The Limits of Knock and Talk Police Encounters

Description

Today we will touch on a couple of criminal procedure issues â?? the ability of officers to enter a personâ??s property to conduct a so-called â??knock and talkâ?• and the ever-popular subject of curtilage. As you know, there can be areas outside of a subjectâ??s home that enjoy the same privacy rights as property located within the subjectâ??s home. In a recent Supreme Court case[1], the Supreme Court reviewed an officerâ??s actions when the officer walked up a subjectâ??s driveway and recorded a VIN number of a motorcycle found under a tarp in the subjectâ??s car port. In that case SCOTUS opined that the motorcycle enjoyed the same level of privacy â??as if it had been parked in the subjectâ??s living roomâ?•. So, letâ??s look at what the 8th Circuit had to say about the officersâ?? actions in the case of *United States v. White*.[2]

FACTS

Members of the Polk County Sheriffâ??s Office were investigating an Identity Theft case and seeking the identity of a particular subject in a rural area of the County. When they had difficulty locating the subjectâ??s home, they decided to enlist the help of neighbors in identifying the subject and where he lived.

The officers drove up a long driveway seeking to talk with a resident and continued through the tree-lined drive to the house secluded deep in the woods. Officers approached the house and spoke with the owner â?? Charles White. White claimed he did not know the subject or where he lived and, after a short discussion, the officers left. During the time the officers spoke with White they smelled a strong odor of â??greenâ?• marijuana.

The officers went back to the station and contacted the regional drug task force and advised them of their findings.

Later that same day, the officers returned to the White property along with members of the drug task force. The officers went back to what they believed to be the front door and immediately smelled an even stronger odor of â??greenâ?• marijuana. When no one answered the door the task force supervisor directed two officers to return to the station and apply for a warrant while three officers secured the home and nearby shop building. The officers securing the property took no steps to search any of the property while they waited for the search warrant. They did however, speak with Anthony Bearden who appeared on the property driving an ATV and claimed he rented the adjoining property from White. Bearden admitted he had a small amount of personal-use marijuana at his house and allowed officers to go to his rented home and search it. Finding marijuana in the home officers also applied for a warrant for Beardenâ??s house and shed.

When officers returned with the search warrants, they searched Whiteâ??s house and shop building and Beardenâ??s home where they recovered hundreds of marijuana plants in Whiteâ??s shop building and the shed at Beardenâ??s home. The District Court denied Whiteâ??s and Beardenâ??s Motion to Suppress finding that the officers properly entered the property prior to seeking the warrant.

Bearden filed a conditional guilty plea and White continued his appeal. Beardenâ??s appeals were handled under a separate case.

8th Circuit Findings

Interestingly, the state conceded that the officers had entered the protected curtilage of Whiteâ??s property. The court agreed but determined that the 4th Amendment allowed officers to enter the curtilage on the first visit â??*where the officers restrict their activity to areas generally made accessible to visitors such as driveways, walkways or similar passageways and the purpose for entering the curtilage is to seek assistance in a criminal matter not related to the defendants*â?•.

With respect to the second visit, White claimed that the second visit went beyond a typical â??knock and talkâ?• citing the SCOTUS ruling in *Florida v. Jardines*[3]. In the *Jardines* case, SCOTUS determined it was outside the scope of a knock and talk exception to stand on the front porch with a trained narcotics dog to sniff the interior of the house. The 8th Circuit disagreed, finding that the officers in this case did not conduct the second visit for purposes of conducting a search as the officers did in *Jardines*. Rather, the court determined that the officersâ?? conduct in this case was permitted under the knock and talk â??licenseâ?•. Since the officers were permissibly within the protected curtilage of Whiteâ??s home their â??plain smellâ?• of marijuana was not a search. The 8th Circuit then affirmed the District Courtâ??s denial of the motion

WRAP UP

This case presents some interesting factors that are worth some review. In the sister case *US v Bearden*, Whiteâ??s tenant claimed that there was a closed gate at the beginning of Whiteâ??s driveway and signs that stated â??No Trespassingâ?•. While the issue was not raised here, officers in the Bearden case had testified that there was no gate protecting the driveway and they did not see any signs. The District Court credited the officersâ?? testimony over that of the defendants.

As you know, there are 4 factors that come into play when the court determines whether a particular area enjoys the 4th Amendment protections granted to â??curtilageâ?• property:

- The distance from the home to the area in question;
- Whether the area is fenced or enclosed;
- The nature of use within the area in question; and
- Steps taken by the resident to protect the area from unwanted observation.

Particularly in more rural areas, it is important for officers to understand when they have moved from unprotected â??open fieldsâ?• areas to an area that meets the factors listed above and falls within 4th Amendment privacy protections.

1. *Collins v. Virginia*, 584 U.S. ___ (2018) â??
2. *United States v White*, 2019 US App LEXIS 19446 (8th Cir, June 28, 2019) â??
3. *Florida v. Jardines*, 569 U.S. 1 (2013) â??

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