

Supreme Court Upholds Search of Drug House Despite Illegal Entry by Police

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The Wisconsin Attorney General issued the following news release:

The Wisconsin Supreme Court today affirmed a decision of the Court of Appeals, District I, which affirmed a judgment by the Circuit Court for Milwaukee County convicting Robert Artic, Sr., of running a drug house. The Court ruled that although the police entered the building unlawfully, Artic voluntarily consented to a search of his apartment so that the unlawfulness of the initial entry did not taint the validity of the search, which uncovered evidence of drug dealing.

Attorney General J.B. Van Hollen praised the decision as a victory for the rule of reasonableness in enforcing criminal laws. "The Wisconsin Supreme Court reaffirmed the principle that minor mistakes by the police should not allow convicted criminals to go free."

Milwaukee police arranged to make an undercover buy of cocaine from a man they knew as "Rob." The transaction was supposed to take place in Rob's green minivan in the 3200 block of North 15th Street. Officers on stakeout saw the minivan drive up and park. Rob went into the building at 3206 North 15th Street, and came out five minutes later. When he got back into his minivan, the police closed in and found baggies of cocaine on the floor of the vehicle.

The police then decided to get a warrant to search the building from which Rob apparently got the cocaine. Before they applied for the warrant, though, they wanted to see if anyone was inside, so they knocked on the front door and announced that they were police officers.

One officer went around to the fenced-in back yard of the building to make sure no one ran out the back door. When the officers knocked on the front door, the officer in the back saw people moving around in the building. Thinking they might be destroying evidence of drug dealing, the officer in back alerted the officers in front, who then entered the building by force.

The first floor of the building was undergoing renovation, so the officers went up to the second floor where there appeared to be a separate residence. The police knocked on the upstairs door and asked if they could come in. Robert Artic, Sr., who turned out to be Rob's father, gave the police permission to enter his residence. After some friendly conversation, the police asked Artic if they could search his residence. Artic agreed. The search revealed evidence of drug dealing, and Artic was charged with and convicted of running a drug house.

Artic argued that the evidence of drug dealing found in his apartment should be suppressed because the search was tainted by an illegal entry to the building. The Supreme Court agreed that the entry was illegal because the officer who precipitated the forceful entry of the building had no right to be in Artic's fenced-in back yard when she

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saw the activity that led her to believe drugs were being destroyed. So the question presented to the Supreme Court was whether the search of Artic's apartment was sufficiently attenuated from the illegal entry of the building that the illegal entry did not affect the validity of the search.

The Court ruled that Artic voluntarily consented to the entry of the police into his apartment and then voluntarily consented to the search. Artic's voluntary consent, said the Court, broke the link between the illegal entry and the search so that there was no good reason to suppress the evidence found in the search simply because the entry of the police into the building was technically illegal.

Summing up its ruling the Court said, "We conclude that Artic's consent to search was given freely and voluntarily, and not merely in acquiescence to police authority. We also conclude that the police search of Artic's upper-level residence was sufficiently attenuated from the illegal entry to purge the primary taint of that entry. While the temporal proximity was short, meaningful intervening circumstances took place and the official conduct was neither flagrant nor purposeful."

The case was handled in the circuit court by Milwaukee County Assistant District Attorney Daniel Gabler, and in the Supreme Court by Assistant Attorney General Thomas J. Balistreri.

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