

# 13-05: Looking Inside the Window of a Home while Conducting a Knock and Talk

Case: Powell v. State, 2013 WL 2232319 (Fla. 1<sup>st</sup> DCA 2013)

Date: May 22, 2013

Subject: Looking inside the window of a home while conducting a knock and talk

**FACTS:** Law enforcement received an anonymous call indicating that marijuana would be found at a particular home. In the middle of the night, two deputies went to the home, without a warrant, to perform a knock and talk. The home was located in a rural area, and a gate was found at the front of the property. The gate was open and there were no signs posting saying "No Trespassing." A rough path led to the front door. When no one answered the door, the deputies noticed a window a few feet to the left of the door. The deputies stepped away from the doorstep in order to see through the window. While standing only inches from the window, the deputies observed marijuana plants in the kitchen. Ultimately, the deputies entered the home without a warrant and arrested the occupants for Possession. The defendants asked the trial court to dismiss the case, arguing that the officers violated the Fourth Amendment by looking through the window. The trial court denied the motion, but the appellate court reversed.

**RULING:** When conducting a knock and talk, officers cannot trespass on the curtilage of someone's home for the purpose of looking inside a window.

**DISCUSSION:** In general, officers are not allowed to enter the curtilage of someone's home without a warrant, an emergency exception to the need for a warrant, or the person's consent. Although the word "curtilage" is ambiguous, it includes any area that is physically and mentally connected to the home, such as porches, patios, backyards, and side windows. An exception to this rule allows the police to approach the front door of a home for the purpose of attempting a voluntary interview with a resident. During a "knock and talk," the officer is required to follow the walking path (if one exists) and remain at the front door. The officer cannot begin searching elsewhere on the property. In this case, the officers could not see through the window from their position at the front door; instead, they stepped onto the yard, which is part of the curtilage, to look through it. The officers had no lawful right to enter the yard or go anywhere on the curtilage (other than the walking path to the front door). Therefore, the officers observed the marijuana from a place they had no lawful right to be, and the observation was an unconstitutional search. That which was observed (the marijuana) was suppressed as was the fruit of the illegal search (the warrantless seizure of the plants). This resulted in dismissal of the Possession charge.

The Court mentioned, however, that some homes have a window built into the front door. In that scenario, the officer can look through the window because the officer has a lawful right to stand at the door. The Court also noted that officers are allowed to stand on public roadways and sidewalks and look into an open window. In that scenario, the officer is standing in a place where he or she has a lawful right to be.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.