

## FISH HOUSE CASE

Like many states with lakes that freeze during the winter, Minnesota becomes home to thousands of fishing villages every year.



Fish houses vary in design and size.



But, they all have one thing in common--a fishing hole.



**ISSUE:** What level of protection does the 4th Amendment provide to occupants and activities in a fish house? Is the search of a fish house a violation of the U.S. Constitution?

**FACTS:**

At around 11:30 a.m. on January 21, 2000, Officer Hemker approached a fish house on Cannon Lake to determine whether the fish house was properly registered and the occupants had fishing licenses, as required by Minnesota law. Troy Krenz owned the fish house. Officer Hemker did not notice any unusual or suspicious behavior and saw that the required registration decal was on the outside of the fish house. Officer Hemker knocked on the fish house, identified himself, and opened the door without waiting for a response to his knock. Officer Hemker did not have a search warrant.

Krenz and Christopher Gillen were in the fish house when Officer Hemker entered. As he entered, Hemker saw Krenz push down the trays in a tackle box and thought that Krenz was trying to hide something. Hemker asked to see Krenz's fishing license. After searching for his license, Krenz admitted to Hemker that he had lost it a few weeks earlier.

Officer Hemker saw a small aluminum pipe lying next to the tackle box. The pipe appeared to be a device that is used to smoke controlled substances. He asked Krenz where the marijuana was. Krenz responded that there was no marijuana in the fish house.

Officer Hemker then investigated the contents of the tackle box and found an aluminum spoon that contained an off-white, rock-like substance. Krenz told Officer Hemker that the substance was baking soda. Officer Hemker then saw Gillen drop several containers into a hole through the ice. The containers floated to the surface and were retrieved by Officer Hemker who asked Gillen what was inside them. Gillen said that they contained cocaine.

Krenz admitted that he smoked cocaine with the pipe, that the pipe belonged to him, and that it contained cocaine; he was charged with one count of controlled substance-crime in the fifth degree. Krenz moved to suppress the evidence and his own statements on the grounds that the search and seizure were unlawful.

The district court determined that Officer Hemker's entry into the fish house was unconstitutional, suppressed the evidence, and dismissed the charges. The suppression order was appealed by the State.

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### Decision

Because the solid walls of a fish house provide visual privacy for a range of legitimate activities that can take place in a fish house, an expectation of privacy in a fish house is reasonable.

We then affirmed the district court's conclusion: that because Krenz had a legitimate expectation of privacy in his fish house, [the DNR officer's] entry into the fish house without consent, a warrant, probable cause, or an articulable basis for suspicion violated the Fourth Amendment of the United States Constitution.

Minnesota Court of Appeals  
State v. Krenz, 634 N.W.2d 231 (Minn. App. 2001)

From another Minnesota fish house case:

Here, a word needs to be said about just what is a "fish house," meaning an ice-fishing house or a fish house. Just like the word "home," no single word describes the simplicity or the complexity, the amount of space or the lack of space, or the presence of amenities or the lack of amenities that may exist in a fish house. While some fish houses are basically canvas and/or thin wood enclosed shed-type structures, it is not uncommon for fish houses to have a rudimentary and, at times, even a sophisticated-type interior heating system. While ice fishing can take place during the day, it can also commonly take place during hours extending well after midnight and into the next day. It is not uncommon for a fish house, even a simple one, to contain a cot for resting and sleeping. Fish houses often contain chairs, portable radios, and portable televisions. Many fish houses are built larger and for more than the basic one or two holes in the ice. Some have the equivalent of beds, televisions, refrigerators, and some elementary method of heating food. The occupant of a fish house has an expectation of privacy exceeding that of someone sitting in a car or an open fishing boat.

Minnesota Court of Appeals  
State v. Larsen, C5-01-980 (Minn. App. 2001)

Affirmed. Minnesota Supreme Court  
State v. Larsen, 650 N.W.2d 144 (Minn. 2002);