NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1500-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RAYMOND INGRAM,
a/k/a MICHAEL JONES,

Defendant-Appellant.

APPROVED FOR PUBLICATION
February 13, 2023
APPELLATE DIVISION

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Argued December 6, 2022 – Decided February 13, 2023

Before Judges Gilson, Gummer, and Paganelli.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Indictment No. 19-01-0028.

Scott Michael Welfel, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Simon Wiener, Assistant Deputy Public Defender, of counsel and on the briefs).

Peter William Rhinelander, Assistant Prosecutor, argued the cause for respondent (Angelo J. Onofri, Mercer County Prosecutor, attorney; Laura Sunyak, Assistant Prosecutor, of counsel and on the brief).

The opinion of the court was delivered by

GILSON, J.A.D.

We consider whether a police officer, who walked onto the driveway of a home without permission or a warrant, was lawfully there when he observed illegal narcotics in a hole in the home's front porch. Because the driveway was part of the home's curtilage, we hold that the officer conducted an unlawful search and his subsequent observation of contraband in the hole in the porch did not satisfy the plain-view exception. Accordingly, we reverse the trial court's denial of defendant's motion to suppress the seized contraband.

I.

The facts were developed at an evidentiary hearing on defendant's motion to suppress the seized physical evidence. The hearing took place on August 14, 2020, and one witness testified: Trenton Police Officer Jonathan Cincilla.

Cincilla testified that on June 15, 2018, he and his partner, Detective Jeffrey Donaire, were on patrol in Trenton in an unmarked police car. At approximately 7:45 p.m., they were driving on Christoph Avenue and saw a man, later identified as defendant Raymond Ingram, standing by the front porch of 27 Christoph Avenue.

Cincilla stated that 27 Christoph Avenue was a duplex, a two-family home. He described the house as "abandoned," explaining that the "exterior was

in disrepair, the front porch was dilapidated, . . . [t]he lawn was overgrown, there were no lights on, [and] windows were broken."

Immediately adjacent to the house was a grassy area, which Cincilla stated "could have been utilized as a driveway at one time because there was a garage in the rear, like directly behind it." During his testimony, Cincilla was shown a photograph of 27 Christoph Avenue, which was marked into evidence. Referencing the photograph, Cincilla explained that defendant was standing on a section of concrete that was part of the driveway and defendant was right next to the front porch of the home. Cincilla also explained that defendant was alone and Cincilla did not see other people at or near the house.

When Cincilla observed defendant from the patrol car, defendant was looking down at a cigarette box he was holding. As Cincilla drove closer, he also saw a glass vial with "a yellow tinted liquid in it." The vial was on the edge of the porch "directly next to" defendant. Cincilla believed the liquid in the vial was phencyclidine (PCP), explaining that he had seen PCP many times as part of his duties investigating illegal drug activity.

As the police car slowed down near 27 Christoph Avenue, defendant looked up, turned his back to the approaching vehicle, and blocked Cincilla's view of the vial. Defendant then started "moving his arms" and when he turned

back around, Cincilla did not see the cigarette box or vial. Thereafter, defendant began walking away from the porch towards the sidewalk.

The officers then stopped, exited their car, and ordered defendant to stop; and defendant complied. Donaire walked over to defendant, while Cincilla walked to where defendant had been standing on the driveway, near the porch. Using the photograph, Cincilla explained that he had walked approximately five steps off the sidewalk and stood on a section of the concrete that was part of the driveway. From that vantage point on the driveway, Cincilla saw a "softball" size hole "on the top of the porch like right where the edge was."

Cincilla went on to explain that the hole was directly in his line of sight, and inside the hole he saw the cigarette box and glass vial. Cincilla then reached into the hole and retrieved the items. After Cincilla seized the box and vial, he told Donaire what he had found, and Donaire arrested defendant. Defendant was searched and found to be in possession of $441 in cash.

On August 27, 2020, on the record, the trial court made its findings of facts and conclusions of law concerning the motion to suppress. The court found Cincilla's testimony credible. Relying on Cincilla's testimony and the photograph of 27 Christoph Avenue, the court found that (1) when Cincilla first saw defendant, defendant was standing in the driveway next to the front porch

of 27 Christoph Avenue; (2) Cincilla saw a glass vial with a yellow-tinted liquid on the porch next to defendant; (3) based on his training and experience, Cincilla believed that the vial contained PCP; (4) after stopping and exiting the car, Cincilla and Donaire ordered defendant to stop as he was walking away from the porch; and (5) Cincilla then walked onto the driveway, and while standing on the driveway Cincilla saw the vial and cigarette box in a hole in the porch. The trial court concluded: "Based on Cincilla's testimony and the photograph, this Court finds that when Cincilla was standing on the side of the porch and peered into the hole, he was standing in a section of the driveway."

Regarding 27 Christoph Avenue, the trial court found that it was "a two-family dwelling [that] Cincilla referenced as a duplex" and the porch was shared by both residences. The court also found that "the hole in the porch was located within a few feet of the sidewalk, and anyone walking by the residence could view that area of the porch. The area is completely unobstructed and largely accessible to the public."

The court also found, however, that the State had not proven that 27 Christoph Avenue was abandoned. While acknowledging Cincilla's description of the house as dilapidated, the court found that "Cincilla essentially described a neglected home that was greatly in need of repair, but his observations of the

property were limited," and the State did not "provide any tax or utility records" showing the property was abandoned.

The trial court also found that the State had failed to show that defendant had been trespassing on the property. The court acknowledged Cincilla's testimony that defendant had given him a different address than 27 Christoph Avenue as his residence, but the court found that the State had failed to show that defendant's "presence at the home was unlawful or unwelcome."

Having found that the State had failed to establish that the home was abandoned or that defendant was trespassing, the trial court ruled that defendant had standing to make the motion to suppress the evidence seized from the porch. In that regard, the trial court cited and relied on New Jersey's automatic standing rule, under which a defendant is presumed to have a proprietary interest in either the place searched or the property seized, if the State fails to establish that the property was abandoned or defendant was a trespasser. See State v. Randolph, 228 N.J. 566, 571-72 (2017).

Because the trial court had found that Cincilla had conducted a search without a warrant, the court went on to analyze whether the search was lawful under the plain-view doctrine. Relying on State v. Johnson, 171 N.J. 192 (2002), the trial court reasoned that Cincilla had been in the viewing area lawfully

because defendant had a diminished privacy expectation in the driveway. The trial court also found that Cincilla had probable cause to believe that the vial on the porch contained PCP. Accordingly, the trial court denied defendant's motion to suppress the seized PCP, under the plain-view doctrine.

After his arrest, defendant was indicted for four crimes: third-degree possession of PCP, N.J.S.A. 2C:35-10(a)(1) (count one); first-degree possession of PCP with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and (b)(6) (count two); third-degree possession of PCP with intent to distribute near school property, N.J.S.A. 2C:35-7(a), and N.J.S.A. 2C:35-5(a)(1) and (b)(6) (count three); and second-degree hindering apprehension, N.J.S.A. 2C:29-3(b)(3) (count four).

Following the denial of his motion to suppress, defendant pled guilty to count one, possession of PCP. He was sentenced to five years in prison with two years of parole ineligibility. He now appeals, contending that the trial court erred in denying his motion to suppress and his conviction and sentence should be vacated.

II.

On appeal, defendant presents the following arguments for our consideration:

> POINT I – THE TRIAL COURT'S DENIAL OF MR. INGRAM'S MOTION TO SUPPRESS SHOULD BE

REVERSED BECAUSE THE COURT IMPROPERLY APPLIED THE PLAIN-VIEW EXCEPTION TO A WARRANTLESS SEARCH OF CURTILAGE, CONTRARY TO CURRENT UNITED STATES SUPREME COURT PRECEDENT.

A. The Outer Side of 27 Christoph Avenue's Porch Was Constitutionally Protected Curtilage, Contrary to the Trial Court's Reasoning.

1. The Fourth Amendment's Protections Extend to All of the Curtilage.

2. Officer Cincilla Looked for Evidence in a Constitutionally Protected Area through an Unlicensed Physical Incursion, Rendering the Warrantless Search Unlawful.

3. The New Jersey Cases upon Which the Trial Court Relied Are Inapplicable Because They Apply a Bygone Analysis of Curtilage Searches.

B. Because Officer Cincilla Searched Protected Curtilage without a Warrant, the Search Cannot Be Justified under the Plain-View Exception.

1. A Warrantless Officer May Not Trespass on Curtilage and Then Rely on the Plain-View Exception Once Unlawfully Inside.

2. Because Officer Cincilla Did Not Have a Lawful Right of Access to 27 Christoph Avenue's Driveway, the Plain-View Exception Does Not Redeem His Otherwise Unlawful Search.

The trial court found that Cincilla was standing on the driveway when he saw the vial and cigarette box in a hole in the porch of the home. Both the

driveway and porch are curtilage of the home, and those areas implicate the same constitutional protections as the rest of the house. See Collins v. Virginia, 584 U.S. ___, 138 S. Ct. 1663 (2018); Florida v. Jardines, 569 U.S. 1 (2013). Therefore, Cincilla needed either a warrant, permission, or license to walk onto the driveway. Because he had none, he was not lawfully in the viewing area when he saw and seized the vial and cigarette box. Thus, his search and seizure were unlawful. We, therefore, hold that the trial court should have granted the motion to suppress, and we vacate defendant's guilty plea and sentence.

A. Our Standard of Review.

An appellate court's "review of a motion judge's factual findings in a suppression hearing is highly deferential." State v. Gonzales, 227 N.J. 77, 101 (2016). Appellate courts should defer to the trial court's factual findings unless they are "so clearly mistaken 'that the interests of justice demand intervention and correction.'" State v. Gamble, 218 N.J. 412, 425 (2014) (quoting State v. Elders, 192 N.J. 224, 244 (2007)). "A trial court's interpretation of the law, however, and the consequences that flow from established facts are not entitled to special deference." State v. Hubbard, 222 N.J. 249, 263 (2015). In reviewing legal issues, "[a] trial court's legal conclusions are reviewed de novo." Ibid. Similarly, where "the trial judge misconceives the applicable law or misapplies

it . . . the exercise of legal discretion lacks a foundation and becomes an arbitrary act." Summit Plaza Assocs. v. Kolta, 462 N.J. Super. 401, 409 (App. Div. 2020) (alteration in original) (quoting State v. Steele, 92 N.J. Super. 498, 507 (App. Div. 1966)).

B. Defendant's Fourth Amendment Rights.

The Fourth Amendment of the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . and no warrant shall issue, but upon probable cause." U.S. Const. amend. IV. Article I, Paragraph 7 of the New Jersey Constitution contains nearly identical language guaranteeing the same right. See N.J. Const. art. I, ¶ 7. "The Fourth Amendment, as interpreted by the United States Supreme Court, sets forth the minimum guarantees. No state can reduce those liberty rights, but more expansive constitutional protections may be afforded under state law . . . ." State v. Caronna, 469 N.J. Super. 462, 481 (App. Div. 2021). Accordingly, "[t]he Federal Constitution provides the floor for constitutional protections, and [in certain circumstances New Jersey's] Constitution affords greater protection for individual rights than its federal counterpart." State v. Melvin, 248 N.J. 321, 347 (2021).

1. Defendant's Protected Interest in 27 Christoph Avenue.

"[U]nder Article I, Paragraph 7 of the New Jersey Constitution, 'a criminal defendant is entitled to bring a motion to suppress evidence obtained in an unlawful search and seizure if he has a proprietary, possessory[,] or participatory interest in either the place searched or the property seized.'" Randolph, 228 N.J. at 581 (quoting State v. Alston, 88 N.J. 211, 228 (1981)). "Whenever a defendant 'is charged with committing a possessory drug offense . . . standing is automatic, unless the State can show that the property was abandoned or the accused was a trespasser.'" State v. Shaw, 237 N.J. 588, 617 (2019) (quoting Randolph, 228 N.J. at 571-72). In granting defendants automatic standing, New Jersey has accorded greater protection than provided under the federal Constitution. Randolph, 228 N.J. at 582.

"'[T]he State bears the burden of showing that defendant has no proprietary, possessory, or participatory interest' in the property searched." Shaw, 237 N.J. at 617 (alteration in original) (quoting Randolph, 228 N.J. at 582). Moreover, a defendant does not have any obligation to show that he had a reasonable expectation of privacy in the area searched. Ibid.; Randolph, 228 N.J. at 583.

The trial court found that the State had failed to prove that 27 Christoph Avenue was abandoned. The court also found that the State had failed to show that defendant was trespassing on the property. Both those findings are supported by substantial credible evidence. Consequently, defendant had standing to assert Fourth Amendment rights concerning any search or seizure at 27 Christoph Avenue.

We emphasize defendant's automatic standing because an intelligent reader, who is not familiar with the law, might question how defendant is accorded constitutional rights at a property that some people might consider abandoned or at least not in use as a residence. New Jersey's automatic standing rule, however, places the burden on the State to protect all citizens' right to be free from unwarranted searches and seizures. See Shaw, 237 N.J. at 616 (explaining that one of the interests protected by the automatic standing rule "is to increase privacy protections for our citizens"). Accordingly, when the State fails to prove that a property is abandoned or a defendant is trespassing, a defendant has the same constitutional protections as a resident or an invited guest at the home. Randolph, 228 N.J. at 588.

2. The Protection Afforded a Home and its Curtilage.

"[W]hen it comes to the Fourth Amendment, the home is first among equals." Jardines, 569 U.S. at 6. Accordingly, constitutional protection against unlawful searches and seizures applies with maximum force to governmental intrusions into the home. Ibid.; Collins, 138 S. Ct. at 1670. The United States Supreme Court has repeatedly held that a home's curtilage, the area immediately surrounding and associated with the home, is protected by the Fourth Amendment, like the home itself. Collins, 138 S. Ct. at 1670; Jardines, 569 U.S. at 6; Oliver v. United States, 466 U.S. 170, 180 (1984). "The protection afforded the curtilage is essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened." California v. Ciraolo, 476 U.S. 207, 212-13 (1986). "When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred." Collins, 138 S. Ct. at 1670 (citing Jardines, 569 U.S. at 11).

In Jardines, the Court held that the "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." 569 U.S. at 11-12. The Court

acknowledged that, in the past, it had considered whether an individual had a "reasonable expectation of privacy," but clarified that a person's privacy expectation "'has been added to, not substituted for,' the traditional property-based understanding of the Fourth Amendment." Id. at 11 (quoting United States v. Jones, 565 U.S. 400, 407 (2012)). The Court went on to explain that it was not necessary to consider whether a defendant had a reasonable expectation of privacy because "the Fourth Amendment's property-rights baseline . . . keeps easy cases easy." Ibid. "That the officers learned what they learned only by physically intruding on [defendant's] property to gather evidence is enough to establish that a search occurred." Ibid.

After holding that the front porch was afforded full Fourth Amendment protection, the Court in Jardines analyzed whether the police investigation "was accomplished through an unlicensed physical intrusion." Id. at 7. The Court recognized that there is an "implied license" to approach a home by the front path, knock, wait to be received, and then leave, "precisely because that is 'no more than any private citizen might do.'" Id. at 8 (quoting Kentucky v. King, 563 U.S. 452, 469 (2011)). Moreover, the Court reiterated that "while law enforcement 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 (quoting Ciraolo, 476 U.S. at 213).

In addition, the Jardines Court explained that "[t]he scope of a license – express or implied – is limited not only to a particular area but also to a specific purpose." Id. at 9. An officer may have permission to knock on the front door, but the scope of that license does not include an invitation to conduct a search. Ibid. Consequently, in Jardines, the Court found that police officers had exceeded the scope of their license when they went onto defendant's front porch with a trained police dog to conduct a search. Ibid.

In Collins, the Supreme Court further clarified the protection of a home's curtilage. In that case, the police were looking for a motorcycle that had twice eluded officers. 138 S. Ct. at 1668. After investigating, the police believed the motorcycle might be at a home where defendant was staying. An officer went to the home and walked up a driveway that ran alongside the house. Id. at 1670. When the officer got to the top portion of the driveway, he lifted a tarp and found the motorcycle. The officer then ran a search on the license plate and vehicle identification numbers, which revealed that the motorcycle had been stolen. After he took a photograph of the motorcycle, the officer put the tarp back on

and left the property to wait on the street. When defendant returned home, the officer arrested him.

The Collins Court held that the driveway was curtilage because it constituted "an area adjacent to the home and 'to which the activity of the home life extends.'" Id. at 1671 (quoting Jardines, 569 U.S. at 7). The Court in Collins concluded that "[i]n physically intruding on the curtilage of [defendant's] home to search the motorcycle, [the officer] not only invaded [defendant's] Fourth Amendment interest in the item searched, i.e., the motorcycle, but also invaded [defendant's] Fourth Amendment interest in the curtilage of his home." Ibid.

Jardines and Collins clarify the protection associated with curtilage. Those cases explain that curtilage includes a front porch and a driveway running along the home. Jardines, 569 U.S. at 6; Collins, 138 S. Ct. at 1671. The cases also clarify that no privacy expectation analysis needs to be applied to curtilage. Jardines, 569 U.S. at 11. Therefore, when a government official steps onto curtilage of a home without permission, an implied license, or a warrant, the official has begun to conduct a search and the search will be lawful only if an exception to the warrant requirement applies.

C. The Application of the Law to the Search Conducted in this Case.

Application of the principles governing searches and seizures to the material facts of this case makes the outcome straightforward. Because the State failed to show 27 Christoph Avenue was abandoned or that defendant was a trespasser, defendant automatically had constitutionally protected rights in the house. When Cincilla stepped off the sidewalk and walked onto the driveway, he was in the house's curtilage without permission, an implied license, or a warrant. Therefore, Cincilla's search and seizure of the vial and cigarette box were lawful only if they fell within one of the exceptions to the warrant requirement.

Here, the State relies on the plain-view exception to the warrant requirement. To establish a permissible warrantless search under the plain-view doctrine, the State must prove two factors: (1) "the officer must lawfully be in the area where he observed and seized the incriminating item or contraband"; and (2) "it must be immediately apparent that the seized item is evidence of a crime." Gonzales, 227 N.J. at 101. In this case, the State has failed to establish the first factor.

The trial court correctly concluded that the driveway was part of the curtilage of the home. We part company with the trial court, however, in its

additional legal conclusion that defendant had a diminished privacy expectation on the driveway. The trial court's latter conclusion was inconsistent with the principles and holdings set forth by the United States Supreme Court in Jardines and Collins. Applying the principles of Jardines and Collins, Cincilla was not lawfully in the area when he looked into the hole in the porch and saw and then seized the glass vial and cigarette box.

The following example helps illustrate our ruling. Suppose Cincilla had seen defendant holding the vial of PCP through the window of the home. Suppose further that Cincilla then observed defendant place the vial down somewhere out of view, walk outside, and leave the home. Cincilla would not have been entitled to go up to the home and reach through the window or otherwise enter the home to conduct a search without a warrant. Likewise, Cincilla was not entitled to enter the driveway, the home's curtilage, to conduct a warrantless search.

Our holding, moreover, is consistent with the material facts found by the trial court. Although the trial court noted that the hole in the porch could be observed from the sidewalk, Cincilla never testified that he had observed the hole from the sidewalk. Instead, he testified he had walked five steps onto the driveway and then looked into the hole in the porch. Consequently, Cincilla's

search and seizure were conducted from the curtilage of the home. Moreover, there was no evidence that Cincilla was using an implied license to walk to a door to make an inquiry. Instead, it was undisputed that Cincilla walked onto the driveway to look for the vial, that is, to conduct a search.

In making this holding, we do not say that a home's driveway will always be considered part of the curtilage. We recognize that there may be instances where a driveway is far enough away from the home and its immediate surroundings to not qualify as curtilage. Whether a court should apply an expectation of privacy analysis in such scenarios is a question for another day. Here, however, the driveway Cincilla entered immediately abuts 27 Christoph Avenue. This is exactly like the driveway addressed in Collins, and so our outcome is dictated by that case. See 138 S. Ct. at 1670-71.

In making our holding, we also clarify that existing New Jersey precedent must be interpreted and applied in the framework established by the United States Supreme Court in Jardines and Collins. The trial court here relied on a New Jersey Supreme Court case, State v. Johnson, 171 N.J. 192 (2002), and two Appellate Division cases: State v. Ford, 278 N.J. Super. 351 (App. Div. 1995), and State v. Wilson, 442 N.J. Super. 224 (App. Div. 2015), rev'd on other grounds, 227 N.J. 534 (2017). The trial court used those cases to reason that

defendant had a diminished privacy expectation in the driveway and the front porch of 27 Christoph Avenue. To the extent that Johnson, Ford, or Wilson can be read to support an argument concerning diminished privacy expectations, those portions of the cases can no longer be applied under governing Fourth Amendment law. New Jersey courts are bound to follow United States Supreme Court decisions establishing constitutional protections afforded under the Fourth Amendment. See State v. Adkins, 221 N.J. 300, 313 (2015). The United States Supreme Court has rejected the view that curtilage is subject to a diminished Fourth Amendment protection because the area is semi-private or because it carries a diminished privacy expectation. Consequently, in analyzing governmental searches and seizures, New Jersey courts must apply the principles and holdings set forth in Jardines and Collins, and to the extent that existing New Jersey precedent conflicts with those holdings, the United States Supreme Court cases govern.

D. Summary.

Defendant had standing to challenge the search and seizure that occurred at 27 Christoph Avenue. When Cincilla walked onto the driveway of 27 Christoph Avenue, he was not lawfully there because he did not have a warrant, permission, or an implied license. Because the driveway was part of the home's

curtilage, Cincilla's search and seizure of the glass vial and cigarette box did not satisfy the first prong of the plain-view exception. Moreover, without that evidence, defendant's arrest was not based on probable cause and the search incident to his arrest was not lawful. Accordingly, we reverse the trial court's denial of defendant's motion to suppress and remand with directions that the trial court enter an order suppressing the seized evidence, which includes the vial, cigarette box, and the $441. We also vacate defendant's guilty plea and sentence.

Reversed and remanded. We do not retain jurisdiction.