No. 122484

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. DERRICK BONILLA, Defendant-Appellee.	)	On Appeal from the Appellate Court of Illinois, Third District, No. 3-16-0457 There on Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois, No. 15 CF 225 The Honorable Frank Fuhr, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

NATURE OF THE ACTION

A police officer brought a trained K9 into defendant's apartment building through an unlocked exterior door. The K9 alerted in a common area hallway outside defendant's apartment. Police officers obtained a search warrant based on the K9's alert and discovered cannabis in defendant's apartment. The trial court granted defendant's motion to suppress the evidence, holding that the K9 sniff violated the Fourth Amendment under *Florida v. Jardines*, 569 U.S. 1 (2013). The appellate court affirmed, and the People appeal from that judgment. No question is presented on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether an apartment building's common area hallways behind unlocked exterior doors are curtilage.

2. Whether officers could rely in good faith on binding appellate precedent holding that there was no reasonable expectation of privacy in common area hallways behind unlocked exterior doors.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315, 317, 604(a)(2), and 612(b)(2). On September 27, 2017, this Court allowed the People's petition for leave to appeal.

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution states that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF FACTS

The trial court suppressed evidence seized following a K9 sniff in an unlocked common area hallway.

Defendant was charged with unlawful possession of cannabis with intent to deliver in violation of 720 ILCS 550/5(c). C4.[1] He moved to suppress the drug evidence, alleging that the K9 sniff violated the Fourth Amendment under *Florida v. Jardines*, 569 U.S. 1 (2013), and *People v. Burns*, 2016 IL 118973. C25-26.

Defendant did not call witnesses at a suppression hearing. Instead, the parties stipulated to (1) the facts in the search warrant and (2) that "all doors" in the apartment complex were "unlocked and not necessarily capable of being locked." R7; *see also* SC2 (Agreed Statement of Facts).

Those facts included that on March 19, 2015, a police officer led the trained K9 through the unlocked outer doors of defendant's apartment

[1] "C_," "S_," "R_,", and "A_" refer to the common law record, the supplemental common law record, the report of proceedings, and the appendix to this brief, respectively.

building and walked through the common area hallways on the second and third levels, each of which had four apartments. C25. The K9 alerted only at the doorway of apartment #304, defendant's unit. *Id.* The officers obtained a search warrant based on the K9 alert and, upon executing it, found cannabis in defendant's apartment.

The circuit court granted the motion to suppress, reasoning that while *Burns* involved a locked common area, distinguishing *Burns* on that basis would be "a distinction with an unfair difference." R16. The People filed a notice of appeal that same day. C42.

A divided appellate court considered the distinction that in *Burns* the building's outer door was locked.

In a split decision, the appellate court affirmed. A8. The majority did not address the four-factor test the Supreme Court adopted to identify curtilage in *United States v. Dunn*, 480 U.S. 294, 301 (1987). A6 ¶ 19. Instead, the majority relied on *Burns* and reasoned that the "only difference" was "that the apartment building in the present case was unlocked." A6 ¶ 19. The majority acknowledged that *Burns* "comment[ed] that a situation involving an unlocked and unsecured common area was distinguishable from the facts that were before the court in *Burns*." A6 ¶ 20. But the majority agreed with the trial court that distinguishing *Burns* on this basis would be "unfair." A6 ¶ 18.

The majority also held that the good faith exception to the exclusionary rule did not apply, again relying on *Burns*. A7 ¶ 24. The majority earlier

"acknowledge[d] that there is precedent to support the State's assertion that a person does not have a reasonable expectation of privacy in the [unlocked] common area of an apartment building, that a dog sniff is not a search under the fourth amendment, and that a dog sniff is not the same as the thermal imaging scan that was condemned in *Kyllo*." A6 ¶ 21. Yet the majority reasoned that officers could not rely on those precedents because at the time of the K9 sniff, courts already had ruled that K9 sniffs were Fourth Amendment searches when conducted outside houses or in common areas behind locked doors. A7 ¶ 24.

Justice Wright dissented, explaining that "[o]ur supreme court made it very clear in *Burns* that the locked nature of the building resulted in the fourth amendment violation, . . . specifically stat[ing] 'this case is distinguishable from situations that involve police conduct in common areas readily accessible to the public.'" A8 ¶ 31 (Wright, J. dissenting) (quoting *Burns*, 2016 IL 118973, ¶ 41). Justice Wright also reasoned that the hallway was not curtilage; the only applicable *Dunn* factor was proximity — the hallway was neither enclosed nor used for any private purpose, and "defendant took no steps to protect the exterior of his apartment door from the view or observations of people lawfully travelling back and forth throughout the unlocked apartment building." A9 ¶ 36 (Wright, J. dissenting).

STANDARD OF REVIEW

This Court reverses a trial court's findings of fact when ruling on a motion to suppress only if they are against the manifest weight of the evidence. *People v. Burns*, 2016 IL 118973, ¶ 15. Here, there is no factual dispute. This Court reviews the trial court's legal ruling on whether to suppress evidence de novo. *Id.* ¶ 16.

ARGUMENT

I. A K9 Sniff in an Unlocked Common Area Is Not a Search Under the Property-Based Approach.

A. The Fourth Amendment protects a home and its curtilage, an area intimately associated with the privacies of life.

"The Fourth Amendment 'indicates with some precision the places and things encompassed by its protections': persons, houses, papers, and effects." *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (quoting *Oliver v. United States*, 466 U.S. 170, 176 (1984)). It protects "the equivalent of the traditional single-family house, such as an apartment." *Maryland v. Garrison*, 480 U.S. 79, 90 (1987). But the protection extends only to the "curtilage," an "area around the home . . . 'intimately linked to the home, both physically and psychologically,'" "where 'privacy expectations are most heightened.'" *Jardines*, 569 U.S. at 7 (quoting *California v. Ciraolo*, 476 U.S. 207, 213 (1986)).

"'At common law, the curtilage is the area to which extends the intimate activity associated with the 'sanctity of a man's home and the

privacies of life."" *Ciraolo*, 476 U.S. at 212 (quoting *Oliver*, 466 U.S. at 180 (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886))). "The protection afforded the curtilage is essentially a protection of families and personal privacy," *Ciraolo*, 476 U.S. at 212-13, as the curtilage is "considered part of home itself for Fourth Amendment purposes," *Oliver*, 466 U.S. at 180; *see also People v. Janis*, 139 Ill. 2d 300, 310 (1990) ("The term 'curtilage' refers to the area immediately surrounding a dwelling house which is so intimately associated with the home and the privacies of life that it is given the same protection under the fourth amendment as is afforded to the home itself.").

The concern about invasion of the "home itself" animates the curtilage protection. "The curtilage concept originated at common law to extend to the area immediately surrounding a dwelling house the same protection under the law of burglary as was afforded the house itself." *United States v. Dunn*, 480 U.S. 294, 300 (1987). Blackstone explains that there is no burglary of a house where no person resides because absent are the "same circumstances of midnight terror." William Blackstone, 4 Commentaries *225. The impact of intrusion on the place where people dwell — *i.e.*, sleep — is more significant than an intrusion at a house where no person lives. *Id.* Thus, the curtilage is the area that is intimately associated with dwelling, and invading it is akin to invading the sleeping quarters.

B. Under *Burns*, an unlocked common area is not curtilage.

A Fourth Amendment search occurs in two circumstances: (1) when government action violates a person's reasonable expectation of privacy; and

(2) when government agents engage in unlicensed physical intrusion of a constitutionally protected area owned by defendant to obtain information. *Jardines*, 569 U.S. at 5-6. *Jardines* employed the latter, property-based approach to hold that a K9 sniff conducted from the front porch of a house and at its front door was a Fourth Amendment search. *Id.* at 6-11. In *People v. Burns*, 2016 IL 118973, ¶ 44, this Court "conclude[d] that under *Jardines*, . . . when police entered defendant's locked apartment building at 3:20 a.m. with a drug-dection dog, their investigation took place in a constitutionally protected area."

The importance in *Burns* of the locked outer door cannot be overstated. Indeed, this Court made clear that the outcome of that case would have been different had the door been unlocked.

In *Burns*, the People argued that the common area did not belong to the defendant and that *Jardines* articulated a "straightforward" principle: there was a Fourth Amendment violation in that case because "officers were gathering information in an area *belonging to Jardines* and immediately surrounding his house." 569 U.S. at 5-6 (emphasis added). The curtilage concept did not apply to an area that is not the resident's property.

There, as here, the landing did not belong to the defendant. *See People v. Carodine*, 374 Ill. App. 3d 16, 23 (1st Dist. 2007) ("Although defendant leased the apartment in which he and his mother resided, he had no possessory interest to the common area from which the officer reached

because the inhabitants of two other units had access to the common area."). And there, as here, the only space from which the defendant had a legally cognizable right to exclude persons was the apartment itself.

This Court was "not persuaded" by the People's argument in *Burns* for one reason: "the entrances to defendant's apartment building were locked every time police attempted to enter the secured building." *Burns*, 2016 IL 118973, ¶ 33. *Burns* "emphasize[d] that the 'common areas' of the secured apartment building were clearly not open to the general public, a fact known by the officers who entered defendant's secured apartment building in the middle of the night." *Id.*

Here, in contrast, the doors to defendant's building were unlocked. According to the stipulated facts, every time the officers entered the building they did so without assistance and through unlocked doors. R7; SC2. So the basis on which *Burns* rejected the argument is absent here.

The same is true for another central argument: that the common area did not qualify as curtilage under the Supreme Court's four-factor test. *See Dunn*, 480 U.S. at 301. Curtilage "questions should be resolved with particular reference to four factors: the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by." *Id.* at 301. The factors do not "produce[] a finely tuned formula

that, when mechanically applied, yields a 'correct' answer," but "are useful analytical tools" to the extent "they bear upon the centrally relevant consideration — whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." *Id.*; *see also Pittman*, 211 Ill. 2d at 516-17 (applying *Dunn* factors).

In *Burns*, as here, the common area was proximate to the apartment, but the People argued that the remaining three *Dunn* factors weighed heavily against finding that the common landing belonged to the apartment's curtilage. This Court was not convinced because the common area was "located within a locked structure intended to exclude the general public." *Id.* ¶ 37. Here, in contrast, the structure is unlocked and thus does not exclude the general public.

The common area in *Burns* was different than the area here in other salient respects. For instance, it was a landing used only by the defendant's apartment and one other. *See id.* ¶ 37. Here, the common area was accessible to and used by guests and residents of at least twice as many apartments. C25.

Moreover, there was no evidence that defendant used the hallway for anything other than accessing his apartment, that his lease permitted any other use, or that any other use was feasible. And no effort was made by defendant to protect the area from observation by other tenants, their

invitees, the landlord, workers — or even the general public, as the exterior door was unlocked.

Nor did the officer's conduct exceed any implied license, as it did in *Burns*. There, the officers "entered a locked building in the middle of the night." *Burns*, 2016 IL 118973,¶ 43; *see also id.* ¶ 44 ("We conclude that, under *Jardines*, 569 U.S. ___, 133 S. Ct. 1409, when police entered defendant's locked apartment building at 3:20 a.m. with a drug-detection dog, their investigation took place in a constitutionally protected area."). Here, there is no evidence that the K9 sniff took place in anything but the middle of the day and that the officers entered through unlocked doors, as any member of the public could have done.

In *Burns*, this Court "reiterate[d] that the entrances to defendant's apartment building were locked every time police attempted to enter the secured building and officers entered the building with the knowledge that the building they entered was not accessible to the general public." *Id.* ¶ 41.; *see also id.* ("*Thus*, this case is *distinguishable* from situations that involve police conduct in common areas readily accessible to the public. *Accordingly*, we reject the State's argument that defendant's landing should not be treated as curtilage for purposes of the fourth amendment.") (emphasis added). The fact that the exterior door was locked was decisive in *Burns*. The absence of that decisive factor here is similarly controlling. Here, the hallway was behind an unlocked door, not owned by defendant, accessible by the public,

and neither used for any private purpose nor protected from observation by the public. Accordingly, the K9 sniff was lawful.

Other jurisdictions have held that unlocked common areas are not curtilage under *Jardines*; indeed, courts have even extended the rule to locked common areas. *See State v. Williams*, 862 N.W.2d 831, 837 (N.D. 2015) (K9 sniff in unlocked condominium common area not search under *Jardines*); *see also State v. Nguyen*, 841 N.W.2d 676, 82 (N.D. 2013) (dog sniff in unlocked common area hallway was not within apartment's curtilage, as "'central component of th[e] inquiry [i]s whether the area harbors . . . intimate activity associated with the sanctity of a man's home and the privacies of life.'") (quoting *Dunn*, 480 U.S. at 300); *Lindsey v. State*, 127 A.3d 627, 642-43 (Md. Ct. Spec. App. 2015) (hallway outside apartment door not curtilage even though area was equipped with lock and buzzer system, so dog sniff not search under *Jardines*).

Here, the outer doors of defendant's apartment building were unlocked. The officers did not violate the Fourth Amendment by bringing a K9 through unlocked doors into a common area accessible by the public.

II. The Good-Faith Exception Applies Because Officers Could Rely on this Court's Precedent Regarding Unlocked Common Areas.

Alternatively, even if the K9 sniff was unlawful, the good-faith exception applies. The exclusionary rule applies only when officers engage in misconduct. Here, the officers acted in good-faith reliance on binding

appellate precedent from this Court holding that there is no reasonable expectation of privacy in unlocked common areas.

A. The exclusionary rule does not apply when officers rely in good faith on binding appellate precedent.

The Fourth Amendment "says nothing about suppressing evidence obtained" from unreasonable searches. *Davis v. United States*, 564 U.S. 229, 236 (2011) (internal quotation marks omitted). Instead, judges created the exclusionary rule as a "prudential doctrine" to deter police misconduct. *Id.* (internal quotation marks omitted). "Exclusion exacts a heavy toll on both the judicial system and society at large, because it almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence, and its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment." *People v. LeFlore*, 2015 IL 116799, ¶ 23. Thus, "for exclusion of the evidence to apply, the deterrent benefit of suppression must outweigh the substantial social costs," and "application of the exclusionary rule has been restricted to those unusual cases where it can achieve its sole objective: to deter future fourth amendment violations." *Id.* at ¶¶ 22-23 (internal quotation marks omitted). Indeed, the "Supreme Court has repeatedly expressed the notion that 'exclusion has always been our last resort, not our first impulse.'" *Id.* at ¶ 22 (quoting *Herring v. United States*, 555 U.S. 135, 140 (2009)) (additional internal quotation marks omitted).

"When there is no illicit conduct to deter," "the deterrence rationale loses much of its force and exclusion cannot pay its way." *LeFlore*, 2015 IL 116799, ¶ 24 (internal quotation marks omitted). Such is the case when "police acted with an objectively reasonable good-faith belief that their conduct was lawful, or when their conduct involved only simple, isolated negligence." *Id.* (internal quotation marks and brackets omitted). Police conduct must be "sufficiently culpable that deterrence outweighs the cost of suppression." *Id.*

In "determining whether the good-faith exception applies, a court must ask the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal in light of all of the circumstances." *Id.* at ¶ 25 (internal quotation marks omitted). Here, where binding appellate precedent held that the activity was not a search or in a constitutionally protected area, the answer to that question is "no."

B. Under this Court's precedent, there was no reasonable expectation of privacy in unlocked common areas.

Unlike the officers in *Burns*, the officers here could rely on binding appellate precedent that the precise location of the K9 sniff was not constitutionally protected. Once again, that the exterior door here was unlocked makes all the difference. In declining to apply the good faith exception because *Burns* rejected a "very similar" argument," A7 ¶ 24, the appellate majority disregarded this decisive criterion.

The officers here could act in good faith reliance on this Court's decision in *People v. Smith*, 152 Ill. 2d 229 (1992). There, officers standing in the unlocked hallway outside the defendant's apartment overheard him confess to a murder. *Id.* at 240-41. This Court held that there was no Fourth Amendment search because there was no reasonable expectation of privacy in the unlocked common area. *Id.* at 245-46; *see also Carodine*, 374 Ill. App. 3d at 24 (no reasonable expectation of privacy in unlocked common area because "it has been held that where hallways and other common areas of a building are readily accessible to members of the public, that is, where nonresidents without a key can freely enter the common areas of the building, a law enforcement officer or other governmental agent does not conduct a 'search' when he enters those areas of the building").

Burns explained that the officers could not rely on *Smith* for one reason: the common area in *Smith* was located behind an unlocked door, while the door in *Burns* was locked. *Burns*, 2016 IL 118973, ¶ 58. Here, in contrast, the facts closely track those in *Smith*. The area "was a common area shared by other tenants, the landlord, their social guests and other invitees"; it "was unlocked"; it was somewhere officers had a "legal right to be." *Smith*, 152 Ill. 2d at 245-46.

True, in *Smith* "the officers used no artificial means to enhance their ability" to secure the evidence, *Smith*, 152 Ill. 2d at 246, whereas here the officers used a K9. But for thirty years, and on three separate occasions, the

United States Supreme Court had held that a K9 sniff was neither a Fourth Amendment search nor constitutionally relevant. *See Illinois v. Caballes*, 543 U.S. 405, 409 (2005) (upholding K9 sniff conducted during lawful traffic stop because it did "not implicate legitimate privacy interests," and any intrusion on driver's "privacy interests does not rise to the level of a constitutionally cognizable infringement); *City of Indianapolis v. Edmond*, 531 U.S. 42, 40 (2000) (no Fourth Amendment search when officers conducted K9 sniff of automobile at highway checkpoint because it "is not designed to disclose any information other than the presence or absence of narcotics"); *United States v. Place*, 462 U.S. 696, 707 (1983) (K9 sniff of luggage at an airport "did not constitute a 'search' within the meaning of the Fourth Amendment" because it was "so limited both in the manner in which the information is obtained and in the content of the information revealed by the procedure"). And this Court had itself reaffirmed that principle. *People v. Bartelt*, 241 Ill. 2d 217, 226-27 (2011) ("it is undisputed that the officers had the authority to conduct an exterior dog sniff of defendant's truck during the traffic stop and that the dog sniff itself was not a search subject to the fourth amendment"); *People v. Bew*, 228 Ill. 2d 122 (2008) ("The [Supreme] Court reaffirmed that a dog sniff is *sui generis*, as it discloses only the presence or absence of contraband).

Here, the apartment building was unlocked and the relevant facts mirror those of *Smith*. Thus, the police officers here could rely in good faith

on *Smith* and *Carodine* regarding the lack of privacy interests in unlocked common areas.

Another factor absent here but present in *Burns* was a decision from the appellate district in which the case originated holding that the area was constitutionally protected. *Burns* relied on *People v. Trull*, 64 Ill. App. 3d 385, 387 (4th Dist. 1978), a Fourth District case that found a reasonable expectation of privacy in common area hallways behind locked doors. *See Burns*, 2016 IL 118973, ¶ 66 ("Here, the appellate court properly determined that *Trull,* an Appellate Court, Fourth District case, was binding authority in this case."); *see also id.* ¶ 62 ("Moreover, at the time of the officers' conduct in this case, *Trull* stood, and still stands, as binding Appellate Court, Fourth District precedent extending the protection of the fourth amendment to the common areas of a locked apartment building.").

Trull is not dispositive here for two reasons. First, the exterior door was unlocked. Second, this case originated out of the Third District. In a more recent case, the First District "h[e]ld that a tenant has no reasonable expectation of privacy in common areas of an apartment building that are accessible to other tenants and their invitees." *People v. Lyles*, 332 Ill. App. 3d 1, 7 (1st Dist. 2002). There, police arrested three suspects emerging from the back staircase of an apartment building that had a locked outer door. While arresting the suspects, the officers held open the outer door and

subsequently ascended the staircase, where they found two guns in a garbage can on the defendant's back porch. *Id.* at 3-4.

Lyles and *Trull* "created a conflict between the First and Fourth Districts." *Burns*, 2016 IL 118973, ¶ 66. Because *Burns* originated in the Fourth District, *Trull* was binding. In this case, which arises out of the Third District, neither *Trull* nor *Lyles* constituted binding authority — even for locked common areas.

Instead, the binding precedents for unlocked common areas were *Smith* and *Carodine*, upon which the officers could rely to believe in good faith that the unlocked common area was not constitutionally protected.[2]

The officers' conduct here was also specifically authorized by a decision of the Seventh Circuit Court of Appeals, which constitutes binding appellate precedent "for Illinois police that they [can] reasonably rel[y] upon." *LeFlore*, 2015 IL 116799, ¶ 56; *see also id.* at ¶ 57 ("Illinois law enforcement's reliance upon [a Seventh Circuit decision] fits squarely within the specific holding of *Davis*, because it [is] 'binding appellate precedent' in the absence of any contrary Illinois state authority as far as the [Illinois] police detective was concerned"). In *United States v. Brock*, 417 F.3d 692, 693 (7th Cir. 2005), the defendant rented a room in a house and officers secured from another

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[2] The appellate majority also cited *United States v. Whitaker*, 820 F.3d 849, 850 (7th Cir. 2016), *see* A7 ¶ 24, but that case, too, is inapposite: it involved a locked exterior door and arose in a different jurisdiction (Wisconsin) governed by different local precedents.

resident permission to search the common areas of the house. 417 F.3d at 693. Officers performed a dog sniff outside the locked door to the defendant's bedroom, and the dog alerted. *Id.* The Seventh Circuit "h[e]ld that the dog sniff inside Brock's residence was not a Fourth Amendment search because it detected only the presence of contraband and did not provide any information about lawful activity over which Brock had a legitimate expectation of privacy." *Id.* at 696. Thus, the officers' conduct here was authorized by both binding state (*Smith* and *Carodine*) and federal (*Brock*) precedents.

Indeed, every federal circuit to address the issue had held that there was no reasonable expectation of privacy in unlocked apartment building common areas (and often in locked ones, too). *See United States v. Barrios-Moriera*, 872 F.2d 12, 14-15 (2d Cir. 1989), *abrogated on other grounds by Horton v. California*, 496 U.S. 128, 130 (1990) (no Fourth Amendment violation when officer followed defendant into otherwise locked common area stairway because "the intrusion . . . was not into appellant's home" but "into a common hallway, an area where there is no legitimate expectation of privacy"); *United States v. Correa*, 653 F.3d 187, 190 (3d Cir. 2011) (no Fourth Amendment violation when officer entered through half-open window because defendant "lacked an objectively reasonable expectation of privacy in the common areas of a multi-unit apartment building with a locked exterior door"); *United States v. Dillard*, 438 F.3d 675, 683 (6th Cir. 2006) (no reasonable expectation of privacy in common area of duplex that was "always

locked" but was unlocked and ajar on day at issue); *United States v. Taylor*, 248 F.3d 506, 510-12 (6th Cir. 2001) (no Fourth Amendment violation when "officers rang the other apartments in the building until they found a resident who was willing to let them in" to common area); *United States v. Concepcion*, 942 F.2d 1170, 1171-72 (7th Cir. 1991) ("Concepcion could not assert an expectation of 'privacy' in the common area," because "the five other tenants sharing the same entrance used the space and could admit as many guests as they pleased"); *United States v. Eisler*, 567 F.2d 814, 816 (8th Cir. 1977) (no Fourth Amendment violation when officer followed tenant in behind locked door and overheard conversation in apartment building hallway because defendant "had no reasonable expectation that conversations taking place there would be free from intrusion"); *United States v. Scott*, 610 F.3d 1009, 1015-17 (8th Cir. 2010) (no Fourth Amendment violation when dog sniff occurred in common area hallway outside defendant's apartment); *United States v. Nohara*, 3 F.3d 1239, 1242 (9th Cir. 1993) (9th Cir.) (no reasonable expectation of privacy in apartment building hallway); *United States v. Miravalles*, 280 F.3d 1328, 1332 (11th Cir. 2002) (no reasonable expectation of privacy in common areas of apartment building with front door electronic lock that "at times did not work and was not working when the officers arrived"). Given this "legal landscape," the officers here would have had "no reason to suspect that [their] conduct was wrongful under the circumstances." *LeFlore*, 2015 IL 116799, ¶ 51.

The officers here engaged in activity that the United States Supreme Court and this Court had reaffirmed on multiple occasions was not a Fourth Amendment search and in a location this Court and others had held enjoyed no reasonable expectation of privacy. The officers were not culpable for engaging in such conduct, and the good-faith exception applies.

CONCLUSION

This Court should reverse the judgment of the appellate court.

January 10, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is twenty pages.

/s/ Eldad Z. Malamuth
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Appellate Court

***People v. Bonilla*, 2017 IL App (3d) 160457**

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. DERRICK BONILLA, Defendant-Appellee.
District & No.	Third District Docket No. 3-16-0457
Filed	June 14, 2017
Decision Under Review	Appeal from the Circuit Court of Rock Island County, No. 15-CF-225; the Hon. Frank R. Fuhr, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	John L. McGehee, State's Attorney, of Rock Island (Patrick Delfino, Lawrence M. Bauer, and Gary F. Gnidovec, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People. Michael J. Pelletier, Peter A. Carusona, and Katherine M. Strohl, of State Appellate Defender's Office, of Ottawa, for appellee.
Panel	JUSTICE CARTER delivered the judgment of the court, with opinion. Justice O'Brien concurred in the judgment and opinion. Justice Wright dissented, with opinion.

OPINION

¶ 1 Defendant, Derrick Bonilla, was charged with unlawful possession of cannabis with intent to deliver (720 ILCS 550/5(c) (West 2014)). He filed a motion to quash warrant and suppress evidence (motion to suppress), which the trial court granted after a hearing. The State appeals. We affirm the trial court's judgment.

¶ 2 FACTS

¶ 3 The facts in this case are not in dispute and were stipulated to as follows by the parties at the hearing on the motion to suppress. Police officers had received a tip that drugs were being sold out of apartment 304 of the Pheasant Ridge Apartment Complex in Moline, Illinois. Acting on that tip, on March 19, 2015, the officers brought a trained drug-detection dog to that location. The exterior doors leading into the apartment building's common-area hallways were not locked, and there was no lock, pass card, entry system, or anything whatsoever on the closed exterior doors of the apartment building that would prevent any person off the street from entering into the common-area hallways of the apartment building. Once inside the apartment building, canine officer Genisio walked his drug-detection dog down some of the common-area hallways. The first area that the dog was walked through was the second floor common-area hallway, which included apartments 201, 202, 203, and 204. The dog showed no interest in that hallway and did not alert on any of the doorways. The next area Officer Genisio walked his dog through was the third floor common-area hallway, which included apartments 301, 302, 303, and 304. The dog showed no interest in apartments 301, 302, or 303. As the dog came to apartment 304, however, the dog moved back and forth in the doorway, sniffed at the bottom of the door, and signaled a positive alert for the presence of illegal drugs. The police officers obtained a search warrant for apartment 304 based upon the drug-detection dog's alert. After obtaining the search warrant, the officers searched the apartment and found a quantity of cannabis and certain other items. Defendant, who lived in apartment 304, was later arrested and charged with unlawful possession of cannabis with intent to deliver.

¶ 4 In June 2015, defendant filed the instant motion to suppress. A hearing was held on the motion in August 2016. As noted above, the parties stipulated to the facts for the hearing and no additional testimony or other evidence was presented. At the conclusion of the hearing, after listening to the arguments of the attorneys, the trial court granted the motion to suppress. In so doing, the trial court stated:

> "But I think whether you are doing it as a privacy interest under *Kylo* [*sic*] [*Kyllo v. United States*, 533 U.S. 27 (2001)] or a curtilage property interest under *Jardines* [*Florida v. Jardines*, 569 U.S. 1, 133 S. Ct. 1409 (2013)], I think it would just be unfair to say you can't come up on a person who lives in a single family residence and sniff his door but you can go into someone's hallway and sniff their door if they happen to live in an apartment. That's a distinction with an unfair difference. So I'm granting the motion."

¶ 5 After the State's oral motion to reconsider was denied, the State appealed. The State did not file a separate certificate of impairment but did set forth in its notice of appeal that the granting of defendant's motion to suppress had the substantive effect of dismissing the charges.

¶ 6 ANALYSIS

¶ 7 On appeal, the State argues that the trial court erred in granting defendant's motion to suppress evidence. The State asserts, although not necessarily in the order that follows, that the motion to suppress should have been denied because (1) the common-area hallway in front of defendant's apartment door, where the alleged search took place, did not constitute curtilage under the law, (2) defendant had no reasonable expectation of privacy in the common-area hallway or in the air or odor of cannabis emanating from under his apartment door, (3) neither the United States Supreme Court's ruling in *Jardines* nor the Illinois Supreme Court's ruling in *Burns* (*People v. Burns*, 2016 IL 118973, ¶¶ 31-45) supports the trial court's grant of the motion to suppress in the instant case, (4) under the established precedent, the police dog sniff in this case was not a search for purposes of the fourth amendment and was different from the thermal imaging scan that was condemned by the United States Supreme Court in *Kyllo*, and (5) even if this court finds that the alleged search violated the fourth amendment, the good faith exception to the exclusionary rule operates to avoid suppression of the evidence seized under the search warrant in this case since the police were acting in reliance upon the legal landscape as it existed at the time with respect to the use of drug-detection dogs in areas that were open to the general public. For all of the reasons set forth, the State asks that we reverse the trial court's grant of the motion to suppress and that we remand this case for further proceedings.

¶ 8 Defendant argues that the trial court's ruling was proper and should be upheld. Defendant asserts that the motion to suppress was correctly granted because the police officer physically intruded, without an implied license, on the constitutionally protected curtilage just outside of defendant's apartment door to conduct a warrantless search with a drug-detection dog. According to defendant, it makes no difference in this case on the determination of curtilage whether the main entry to the apartment building was locked or unlocked. Defendant acknowledges that the police officer, like any other member of the public, had an implied license to approach defendant's apartment and knock on the front door but claims that the officer exceeded the scope of that license by approaching with a trained drug-detection dog for the sole purpose of detecting illegal activity within the apartment. Defendant asserts further that the good faith exception does not apply in this case because the police officer could not have reasonably believed under any United States precedent that his actions were authorized. For all of the reasons stated, defendant asks that we affirm the trial court's suppression order.

¶ 9 In general, a reviewing court applies a two-part standard of review to a trial court's ruling on a motion to suppress evidence. *Ornelas v. United States*, 517 U.S. 690, 699 (1996); *People v. Gaytan*, 2015 IL 116223, ¶ 18. Under that two-part standard, the trial court's findings of fact are given great deference and will not be reversed on appeal unless they are against the manifest weight of the evidence (*Burns*, 2016 IL 118973, ¶ 15), but the trial court's ultimate legal ruling of whether reasonable suspicion or probable cause exists and whether suppression is warranted is subject to *de novo* review on appeal (*Id.* ¶ 16; *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001)). In this particular case, however, the parties stipulated to the facts in the trial court and raised only a question of law at the hearing on the motion to suppress. The standard of review in this appeal, therefore, is *de novo* because we are being called upon to review the trial court's legal ruling on the question of law that was presented. See *Burns*, 2016 IL 118973, ¶ 16.

¶ 10 The specific issue before us in this appeal is whether the police officer violated defendant's fourth amendment rights when he entered the common-area hallway of the unlocked apartment

building and conducted a dog sniff of the front door of defendant's apartment. More specifically, we must determine whether the police officer's actions constituted a search for purposes of the fourth amendment. The fourth amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV; *Burns*, 2016 IL 118973, ¶ 19. Article I, section 6, of the Illinois Constitution provides similar protection. See Ill. Const. 1970, art. I, § 6; *Burns*, 2016 IL 118973, ¶ 19. Illinois courts interpret the search and seizure clause of the Illinois Constitution in limited lockstep with that of the federal constitution. *Burns*, 2016 IL 118973, ¶ 19.

¶ 11 I. The Two Different Approaches to Fourth Amendment Search Issues

¶ 12 There are two different approaches that a court may be called upon to apply when determining whether a police officer's actions constitute a search under the fourth amendment—a property-based approach and a privacy-based approach. See *United States v. Sweeney*, 821 F.3d 893, 899 (7th Cir. 2016). If applicable, the property-based approach should be applied first. See *Jardines*, 569 U.S. at ___, 133 S. Ct. at 1417 (stating that there is no need to apply the privacy-based approach if a violation of the fourth amendment has been found under the property-based approach); *Burns*, 2016 IL 118973, ¶¶ 27, 45 (same). The property-based approach recognizes a simple baseline of protection that is provided by the fourth amendment as it relates to the property interests specified: that when the government obtains information by physically intruding (trespassing) on a person's house, papers, or effects, a search within the original meaning of the fourth amendment has undoubtedly occurred. See *Jardines*, 569 U.S. at ___, 133 S. Ct. at 1414; *Burns*, 2016 IL 118973, ¶ 22. The question a court must ask when applying the property-based approach is whether the police officers intruded (trespassed) upon a constitutionally protected area (one of the protected properties specified in the text of the fourth amendment) to obtain the information in question. See *Jardines*, 569 U.S. at ___, 133 S. Ct. at 1414; *Burns*, 2016 IL 118973, ¶¶ 22-24. If so, a fourth amendment search has occurred. See *Jardines*, 569 U.S. at ___, 133 S. Ct. at 1414; *Burns*, 2016 IL 118973, ¶¶ 22-27.

¶ 13 The second approach that may be applied by a court to determine if a police officer's actions constitute a search under the fourth amendment is the privacy-based approach. See *Sweeney*, 821 F.3d at 899. The privacy-based approach recognizes that property rights are not the sole measurement of the fourth amendment's protections and that fourth amendment protections also extend to areas in which a person has a reasonable expectation of privacy. *Jardines*, 569 U.S. at ___, 133 S. Ct. at 1414; *Burns*, 2016 IL 118973, ¶ 23. Under the privacy-based approach, a fourth amendment search occurs when police officers intrude into an area in which a person has a reasonable expectation of privacy. See *Jardines*, 569 U.S. at ___, 133 S. Ct. at 1417; *Burns*, 2016 IL 118973, ¶ 27; *Katz v. United States*, 389 U.S. 347, 360-61 (1967) (Harlan, J., concurring). The question a court must ask when applying the privacy based approach is whether the complaining person had a reasonable expectation of privacy in the area invaded (the location or object of the alleged search) by the police. See *Katz*, 389 U.S. at 360-61 (Harlan, J., concurring). If so, a fourth amendment search has occurred. *Id.*; *Sweeney*, 821 F.3d at 899. As noted above, however, there is no need to apply the privacy-based approach if a fourth amendment search has already been found under the property-based approach (if the situation before the court is such that the police intruded upon

a constitutionally protected area to obtain the evidence in question). See *Jardines*, 569 U.S. at ___, 133 S. Ct. at 1417; *Burns*, 2016 IL 118973, ¶¶ 27, 45. That is so because the privacy-based approach adds to the fourth amendment protections provided under the property-based approach; it does not diminish those protections and is not a substitute for those protections. See *United States v. Jones*, 565 U.S. 400, 414 (2012) (Sotomayor, J., concurring); *Burns*, 2016 IL 118973, ¶ 27.

¶ 14 II. The Fourth Amendment as Applied to Common Spaces in Apartment Buildings

¶ 15 "Applying the Fourth Amendment to various common spaces in apartment buildings has been a source of considerable controversy." *Sweeney*, 821 F.3d at 898. Prior to the United States Supreme Court's decision in *Jardines*, it was generally established that a warrantless police intrusion into a common area of an apartment building did not violate the fourth amendment rights of a defendant tenant. See, *e.g.*, *People v. Smith*, 152 Ill. 2d 229, 245-46 (1992); *Sweeney*, 821 F.3d at 898-99 (listing federal Seventh Circuit cases); see also Carol A. Chase, *Cops, Canines, and Curtilage: What* Jardines *Teaches and What It Leaves Unanswered*, 52 Hous. L. Rev. 1289, 1303-09 (2015) (discussing federal cases in general). In *Jardines*, however, the United States Supreme Court held that a police dog sniff of the front door of a single family home was a search under the fourth amendment. *Jardines*, 569 U.S. at ___, 122 S. Ct. at 1417-18. The Supreme Court reached that conclusion, as stated in its majority opinion, by applying a property-based approach to the police officers' actions and by finding that the police officers had intruded (trespassed) on the curtilage of the home (the front porch) to gather the information (the alert by the drug detection dog) that was later used as the basis for obtaining a search warrant for the home. See *id.* at 1414-18.

¶ 16 The Illinois Supreme Court later applied the holding of *Jardines* in the context of a multiunit apartment building in *Burns* and found that a police dog sniff of the front door of a defendant's apartment was a search under the fourth amendment because the police officers had intruded on the curtilage (the landing outside of defendant's apartment door in a locked apartment building) of the defendant's residence in the middle of the night. *Burns*, 2016 IL 118973, ¶¶ 32-45. In reaching that conclusion, the supreme court emphasized that the apartment building where defendant lived was locked and that the common areas of the building were not open to the general public. *Id.* ¶¶ 33, 41. The court went on to comment that the facts of that case were distinguishable from situations that involved police conduct in common areas that were readily accessible to the public but did not state what the result would have been under that type of factual situation. *Id.* ¶ 41.

¶ 17 III. The Effect of *Jardines* and *Burns* on the Alleged Search in the Present Case

¶ 18 In the present case, although we are mindful of the supreme court's comment in *Burns*, we nevertheless conclude that the police officer's actions constituted a search under the fourth amendment, even though the apartment building involved was unlocked and unsecured. Other than the unlocked status of the building itself (and the time of the search, of which we have no knowledge), the officer's conduct in the present case was virtually identical to that of the officer in *Burns*. See *id.* ¶¶ 7-8. Considering the level of protection that has been afforded to the home in fourth amendment jurisprudence, especially in light of the decisions in *Jardines*

and *Burns*, we cannot conclude that a person who lives in an unlocked apartment building is entitled to less fourth amendment protection than a person who lives in a locked apartment building. See *Jardines*, 569 U.S. at ___, 122 S. Ct. at 1414; *Burns*, 2016 IL 118973, ¶ 24. The fourth amendment draws a firm line at the entrance to the home (*Kyllo*, 533 U.S. at 40) as the home is first among equals in the protected areas specified in the fourth amendment (*Jardines*, 569 U.S. at ___, 122 S. Ct. at 1414; *Burns*, 2016 IL 118973, ¶ 24). At the very core of the fourth amendment is the right of a person to retreat into his or her own home and there to be free from unreasonable governmental intrusion. *Jardines*, 569 U.S. at ___, 122 S. Ct. at 1414; *Burns*, 2016 IL 118973, ¶ 24. In providing that protection, the fourth amendment does not differentiate as to the type of home involved. See Chase, *supra*, at 1312. As the trial court noted, to reach the opposite conclusion would be to draw a distinction with an unfair difference. See *United States v. Whitaker*, 820 F.3d 849, 854 (7th Cir. 2016) (recognizing that to distinguish *Jardines* based upon the differences between the front porch of a single family home and the closed hallway of an apartment building would be to draw an arbitrary line that would apportion fourth amendment protections on grounds that correlate with income, race, and ethnicity); Chase, *supra*, at 1312 (making a similar statement).

¶ 19 Although courts will generally consider the four factors specified in *United States v. Dunn*, 480 U.S. 294, 301 (1987), in determining whether a particular area constitutes the curtilage of a home (in this case, the front door area of defendant's apartment), we need not perform an extensive analysis of the *Dunn* factors in the present case because our analysis here would be only slightly different from the supreme court's analysis of the *Dunn* factors in *Burns*. See *Burns*, 2016 IL 118973, ¶¶ 34-37. The only difference in this case would be that we would note in our analysis, as we have above, that the apartment building in the present case was unlocked, but we would still reach the same conclusion—that the common-area hallway just outside of defendant's apartment door constituted curtilage for the purposes of the fourth amendment. That defendant lacked a reasonable expectation of complete privacy in the hallway or that he lacked an absolute right to exclude all others from the hallway does not mean that defendant had no reasonable expectation of privacy against persons in the hallway snooping into his apartment using sensitive devices not available to the general public or that the police could park a trained drug-detection dog directly in front of his apartment door. See *Whitaker*, 820 F.3d at 853-84. We caution, however, that our ruling here is limited to the facts of this particular case and should not in any way be construed to mean that all apartment common areas constitute curtilage for the purposes of the fourth amendment.

¶ 20 In finding that the officer's actions in this case constituted a fourth amendment search, we reject the State's assertion that *Burns* requires a different outcome. While it is true that the court in *Burns* emphasized the fact that the apartment building in that case was locked, we do not agree that without that fact, the *Burns* court would have reached the opposite conclusion. The most that we can state is that the *Burns* court left that exact issue undecided, other than to comment that a situation involving an unlocked and unsecured common area was distinguishable from the facts that were before the court in *Burns*. See *Burns*, 2016 IL 118973, ¶ 41.

¶ 21 We acknowledge that there is precedent to support the State's assertion that a person does not have a reasonable expectation of privacy in the common area of an apartment building, that a dog sniff is not a search under the fourth amendment, and that a dog sniff is not the same as the thermal imaging scan that was condemned in *Kyllo*. Those same arguments were made by

the State in either *Jardines* or *Burns* (or both) and were rejected by the courts in those cases. We reject those arguments in this case for the same reasons. First, as noted above, there is no need to apply the privacy-based approach here because the government gained the evidence in question by intruding onto a constitutionally protected area. *Jardines*, 569 U.S. at ___, 122 S. Ct. at 1417; *Burns*, 2016 IL 118973, ¶¶ 27, 45. Second, while a police dog sniff of a vehicle or luggage in a public place may not constitute a fourth amendment search, a police dog sniff of the front door of a residence has produced a different result. See *Jardines*, 569 U.S. at ___, 122 S. Ct. at 1417-18; *Burns*, 2016 IL 118973, ¶ 44. Third, when the government uses a physical intrusion to explore the detail of a person's residence, a fourth amendment search has occurred and the type of tool that the government agents brought with them after that point (in this case, a drug-detection dog) is irrelevant. *Jardines*, 569 U.S. at ___, 122 S. Ct. at 1417.

¶ 22 IV. Whether the Good Faith Exception Applies Under the Facts of the Present Case

¶ 23 The final question that must be answered under this issue is whether the good faith exception applies in the present case to prevent the evidence in question from being suppressed. The good faith doctrine operates as an exception to the exclusionary rule. See 725 ILCS 5/114-12(b)(1), (b)(2) (West 2014); *Burns*, 2016 IL 118973, ¶¶ 48-49. The rationale behind the good faith doctrine is that since the purpose of the exclusionary rule is to deter police misconduct, if there is no police misconduct to deter, the exclusionary rule should not apply. See *Burns*, 2016 IL 118973, ¶¶ 51-52 (citing *People v. LeFlore*, 2015 IL 116799, ¶¶ 22-25). The good faith doctrine has been expanded in recent years to include those situations where a police officer acted in good faith reliance upon binding appellate precedent that specifically authorized a particular practice but was subsequently overruled. *Id.* ¶ 50. In deciding whether the good faith exception to the exclusionary rule applies in any particular case, a court must determine whether a reasonably well-trained officer would have known that the search in question was illegal in light of all of the circumstances. *Id.* ¶ 52.

¶ 24 Having reviewed the record in the present case, we find that the good faith exception to the exclusionary rule does not apply. See *Id.* ¶¶ 47-73; *Whitaker*, 820 F.3d at 854-55. Very similar good faith arguments were made by the State in both the *Burns* and the *Whitaker* cases, and, in both of those cases, the courts rejected the State's arguments for application of the good faith exception. See *Burns*, 2016 IL 118973, ¶¶ 47-73; *Whitaker*, 820 F.3d at 854-55. The same logic applies in the present case. Simply put, at the time of the search in the present case, both the United States Supreme Court and the Illinois Appellate Court had already ruled that a dog sniff of the front door of a residence was a fourth amendment search. See *Jardines*, 569 U.S. at ___, 122 S. Ct. at 1414; *People v. Burns*, 2015 IL App (4th) 140006, ¶ 46, *aff'd*, 2016 IL 118973. The police officer could not reasonably rely, therefore, on older case law decisions or decisions involving dog sniffs in other contexts to authorize the warrantless dog sniff of the front door of defendant's residence in the instant case. See *Burns*, 2016 IL 118973, ¶¶ 54-56. Nor could the officer reasonably rely on a search warrant that was issued based upon the warrantless police dog sniff of the front door of defendant's apartment, a practice that had not been specifically authorized by any established precedent. See *Id.* ¶ 69. We, therefore, reject the State's good faith argument in this case.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, we affirm the judgment of the circuit court of Rock Island County.

¶ 27 Affirmed.

¶ 28 JUSTICE WRIGHT, dissenting.

¶ 29 The majority concludes the canine sniff in this case violated the fourth amendment based on the rationale contained in *Florida v. Jardines*, 569 U.S. 1, 133 S. Ct. 1409 (2013) and recently adopted by our supreme court in *People v. Burns*, 2016 IL 118973. I respectfully dissent.

¶ 30 In *Burns*, the apartment building was secured by two locked entrances located on the east and west sides of the building. These locked entrances restricted the access of the uninvited general public into the building. Nonetheless, the officers in *Burns* conducted a canine sniff in a restricted area not accessible to the general public due to the locked exterior doors of the apartment building.

¶ 31 Our supreme court made it very clear in *Burns* that the locked nature of the building resulted in the fourth amendment violation. The *Burns* court specifically stated: "this case is distinguishable from situations that involve police conduct in common areas readily accessible to the public." *Id.* ¶ 41. The intent of the *Burns* majority to limit the application of their decision is further evidenced by their usage of the term "locked" on more than 10 occasions throughout the opinion.

¶ 32 The facts of this case are very different from those presented to the court in *Burns*. This case involves police conduct in a common area readily accessible to the public. Here, the officers did not pass through any locked exterior entrances or any locked interior doorways before reaching the third-floor hallway with the canine. When the canine evaluated the air in the third-floor hallway, the canine was standing in a wholly unrestricted and readily accessible area of the building.

¶ 33 To warrant the constitutional protection as defendant contends, some portion of the third-floor common-area hallway must qualify as the "curtilage" under the property-based approach contemplated in *Jardines*. See *Jardines*, 569 U.S. at ___, ___, 133 S. Ct. at 1409, 1414-15. As aptly stated by Justice Garman in her separate concurrence in *Burns*, a reviewing court should employ a blended application of the property-based and privacy-based approaches to fourth amendment concerns when determining whether an area qualifies as curtilage. *Burns*, 2016 IL 118973, ¶¶ 85-87 (Garman, C.J., specially concurring).

¶ 34 Whether an area qualifies as curtilage depends on "whether an individual reasonably may expect that the area in question should be treated as the home itself." *United States v. Dunn*, 480 U.S. 294, 300 (1987) (citing *Oliver v. United States*, 466 U.S. 170, 180 (1984)). To determine whether this small slice of the third-floor hallway should be classified as the "curtilage," I apply the *Dunn* test by considering the following four factors: "the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by." *Id.* at 301.

¶ 35 I respectfully submit only one of the *Dunn* factors points toward the existence of curtilage in this case. There is no doubt that the third-floor hallway in defendant's apartment building exists in close proximity to defendant's residence.

¶ 36 Yet, no other *Dunn* factors apply. No portion of the third-floor hallway is enclosed. Defendant was not using the area outside his doorway for any private purpose such as for a sitting or reception area for himself or his guests. Nothing other than the thickness of defendant's locked apartment door separated defendant's private area from the publicly-accessible hallway. Defendant did not position any item to cause the general public to detour around the threshold of his locked door. Lastly, and importantly, defendant took no steps to protect the exterior of his apartment door from the view or observations of people lawfully travelling back and forth throughout the unlocked apartment building.

¶ 37 Based on the application of *Dunn* factors, I conclude it was unreasonable for defendant to expect that any portion of the hallway accessible to the general public should be treated as part of defendant's home for fourth amendment purposes. Accordingly, I would hold the hallway in this completely unsecured apartment building was not curtilage in relation to defendant's leased premises.

¶ 38 The majority concedes this case is distinguishable from *Burns* but rationalizes their holding by concluding that a person who lives in an unlocked apartment building is not entitled to less fourth amendment protection than a person who lives in a locked apartment building. I respectfully disagree that all persons enjoy the same level of fourth amendment protection when leasing living quarters in a secured structure versus an entirely unsecured one. I believe "a marked difference" should be discerned "between an individual's expectation of privacy in a locked apartment building as compared to an unlocked one." *People v. Trull*, 64 Ill. App. 3d 385, 389 (1978).

¶ 39 For the preceding reasons, I respectfully conclude this particular defendant's fourth amendment rights were not violated because law enforcement did not pass through any locked exterior or interior thresholds before a drug-sniffing canine analyzed the air in a hallway readily accessible to the public.

¶ 40 I would respectfully reverse the circuit court's judgment suppressing the evidence in this case.

apply.

THE COURT: Anything is possible. I don't know; could be me, but I always find myself either enjoying the concurring opinions or the dissenting opinions. In this case, in Burns I found Justice Garman's concurring opinion very helpful and in Jardines I found Justice Kagan's concurring opinion in reference to Kylo (phonetic) interesting, what seemed to me a clear way to solve these -- this problem.

But I think whether you are doing it as a privacy interest under Kylo or a curtilage property interest under Jardines, I think it would just be unfair to say you can't come up on a person who lives in a single family residence and sniff his door but you can go into someone's hallway and sniff their door if they happen to live in an apartment. That's a distinction with an unfair difference. So I'm granting the motion.

MR. UMLAH: Thank you, Judge.

MR. LAREAU: Do you have the State Appellate Defender file the appeal, or?

MR. UMLAH: No. I will. I guess procedurally, Your Honor, now that the Court has granted the defendant's motion to suppress, the State would ask the Court to reconsider its ruling based on the same

STATE OF ILLINOIS)
) SS.
COUNTY OF ROCK ISLAND)

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 14th JUDICIAL CIRCUIT
COUNTY OF ROCK ISLAND

THE PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
-VS-) No. 15 CF 225
)
DERRICK BONILLA,)
)
Defendant.)

NOTICE OF APPEAL

An appeal is taken from the Trial Judge's granting of the defendants motion to suppress evidence on August 5, 2016 and subsequent denial on August 5, 2016 of the timely filed People's motion to reconsider the motion to suppress. Plaintiff requests that the Appellate Court reverse the judgment of the Circuit Court. This notice of appeal is appropriate under Illinois Supreme Court Rule 604(a)(1) as the courts granting of the defendants motion to suppress has the substantive effect of dismissing the charges.

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By: _____
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IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

vs.

DERRICK BONILLA,

Defendant.

NO. **15 CF 225**

AGREED STATEMENT OF FACTS

The search warrant and affidavit filed in the above case number on November 1, 2016 is the same search warrant an affidavit that was the subject of the defendant's motion to suppress evidence. It was the same search warrant and affidavit that was viewed by the trial judge in reaching his conclusion with respect to the motion to suppress.

DATE: 11-14-16

JUDGE

ASA Justin Umlah

APD Hector Lareau

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STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On January 10, 2018, the foregoing **Brief and Appendix of Plaintiff-Appellant** was (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail addresses of the persons named below:

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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen copies of the Brief and Appendix to the Clerk of the Supreme Court of Illinois, Supreme Court Building, 200 East Capitol Avenue, Springfield, Illinois 62701.

/s/ Eldad Z. Malamuth
ELDAD Z. MALAMUTH
Assistant Attorney General

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