COURT OF APPEALS
DECISION
DATED AND FILED

April 17, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2449

Cir. Ct. Nos. 01-FO-529, 01-FO-530, 01-FO-531, 01-FO-532

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANIEL M. ABRAHAM AND ROBERT S. ABRAHAM,

DEFENDANTS-APPELLANTS.

APPEAL from judgments of the circuit court for Waushara County: LEWIS MURACH, Judge. *Affirmed.*

¶1 ROGGENSACK, J.[1] Robert Abraham and Daniel Abraham appeal adverse judgments rendered against them for a series of deer hunting infractions.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2001-02). In addition, all references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

The circuit court found Daniel guilty of hunting deer without displaying a back tag, contrary to WIS. STAT. § 29.301(3), hunting without a proper license, contrary to WIS. STAT. § 29.024(1) and borrowing the license or tag of another, contrary to § 29.024(2)(e) and Robert guilty of loaning an archery license or tag to another, contrary to § 29.024(2)(e).[2] Because we conclude that: (1) the Department of Natural Resources (DNR) warden did not violate the Fourth Amendment by coming onto Abrahams' property to investigate the alleged violations, (2) the DNR citations conformed to statutory requirements and conferred jurisdiction on the circuit court and (3) the circuit court properly admitted Daniel's written admission of guilt because it was voluntarily made, we affirm the circuit court's judgment.

BACKGROUND

¶2 On November 7, 2001, David Algrem, a conservation warden for the DNR, received a complaint that Robert Abraham had registered a deer shot by his son, Daniel, contrary to law. Algrem, accompanied by warden J. Nigbor, drove to Robert's residence to investigate the complaint. Prior to pulling into Robert's driveway, Algrem saw Daniel and a friend, Jeremy Compton, dressed in camouflage with bow and arrows. Algrem rolled down his window to speak with Daniel and asked to see Daniel's back tag. Daniel admitted that he was not wearing a back tag but told Algrem that the tag was in his truck, parked further up the driveway. Daniel walked up the driveway and Algrem followed in his truck, parking it behind Daniel's truck.

[2] At the Abrahams' request, the circuit court consolidated the matters presented by the citations given to Daniel and Robert. The case remains consolidated on appeal.

¶3 While Daniel searched for his back tag, warden Nigbor spoke with Compton who said that Daniel had shot a deer while they were hunting together the day before and that Daniel's father registered it. Shortly thereafter, Daniel's mother came out of the house and told Daniel that his wife had been injured at his home and that she may need medical attention. Algrem told Daniel to "attend to [his] wife" and that they would "deal with this later." However, because Daniel had still not located his back tag, he asked Algrem to follow him to his residence so that he could show Algrem his tag. The wardens followed Daniel to his residence, parked in Daniel's driveway and waited for Daniel to retrieve his back tag from inside his house. When Daniel returned with the back tag, Algrem questioned him about the deer that had been shot the previous day. Algrem informed Daniel that lying to an officer or obstructing an officer was a criminal offense and that he should tell the truth. Daniel admitted that he had shot the deer with a bow and that his father had registered it. Algrem then handwrote a statement that detailed Daniel's admission and gave it to Daniel to review. Daniel corrected several errors that Algrem had intentionally made in the statement, initialed the errors and signed the statement. Daniel also signed under a statement that read, "I was asked by Warden Algrem to give this voluntary statement."

¶4 Algrem cited Daniel for hunting without a back tag, hunting without a proper license and borrowing a license or tag of another. Algrem also issued a citation to Robert for loaning an archery license or tag to another. The citations notified Robert and Daniel to appear at an initial hearing on December 17, 2001. At the hearing, Daniel refused to enter a plea and the court entered a plea of not guilty for him; Robert pled not guilty. The Abrahams filed a series of motions to dismiss the case and a hearing was scheduled for March 19, 2002. Following the hearing, the circuit court denied the Abrahams' motions regarding all but one

issue, whether Daniel's statement to Algrem was voluntarily made. Following suppression hearings on May 3 and June 19, the circuit court held that Daniel's statement was voluntarily provided. The court also found both Daniel and Robert guilty of the conservation violations. Daniel and Robert appeal.

DISCUSSION

Standard of Review.

¶5 Whether the wardens' presence on the Abrahams' property violated the Fourth Amendment presents an issue of constitutional fact. *See* ***State v. Martwick***, 2000 WI 5, ¶16, 231 Wis. 2d 801, 604 N.W.2d 552. We uphold the circuit court's findings of historical or evidentiary fact unless they are clearly erroneous. ***Id.*** at ¶18. We review, independent of the circuit court, the application of those evidentiary facts to constitutional principles. ***Id.***

¶6 The circuit court's decision to admit evidence is a discretionary determination that will not be upset on appeal if it has a reasonable basis and was made in accordance with proper legal standards and the facts of record. ***Lievrouw v. Roth***, 157 Wis. 2d 332, 348, 459 N.W.2d 850, 855 (Ct. App. 1990).

Fourth Amendment.

¶7 The Abrahams argue that the circuit court erred by failing to dismiss the case because the investigating wardens, Algrem and Nigbor, unlawfully trespassed upon their property. The Abrahams rely on the Fourth Amendment for the proposition that Algrem and Nigbor were required to obtain a search warrant prior to coming onto the driveway of their two respective homes to investigate the alleged conservation violations. We disagree.

¶8 The Fourth Amendment prohibits governmental intrusion "wherever an individual may harbor a reasonable expectation of privacy." ***Terry v. Ohio***, 392 U.S. 1, 9 (1968) (citation omitted). And a residence is generally viewed as the area most resolutely protected by the Fourth Amendment. *See generally* ***Silverman v. United States***, 365 U.S. 505 (1961). However, it is well settled that Fourth Amendment protections do not attach to land beyond the curtilage of a home. ***Oliver v. United States***, 466 U.S. 170, 180 (1984). Curtilage is "the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life.'" ***Id.*** (quoting ***Boyd v. United States***, 116 U.S. 616, 630 (1886). Additionally, those areas within the curtilage that are implicitly open to the public, such as walkways or access routes, are not subject to Fourth Amendment protections. ***State v. Edgeberg***, 188 Wis. 2d 339, 347, 524 N.W.2d 911, 915 (Ct. App. 1994) ("[a] sidewalk, pathway, common entrance or similar passageway offers an implied permission to the public to enter which necessarily negates any reasonable expectancy of privacy" (citation omitted)).

¶9 Warden Algrem entered the Abrahams' property by coming onto the driveway of their two respective homes to investigate the alleged conservation violations. A driveway used for access to the residence and for parking cars does not generally "harbors those intimate activities associated with domestic life and the privacies of the home." ***United States v. Dunn***, 480 U.S. 294, 301 n.4 (1987). Therefore, we conclude that the driveway is not within the curtilage of the residence and Algrem's "trespass" upon the Abrahams' private property does not violate Fourth Amendment protections. Additionally, we note that because Algrem used an open driveway, which the record demonstrates is the normal means of access to and from the residence, there is no reasonable expectation of privacy protected by the Fourth Amendment. *See* ***Edgeberg***, 188 Wis. 2d at 347,

524 N.W.2d at 915. Simply put, the Fourth Amendment does not provide any basis for dismissing the case.

Jurisdiction.

¶10 The Abrahams next argue that the circuit court erred by failing to dismiss the case because the DNR citations did not include a sworn statement of facts sufficient to establish probable cause for each violation. Accordingly, the Abrahams contend that because the citations were defective, the court lacked jurisdiction over the matter. We disagree.

¶11 WISCONSIN STAT. § 23.53 outlines the jurisdictional procedures governing conservation actions. Subsection (2) provides that "use of the citation by any enforcing officer in connection with a violation is adequate process to give the appropriate court jurisdiction over the person upon the filing with such court of the citation." The Abrahams do not dispute that the citations were properly filed with the circuit court. Additionally, WIS. STAT. § 23.54 details the information required for a valid citation. While we agree with the Abrahams that there must be probable cause to believe that a violation has been committed and the defendant committed each violation, there is no requirement that a sworn statement must accompany the citations. *See* § 23.54(2). It is sufficient that "on the face of the citation," there is probable cause to support each violation. ***Id.*** Because all four citations contained the essential information required under § 23.54, and because the citations were properly filed, the circuit court had proper jurisdiction over the case.

Daniel's Confession.

¶12 Robert and Daniel next argue that the circuit court erred by admitting into evidence Daniel's written confession that he shot the deer. The Abrahams argue that Daniel's confession was obtained in violation of the Fifth Amendment because: (1) Algrem failed to inform Daniel of his ***Miranda*** rights before "interrogating" him and (2) Daniel's statements were coerced and not the product of a free and rational choice. We again disagree.

¶13 The Fifth Amendment provides: "No person … shall be compelled in any *criminal* case to be a witness against himself." (Emphasis added). In ***Miranda v. Arizona***, 384 U.S. 436 (1966), the Supreme Court established a set of procedural safeguards to protect a suspect's constitutional privilege against compulsory self-incrimination. The prosecution may not use statements, whether exculpatory or inculpatory, stemming from *custodial interrogation* of the defendant unless it demonstrates compliance with ***Miranda*** dictates. ***Miranda***, 384 U.S. at 444. "Custodial interrogation" means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." ***Id.***

¶14 We agree with the circuit court that Daniel was not "in custody" within the meaning of ***Miranda***. Warden Algrem first spoke with Daniel in the driveway of Robert's residence. However, when Daniel learned that his wife was injured, Algrem told Daniel that he was free to leave and that they could "deal with this later." Daniel instead asked Algrem to follow him to his own residence where, after a brief conversation, Daniel admitted to shooting the deer. We conclude that the record provides no evidence that Daniel experienced the degree of restraint or infringement of movement necessary to create a custodial situation.

Additionally, we note that although forfeiture actions retain certain characteristics of criminal proceedings, we have previously held that ***Miranda*** does not apply to forfeiture proceedings because they "remain essentially civil in nature." ***Village of Menomonee Falls v. Kunz***, 126 Wis. 2d 143, 147, 376 N.W.2d 359, 361 (Ct. App. 1985). The penalty for violation of statutes relating to hunting is "a forfeiture of not more than $1,000." WIS. STAT. § 29.971(3). Because conduct punishable only by forfeiture is not a crime, the Fifth Amendment, that prohibits the use of compelled testimony in any *criminal* case, and the ***Miranda*** requirements fail to provide a basis to suppress Daniel's statement.[3] *See* ***Kunz***, 126 Wis. 2d at 148, 376 N.W.2d at 362.

¶15 With regard to the Abrahams' second argument, we conclude that Daniel's written admission was voluntarily made. On appeal, the Abrahams recycle the same assertions presented at the suppression hearing, that Algrem threatened Daniel with bodily harm, criminal prosecution and "elicited false statements." The circuit court concluded that defendant's testimony was not credible, the accusations baseless and denied the motion to suppress. The determination of witness credibility is for the circuit court. ***Johnson v. Merta***, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813, 818 (1980). Based on the record provided, we see no basis to overturn the circuit court's determination that Daniel's statement was voluntary.

[3] While the privilege against self-incrimination extends to all court proceedings, civil and criminal, the use of statements that are simply adverse to a party in a civil proceeding does not offend the Fifth Amendment. Stated differently, Daniel did not incriminate himself because he was not criminally prosecuted. *See* ***Village of Menomonee Falls v. Kunz***, 126 Wis. 2d 143, 148, 376 N.W.2d 359, 362 (Ct. App. 1985).

Undeveloped Arguments.

¶16 Finally, the Abrahams make a series of arguments that they contend require us to reverse the circuit court's judgment. The Abrahams argue that: (1) Algrem and Nigbor trespassed on private property in violation of a "federal land patent" act, (2) the circuit court "wrongfully seized" jurisdiction by entering a plea of not guilty on behalf of Daniel who refused to enter any plea, (3) the "court and its officials" wrongfully held the Abrahams to the same standards as a professional attorney, (4) the court refused to consider the "laws presented," depriving the court of jurisdiction and (5) the court failed to regard the Abrahams' testimony as "true," possibly because "[p]roper sound transmission and acoustics in the court room were lacking."

¶17 We decline to address these arguments. We agree that there exists an obligation on the part of a court to make reasonable allowance to protect *pro se* litigants from inadvertent forfeiture of important rights because of their lack of legal training. ***DeCecco v. Board of Regents***, 151 Wis. 2d 106, 112, 442 N.W.2d 585, 587 (Ct. App. 1989). However, the arguments presented by Abrahams fail to reflect any legal reasoning, are supported only by general statements and lack citation to any relevant legal authority in support of their claims. Arguments that are inadequately briefed and unsupported by reference to relevant legal authority will not be considered. ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992). We note also that the Abrahams chose to exclude from the record a transcript of the suppression hearing and trial held on June 19, that forms the basis of their third, fourth and fifth arguments. When an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the circuit court's ruling. *See* ***Duhame v.***

Duhame, 154 Wis. 2d 258, 269, 453 N.W.2d 149, 153 (Ct. App. 1989) We do so here.

CONCLUSION

¶18 We conclude that: (1) the DNR warden did not violate the Fourth Amendment by coming onto Abrahams' property to investigate the alleged violations, (2) the DNR citations conformed to all statutory requirements and conferred jurisdiction on the circuit court and (3) the circuit court properly admitted Daniel's written admission of guilt because it was voluntarily made. Accordingly, we affirm the circuit court's judgment.

By the Court.—Judgments affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.