COURT OF APPEALS DECISION DATED AND FILED

August 16, 2012

Diane M. Fremgen
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. 2011AP1708

Cir. Ct. No. 2010CV6330

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

VILLAGE OF OREGON,

PLAINTIFF-RESPONDENT,

V.

JEREMY FLORIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: NICHOLAS McNAMARA, Judge. *Affirmed*.

¶1 LUNDSTEN, P.J.[1] Jeremy Florin appeals his convictions for operating a vehicle while under the influence of an intoxicant and operating a

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

vehicle with a prohibited alcohol concentration, both as first offenses. Florin argues that the circuit court erred when it denied his motion to suppress evidence of his intoxication. Florin asserts that suppression was warranted because a police officer entered his garage and knocked on a door without a warrant or sufficient justification. I agree with the circuit court that the circumstances do not merit suppression, and affirm.

Background

¶2 A police officer was told by dispatch that a complaint had been received that a male was "stumbling around in [a] Kwik Trip" and "was possibly intoxicated." The person turned out to be the defendant Jeremy Florin. The officer responded, followed Florin's car out of the Kwik Trip parking lot, and observed lane deviations.

¶3 After the officer followed Florin for a short distance, Florin pulled into a driveway and parked in a garage attached to a house. The officer pulled to the side of the road near the house and exited his squad. The officer saw Florin standing outside of his car in the garage, and the officer asked Florin to stop, to which Florin replied "hold on." The officer then observed Florin enter the house via a door connecting the garage to the house (the garage entry).

¶4 The garage door was open, and the officer entered the garage and knocked on the garage entry. Florin answered the knock, and agreed to talk to the officer. While standing in the garage, the officer questioned Florin about why Florin had been stumbling in the Kwik Trip and why he had deviated when driving. In the course of conversing with Florin, the officer noted signs of intoxication. The officer proceeded to administer field sobriety tests and a breathalyzer test, which revealed further evidence of intoxication.

¶5 Florin sought suppression of the evidence of his intoxication obtained as a result of the officer's entry into his garage. After a hearing, the circuit court denied the suppression motion. The court concluded that, under the circumstances, it was reasonable for the officer to think that knocking on the garage entry was the least intrusive means of contacting Florin and that, accordingly, Florin's rights were not violated. In the alternative, the court concluded that, in any event, the entry into Florin's garage was justified by the officer's reasonable concern about Florin's well-being.

Discussion

¶6 Florin argues that the circuit court erred when it declined to suppress the intoxication evidence because the evidence was obtained after the officer entered Florin's garage without a warrant or sufficient justification. Florin does not dispute that the officer could have properly knocked and talked to Florin via the house's front door. Florin's complaint is that, because the officer instead came to the garage entry, his constitutional rights were violated, meriting suppression. I am not persuaded.

¶7 The parties dispute whether a "least intrusive means" standard discussed in ***State v. Leutenegger***, 2004 WI App 127, 275 Wis. 2d 512, 685 N.W.2d 536, is met here.[2] The pertinent discussion in ***Leutenegger*** appears in a footnote:

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[2] The Village argues this topic in its responsive brief, and Florin addresses the topic in his reply brief. In his brief-in-chief, Florin focuses on the circuit court's alternative reason to deny the suppression motion based on the officer's concern about Florin's well-being. Because I affirm for the reason discussed, I do not discuss this alternative basis for the circuit court's decision.

> Published decisions on this topic consistently hold that an attached garage is part of the curtilage. We caution, however, that such determinations are fact specific and, in a particular case, a house and attached garage may be situated such that entry through an open garage door to an "exterior" house door within the garage may appear to be the least intrusive means of establishing contact with an occupant. Under such circumstances, an attached garage *might* be considered non-curtilage for the limited purpose of making contact with an occupant, similar to some porches. *See* ***United States v. Santana***, 427 U.S. 38, 42 (1976); ***State v. Potter***, 72 S.W.3d 307, 313-14 (Mo. Ct. App. 2002).

Id., ¶21 n.5 (some citations omitted); *see also* **State v. Davis**, 2011 WI App 74, ¶14, 333 Wis. 2d 490, 798 N.W.2d 902 (citing ***Leutenegger*** for the proposition that warrantless entry into an attached garage to make contact may be permissible when "it reasonably appears that entry into the attached garage is the least intrusive means of attempting contact with persons inside the home").

¶8 The Village argues that "the least intrusive means of establishing contact" standard is met here and, thus, the officer's entry into the garage does not warrant suppression. In reply, Florin does not dispute that the Village prevails if that standard is met, but rather argues that the evidence at the suppression hearing did not show that the garage entry was the "least intrusive means." I assume, for purposes of this discussion only, that the applicable standard is the one the parties discuss—whether the garage entry under the facts here was the "least intrusive means" to reestablish contact. I agree with the Village and the circuit court that the officer's entry into the garage reasonably appeared to be "the least intrusive means" for the following reasons.

¶9 First, because of their brief interaction, Florin would have known that the officer was present and interested in making contact with him. Even so, Florin did not give the officer reason to think that the garage entry was off limits

for purposes of reconnecting with Florin, as opposed to the front door. To the contrary, before using the garage entry, Florin told the officer to "hold on," and this could have suggested to a reasonable officer that Florin did not expect the officer to go elsewhere.

¶10 Second, and related to this, it was reasonable for the officer to think, in seeking to reconnect with Florin, that the obvious door to knock on was the door that Florin had just entered. To put a finer point on it, this is not a situation where the officer simply walked up to Florin's house and knocked at the garage entry, bypassing a front door that might have appeared to be a less intrusive means of attempting to contact an occupant. Rather, here, there was already an interaction between the officer and Florin, and it would have made sense for the officer to think that the place where Florin entered was an efficient and appropriate place to reconnect for both the officer and Florin.

¶11 Florin argues that the Village could not have met its burden because there was no evidence about how the front door to the house was situated and, thus, no evidence allowing a comparison between that entry and the garage entry in terms of which was least intrusive. However, even if I assumed in Florin's favor that someone simply walking up to Florin's house would understand that a less intrusive means of contact was the front door, it would not matter here. The officer did not just walk up to Florin's house, but rather there was the interaction between Florin and the officer that I have just summarized. In these circumstances, I am given no reason to think that the arrangement of Florin's front door mattered.

¶12 In sum, I reject Florin's "least intrusive means" argument.

Conclusion

¶13 For the reasons discussed, I affirm the circuit court.

By the Court.—Judgment affirmed.

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