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OPENING A SCREEN DOOR MAY VIOLATE THE FOURTH AMENDMENT IF THE SCREEN DOOR ACTS AS THE PERIMETER BARRIER TO THE RESIDENCE

QUESTION: Does opening a screen door breach a reasonable expectation of privacy and, consequently, violate the Fourth Amendment?

ANSWER: Opening a screen door breaches a reasonable expectation of privacy and thus violates the Fourth Amendment under certain circumstances. If the screen door acts as the perimeter barrier to the residence, then a reasonable expectation of privacy exists in the area behind it. If, however, the screen door does not act as the primary barrier to entry into the residence, no such reasonable expectation of privacy exists.

CASE: *Christian v. Maryland*, Court of Special Appeals of Maryland,
Decided December 4, 2006

In *Christian v. Maryland*, the Court of Special Appeals faced the issue of whether a police officer's opening of a screen door infringed upon a reasonable and legitimate expectation of privacy in the area immediately behind the door. The Court concluded that, under the particular circumstances of the case before it, the occupant of the residence had no reasonable expectation of privacy in the area immediately behind the door, and, thus no constitutional violation occurred when the officer opened the door to retrieve a suspected "stash" of narcotics from the threshold of the residence.

The facts of the *Christian* case established that, on August 31, 2004, at approximately 3:00 p.m., Sergeant John Hergenroeder was involved in a covert narcotics surveillance operation on North Glover Street in Baltimore City. Sergeant Hergenroeder observed a subject, later identified as Steven Christian, walk out of the rowhouse at 19 North Glover, stop on the steps and look around twice before placing a bag behind the screen door of the house. Christian then walked to the corner and sat on the steps of another rowhouse. A man approached Christian and the two conversed briefly. Christian then walked back to 19 North Glover, retrieved the bag from behind the screen door, removed something from the bag, put the bag inside the doorway, walked back to the corner, and exchanged a small item for U.S. currency. The other man then walked away. Sergeant Hergenroeder suspected that he had just witnessed a narcotics sale, and that the bag left behind the screen door at 19 North Glover was Christian's "stash". Sergeant Hergenroeder sent his partner, Detective William Denford, to 19 North Glover. He directed Detective Denford to open the white screen door and recover the bag, which was on the ledge between the screen door and the wooden entry door. Detective Denford opened the screen door by pulling it outward, and saw the bag sitting in the space between the screen door and the closed wooden door. He retrieved the bag without having to open the

wooden door. The bag contained 119 gel caps of heroin. Christian was immediately arrested. At this point, Roy Royster arrived at the house and said he lived there. Royster said that Christian was his brother, who stayed in the living room and basement of the rowhouse. When questioned by the police, Christian admitted that the drugs were his.

Prior to his criminal trial, Christian moved to suppress the evidence seized from the house. He argued that he had a reasonable expectation of privacy in the area behind the screen door of his brother's home and, therefore, the police were required to obtain a warrant before opening the screen door to seize the suspected 'stash'. At the suppression hearing, however, Sergeant Hergenroeder testified that he had a clear view of the bag as Christian opened the door and retrieved the bag. Christian's motion was denied, and he was convicted of possession with intent to distribute heroin. He appealed.

On appeal, Christian's conviction was affirmed by the Court of Special Appeals. In doing so, the Court observed that Christian's subjective expectation of privacy was not controlling. Whether Christian's, or any person's, subjective expectation of privacy is reasonable is determined through objective evaluation of the circumstances. In other words, simply because Christian believed that he had protected his right to privacy by placing his "stash" behind the screen door did not necessarily make it so. As the Court said, even in an otherwise private place, "what a person knowingly exposes to the public, even in his house or office, is not subject of Fourth Amendment protection."

The Court then focused on the difference in the way that the public uses an entry door that leads to the private quarters of a residence and the screened door between the entry door and the street. The Court reasoned that "[b]oth the custom of public use of [screen] doors and the [ease with which one can see through them]" supported the conclusion that, due to the "open" use of screen doors (for example, by guests who open the screen door to knock on the entry door), and the expected "unauthorized" use of them (for example, by deliveryman or salesman, leaving packages or flyers behind them), there could have been no reasonable expectation of privacy in the area behind the door in this case. In this case, the solid entry door, which was closed, and not the screen door, was the "perimeter barrier" to the rowhouse. There was no evidence that the screen door was latched, or that a door knocker or door bell was located on the outside of the screen door. Consequently, Christian lacked any reasonable expectation of privacy in the area behind the screen door in which the drugs were seized.

NOTE: Although at least one court has analyzed the issue of whether the opening of a screen door breaches a reasonable expectation of privacy in terms of the time of year (winter, summer), our Court of Special Appeals rejected such approach. Instead, the Court said that "[t]he distinguishing factor is not whether the time of year is summer or winter, *but whether the screen door is acting as the perimeter barrier to the residence.*" (Emphasis added). In the *Christian* case, if there had been no closed wooden entry door, or if the screen door had been latched or otherwise locked, the case would have been resolved in Christian's favor. More problematic would have been the presence of a door knocker or doorbell on the screen door. If such device had been in place, the court, again, would most likely have ruled in Christian's favor. Again, each case will turn on its facts, and the pivotal issue will be whether the screen door was the primary barrier to entering the residence. If so, a reasonable expectation of privacy exists; if not, the converse is true.

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