2021 IL App (4th) 190087-U

NO. 4-19-0087

FILED
March 4, 2021
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
COLE HUBER,	)	No. 17CF540
Defendant-Appellant.	)	
	)	Honorable
	)	Mark S. Goodwin,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht concurred in the judgment.
Justice Steigmann specially concurred.

ORDER

¶ 1 *Held:* The trial court erred in denying defendant's motion to suppress heroin recovered from his person because the evidence was the fruit of an unlawful search.

¶ 2 On November 8, 2018, a jury found defendant guilty of possession of a controlled substance (720 ILCS 570/402(c) (West 2016)). On February 4, 2019, the trial court sentenced defendant to four years in prison. Defendant appeals, making the following arguments: (1) the trial court erred in not suppressing the heroin recovered from defendant because it was the fruit of an unlawful search; (2) defendant received ineffective assistance of counsel; (3) the trial court denied defendant's right to have an impartial jury by failing to *sua sponte* discharge the venire and impanel a new venire; (4) the court improperly admonished the jury pursuant to Illinois Supreme Court Rule 431(b) (eff. July 1, 2012); and (5) the State failed to disclose exculpatory and impeachment evidence to defendant in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). We

hold the trial court erred in denying defendant's motion to suppress and reverse defendant's conviction.

¶ 3 I. BACKGROUND

¶ 4 On August 3, 2017, the State charged defendant by information with possession of a controlled substance (heroin) (720 ILCS 570/402(c) (West 2016)). On September 20, 2017, defendant filed a motion to suppress. Defendant filed an amended motion to suppress on October 5, 2018.

¶ 5 On October 11, 2018, the trial court held a hearing on defendant's suppression motion. Defendant testified he was at his friend Dorinda Foust's trailer/camper at 418 Chandler Street on August 2, 2017, at 10 p.m. He had spent the prior three nights at the trailer and was planning to again spend the night there. He testified the trailer was located behind the house on the same property. The light was off inside the trailer at 10 p.m., the door was closed, and he was asleep. When defendant woke up, a police officer had the trailer door open but was still outside the trailer. The officer was looking inside the trailer and saying defendant's name. The owner of the trailer, Dorinda Foust, was also asleep on the same love seat as defendant.

¶ 6 Defendant testified the officer told him to come outside the trailer. Defendant went outside because the officer told him to do so. Three officers were outside the trailer. One officer grabbed his hands. One of the officers told defendant they were going to search him. Defendant did not feel free to leave. One of the officers took something from defendant's pocket. To the best of his knowledge, the police did not have a warrant for his arrest or a warrant to search the trailer. Defendant was on parole when this incident occurred.

¶ 7 Based on defendant's testimony, the trial court found the burden shifted to the State. Vermilion County Sheriff's Deputy Arik Bruens testified he was a patrol officer on August 2,

2017, and was present at 418 Chandler Street based on a tip Brandon Glascott, who had an outstanding arrest warrant, was staying at the residence. Although the police had an arrest warrant for Glascott, they did not have a search warrant for the home, camper/trailer, or any other part of the property. The officers never sought a search warrant for the property. Bruens testified it was dark both inside and outside the house.

¶ 8 Bruens did not write a report for the incident in question. Before his testimony at the suppression hearing, he reviewed Deputy Pete Miller's report to refresh his recollection. Miller's report did not state the officers were looking for Brandon Glascott on an outstanding warrant.

¶ 9 Bruens testified he and at least one other officer went to the front door of the home to conduct a "knock and talk." Two other deputies were also present. After no one answered his knock at the front door, the officers walked around the house to the rear of the residence to see if they could see anything and to knock on the back door. The deputies shined their flashlights on the residence, but Bruens did not see any officers shining flashlights inside the windows.

¶ 10 When the deputies reached the back of the residence, they noticed the trailer/camper in the backyard on the southern edge of the property. No lights were on inside the camper. The camper's door faced north, and the camper sat perpendicular to the residence, the front of which faced east. Bruens stated the camper door was at least 10 feet away from the back door of the residence. According to Bruens, Deputy Haley shined his flashlight on the camper. The door was open, and they saw two people inside, a woman and defendant. The officers then focused their attention on the camper. They recognized defendant was not Glascott.

¶ 11 The officers approached the camper. The two individuals inside were slumped over and non-responsive. Deputy Haley and Deputy Miller then started calling out defendant's name

to try to wake him up. At least one of the officers recognized defendant due to previous encounters with him. Some of the deputies were also knocking on the trailer's walls and shining their flashlights inside the camper. Bruens observed what he believed to be syringe caps on the floor of the camper. Bruens acknowledged an adult can legally own and possess under 20 syringes. He also saw a bent spoon, which Bruens believed was drug paraphernalia. Bruens testified the officers thought the two individuals inside the trailer may have overdosed on heroin.

¶ 12 When defendant woke, Deputy Miller spoke to him. Defendant exited the camper and consented to a search of his person. Miller searched defendant, and a small silver object fell out of defendant's pocket. Bruens picked up what appeared to be a folded piece of tinfoil commonly used to package heroin and gave it to Miller. A field test conducted on the item came back positive for heroin.

¶ 13 Vermilion County Sheriff's Deputy Pete Miller testified he was also present at 418 Chandler Street on the night in question. The police were trying to locate Glascott, who had an outstanding arrest warrant. According to Miller, four deputies approached the residence. He and Deputy Haley went to the back of the house, and the two other deputies went to the front door. Miller testified he and Haley went to the back of the house in case someone tried to run out the back door. Miller testified they observed a pull-behind camper in the back yard. Although the camper's door was open, he could not see any people inside from the back of the house. They approached the camper for security reasons to see if anyone was inside. When they looked inside the trailer, they saw Dorinda Foust and defendant. They were passed out and unresponsive to noise and lights. Miller saw the syringe caps and spoon and was concerned Foust and defendant may have overdosed.

¶ 14 Deputy Miller spoke to defendant after defendant woke up. Although defendant

was awake, he still seemed disoriented. Miller asked defendant to come outside the camper, which defendant did. Miller asked defendant if Miller could search defendant. Defendant gave verbal consent for the search. While searching defendant, Miller pulled a small piece of aluminum foil out of defendant's pocket. Bruens picked it up from the ground and gave it to Miller. Miller opened the foil and found a powdery substance he suspected was heroin. Miller asked defendant if the substance was heroin, and defendant said it was. A field test came back positive for heroin. In his incident report, Miller did not include Glascott's name or his physical description. He also did not indicate in his report he was concerned defendant and Foust may have overdosed.

¶ 15 In rebuttal, defendant testified the police told him to step outside the camper and that they were going to search him. Based on the officer's statements, he did not believe he could refuse.

¶ 16 On October 12, 2018, defendant filed a memorandum in support of his motion to suppress, making arguments based on the evidence presented at the suppression hearing. Defendant argued the State presented no evidence the police officers knew defendant was on parole when he was searched, the officers found defendant during an illegal search of the curtilage of the property, defendant was seized when the officers banged on the wall of the trailer and shined a light on his face, and the State failed to establish defendant consented to the search of his person.

¶ 17 On October 13, 2018, the trial court denied defendant's motion and amended motion to suppress evidence. The court's docket entry states:

> "The deputies arrived at 418 Chandler Street for purposes of serving an arrest warrant. There is no evidence that the arrest warrant was improper or that they did not have a good faith belief that the subject of the arrest warrant might be at 418 Chandler. The officers arrived at the location and attempted to get a response from

someone inside the main structure. They tried different doors in their attempt to get a response. In so doing, they noticed a recreational trailer on the property with the door standing open. As they approached this trailer they observed [two] individuals that appeared to be passed out or unconscious as they were, at least, partially upright but slumped over; not in a normal sleeping position. As they got closer they observed several orange caps from syringes and a spoon; items typically used in connection with drug use. The officers, never actually entered the premises, attempted to awaken both individuals by shining a flashlight in their faces and calling out to them. Officer Miller recognized the Defendant from his previous 5-10 drug related encounters with the Defendant and was concerned that both individuals had overdosed on heroin. Defendant finally awakened and was asked to exit the trailer which he did voluntarily. He was then asked to consent to a search of his person which he voluntarily did. As a result of that search, the [o]fficer found heroin. Defendant argues repeatedly that the officers had no right to enter and search the trailer. The [o]fficers never actually entered the trailer and they never searched the trailer. The door was wide open, the two unconscious people were in plain view along with the syringe caps and the spoon. Based on the totality of the circumstances, the [o]fficers had, not only probable cause to believe that a crime had been committed, but had a legitimate concern about the safety of the two people inside the trailer."

¶ 18 In November 2018, defendant's jury trial commenced. Defendant renewed his motion to suppress during the trial. The trial court again denied the motion. A jury found defendant guilty of possession of a controlled substance.

¶ 19 In February 2019, the trial court sentenced defendant to four years in prison and one year of mandatory supervised release. He was given credit for 551 days of time served.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 We first address defendant's argument the trial court erred by not suppressing heroin recovered from him because he contends the police illegally entered the backyard of the home at 418 Chandler Street without a search warrant. Without the heroin, defendant contends the State could not have convicted him of possession of a controlled substance.

¶ 23 When reviewing a trial court's ruling on a motion to suppress evidence, the reviewing court must look at both the trial court's factual findings and its ultimate ruling on the motion. A trial court's factual findings are given deference and will only be reversed if they are against the manifest weight of the evidence. *People v. Manzo*, 2018 IL 122761, ¶ 25, 129 N.E.3d 1141. The court's ultimate decision whether to grant the motion to suppress is reviewed *de novo*. *Manzo*, 2018 IL 122761, ¶ 25.

¶ 24 The fourth amendment to our federal constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. Similarly, our state constitution grants its citizens with "the right to be secure in their persons, houses, papers[,] and other possessions against unreasonable searches [and] seizures." Ill. Const. 1970, art. I, § 6. Our state supreme court interprets the search-and-seizure clause of our state constitution in a manner consistent with the United States Supreme Court's fourth-amendment jurisprudence. See *People v. Caballes*, 221 Ill. 2d 282, 335-36, 851 N.E.2d 26, 57 (2006).

¶ 25 The United States Supreme Court has stated the home is "first among equals" when

it comes to the fourth amendment. *Florida v. Jardines*, 569 U.S. 1, 6 (2013). At the core of the fourth amendment is " 'the right of a man to retreat into his own home and there be free from unreasonable government intrusion.' " *Jardines*, 569 U.S. at 6 (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). According to the majority opinion, written by Justice Scalia:

> "This right would be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity; the right to retreat would be significantly diminished if the police could enter a man's property to observe his repose from just outside the front window.
>
> We therefore regard the area 'immediately surrounding and associated with the home'—what our cases call the curtilage—as 'part of the home itself for Fourth Amendment purposes.' [Citation.] That principle has ancient and durable roots. Just as the distinction between the home and the open fields is 'as old as the common law,' [citation] so too is the identity of home and what Blackstone called the 'curtilage or homestall,' for the 'house protects and privileges all its branches and appurtenants.' 4 W. Blackstone, Commentaries on the Laws of England 223, 225 (1769). This area around the home is 'intimately linked to the home, both physically and psychologically,' and is where 'privacy expectations are most heightened.' " *Jardines*, 569 U.S. at 6-7 (quoting *Oliver v. United States*, 466 U.S. 170, 180 (1984), *Hester v. United States*, 265 U.S. 57, 59 (1924), and *California v. Ciraolo*, 476 U.S. 207, 213 (1986)).

In this case, without a search warrant for the property at 418 Chandler Street, but with an arrest warrant for an individual who did not live at that address, multiple police officers entered the curtilage of the residence at issue to conduct what they testified was a "knock and talk" at 10:10

p.m. We note an arrest warrant for an individual, by itself, does not give law enforcement the authority to search a third party's home for the wanted man. See *Steagald v. United States*, 451 U.S. 204, 213 (1981) (a law enforcement officer may not enter an individual's home simply because they possess an arrest warrant for a person they believe may be a guest inside the home).

¶ 26 However, this does not mean a police officer is prohibited from entering the curtilage of a home as a whole. The Supreme Court noted "[an] implicit license typically permits [a] visitor to approach [a] home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." *Jardines*, 569 U.S. at 8. According to the Court, an individual does not need "fine-grained legal knowledge" to comply with the conditions of the implicit license. *Jardines*, 569 U.S. at 8. The majority pointed out trick-or-treaters and girl scouts have generally managed to abide by the implicit license without incident. *Jardines*, 569 U.S. at 8.

¶ 27 Like a neighbor, a trick-or-treater, or a girl scout, "a police officer not armed with a warrant may approach a home and knock, precisely because that is no more than any private citizen might do." (Internal quotation marks omitted.) *Jardines*, 569 U.S. at 8. However, a police officer is not free to wander anywhere he or she so chooses within the curtilage of a home without a warrant or the presence of exigent circumstances justifying his actions. According to the Supreme Court:

> "To find a visitor knocking on the door is routine (even if sometimes unwelcome); to spot that same visitor exploring the front path with a metal detector, or marching his bloodhound into the garden before saying hello and asking permission, would inspire most of us to—well, call the police. The scope of a license—express or implied—is limited not only to a particular area but also to a specific purpose. Consent at a traffic stop to an officer's checking out an anonymous tip that there is

a body in the trunk does not permit the officer to rummage through the trunk for narcotics. Here, the background social norms that invite a visitor to the front door do not invite him there to conduct a search." *Jardines*, 569 U.S. at 9.

¶ 28 In *People v. Brandt*, 2019 IL App (4th) 180219, 125 N.E.3d 501, the question before this court was whether police officers conducted an unlawful search or an appropriate "knock and talk" at the defendant's home. The police received information from an anonymous source indicating defendant was in possession of drugs and selling them from his residence. *Brandt*, 2019 IL App (4th) 180219, ¶ 11. Inspector Mike Ringhausen testified he had received similar information before the anonymous source provided his or her information to the police. *Brandt*, 2019 IL App (4th) 180219, ¶ 11. Ringhausen decided to do a "knock and talk" at defendant's home, hoping defendant would consent to a search. *Brandt*, 2019 IL App (4th) 180219, ¶ 12. Ringhausen and two other officers drove to the defendant's home in three separate vehicles. *Brandt*, 2019 IL App (4th) 180219, ¶ 12.

¶ 29 The defendant's home was on a one lane gravel road in rural Jersey County. A driveway in front of the home ran perpendicular to the gravel road. The side of the home facing the road had one window on the first floor towards the rear of the house. The window was to the home's kitchen. The area between the side of the home and the road was slightly wider than the width of a vehicle and was covered with gravel similar to the gravel on the road. *Brandt*, 2019 IL App (4th) 180219, ¶ 13.

¶ 30 The three officers arrived at the defendant's house at the same time. The defendant and his daughter were outside the home near the driveway when the police arrived. One of the officers, Sergeant Gordon, testified she parked her squad car in the gravel area by the side of the home near the kitchen window because this area had the same type of gravel as the road and she

did not want to park in the grass. Inspector Ringhausen stated Gordon's parking spot was "inadvertent" and a "coincidence." Where Gordon parked her vehicle was within several feet of the kitchen window. The window was open, and a fan was blowing air out of the house. *Brandt*, 2019 IL App (4th) 180219, ¶ 14.

¶ 31 Sergeant Gordon testified she detected the odor of fresh cannabis coming from the house when she exited her vehicle. She approached Inspector Ringhausen and the defendant and asked the defendant why the odor of cannabis would be coming from within his residence. She informed Ringhausen she detected the odor of cannabis coming from the house. *Brandt*, 2019 IL App (4th) 180219, ¶ 16.

¶ 32 The defendant denied consent for the police officers to search the home and left. The officers secured the property, and Ringhausen left to apply for a warrant to search the house. After obtaining a search warrant, the police found a bag containing approximately nine grams of cannabis in a cabinet above the kitchen window. *Brandt*, 2019 IL App (4th) 180219, ¶ 18.

¶ 33 The defendant moved to quash the search warrant and suppress the evidence found subject to the warrant, arguing the trial court should not have considered Sergeant Gordon's statement she smelled the odor of cannabis coming from the house because she detected the smell during an unlawful search of the curtilage of his home. According to the defendant, without Gordon smelling the cannabis, the State lacked probable cause for the search warrant. *Brandt*, 2019 IL App (4th) 180219, ¶ 20.

> "Defendant specifically asserted an unlawful search occurred when Sergeant Gordon made a 'deliberate and calculated effort to surveil the interior of the residence and to obtain information about the contents of the residence under the guise of an innocent "knock and talk" encounter.' In support of this assertion,

> defendant noted as follows: (1) '[t]here was no reason for the officers to approach the residence itself as the intended target of the "knock and talk" encounter was not in the residence at the time the officers arrived,' (2) '[t]here was no need to park next to the window of the residence as there was plenty of space to park away from the residence,' and (3) [Sergeant] Gordon stepped off the public thoroughfare and entered into the area immediately adjacent to the residence with neither consent nor warrant with the intent to gather evidence.' " *Brandt*, 2019 IL App (4th) 180219, ¶ 20.

The State responded Sergeant Gordon offered a reasonable explanation for parking next to the house and the police officers only entered portions of the property that appeared to be open to the public. *Brandt*, 2019 IL App (4th) 180219, ¶ 21.

¶ 34 The trial court entered an order quashing the search warrant and suppressing the evidence found during the execution of the warrant. The court found Sergeant Gordon parking by the open window constituted an unlawful intrusion into the curtilage of the defendant's home, especially when the officer was a trained drug task force officer. *Brandt*, 2019 IL App (4th) 180219, ¶ 24.

¶ 35 On appeal, this court noted a "knock and talk," when performed within its proper scope, is not a search for fourth amendment purposes. *Brandt*, 2019 IL App (4th) 180219, ¶ 34. Citing *People v. Woodrome*, 2013 IL App (4th) 130142, 996 N.E.2d 1143, *People v. Redman*, 386 Ill. App. 3d 409, 900 N.E.2d 1146 (2008), and *People v. Kofron*, 2014 IL App (5th) 130335, 16 N.E.3d 371, this court stated:

> "When reviewing a police officer's actions during a 'knock and talk,' our courts have focused on the reasonableness of the officer's actions given the totality of the

> circumstances presented. [Citations.] We have specifically considered whether the manner in which an officer approached a home to conduct a 'knock and talk' constituted 'reasonable police actions.' " *Brandt*, 2019 IL App (4th) 180219, ¶ 35.

While the defendant's presence near the driveway when the officers arrived meant the officers no longer had a reasonable basis to go and knock on the defendant's front door, this court found it was reasonable for the officers to park and exit their vehicles so they could talk to the defendant. *Brandt*, 2019 IL App (4th) 180219, ¶ 38. This court also found it was reasonable for Sergeant Gordon to park where she did because the area where she parked appeared "to be a driveway—a location where any visitor could reasonably be expected to park." *Brandt*, 2019 IL App (4th) 180219, ¶ 39. When Sergeant Gordon exited her vehicle in a place she had a lawful right to be and smelled the odor of cannabis coming from the house, an unlawful search did not occur. *Brandt*, 2019 IL App (4th) 180219, ¶ 40. "When an officer enters into the curtilage of a home for the lawful purpose of conducting a 'knock and talk' and his or her movements are restricted to places visitors could be expect[ed] to go, a search does not occur when that officer observes what is in plain view or detects what is in plain smell." *Brandt*, 2019 IL App (4th) 180219, ¶ 40. As a result, this court reversed the trial court's decision to quash the search warrant and suppress the evidence found during the search.

¶ 36 In this case, the State points to the fact they approached the home in question because they had information Glascott, who was wanted on an arrest warrant, was at that address. We note no evidence was presented the officers acted improperly when they approached the front of the house to knock on the door and ask about Glascott. However, this does not answer the question whether two of the officers were justified in going into the rear curtilage of the home at the same time.

¶ 37 The State argues this court's decision in *Redman* provided authority for the police officers going into the backyard. In *Redman*, which was decided before *Jardines*, this court stated:

> "An officer may lawfully approach the front door of a residence to conduct an investigation—referred to by many courts as a 'knock and talk'—so long as the officer enters an area impliedly open to the public. [Citations.] An officer may go beyond the front door to investigate by approaching the back door of a residence—either when no one answers a knock on the front door or where a legitimate reason is shown for approaching the back door." *Redman*, 386 Ill. App. 3d at 418-19, 900 N.E.2d at 1155-56.

However, the Supreme Court's decision in *Jardines* calls into question whether a police officer engaged in a "knock and talk" can enter into the back curtilage of a home simply because no one answered a knock at the front door. (Regardless, in this case, Deputy Miller testified he and another officer immediately went to the back of the home without waiting to see if anyone answered the officer's knock at the front door.)

¶ 38 Courts must look at whether a police officer's conduct constitutes "reasonable police actions" based on the totality of circumstances in the case. See *Brandt*, 2019 IL App (4th) 180219, ¶ 35. Unlike the situation in *Brandt*, the law enforcement officers who went to the back of the home in this case did so after 10 o'clock at night, when all the lights were off in the house and the backyard was dark. Generally speaking, a visitor would not be expected to go into someone's backyard in those circumstances.

¶ 39 Further, the police officers in this case pointed to no articulable facts showing they had reasonable suspicion, let alone probable cause to believe criminal activity was afoot at the property when they decided to go into the back yard of the home without a search warrant. They

also had no independent corroboration for the tip they received that Glascott was at this house.

¶ 40 These facts distinguish this case from this court's decision in *Redman*. In *Redman*, the officers pointed to articulable facts the individuals in the home were in the process of manufacturing methamphetamine, and the police officers planned to arrest the occupants of the home if they voluntarily came outside. *Redman*, 386 Ill. App. 3d at 411-12, 900 N.E.2d at 1150-51.

¶ 41 This case is different. Based on the totality of circumstances here, the police officers who entered the rear curtilage of the home did not have a legitimate reason to do so and committed an illegal search. The State presented no evidence the officers had any indication criminal activity was taking place at the house. Further, as stated earlier, the law enforcement officers who went to the back of the home did so after 10 p.m., when all the lights were off in the house and the backyard was dark.

¶ 42 Absent the illegal search, the officers would not have found defendant or discovered the heroin he was charged with possessing. As a result, the heroin was the fruit of an unconstitutional search and should have been suppressed. *Wong Sun v. United States*, 371 U.S. 471, 484-85 (1963). As Justice Steigmann points out in his special concurrence, the State does not contest the fourth amendment curtilage protections of the residence extended to Foust and defendant as her guest. *Infra* ¶¶ 48-49. Because the State could not prove defendant guilty of possession of a controlled substance without the heroin, we reverse defendant's conviction in this case.

¶ 43 Because we are reversing defendant's conviction, we need not consider the other issues he raised on appeal.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we reverse defendant's conviction.

¶ 46 Reversed.

¶ 47 JUSTICE STEIGMANN, specially concurring.

¶ 48 This is a strange, difficult case made more so by the State's failure at the hearing on defendant's motion to suppress to present any evidence regarding (1) what the trailer was doing in the back of the house at issue at 418 Chandler Street, (2) whose trailer it was, (3) who owned the house the trailer was behind, and (4) what the relationship, if any, was between Dorinda Foust and the owner of the house. I note that defendant testified that he was at her trailer on the night in question and had spent the previous three nights at the trailer. Further, the State did not challenge defendant's *implicit* assertion that Foust was either the owner of the house or had the house owner's permission to put her trailer in the backyard of the house.

¶ 49 Despite these omissions, it appears that the trial court and counsel at the hearing on the motion to suppress all somehow accepted that the protection provided to residents of the house by the curtilage doctrine also applied to the people in the trailer—namely, defendant and Foust—when the police went into the backyard of the house and saw defendant and Foust in the trailer. This acceptance by the trial court and parties is surprising for the following reasons.

¶ 50 First, the record is devoid of *any* reference to who owned the house at 418 Chandler Street, what Foust's relationship to the owner may have been, or anything else pertaining to that house except for the following rather cryptic answer defendant gave when he testified at the hearing on the motion to suppress:

"Q. Okay, and could you explain to the court where the trailer was located.

A. It was located at 418 Chandler Street behind a house of another friends."

¶ 51 Second, no claim or reference at all was made at the trial level regarding the curtilage of the house. Instead, the only time the word "curtilage" appears in the transcript of the hearing on the motion to suppress is when defense counsel argued that the motion should be

granted because "the officers still were on a curtilage of a trailer, a trailer that has protections under the [f]ourth [a]mendment."

¶ 52 So, not only is the application of the "curtilage of the house" doctrine problematic in this case, it was never even mentioned or argued in the trial court.

¶ 53 Defendant's claim on appeal that the fourth amendment was violated because the police entered upon the curtilage of the house is derivative. By that, I mean defendant is not claiming the curtilage *around the trailer* in which he was first seen was violated; instead, it is the curtilage around the house in front of the trailer that he claims was violated.

¶ 54 On appeal, defendant argues to this court as if Foust were the owner of the house in question and she chose for whatever reason (it was August, so maybe it was hot) to spend the night with defendant in the trailer behind the house. If that were true, the trailer would clearly be on the curtilage of the house and protected by the fourth amendment from any unwarranted intrusion by the police. However, the limited information in the record suggests that the house belonged to another of defendant's friends.

¶ 55 I find it regrettable that no one—including the trial court—at the hearing on the motion to suppress ever asked the simple and obvious questions: (1) What is defendant's or Foust's connection to the house and (2) how is it that her trailer was present in the backyard of that house?

¶ 56 Establishing that a particular search violated the curtilage doctrine is often difficult, and this is the first case I have seen in which a defendant is claiming the protections of the curtilage doctrine *derivatively*—that is, the trailer did not belong to this defendant but (apparently) to Foust, who in turn (according to defendant's argument) was entitled to the

protection of the curtilage doctrine that protected the house and the backyard in which the trailer was located.

¶ 57 This is a very unsatisfactory record upon which to analyze the claims defendant has made to this court. Nonetheless, we have to decide the case before us, and based upon this deficient record, I am not prepared to conclude that my distinguished colleagues in the majority are incorrect in their decision to reverse defendant's conviction. Nonetheless, I specially concur because I wish to point out that due to the deficiencies in the record before us, this particular case says very little about the complicated question of curtilage.