

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 14, 1996

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

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3058-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAVID T. POLK,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Rock County:
EDWIN C. DAHLBERG, Judge. *Reversed and cause remanded.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. After an unsuccessful motion to suppress evidence, David Polk pled guilty to and was convicted of possession of cocaine with intent to deliver. The issue is whether the trial court properly refused to suppress evidence found on Polk's person when he arrived as a guest at a residence during the execution of a search warrant. Because the search of Polk violated the Fourth Amendment, we reverse.

The supreme court recently held that the police may not search items worn by or in the physical possession of a visitor during the execution of a warrant to search a private premises. See *State v. Andrews*, 201 Wis.2d 383, 386, 549 N.W.2d 210, 211 (1996). The court explained that there is a "proscription against the search of the person of an individual whose search is not specifically authorized [by] the warrant." *Id.* at 397, 549 N.W.2d at 215.

It is undisputed that Polk arrived as a guest at a residence being searched pursuant to a warrant that allowed for the search of a residence and the people at the residence when the police handcuffed him, searched him, and found cocaine. Under *Andrews*, the search violated the Fourth Amendment because the warrant did not authorize the search of visitors arriving at the residence a substantial period after execution of the warrant had begun. *Id.* The evidence stemming from the search, including the evidence subsequently found in Polk's automobile, must be suppressed. Accordingly, we reverse the judgment and remand for further proceedings.¹

By the Court. – Judgment reversed and cause remanded.

This opinion will not be published. See RULE 809.23(1)(b)(5),
STATS.

¹ The parties concede that the search warrant was invalid and argue extensively about whether this court has adopted a good faith exception to the exclusionary rule as articulated in *United States v. Leon*, 468 U.S. 897 (1984). We do not address this issue because the search in question was not made in good faith reliance on an invalid warrant. Here, the search was not authorized by the warrant whatsoever.