Amendment.' The holding in ***United States v. Lee***, 274 U.S. 559, 563, 47 S. Ct. 746, 748, 71 L. Ed. 1202 (1927) is of similar import."). Consequently, Deputy Lenzner's discovery of the damaged front end of Bolen's truck was lawful because Lenzner observed that damage while approaching Bolen's front door for legitimate reasons, the truck damage was in plain view from Lenzner's vantage point, and its incriminating character was immediately apparent given the information Deputy Lenzner had before arriving at Bolen's home. Thus, the seizure of Bolen's truck was supported by lawfully obtained probable cause. Our decision makes it unnecessary to determine if Deputy Westen went beyond the area of the curtilage impliedly open to the public when he walked over to the truck to closely inspect it.

¶9 Bolen suggests that his statements to police should be suppressed because of illegal police activity with respect to his truck. But we agree with the State that Bolen's statements are admissible regardless of the legality of the inspection of Bolen's truck. In no sense did the police exploit the truck evidence observed in Bolen's driveway to obtain statements from Bolen. *See* ***State v. Simmons***, 220 Wis. 2d 775, 585 N.W.2d 165 (Ct. App. 1998) (evidence obtained after illegal police activity remains admissible if obtained by means sufficiently distinguishable from that activity).

By the Court.—Judgments and order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5. (2003-04).