

SUPREME COURT OF WISCONSIN

State v. Artic, 2010 WI 83

786 N.W.2d 430 (2010) · No. 2008AP880-CR · Decided July 15, 2010

SUMMARY

The Supreme Court of Wisconsin reviewed Robert Lee Artic, Sr.'s ineffective-assistance claim arising from the warrantless entry and search of his residence. The court held that Artic voluntarily consented to the search of his upstairs residence and that the search was sufficiently attenuated from the unconstitutional entry to purge its taint. The court therefore affirmed the court of appeals and concluded that Artic was not prejudiced by counsel's alleged deficiencies.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	David T. Prosser; Shirley S. Abrahamson; Ann Walsh Bradley
JURISDICTION	Wisconsin
DECIDED	July 15, 2010
DOCKET	2008AP880-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Review of a published Wisconsin Court of Appeals decision affirming the denial of postconviction relief and the defendant's convictions. The defendant alleged ineffective assistance of trial counsel based on counsel's failure to challenge police-created exigent circumstances and to object to testimony derived from an unlawful entry into the home's curtilage.
STANDARD OF REVIEW	Ineffective assistance of counsel presents a mixed question of fact and law: historical facts are reviewed for clear error, while deficient performance and prejudice are reviewed de novo. Voluntariness of consent and attenuation are constitutional facts reviewed as mixed questions, with historical facts reviewed for clear error and constitutional principles applied independently.
PRECEDENTIAL VALUE	Published, precedential Wisconsin Supreme Court decision
PARTIES	Robert Lee Artic, Sr. v. State of Wisconsin

TOPICS

fourth amendment

search and seizure

suppression of evidence

exclusionary rule

ineffective assistance

PRACTICE AREAS

criminal procedure

constitutional law

evidence

post-conviction relief

ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether Artic voluntarily consented to the police search of his upstairs residence.
2. Whether the search was sufficiently attenuated from the officers' unconstitutional warrantless entry to purge the taint of that entry.
3. Whether Artic was prejudiced by trial counsel's failure to argue that police created their own exigent circumstances and failure to object to testimony concerning observations made from within the curtilage.

HOLDINGS

1. Artic voluntarily consented to the search of his upstairs residence; his consent was a free and unconstrained choice rather than mere acquiescence to police authority.
2. The search of Artic's upstairs residence was sufficiently attenuated from the unconstitutional entry into the building to purge the taint of that entry.
3. Artic was not prejudiced by counsel's alleged failures because the suppression motion would properly have been denied even if counsel had challenged the police-created exigency and objected to the curtilage-observation testimony.

KEY QUOTATIONS

"We conclude that Artic voluntarily gave police officers consent to search his residence, namely, the upstairs unit of his house." (436)

"We also conclude, based on the three-factor attenuation test established in Brown v. Illinois, 422 U.S. 590, 603-04, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975), that the search was sufficiently attenuated to purge the taint of the illegal entry of Artic's house." (436)

"Therefore, their actions were neither purposeful nor flagrant, and this factor weighs in favor of attenuation." (455)

FACTUAL BACKGROUND

Police investigated information that Artic's son would retrieve and deliver cocaine from a Milwaukee residence. After arresting the son with cocaine, officers planned to obtain a search warrant but instead conducted a knock-and-talk and positioned an officer inside the fenced backyard curtilage. Based on observations from the curtilage, officers forcibly entered the building, proceeded upstairs, and obtained Artic's oral consent to search his residence after telling him they lacked a warrant. The search recovered drug-related items and cocaine residue.

PROCEDURAL HISTORY

Police entered the building without a warrant after relying on observations made from within the fenced curtilage, searched the upstairs residence after Artic orally consented, and recovered drug-related evidence. The circuit court denied suppression, Artic was convicted by a jury, and the circuit court denied his postconviction ineffective-assistance motion. The court of appeals affirmed, and the Wisconsin Supreme Court affirmed on the grounds that Artic voluntarily consented and that the search was sufficiently attenuated from the illegal entry.

DISPOSITION

affirmed

CASES CITED

- Brown v. Illinois, 422 U.S. 590, 603-04, 609 (1975)
- Wong Sun v. United States, 371 U.S. 471, 487-88 (1963)
- Strickland v. Washington, 466 U.S. 668, 687, 694, 697 (1984)
- State v. Phillips, 218 Wis. 2d 180, 195-212, 577 N.W.2d 794 (1998)
- State v. Richter, 2000 WI 58, 235 Wis. 2d 524, 612 N.W.2d 29
- Schneckloth v. Bustamonte, 412 U.S. 218, 219, 224-27, 231, 248-49 (1973)
- Bumper v. North Carolina, 391 U.S. 543, 548-49 (1968)
- State v. Fonte, 2005 WI 77, 281 Wis. 2d 654, 698 N.W.2d 594
- State v. Johnson, 2007 WI 32, 299 Wis. 2d 675, 729 N.W.2d 182
- State v. Faust, 2004 WI 99, 274 Wis. 2d 183, 682 N.W.2d 371
- United States v. White, 979 F.2d 539, 542 (7th Cir. 1992)
- United States v. Robeles-Ortega, 348 F.3d 679, 684 (7th Cir. 2003)
- State v. Bermudez, 221 Wis. 2d 338, 585 N.W.2d 628 (Ct. App. 1998)
- State v. Kiekhefer, 212 Wis. 2d 460, 569 N.W.2d 316 (Ct. App. 1997)
- Rawlings v. Kentucky, 448 U.S. 98, 100-01, 107-08 (1980)
- Oliver v. United States, 466 U.S. 170, 178, 180 (1984)
- United States v. Dunn, 480 U.S. 294, 301 n. 4 (1987)
- United States v. Scheets, 188 F.3d 829, 840 (7th Cir. 1999)
- Segura v. United States, 468 U.S. 796, 810 (1984)