SUPREME COURT OF LOUISIANA

NO. 99-KK-0627

STATE OF LOUISIANA

VERSUS

TORRANCE DEARY

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FOURTH CIRCUIT, PARISH OF ORLEANS**

JOHNSON, J., Dissenting

These officers were on patrol in the vicinity of 1924 Jackson Avenue, but there had been no reports of criminal activity in the area and the officers did not observe any. What they did observe was two men standing outside on the sidewalk in front of 1924 Jackson Avenue. The men were not engaged in any criminal activity, but the officers recognized one of the men to be Grant Perkins, who had been arrested previously for narcotics. According to Officer Weise, he stepped out of the car to conduct an investigation, and the unknown man fled. Officer Weise was unable to catch this unknown man, but he testified that the man threw down what appeared to be crack cocaine. However, this alleged contraband could not be found by the officer. Having lost this unknown suspect and not finding what he thought to be discarded contraband, Officer Weise decided to crawl through an opening in someone's fence to get back to the street. This fence just happened to be surrounding the property at 1924 Jackson Avenue.

Clearly, when Officer Weise crawled through the opening in the fence and walked up the alley, he had no evidence of a crime to be investigated. While I will not speculate as to why the unknown man fled, the officers had no reason to approach these two men since there was no testimony that they were engaged in any illicit (illegal) activity. In my opinion, a person who has been arrested previously, such as Grant Perkins, has the same rights as everyone else to stand on a public sidewalk. The majority seems to be of the opinion that once you have been arrested for some illegal activity, the mere action of you standing on a public sidewalk is grounds for a criminal investigation.

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" by governmental officials. U.S. Const. amend. IV; *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S.Ct. 1652, 1656, 80 L.Ed. 2d 85 (1984). "A search occurs when an expectation of privacy that society is prepared to

consider reasonable is infringed." *Id*. Individuals in our society generally have the highest expectation of privacy within the curtilage of their homes. Further, this expectation of privacy within the curtilage of the home is "afforded the most stringent Fourth Amendment protection." *United States v. Martinez-Fuerte*, 428 U.S. 543, 561, 96 S.Ct. 3074, 3084, 49 L.Ed. 2d 1116 (1976). This Court has recognized the front porch of a private residence as a part of the curtilage of the home, but affords this area a somewhat lessened measure of protection than that afforded the home. This lessened protection stems from "an almost implicit understanding and custom in this country that, in the absence of signs or warning, a residence may be approached and the occupants summoned to the door by knocking." *State v. Sanders*, 374 So. 2d 1186, 1189 (La. 1979).

The majority points to "the overwhelming weight of authority that "police with legitimate business may enter the areas of the curtilage which are impliedly open to use by the public, and that in doing so they are free to keep their eyes open and use their senses."" *See* 1 Wayne R. LaFave, *Search and Seizure*, § 2.3(c), p. 483 (1996). Based on this authority, the Court concludes that the officer's seizure of the cocaine packet in this case was lawful. The majority is of the opinion that Officer Weise was conducting a legitimate police investigation when he knocked on the side of defendant's home and looked through the opened front door. In my mind, this is untenable. While it is true that police officers may approach a private residence to investigate criminal activity, the officers in this case had no information about criminal activity at this residence.

The decision rendered in this case will lead to unwarranted invasions of privacy. The jurisprudence explains that "a law enforcement officer's observations from **a public vantage point where he has a right to be** and from which the activities or objects he observes are clearly visible do not constitute a search within the meaning of the Fourth Amendment." *United States v. Taylor*, 90 F.3d 903, 909 (4th Cir. 1996) (internal quotation marks omitted) (emphasis added), *citing, California v. Ciraolo*, 476 U.S. 207, 213, 106 S.Ct. 1809, 1813, 90 L.Ed. 2d 210 (1986). The lower courts were correct in concluding that Officer Weise had no right to be on the defendant's front porch, and in suppressing the evidence obtained in violation of the defendant's Fourth Amendment rights.

For these reasons, I respectfully dissent.