



## DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 364

April 2, 2013

**WARRANTLESS PRESENCE DRUG-SNIFFING DOG ON A  
HOMEOWNER'S PORCH IS A SEARCH WITHIN THE  
MEANING OF THE FOURTH AMENDMENT**

**Reference:**

Florida

United States Supreme Court

569 U.S. \_\_\_\_ (2013)

March 26, 2013

v.

Joelis Jardines

**FACTS:**

Police detectives received an unverified tip that marijuana was being grown in JARDINES' residence. Police took a drug-sniffing dog to JARDINES front porch, where the dog gave a positive alert for narcotics. Based on the alert, the officers obtained a warrant for a search, which resulted in the seizure of marijuana plants; JARDINES was charged with trafficking in cannabis.

JARDINES moved to suppress the marijuana plants on the ground that the canine investigation was an unreasonable search.

**ISSUE:**

Is the use of a drug sniffing dog on a homeowner's porch to investigate the contents of the home a "search" within the meaning of the Fourth Amendment?

**Held.** Yes - the area "immediately surrounding and associated with the home" is called the curtilage and is part of the home itself for Fourth Amendment purposes.

**REASONING:**

1. The use of the trained narcotics dog to investigate Jardine's home was a search unsupported by probable cause, rendering invalid the warrant based upon information gathered in that search.

2. When "the Government obtains information by physically intruding" on persons, houses, papers, or effects, "a search has undoubtedly occurred." (Citing U.S. v. Jones - see bulletin no. 358 - where warrantless placement of GPS on vehicle violates Fourth Amendment.)

3. The officers were gathering information in an area belonging to JARDINES and immediately surrounding his house - in the curtilage of the house, which enjoys the same protection as part of the home itself.

4. 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 call the police.

**NOTES**

Some of the cases cited by the court in this case include: Kentucky v. King, bulletin no. 354 - a police officer not armed with a warrant may approach a home in hopes of speaking to its occupants, because that is no more than any private citizen might do; Oliver v. U.S., bulletin no. 82 - "open field" exception to warrant requirement; U.S. v. Place, bulletin no. 75 - sniff test of luggage by dog in public place (airport) does not constitute search; Illinois v. Caballes, bulletin no. 292 - sniff test by dog of legally stopped vehicle does not violate Fourth Amendment; and Kyllo v. U.S., bulletin no. 250 - warrantless use of thermal-imaging device aimed at private residence from a public street constitutes a search. The U.S. Supreme Court has also held (see Florida v. Harris, bulletin no. 363) that sniff test based in residual odor constitutes probable cause to search.

**NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:**

File Legal Bulletin No. 364 numerically under Section R of the manual.