

Robert L. Farb
School of Government
January 26, 2015

Fourth Circuit Court of Appeals

(Note: You may access the court's opinion by clicking on the case name)

When Plaintiffs' Pleadings in Civil Lawsuit under 42 U.S.C. § 1983 and *Bivens* Sufficiently Alleged That Defendants (Officers and Others) Violated Fourth Amendment by Entering Home's Curtilage, Defendants Were Not Entitled to Dismissal of Lawsuit at Pleading Stage under Rule 12(b)(6)

[Covey v. Assessor of Ohio County](#), ___ F.3d ___, 2015 WL 309598 (4th Cir. January 26, 2015). The plaintiffs (husband and wife) live in a privately-set home in rural Ohio County, West Virginia. They alleged in their civil lawsuit against state and federal law enforcement officers and others that the defendants violated the Fourth Amendment by entering their home's curtilage—a walk-out basement patio area attached to their home—in search of marijuana. The federal district court dismissed the lawsuit at the pleading stage under Rule 12(b)(6). The circuit court reversed, holding that the district court failed to construe the complaint in the light most favorable to the plaintiffs when ruling on the defendants' motion to dismiss.

The complaint alleged the following: On October 21, 2009, a field deputy for the tax assessor of Ohio County, West Virginia, enter the plaintiffs' property to collect data to assess its value for tax purposes. After finding no one at the home, he opened the door and left a pamphlet inside. He then searched the house's curtilage, including the walk-out basement patio, where he found marijuana. He contacted the sheriff. A local law enforcement officer and a federal law enforcement officer went to the property and parked on the private driveway in an area not normally used for visitor parking. They then entered the curtilage, specifically the walk-out basement patio. They came upon the male plaintiff, who was working at his workbench. The court noted that it was reasonable to infer from the complaint that the officers did not see him until *after* entering the curtilage. The officers seized the plaintiff, took him to their car, and one officer re-entered the patio area and searched it. The other officer later opened the basement doors, leaned inside and took photographs, and seized evidence. Later they obtained a search warrant to continue the search.

The circuit court rejected the defendants' argument that the knock-and-talk exception to the Fourth Amendment's warrant requirement allowed them to enter the curtilage to approach the resident. The court recognized, citing *Alvarez v. Montgomery County*, 147 F.3d 354 (4th Cir. 1998), that an officer may bypass the front door (or another entry point usually used by visitors) when circumstances reasonably indicate that the officer might find the homeowner elsewhere on the property. It stated, however, that knock and talk does not permit a general investigation on a home's curtilage, citing *Rogers v. Pendleton*, 249 F.3d 279 (4th Cir. 2001).

The court noted that the officers claim that they were justified in bypassing the front door because they saw the plaintiff on the walk-out basement patio area, thus giving them an implied invitation to approach him. The court stated that if the officers initially saw him from a non-curtilage area, they may well prevail under the knock-and-talk exception at summary judgment. But, when the complaint is properly construed in the plaintiffs' favor, it alleges that the officers saw him *after* they entered the curtilage. Nothing in the complaint suggests that the officers reasonably believed that the plaintiff was in the patio area before proceeding there. Thus, applying the proper Rule 12(b)(6) standard, the court found that the plaintiffs have plausibly alleged that the officers violated their Fourth Amendment rights by entering and searching the curtilage to the side of their house without a warrant.

The court also held that the complaint sufficiently alleged that the field deputy for the tax assessor violated the plaintiffs' Fourth Amendment rights. The complaint set out three distinct intrusions: (1) entering onto the plaintiffs' property; (2) entering into their home; and (3) searching the curtilage. Even if the first intrusion was justified under the open-fields doctrine, the court held that the other two clearly were not. It stated that what began as a mere regulatory violation turned into an affront to the plaintiffs' Fourth Amendment rights when the field deputy entered the curtilage and the plaintiffs' home.

The court also held that the defendants were not entitled to qualified immunity at the pleading stage. [Author's note: Qualified immunity may be re-considered later at the summary judgment stage.]