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June 4, 2014

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You are hereby notified that the Court has entered the following opinion and order:

2013AP1784-CR State of Wisconsin v. Richard John Jarvis (L.C. #2011CF2660)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Richard John Jarvis appeals from a judgment convicting him of maintaining a drug trafficking place. He contends that the circuit court wrongly denied his motion to suppress evidence. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).[1] We affirm the judgment of the circuit court.

[1] All references to the Wisconsin Statutes are to the 2011-12 version.

In April 2011, Milwaukee police received information from an anonymous citizen that Jarvis was selling drugs from his residence. Based on the tip, officers went to Jarvis's home with a trained drug detection dog and had the dog sniff around the front door. Based on the dog's alert to the odor of drugs, the officers obtained a search warrant for the residence and eventually discovered illegal drugs when they executed the warrant.

Jarvis moved to suppress the evidence obtained as a result of the warrantless dog sniff. Following a hearing on the matter, the circuit court denied the motion, concluding that, under existing case law, the dog sniff did not constitute a search. Jarvis then entered a guilty plea to maintaining a drug trafficking place. The circuit court imposed and stayed a sentence of four years of imprisonment and placed Jarvis on probation. This appeal follows.

On appeal, Jarvis contends that the circuit court wrongly denied his motion to suppress evidence obtained as a result of the warrantless dog sniff of his front door. He notes that since the denial of his motion to suppress, the United States Supreme Court has held that the government's use of trained police dogs to investigate a home and its immediate surroundings is a "search" for purposes of the Fourth Amendment. ***Florida v. Jardines***, 569 U.S. __, 133 S. Ct. 1409, 1417-18 (2013).

The State concedes that, under ***Jardines***, the dog sniff of Jarvis's front door was a search requiring a warrant or probable cause. However, the State submits that, based on both the existing law at the time of the officers' actions[2] and the procedure used to obtain the related

[2] Prior to ***Florida v. Jardines***, 569 U.S. __, 133 S. Ct. 1409 (2013), dog-sniff searches of the type presented in this case had been held lawful in many jurisdictions. *See* ***State v. Scull***, 2014 WI App 17, ¶21 n.4, 352 Wis. 2d 733, 843 N.W.2d 859 (collecting cases).

warrant,[3] the good-faith exception counsels against suppression of the evidence.[4] The application of the good-faith exception to the exclusionary rule is a question of law we review de novo. ***State v. Hess***, 2010 WI 82, ¶19, 327 Wis. 2d 524, 785 N.W.2d 568.

We conclude that this case is controlled by the recent decision of ***State v. Scull***, 2014 WI App 17, 352 Wis. 2d 733, 843 N.W.2d 859, which addressed the same legal issue. There, a defendant argued that the circuit court erred in denying his motion to suppress because the police violated his Fourth Amendment rights when they brought a drug-sniffing dog to the front door of his home without a warrant or probable cause. ***Id.***, ¶1. After the circuit court denied his motion, and after he filed his notice of appeal, the United States Supreme Court issued its decision in ***Jardines***, making clear that the defendant's rights had been violated. ***Id.*** Nevertheless, because the police had obtained a search warrant of the defendant's house in good faith (although based, in part, on the warrantless dog sniff), we affirmed the circuit court. ***Id.*** We explained:

> In light of the reliability of the process used to obtain the search warrant for Scull's home and the state of the law at the time the search warrant was issued, we conclude that the police "acted in the objectively reasonable belief that their conduct did not violate the Fourth Amendment" when they executed the search warrant and searched Scull's home. As such, application of the exclusionary rule in this case would not act to "deter police misconduct" nor would the deterrent benefits of the rule "outweigh

[3] The search warrant affidavit was approved by a prosecutor, and the search warrant was signed by a circuit court judge.

[4] Jarvis argues that the State forfeited its right to argue that the good-faith exception applies because it did not raise the issue before the circuit court. We disagree for two reasons. First, we may affirm a circuit court's decision on any grounds. *See* ***State v. Milashoski***, 159 Wis. 2d 99, 108-09, 464 N.W.2d 21 (Ct. App. 1990). Second, the good-faith exception never came up in the circuit court because the court ruled on the issue prior to the United States Supreme Court's decision in ***Jardines*** and concluded that the dog sniff was not a search. Therefore, the circuit court did not need to explore the application of the exclusionary rule as a remedy.

> the substantial costs to the truth-seeking and law enforcement objectives of the criminal justice system." Therefore, we conclude that the good-faith exception to the exclusionary rule applies in this case, and we must affirm the circuit court.

Id., ¶22 (citation omitted).

Like the court in ***Scull***, we are satisfied that the officers in the present case "acted in the objectively reasonable belief that their conduct did not violate the Fourth Amendment" when they executed the search warrant and searched Jarvis's home. ***Id.*** We base this conclusion on the state of the law at the time of their actions, coupled with the separate review and approval of the search warrant by both the prosecutor and judge. Accordingly, we hold that the good-faith exception to the exclusionary rule applies, and we affirm the circuit court.[5]

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

[5] To the extent we have not addressed an argument raised by Jarvis on appeal, the argument is deemed rejected. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").