Is The Front Yard A Public Place?
Legal Question of The Week
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Might Be A Redneck and
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Once the legal office has decided on the topic for the next edition of "Legal Question of the Week," we set out to find the best way to introduce the topic.[1] Many times it takes us longer to write the opening paragraph than the rest of the document. After all, we[2] want something to grab your attention and get you in the proper mindset to absorb not only the great legal advice but the mediocre humor that appears herein.[3] This week we start with a quote: "A man's front yard is the window to his house."[4]

Actually the topic this week stems from a statement I made in my last legal update. If you recall, I dealt with one of the hot button issues of our day – disorderly conduct and the practice of "hair profiling." You should remember that our hypothetical situation involved a particularly obnoxious red-headed man who felt that he was being mistreated by the police. In discussing whether our hypothetical antagonist could and should be charged with disorderly conduct, I stated that the requirement that the conduct be in a "public place" would probably be satisfied even though the man was in his own front yard.[5] The idea that private property could be considered a public place probably deserves a little closer look.

Several of our criminal laws contain an element that the conduct must occur in a public place, such as affray, disorderly conduct, intoxicated and disruptive, and riot. The North Carolina Supreme Court considered what constitutes a "public place" in the case of

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[1] Trying to find a topic for this esteemed legal treatise is often times the subject of much heated debate. That explains the loud screams and weird guttural noises that you sometimes hear coming from the legal office. It's either an argument about the topic or that Chinese food I ate for lunch – either way, you don't want to come in.

[2] For those that are confused, the legal office is still a one man operation. By using "we," I make it sound more important. Plus, it does feel crowded in here with all the voices in my head.

[3] "Herein" is attorney-speak for "in here." This sort of thing is the reason law school is a three year program.

[4] The reason this quote sounds stupid is because I just made it up. It is only a quote because I spoke it out loud before typing it. It is based on the real quote: "The eyes are the windows to the soul," which makes much more sense but is offensive to those of us with dark colored eyes.

[5] Speaking of front yards, if you burn your front yard rather than mowing it, you might be a redneck according to Jeff Foxworthy.

In re Margaret May.[6] The Court stated that there are two types of locations that qualify as public places. The first are those places which are generally considered public by the nature of their use. For instance, places maintained by a government entity or private business that are open to public traffic such as streets, sidewalks, parks, shopping malls, and apartment complexes are public places.

The second type of public place would be private property which is situated "near enough to public thoroughfares that citizens using such thoroughfares could bear witness to the altercation." So private property within view or earshot of a sidewalk or street would qualify as a public place for purposes of these statutes as would any place open to public view and close enough to the public so that fighting there may tend to cause public alarm.[7] This was the basis for concluding in last week's hypothetical that the "public place" element would probably be met.

But what about the related issue of what rights a property owner has in their own front yard? Certainly a property owner can decide who is welcome in their front yard. If an unwelcome visitor stays too long and refuses to leave, the owner would obviously be able to pursue trespassing charges. But what about the police? Is there some Fourth Amendment protection prohibiting the police from entering your front yard?

A recent North Carolina Court of Appeals case reinforces what has been a long-standing rule in this area. In State v. Rivens,[8] the Charlotte-Mecklenburg Police Department received an anonymous call that five males were on the side of Longleaf Drive, firing a gun. The caller described one who had dreadlocks and was wearing a white shirt and reported that another had a green shirt. Two officers arrived on the scene to find five males standing in the front yard of 1629 Longleaf Drive and confirmed that two of them matched the description given by the caller.[9]

The officers approached the men in the front yard to inquire about the report of gunfire. While talking to one of the men, the officer asked for consent to frisk which was given.[10] The frisk turned up no weapons or contraband. Another officer asked the man in the white shirt with dreadlocks (who will shortly become "the defendant") to come over and talk, but the man declined by showing the officer that he was wearing a house-arrest tracking device[11] and was not allowed to leave the property.[12] As the officer

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[6] I am not making this name up. Although it sounds like a Dr. Seuss book, this is an actual case. You can look it up at 357 N.C. 423 (2003).
[7] Speaking of public alarm, if you have flowers planted in a bathroom fixture in your front yard . . . you might be a redneck.
[8] 2009 N.C. App. LEXIS 1086.
[9] Question: Do the officers have reasonable suspicion of criminal activity at this point? Answer: No. Question: Can they detain the two males fitting the description they have received without their consent? Answer: No. If you disagree with these two answers, you need to reread the Anonymous Tips legal update I put out several weeks ago. (Available wherever fine legal advice is sold.)
[10] This officer knew he didn't have reasonable suspicion based on the anonymous tip alone and was instead having a consensual conversation and doing a consensual frisk, neither of which required any type of suspicion.
[11] The latest fashion trend for 2009. Available in your favorite color, as long as your favorite color is black.

approached the defendant, he noticed a few things. First, the defendant's right cheek was twitching – a sign of nervousness according to the officer. Second, the officer noticed that the defendant's shirt was bunched in a way that possibly could conceal a weapon, and third, the officer smelled marijuana on the defendant.[13]

The officer asked the defendant for consent to be searched[14] and the defendant responded, "Go ahead," and raised his arms over his head. During the search, the officer found a small bag in the defendant's pocket which held four smaller baggies, each containing a rock of crack cocaine. The defendant was then placed under arrest.

The defendant's two arguments at trial were that the officers did not have sufficient reasonable suspicion to approach him in his front yard[15] and that the consent given by him for the search was not voluntary. As to the first argument, the court stated three well-established principles of law:

1. "Law enforcement officers have the right to approach a person's residence to inquire whether the person is willing to answer questions." State v. Wallace, 111 N.C. App. 581 (1993).

2. "[W]hen officers enter private property for the purpose of a general inquiry or interview, their presence is proper and lawful . . . [O]fficers are entitled to go to a door to inquire about a matter; they are not trespassers under these circumstances." State v. Church, 110 N.C. App. 569 (1980).

3. Arriving at a home in order to perform an investigation and requesting to speak with the occupant does not constitute an "investigative stop," does not require an "articulable suspicion of criminal activity," and does not constitute a search or seizure. See Terry v. Ohio, 392 U.S. 1 (1968).

The Court ruled based on these principles that since the defendant did not request the officers to leave the premises or enter his home to avoid dealing with them, their presence in the yard was lawful without any type of suspicion.

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[12] Question: If the man with dreadlocks turned and started to walk into the house at this point, could the officer stop him? Answer: No. We still don't have reasonable suspicion of criminal activity. All we have is an anonymous tip. (Florida v. J.L., 529 U.S. 266 (2000).) Let the guy go and figure you'll get him the next time.

[13] BING! BING! BING! WE HAVE A WINNER! The officer has now done an excellent job of articulating facts that, combined with the anonymous phone call, now support his reasonable suspicion that criminal activity has occurred, is occurring, or is about to occur. I can say this because the court said it in their opinion.

[14] Another good decision by an apparently well-trained officer. Instead of simply relying on reasonable suspicion to justify a frisk, the officer "stacks" his Fourth Amendment justifications by asking for consent as well. Now he not only has a right to frisk, but can do a full search of the defendant's person.

[15] By the way, if your baby's favorite teething ring is the garden hose in your front yard . . . you might be a redneck. That reminds me - congratulations to Officer Andrew Lanier on the birth of his daughter. Must be pretty anti-climatic though after winning those 100 points in the legal office "name that search" contest a couple of weeks ago.

As to the voluntariness of defendant's consent to a search, the Court pointed out that there was no allegation or evidence of any coercive acts by the police other than approaching defendant on his property to ask questions. Since they had a lawful right to do that, the Court found the consent to be voluntary and upheld the defendant's conviction for Possession of Cocaine with Intent to Sell and Deliver. Kudos to these officers for a job well done.

As I close out this edition, I leave you with this final thought about front yards: If you think you are an entrepreneur because of the "Dirt for Sale" sign in your front yard, you might be a redneck.[16]

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[16] Disclaimer: The Legal Office does not intend to disparage that class of people who consider themselves to be or are considered by others to be "rednecks." The term "redneck" is not to be construed as having any negative connotation whatsoever. If you are a "redneck" and are offended by any comment made in this Legal Update, you are too sensitive and should seek medical help immediately. In addition, if you can read this, chances are you are not a genuine redneck in the first place.