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Florida v. Jardines

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Use of a Trained Drug Dog To Sniff The Exterior Door of a Home Is a Search Within The Meaning of The Fourth Amendment

In *Florida v. Jardines*, No. 11-564 (March 26, 2013), the U. S. Supreme Court determined in a 5-4 decision that law enforcement's use of a trained drug dog to sniff the exterior front door of a residence was a "search" within the meaning of the Fourth Amendment. The evidence showed that the police received an unverified tip that marijuana was being cultivated in the home of Jardines. Two detectives and a drug dog on a leash approached Jardines' front porch. The dog alerted to the front door of the home. The detectives used the information to get a search warrant for the residence. The search revealed growing marijuana and Jardines was charged with trafficking.

Like its recent decision in *U. S. v. Jones*, 565 U.S. ___, 132 S.Ct. 945, 181 L.Ed.2d 911 (2012), the Supreme Court decided this case solely on property right grounds rooted in common law trespass. The Court stated that a person's home and its curtilage are a constitutionally protected area and "it is undisputed that the detectives had all four of their feet and all four of their companion's firmly planted on [Jardine's curtilage]." Thus, "the only question is whether [Jardines] had given his leave (even implicitly) for them to do so." The Court held that "[h]e had not."

The general public, including police officers, have an implicit license which typically permits the visitor to approach a home by the front path, knock and wait briefly to be received, and then, if no answer, leave. But, the scope of such an implicit license is limited not only to a particular area (front path), but also to a specific purpose. Thus, an officer may approach a residence in order to speak with an occupant, because "*all are invited to do that.*" (Emphasis in original) But here, the detectives exceeded the scope of the implied license because "no one is impliedly invited to enter the protected premises of [a] home in order to do nothing but conduct a search." Accordingly, by using the drug dog to sniff the exterior of the front door, the detectives physically trespassed on Jardines' property, which was a violation of the Fourth Amendment.

As it did in *Jones*, the Court again side-stepped the argument that no violation occurred because the defendant had no reasonable expectation of privacy. "[W]e need not decide whether the officers' investigation of Jardines' home violated his expectation of privacy...One virtue of the Fourth Amendment's property-rights baseline is that it keeps easy cases easy. That the officers learned what they learned only by physically intruding on Jardines' property to gather evidence is enough to establish that a search occurred."