STATE OF WISCONSIN
C O U R T O F A P P E A L S
DISTRICT II
Appeal No. 2018AP1620-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JEFFREY L. IONESCU,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF THE CIRCUIT COURT FOR WAUKESHA COUNTY, THE HONORABLE LEE S. DREYFUS PRESIDING

BRIEF OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

1. Did police violate Mr. Ionescu's Fourth Amendment rights by bringing a trained police dog onto the curtilage of his home in violation of ***Florida v. Jardines***, 569 U.S. 1 (2013)?

The circuit court answered no. It found that the search was justified by the exigency of disappearing evidence—footprints in the dew evaporating with the heat of the morning sun. The circuit court also found that the homeowner, defendant's mother, consented to a search of the mobile home.

This court should answer yes.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Publication is warranted because a decision in this case is of substantial and continuing public interest. Undersigned counsel is not aware of any binding case law analyzing whether a mobile home parked within the curtilage of a residence can be searched with the use of trained police dogs. Oral argument is welcome if it would be helpful to the court.

STATEMENT OF THE CASE AND FACTS

On Monday, June 6, 2016, at 4:17 a.m., officers were dispatched to 17435 Rogers Drive for a report of

a theft in progress. (1:1-3). The caller reported that he woke up to a strange noise and found a white male wearing a white tank top leaning into the caller's vehicle, which was parked in the caller's garage. (1:3). He yelled at the male and chased him away. When police arrived, the caller pointed the police in the direction of the fleeing suspect and reported that he was missing an expensive watch. (1:3-4).

Officer Ament responded to the call in the company of Condor, a dual-purpose K-9 trained and certified in tracking. (1:4). Condor led Officer Ament on a 2000-foot track that took approximately 25-30 minutes to complete. (38:23, 27). The track relies on Condor's ability to detect a scent from the footprints themselves on soft surfaces and, in some measure, from Officer Ament's ability to see the footprints in the dew. (*Id*. at 8-9). The track led them to 17620 West Westward Drive, a property owned by Jeffrey Ionescu's parents; Mr. Ionescu lived in the mobile home parked in the home's driveway.[1] (*Id*. at 15).

After crossing approximately one dozen backyards, Officer Ament and Condor followed the trail through the rear portion of the Ionescu property—along the property line between the Ionescu land and that of their neighbor—across the yard, and right up to the mobile home. (38:13). There were no lights on inside the mobile home. (*Id*. at 22).

[1] Officer Ament testified that the mobile home was parked in a parking stall that is perpendicular to the driveway and in front of the residence. (38:12).

Officer Ament knocked on the door of the mobile home, and nobody answered. (*Id.*). Condor was unable to detect the same human scent in the adjoining residences or across the street. (*Id.* at 26). Officer Ament called in Mr. Ionescu's address, which resulted in police learning that Mr. Ionescu lived at that address and was a known burglar. (*Id.* at 30).

Ultimately, law enforcement officers knocked on the front door of the house and made contact with Mr. Ionescu's mother—the owner of the mobile home—who unlocked the mobile home for the police and gave them permission to search it. (38:15). During their search, police found Mr. Ionescu and the caller's stolen watch.[2] (1:4). While attempting to arrest Mr. Ionescu, police felt resistive tension in his arms; they responded by knocking him down and pointing a taser at him. (1:4-5).

Mr. Ionescu was charged with one count of burglary, one count of misdemeanor theft, and one

[2] The state repeatedly asserted that the officers conducted an "Act 79" search, but the court did not rely on Act 79 as a basis to uphold the search. 2013 Wisconsin Act 79 specified that "a law enforcement officer may require certain persons under field supervision to submit to a search of the person, the person's residence, or of any property under the person's control, if the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime or a violation of a condition of the field supervision." *See* Wisconsin Legislative Council Act Memo, 2013 Wisconsin Act 79: Searches by Law Enforcement of a Person on Probation, Parole, or Extended Supervision.

count of resisting an officer. (1:1-3). He moved to suppress the results of the officers' "warrantless entry onto the defendant's property" and the subsequent search of the mobile home. (10:3).

Defendant's Motion to Suppress Illegal Search

The defendant's motion was denied after an evidentiary hearing before the Honorable Lee S. Dreyfus on May 24, 2017. (11; 38). The circuit court distinguished these facts from ***Florida v. Jardines***, 569 U.S. 1 (2013), because this case did not involve an anonymous tip. (38:37). Further, the circuit court found that law enforcement was in pursuit of Mr. Ionescu because they followed a single set of footprints from the caller's home to Mr. Ionescu's mobile home:

> They did bring in Officer Ament and Condor to assist and he described how he tracked and followed a single set of footprints through multiple yards and he believed it was 10 to 12, across hard surfaces and lost the scent and picked it back up again and when it picked it back up again, the footprints were consistent, it was a single set, and ultimately, it led to the property in question and I believe it was located on West Westward Drive. You're correct, they came into the property through the back yard because that's where the tracks took them and took them to a motor home parked next to the driveway. It was parked next to the driveway and the tracks ended there. The tracks ended there and the dog itself as described by Officer Ament did a hard left to the vehicle and Officer

> Ament also testified that he also looked around for tracks going off in other directions and was unable to find them …

(38:37-38).

Despite acknowledging the absence of any testimony indicating how much time passed between the 9-1-1 call and the arrival of officers on the scene, the circuit court found that the pursuit began "a matter of minutes after the initial contact by the homeowner." (*Id*. at 38-39). The court found that the dissipation of evidence—i.e., footprints in the dew evaporating as a result of the morning sun and scents vanishing in the wind—presented exigent circumstances:

> In some respects, this is no different where we have the case where individuals are tracking individuals and they leave footprints in the snow and they've gone from a house to another place and eventually, those footprints are going to dissipate in some fashion though it may take substantially longer for snow as opposed to dew, but nonetheless it will dissipate. We're not dealing with a situation where this is many hours later or days later. This is a situation where it's a very close proximity to when the incident is alleged to have occurred. The officers were following what would be a current track or believed to be a current track. Ultimately, it led to the Ionescu property.

(38:39-40).

The circuit court did not make any findings with regard to the police entry onto the Ionescu property, the officers' knocking on the door of the mobile home with Condor, or the officers' knocking on the door of the Ionescu property with Condor. Instead, the circuit court addressed only the officers' contact with the homeowner, finding that "she said it was fine for them to be there and granted permission to search the vehicle." (*Id.* at 40). The court then found that Mr. Ionescu did not have "a privacy interest in either the home itself or in terms of the motor home that would otherwise give him standing under the circumstances." (*Id.* at 40). "There's no showing of ownership in the premises or the motor home. The only person who had ownership is his mother and she granted permission." (*Id.* at 41). The court found that officers knew the mobile home was registered to Mr. Ionescu's mother, and she gave them permission to search it. (*Id.* at 41-42). In addition, the court found that the mobile home was "moveable" but failed to make any findings regarding whether the mobile home was operable or whether it had an unobstructed path out of the driveway. (*Id.*). The court entered a written order denying the defendant's motion to suppress. (11).

Plea & Sentencing

On August 24, 2017, Mr. Ionescu entered a guilty plea to burglary (Count 1 of the Information) and the state agreed to strike the habitual criminality repeater and to dismiss and read-in Counts 2 and 3. (39:2). On August 30, 2017, the

Honorable Lee S. Dreyfus sentenced Mr. Ionescu to a bifurcated sentence of 8 years including 4 years of initial confinement and 4 years of extended supervision. (16:1-3). Mr. Ionescu filed a timely notice of intent to pursue postconviction relief. (18). He now appeals.[3]

ARGUMENT

The question of whether a search or seizure is reasonable under the Fourth Amendment is a question of constitutional fact. ***State v. Kieffer***, 217 Wis. 2d 531, 541, 577 N.W.2d 352 (1998). "On appeal, an appellate court applies a different standard of review to each step in a circuit court's determination of constitutional fact." ***State v. Martwick***, 2000 WI 5, ¶ 18, 231 Wis. 2d 801, 604 N.W.2d 552. "[A] circuit court's historical findings of fact are reviewed under a clearly erroneous standard, while the ultimate question of constitutional fact is reviewed de novo." ***Id***. at ¶ 2.

[3] "An order denying a motion to suppress evidence … may be reviewed upon appeal from a final judgment or order notwithstanding the fact that the judgment or order was entered upon a plea of guilty or no contest to the information or criminal complaint." Wis. Stat. § 971.31(10).

I. Police violated Mr. Ionescu's Fourth Amendment rights by bringing a trained police dog to sniff the curtilage of his home in violation of *Jardines*.

The Fourth Amendment protects people from unreasonable searches and seizures in their persons, houses, papers, and effects. ***Martwick***, 231 Wis. 2d 801, ¶ 26. The protection provided by the Fourth Amendment to a home also extends to the curtilage of a residence. ***Id***. (*citing* ***Oliver v. United States***, 466 U.S. 170, 180 (1984)). The curtilage is considered part of the home itself and is defined as "the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life.'" ***Oliver***, 466 U.S. at 180 (*quoting* ***Boyd v. United States***, 116 U.S. 616, 630 (1886)).

Thus, an officer's physical intrusion onto the curtilage of a home to gather evidence is a search within the meaning of the Fourth Amendment, and absent a warrant, it is presumptively unreasonable. ***Florida v. Jardines***, 569 U.S. 1, 11 (2013). Although officers need not shield their eyes when passing by the home on public thoroughfares, "an officer's leave to gather information is sharply circumscribed when he steps off those thoroughfares and enters the Fourth Amendment's protected areas." ***Id***. at 7. Therefore, if police enter the constitutionally protected extension of a defendant's home, the court must ask whether the defendant gave his leave for them to do so, either explicitly or implicitly. ***Id***. at 8. A license is traditionally implied by the knocker on a

front door, an invitation "justifying ingress to the home by solicitors, hawkers and peddlers of all kinds." ***Id***. (*quoting* ***Breard v. Alexandria***, 341 U.S. 622, 626 (1951)). "Thus, a police officer not armed with a warrant may approach a home and knock, precisely because that is no more than any private citizen might do." ***Jardines***, 569 U.S. at 7.

This implicit license is limited in scope and does not allow the introduction of "a trained police dog to explore the area around the home in hopes of discovering incriminating evidence." ***Id***.

> To find a visitor knocking on the door is routine (even if sometimes unwelcome); to spot that same visitor exploring the front path with a metal detector, or marching his bloodhound into the garden before saying hello and asking permission, would inspire most of us to—well, call the police. The scope of a license—express or implied—is limited not only to a particular area but also to a specific purpose.

Jardines, 569 U.S. at 9.

However, the protections of the Fourth Amendment "do not attach to land beyond the curtilage of a home" to public areas and what has been described as open fields. ***Martwick***, 231 Wis. 2d 801, ¶ 27. An individual "may not legitimately demand privacy for activities conducted out of doors in fields, except in the area immediately surrounding the home." ***Oliver***, 466 U.S. at 178.

Nevertheless, the Fourth Amendment does prevent an officer from "enter[ing] a home or its curtilage to access a vehicle without a warrant." ***Collins v. Virginia***, 138 S. Ct. 1663, 1671 (2018).[4] This is because "searching a vehicle parked in the curtilage involves not only the invasion of the Fourth Amendment interest in the vehicle but also an invasion of the sanctity of the curtilage." ***Id***. at 1671-72. Therefore, regardless of whether the mobile home in the present case is subject to the automobile exception, *see* ***California v. Carney***, 471 U.S. 386, (1985), if it is parked on the curtilage of the home, it cannot be subjected to a dog sniff search without a warrant.

A. Mr. Ionescu had an expectation of privacy in the mobile home, which was parked on the curtilage of the home.

"In order for the Fourth Amendment's warrant requirement to apply, the defendant must first have a reasonable expectation of privacy in the property or location." ***State v. Guard***, 2012 WI App 8, ¶ 16, 338 Wis. 2d 385, 808 N.W.2d 718. The Fourth Amendment's protection is heightened at the home. ***State v. Dumstrey***, 2016 WI 3, ¶ 29, 366 Wis. 2d 64, 873 N.W.2d 502. Whether a defendant had a

[4] In the present case, the state argued that there was "an automobile exception here." (38:32). The circuit court engaged in some analysis regarding the automobile exception, finding that motor homes "are somewhat different than automobiles" and that the mobile home in question "is moveable and … registered to Mr. Ionescu's mother." (38:41).

legitimate expectation of privacy depends upon the totality of the circumstances, which in turn requires an evaluation of the following factors:

> (1) whether the defendant had a property interest in the premises; (2) whether he was legitimately (lawfully) on the premises; (3) whether he had complete dominion and control and the right to exclude others; (4) whether he took precautions customarily taken by those seeking privacy; (5) whether he put the property to some private use; and (6) whether the claim of privacy is consistent with historical notions of privacy.

Guard, 338 Wis. 2d 385, ¶ 17.

In the present case, the state claimed that Mr. Ionescu did not have standing to challenge the search: "I don't think we've had a showing that the Defendant has standing on this. I believe his mother owns the property. I don't believe the Defendant does." (38:32). Similarly, the court found that "[t]here's no showing of ownership in the premises or the motor home." (38:41).

Both the state and the circuit court seemed to confuse ownership with standing. Mr. Ionescu clearly has standing to raise a Fourth Amendment issue because he *lives* in the mobile home. Mr. Ionescu's mother, who eventually gave consent to search the mobile home, told the police that Mr. Ionescu lived in the mobile home. (38:15). Officer Ament and the state both acknowledged multiple times that Mr. Ionescu lives at the address in question. (38:11).

Because he lived in the mobile home, the factors weigh in favor of a reasonable expectation of privacy. Mr. Ionescu had a property interest in the premises, was lawfully on the premises, and put the property to some private use by living at the premises. Moreover, his claim of privacy is consistent with historical notions of privacy. At the "very core [of the Fourth Amendment] stands the right of a person to retreat into his or her own home and there be free from unreasonable governmental intrusion." ***Dumstrey***, 366 Wis. 2d 64, ¶ 29 (*citing* ***Jardines***, 569 U.S. at 6). Therefore, Mr. Ionescu's standing to challenge the police entry into the curtilage of his home with trained police dogs should not be in question.

B. The mobile home parked in the curtilage is protected by the Fourth Amendment and cannot be searched by a trained police dog.

Combining ***Carney***, ***Jardines***, and ***Collins***, it is clear that even when supported by probable cause, the warrantless search of a mobile home is not allowed if the mobile home is parked within the curtilage of a stationary residence.

In ***Collins***, the United States Supreme Court rejected the state's request for a bright line rule limiting Fourth Amendment protection to "a fixed, enclosed structure inside the curtilage like a garage." ***Collins***, 138 S. Ct. at 1674. The Court held that such a rule:

> [W]ould grant constitutional rights to those persons with the financial means to afford residences with garages in which to store their vehicles but deprive those persons without such resources of any individualized consideration as to whether the areas in which they store their vehicles qualify as curtilage. *See* ***United States v. Ross***, 456 U. S. 798, 822 (1982) ("[T]he most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion").

Collins v. Virginia, 138 S. Ct. at 1675.

Thus, under ***Collins***, the mobile home in which Mr. Ionescu resided cannot be said to be outside the curtilage simply because it was not in an enclosed area.

1. The mobile home was parked in the curtilage.

The location of the mobile home matters for the purpose of determining whether the dog sniff of the mobile home was prohibited by ***Jardines***. The limits of a home's curtilage are tested using the following formulation:

> [T]he 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.

Martwick, 231 Wis. 2d 801, ¶ 30 (*citing* ***United States v. Dunn***, 480 U.S. 294, 301 (1987)).

The first factor is the proximity to the home of the area claimed to be curtilage. The area claimed to be curtilage is the mobile home. The circuit court found that the mobile home was "parked next to the driveway" of the Ionescu home. (38:38). Officer Ament testified that he could not see the front door of the Ionescu house, nor could he see the mobile home, as he entered the Ionescu property from the rear. (38:23). Before he rounded the corner of the house, he could see either the front or back edge of the mobile home, which was "about adjacent with the edge of the house." (38:24). The mobile home was perpendicular to the driveway and directly in front of the residence in a paved area resembling a parking stall. (38:12). Thus, the mobile home was parked parallel to the house, and its door was either facing the house or facing the street, depending on which way the mobile home was facing. Officer Ament testified that when he took the hard left following the track, he was in the front yard about "halfway from the front of the house to the street." (38:12). Depending on the size of the mobile home in relation to the size of the front yard—as well as Officer Ament's estimation—it seems the mobile home was parked directly in front of the house and in very close proximity to it.

The second factor is whether the area is included within an enclosure surrounding the home. There does not seem to be an enclosure surrounding the house or the mobile home, as officers were able to

enter it without scaling a fence. Moreover, fences do not seem to be common in the area, as law enforcement officers were able to enter between 10-12 backyards in the surrounding area. (38:23).

Third, the court must examine the nature of the uses to which the area is put. Officer Ament testified that Mr. Ionescu lived in the mobile home. (38:15).

The fourth factor examines the steps taken by the resident to protect the area from observation by people passing by. The area in question is the mobile home, which is enclosed and has a front door with a lock on it. Officer Ament approached that door with Condor and officers knocked on the door. (38:13). It is not clear whether the mobile home has windows. When asked whether police were able to look inside, Officer Ament testified that "police walked around it" but did not say they were able to see inside. (38:22). Thus, the interior of the mobile home itself does not appear to have been readily visible from outside the home.

Given the mobile home's proximate location to the house, the fact that Mr. Ionescu lived in the mobile home, and the apparent inability to view the interior of the mobile home from the street, the mobile home and the area in which it is parked should be considered to be safely within the curtilage of the house.

2. The mobile home could not be searched without a warrant.

In the present case, the officers entered the Ionescu property through the backyard. They walked near the property line separating the Ionescu property from that of their neighbors, and they eventually walked across the Ionescu front yard—about halfway between the street and the house—where Condor alerted at the mobile home door. (38:13). This is exactly the kind of warrantless conduct prohibited by ***Jardines***, which held that "[t]he government's use of trained police dogs to investigate the home and its immediate surroundings is a 'search' within the meaning of the Fourth Amendment." ***Jardines***, 569 U.S. at 11-12. Moreover, the automobile exception does not permit an officer to enter a home's curtilage in order to search a vehicle therein. ***Collins***, 138 S. Ct. at 1675.

The officers did not have an express or implied license to enter these areas of the Ionescu property. Police entered this area, accompanied by a trained police dog, without the prior consent of Mr. Ionescu or his parents. They then entered the curtilage with the trained police dog and learned that the defendant was in the mobile home and that he lived on the property. "That the officers learned what they learned only by physically intruding on [the defendant's] property to gather evidence is enough to establish that a search occurred." ***Jardines***, 569 U.S. at 11. Because the evidence has been come at by exploitation of that illegality, it should be suppressed.

Wong Sun v. United States, 371 U.S. 471, 488 (1963); *see also* ***Mapp v. Ohio***, 367 U.S. 643, 655 (1961).

C. There were no exigent circumstances that would have justified the warrantless police action.

There are four well-recognized categories of exigent circumstances that may justify a warrantless search by police: 1) hot pursuit of a suspect, 2) a threat to the safety of a suspect or others, 3) a risk that evidence will be destroyed, and 4) a likelihood that the suspect will flee. ***State v. Richter***, 2000 WI 58, ¶ 29, 235 Wis. 2d 524, 612 N.W.2d 29. Categories one and three were addressed in the motion hearing on this case. Categories two and four were not argued by the state.

1. The police action was not hot pursuit.

Hot pursuit requires a showing of immediate or continuous pursuit of a suspect from the scene of a crime—though it does not require that "the officer himself personally observe the crime or the fleeing suspect." ***Id***. at ¶¶ 32-33. In ***Richter***, the officer arrived on the scene shortly after a reported burglary and spoke to the victim, who said she had seen the burglar flee her trailer home on lot 438 and enter a specific trailer on lot 439. ***Id***. at ¶¶ 2-3. Although the officer did not observe the fleeing suspect, an eyewitness was able to tell the officer the current

location of the suspect. ***Id***. The court upheld a warrantless search under the hot pursuit doctrine.

In the present case, the circuit court did not make a specific determination that the police action constituted "hot pursuit," though it did find that "this is not a pursuit that appears to have been taking place many hours later." (38:38-39). Based on the facts, however, police were not engaged in a hot pursuit. Here, the homeowner witnessed the crime, but he was only able to tell the police in which direction the suspect had fled. (38:6). The police, with the assistance of Condor, tracked the suspect's path through a dozen backyards. (38:38). Unlike in ***Richter***—where the eyewitnesses were able to point directly to the lot and trailer that the suspect entered—this case involves an invisible track that was approximately 2000 feet long. (*Id*. at 23). In addition to the 5 to 10 minutes it took the police to arrive after the incident, the tracking exercise took 25 to 30 minutes to complete. (*Id*. at 27). Therefore, the officers arrived at Mr. Ionescu's trailer 30 to 40 minutes after the reported burglary. Given the length of the track and the time it took the officers to arrive, they traveled at a speed of approximately 0.75 miles per hour. At no point did the police see him or accelerate their tracking in order to catch up to him, so there was no immediacy to the tracking.

2. Mr. Ionescu did not present a threat to safety.

There is no evidence on the record that officers considered Mr. Ionescu a threat to public safety. He was not armed during the incident, and he fled after being confronted by the homeowner. Any concern for the public's safety did not establish exigent circumstances.

3. There was no exigency created by the possible destruction of evidence.

At the motion hearing, the state argued that the search was justified as an exigent circumstance in order to prevent the destruction of evidence. (38:32). The test for whether an exigency related to the destruction of evidence exists is an objective one: whether a police officer, under the facts as they were known at the time, would reasonably believe that delay in procuring a search warrant would risk destruction of evidence. ***State v. Parisi***, 2014 WI App 129, ¶ 9, 359 Wis. 2d 255, 261, 857 N.W.2d 472, 475 (*citing* ***State v. Hughes***, 2000 WI 24, ¶ 24, 233 Wis. 2d 280, 607 N.W.2d 621). However, the examples cited by the state referred to evidence outside the mobile home:

> When the sun comes up, the dew's going to go away. We all know that from common sense over time. So, any odors the dog is tracking go. If he doesn't track the dog right then there will be destruction of evidence which is one of the bases for a search done in exigent circumstances.

(38:32).

The circuit court found that exigent circumstances were some kind of factor, but it too referenced only examples outside the mobile home:

> Once the sun comes up—and it's not at all an unusual circumstance where there will be dew, dew on the grass, and anything that may have been out there, there are tracks in the dew and the dew quickly dissipates based upon weather conditions and sun temperature, but nonetheless, it dissipates and it's no longer there.

(38:39).

Despite the court's findings, Officer Ament testified that the footprints in the dew did not go away when the sun came up—though he acknowledged they would eventually go away. (38:26-27).

The police trailed through 10 to 12 backyards before reaching the Ionescu property. Once there, they walked near the property line until they were pulled sharply to the left by Condor. (38:24). Rather than avoiding a Fourth Amendment violation by obtaining a warrant from the edge of the property line, the officers followed Condor to the front door of

the mobile home and conducted a dog sniff of the curtilage of the defendant's home without a warrant in violation of ***Jardines***.

Once they had arrived at the Ionescu property, police had no reason to believe evidence would be destroyed. They were in search of a watch that the homeowner reported missing from his car. As there was no exigent circumstance, the warrantless police entry onto the curtilage of Mr. Ionescu's home with a trained police dog violated his Fourth Amendment protection against an unreasonable search.

4. The risk of flight was minimal and did not present an exigency.

The search of the curtilage ended when Condor sat at the door of the mobile home and alerted, letting Officer Ament know that "he thinks that the person is in [the mobile home]." (38:13). The mobile home was not running, and the lights inside the mobile home were off. (38:22). The police arrived at the mobile home 30 to 40 minutes after the reported burglary. Clearly, the scene appeared to be static. The officers would not have risked the suspect's flight by securing the scene from the street while they sought a warrant. There was no exigency created by potential risk of flight, and there is no testimony on the record that law enforcement was concerned about the risk of flight.

CONCLUSION

For the reasons stated, Mr. Ionescu respectfully requests that this court vacate the judgment of conviction and remand this case to the circuit court with instructions to grant the defendant's motion to suppress all evidence that derived from the violation of ***Jardines*** and to dismiss the case for lack of evidence.

Dated this 28th day of December, 2018.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,830 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 28th day of December, 2018.

Signed:

JORGE R. FRAGOSO
Assistant State Public Defender