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BODY:

Police may take trash bags from a suspect's yard without a warrant if the bags are "readily accessible" to the public, the Court of Appeals held in a 4-3 split. The decision revives the cocaine possession conviction of Donna Sampson, which was reversed by the Court of Special Appeals last January. Police had obtained evidence from her garbage over the course of several trash-day runs. The officers would stand on the sidewalk and reach about three feet into her small front yard to lift the bags, which Sampson leaned against a tree. The intermediate appellate court had found that Sampson had an expectation of privacy in her front yard and that the trash bags were located within the curtilage of her property, even though they were mere feet from the sidewalk. The Court of Appeals had harsh words for that analysis. "To suggest that the concept of curtilage has any meaning to people in the context of placing their trash for collection is absurd," Judge Alan M. Wilner wrote for the top court. "Curtilage is a legal concept, not a surveying one," Wilner wrote. "Most people have no idea what the word 'curtilage' means, much less where, on their property, it ends. Nor do they, as a practical matter, give a moment's thought to whether the place where they set their trash for collection is within or without this unmarked boundary." It would not be reasonable to give credence to people who claimed they had a different expectation of privacy based on where they put their trash bags, the majority held. "If the trash is placed for collection at a place that is readily accessible, and thus exposed, to the public, the person has relinquished any reasonable expectation of privacy," Wilner wrote. "The Court of Special Appeals erred in concluding otherwise."

Close enough?

Not so, the three dissenters claimed. "The fact that Sampson may lack a reasonable expectation of privacy in her garbage does not change the fact that she has a reasonable expectation of privacy in her front yard," Judge Irma S. Raker wrote for herself, Chief Judge Robert M. Bell and Judge John C. Eldridge. The majority also ignored the fact that police had to trespass into Sampson's yard in order to obtain her trash bags. "The fact that the police made a specific point of not stepping on Sampson's lawn suggest that even the investigating officers recognized a significance in Sampson's property line," Raker wrote. The dissent argued that the court's opinion will leave police guessing about what's permitted on a warrantless trash run, since it gives them no guidance on what's "sufficiently close" to the sidewalk. "The police are already constrained by the curtilage test in other Fourth Amendment contexts; there is no reason to develop an independent jurisprudence simply based on the ature of the seized evidence -- namely, garbage," the dissenters wrote.