

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 10, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-2677-CR
STATE OF WISCONSIN**

Cir. Ct. No. 00 CF 5242

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

BRETT M. CHAMPAGNE,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Milwaukee County:
CLARE L. FIORENZA, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

¶1 PER CURIAM. Brett M. Champagne appeals from judgments of conviction for possession with intent to deliver cocaine and possession of heroin,

following his guilty plea. He argues that the trial court erred in denying his motion to suppress evidence.¹ We affirm.

¶2 On April 24 and May 21, 2000, police took garbage bags from plastic garbage cans located in the alley area behind Champagne's residence. The garbage bags contained items that led to the issuance of a search warrant for Champagne's residence, and the resulting search led to the recovery of evidence forming the basis for Champagne's convictions. The limited issue at the suppression hearing, as summarized by the trial court, was "whether police officers entered the curtilage of [Champagne's] residence in order to get garbage—in order to search the garbage."

¶3 At the hearing, testimony was presented by: William Chamulak,² a West Allis Police Department Corporal who conducted the garbage searches on April 24 and May 21; Benjamin Hannus, a resident of the same building where Champagne lived; and Champagne. The factual dispute centered on whether, when the police took the garbage bags, the garbage cans were located on the public alley or on the edge of the private property of the building where Champagne lived.

¶4 Corporal Chamulak testified that on both April 24 and May 21, the garbage cans from which police took Champagne's garbage bags were "in the alley." Repeatedly, under both direct and cross-examination, he testified that the

¹ A defendant may appeal from an order denying a motion to suppress evidence even though the judgment of conviction rests on a guilty plea. WIS. STAT. § 971.31(10) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

² Corporal William Chamulak's name is spelled two different ways in the record: "Chamulek" and "Chamulak."

cans were located in a “public” alley, and that the police never went onto the property of Champagne’s residence to obtain the garbage bags.

¶5 Hannus and Champagne, describing the location of the garbage cans in relation to the yard, the alley, and disabled cars parked in the alley area behind the residence, indicated that the cans usually sat on the residential property. Hannus conceded, however, that he could not say where the cans were located on the days of the searches, and that sometimes the cans were in the alley after the garbage collectors emptied them. Champagne also acknowledged that he could not specify the location of the cans on the days of the searches. He said, however, that they were “usually” and “mostly” on the private property of his residence.

¶6 In its oral decision on the motion, the trial court stated that the garbage cans were “located behind the disabled vehicle from the end of the disabled vehicle to the alley.” The court concluded:

I’m finding that, number one, I believe the credible testimony is that the officer did not step onto the defendant’s property line; but even if he had—and I’m not finding he had—even if he had[,] a garbage can that’s right there on the edge of an alleyway in the public way is not automatically considered his—the curtilage of the home.

So[, the] first finding is that he did not step on [the property line], but even if he did, it’s not commonly within the curtilage of the home.

And with the facts before this Court, I would find even if he had stepped on the property line, slightly onto the property, it still was not within his curtilage of the home.

¶7 Champagne argues that “[t]he trial court’s finding ... that the garbage cans were not within [his] home’s curtilage is clearly erroneous.” We disagree.

¶8 The Fourth Amendment to the United States Constitution and article I, § 11 of the Wisconsin Constitution protect all persons from unreasonable searches and seizures. *See State v. O'Brien*, 223 Wis. 2d 303, 316, 588 N.W.2d 8 (1999). Generally, Wisconsin courts apply the search-and-seizure standards articulated by the United States Supreme Court in its interpretation of the Fourth Amendment. *See State v. Phillips*, 218 Wis. 2d 180, 195, 577 N.W.2d 794 (1998).

¶9 The Fourth Amendment does not prohibit a warrantless seizure of garbage bags from garbage cans left for collection beyond the curtilage of a residence. *See California v. Greenwood*, 486 U.S. 35, 37 (1988). The “curtilage” of a residence is “the area immediately adjacent to the home to which a person extends the intimate activities associated with the privacies of life.” *State v. Wilson*, 229 Wis. 2d 256, 264, 600 N.W.2d 14 (1999). Whether a certain area is part of the curtilage is “determined by factors that bear upon whether an individual reasonably may expect that the area in question should be treated as the home itself.” *Id.* at 264 (quoting *United States v. Dunn*, 480 U.S. 294, 300 (1987)).

¶10 To determine the area of curtilage, a court should consider: the proximity of the area to the home; whether the area is within an enclosure surrounding the home; the nature and use of the area; and any steps the resident has taken to protect the area from observation. *See id.* While these factors should not be mechanically applied, they offer analytical tools to help evaluate the extent to which a resident has a reasonable expectation of privacy in the area from which the search and seizure occur. *See id.* Even if garbage is within the curtilage, a defendant must still have a reasonable expectation of privacy in the garbage to gain Fourth Amendment protection. *See, e.g., United States v. Shanks*, 97 F.3d 977, 979-80 (7th Cir. 1996).

¶11 Whether an area is within the curtilage of a residence is an issue of constitutional fact involving a two-step standard of review. *State v. Martwick*, 2000 WI 5, ¶16, 231 Wis. 2d 801, 604 N.W.2d 552. We review the trial court's factual findings under the deferential, clearly erroneous standard, but we independently review the trial court's determination of the constitutional question. *Id.* at ¶18.

¶12 Here, the record reveals no basis on which we could conclude that the trial court's factual finding was clearly erroneous. Corporal Chamulak clearly and repeatedly testified that the garbage cans were in the public alley and that the police never had to go onto the residential property to remove the garbage bags from them. The court found Corporal Chamulak's testimony credible. *See Sanders v. State*, 69 Wis. 2d 242, 253, 230 N.W.2d 845 (1975) (it is for the trial court to determine the credibility of witnesses at a suppression hearing). And although Hannus and Champagne indicated that the garbage cans usually were located on the residential property, they acknowledged that sometimes the cans were in the alley, and that they could not say where the cans were located on the days of the searches.

¶13 Therefore the trial court's finding that the garbage cans, from which the police took Champagne's garbage, were not within the curtilage of Champagne's residence was not clearly erroneous. Thus, Champagne had no Fourth Amendment protection in relation to the garbage. *See Greenwood*, 486 U.S. at 40-41. Accordingly, we conclude that the trial court correctly denied

Champagne's motion to suppress the evidence discovered in the subsequent search of his home.³

By the Court.—Judgments affirmed.

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

³ We also acknowledge the State's strong arguments that (1) even if the garbage cans were on the residential property, they still were not within the curtilage, and (2) even if they were within the curtilage, Champagne had no reasonable expectation of privacy in the garbage the police seized. We also note the parties' arguments over whether Champagne waived any challenge to the admissibility of the items seized pursuant to the search warrant. Resolving this appeal as we have, however, obviates the need to address these additional issues. See *State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (appeals should be resolved on the narrowest possible grounds); see also *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issue need be addressed).

