No. _____

In The
Supreme Court of the United States

STATE OF MINNESOTA,

Petitioner,

v.

QUENTIN TODD CHUTE,

Respondent.

On Petition For A Writ Of Certiorari To The Minnesota Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

After *Florida v. Jardines*, 569 U.S. 1 (2013), and *Collins v. Virginia*, 138 S.Ct. 1663 (2018), it is unclear – and there is a split in authority on – whether the Fourth Amendment prohibits police officers from engaging in knock-and-talks to gather evidence, and if officers are allowed to stop and look at evidence of a crime that is nearby and in plain view when they approach a house.

Is an officer's subjective intent still irrelevant to the lawfulness of entry on to impliedly open curtilage?

Once on curtilage can an officer inspect, without touching, what is in plain view?

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Petitioner State of Minnesota respectfully petitions for a writ of certiorari to review the judgment of the Minnesota Supreme Court.

OPINIONS BELOW

The opinion of the Minnesota Supreme Court is reported at 908 N.W.2d 578 (Minn. 2018). App. 1. The opinion of the Minnesota Court of Appeals is reported at 887 N.W.2d 834 (Minn. Ct. App. 2016). App. 29. The written decision of the District Court of Ramsey County addressing the relevant issue was not reported, but is reprinted at App. 50.

JURISDICTION

The Minnesota Supreme Court entered judgment on April 6, 2018. App. 58. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment to the United States Constitution reads:

> 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.

Minnesota Statutes section 609.53, subdivision 1, and section 609.52, subdivision 3(3)(a) read:

> Except as otherwise provided in section 609.526, any person who receives, possesses, transfers, buys or conceals any stolen property or property obtained by robbery, knowing or having reason to know the property was stolen or obtained by robbery, may be sentenced in accordance with the provisions of section 609.52, subdivision 3.
>
> Whoever commits theft may be sentenced . . . to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both, if . . . the value of the property or services stolen is more than $1,000 but not more than $5,000[.]

STATEMENT OF THE CASE

I. Factual history

In July 2011, B.F.'s Jayco pop-up camper was stolen from outside his apartment. App. 2-3, 50. Three months later, as B.F. was driving his taxicab on a public street, he spotted his stolen camper parked on the driveway of a house. App. 3, 50. B.F. recognized his camper because he could see from the road the distinctive bolts he had personally installed. App. 3, 51, 55.

B.F. made a U-turn and drove past the house a second time; he confirmed that it was his stolen camper and called 911. App. 3, 50-51.

When Maplewood Police Officer Tommy Kong responded to the scene, he could see – from the road – the camper sitting on a driveway. App. 4, 51. Although Officer Kong was not personally familiar with the distinctive bolts on the camper, B.F. informed Officer Kong that it was his stolen camper. App. 4, 51. Officer Kong verified – while still on the street – that the plainly visible camper matched the description of the stolen camper in the police report that B.F. had made three months prior. App. 4, 51.

B.F. and Officer Kong then walked down the driveway towards the house and where B.F.'s stolen camper was parked. App. 4, 51-52. They could see, standing outside of the camper, that its license plate and vehicle identification number (VIN) had been removed. App. 4, 52. Officer Kong called Jayco and learned that a partial VIN was stamped on the outside of the camper's metal frame; while standing on the driveway, he looked at this partial VIN, and saw that it was consistent with that of B.F.'s stolen camper. App. 4, 52. The camper was significantly damaged, and its door was open. *See* App. 54-55. B.F and Officer Kong looked through the open door and saw that the only item of B.F.'s that remained inside was a single kitchen dish. *See* App. 52.

Officer Kong and B.F. walked on the driveway towards the back of the house to knock on the door. App. 4. But when Officer Kong heard voices coming from the

detached garage at the end of the driveway, he knocked there instead. App. 4, 52. Respondent Quentin Chute answered the door, identified himself as the homeowner, and claimed to be storing the camper for a friend. App. 4, 53. While speaking with Chute at the door of the garage, B.F. saw that his propane tank (which had previously been mounted to the outside of his camper) was inside the garage. *See* App. 4. Chute then allowed B.F. and Officer Kong to search his garage. App. 4, 53. After finding other items from B.F.'s camper in the garage, Officer Kong asked Chute for permission to search his house; Chute again consented. App. 4, 53. B.F. and Officer Kong found many additional items that had been taken from the camper throughout Chute's house. App. 4-5, 53.

II. Proceedings below

The State charged Chute with possessing stolen property valued at over $1,000. App. 5. Chute moved to suppress "all evidence found by police pursuant to a warrantless search" on his property. App. 5. The District Court of Ramsey County denied the motion, reasoning that Chute's driveway was "impliedly open to the public" because it appeared that "the area in question was regularly used by cars carrying persons seeking a backdoor entrance to the house and garage." App. 5-6, 54. The court held that this gave Officer Kong a lawful right of access to the camper. App. 5, 55. The court specifically concluded that Officer Kong did not search the camper because he could see, in plain view,

while standing on the driveway, the partial VIN that was stamped on the camper. App. 56.

The court further concluded that Officer Kong's actions were proper under this Court's decision in *Florida v. Jardines*, which held that officers' use of a specially trained drug-sniffing dog on a homeowner's porch violated the Fourth Amendment because the implied license of the public to approach a house does not include using trained police dogs "around the home in hopes of discovering incriminating evidence." App. 56 (quoting 569 U.S. 1, 9 (2013)). The court reasoned that Officer Kong's observations were "more akin to the officers in *Jardines* had they been able to clearly smell drugs on a homeowner's porch without the assistance of a drug sniffing dog." App. 56. A jury found Chute guilty of possessing stolen property. App. 6.

Chute appealed. The Minnesota Court of Appeals reversed. App. 6, 48-49. The court first found that "by entering [Chute's] dirt driveway," Officer Kong and B.F. "entered the curtilage" of Chute's house. App. 35. The court then concluded, based on *Jardines*, that Officer Kong "entered the driveway for the purpose of conducting a search" of the stolen camper, and that "police do not have a license to enter the curtilage" for this "improper purpose." App. 6, 36-37, 38, 40. The court further held that, based on Officer Kong's "improper purpose," his presence on the driveway "was not lawful" and the plain-view exception did not justify the "search of the camper." App. 6, 40.

The State then appealed, and the Minnesota Supreme Court granted review. Although a majority of the court also concluded that the part of the driveway on which B.F.'s stolen camper was found constituted curtilage, two of the six justices dissented on this issue. App. 20, 28. The dissent would have held that Officer Kong "lawfully conducted his investigation in 'open fields' and then entered Chute's curtilage with the purpose of seeking him out, as is permitted under *Florida v. Jardines*." App. 27 (citing 569 U.S. at 6).

The majority addressed whether Officer Kong had an implied license to enter the curtilage, and whether he acted "within the scope" of that license. App. 14, 15-16 (citing *Jardines*, 569 U.S. at 8, 9). It pointed out that the circuits are split on whether an officer must first approach the front door of a house under the license to conduct a knock-and-talk, and identified three other "limitations" of this license: a spatial limitation, a purpose limitation, and a temporal limitation. App. 16, 17, 18-19.

The majority concluded that Officer Kong violated these limitations. App. 16. First, it wrote that Officer Kong's "purpose for entering the curtilage was to conduct a search . . . not to question the resident of the house." App. 16 (citing *Jardines*, 569 U.S. at 10). Second, it held that in approaching the camper on the driveway, Officer Kong deviated too greatly from "the normal route . . . that a visitor would reasonably use to access the house or garage." App. 18 (citing *Jardines*, 569 U.S. at 9, 19). Third, it concluded that Officer Kong "violated the time limitations of the implicit license,"

based on the inference that he "spent several minutes" inspecting the camper before continuing to the door. App. 19. Ultimately, the majority held that Officer Kong violated the Fourth Amendment by visually inspecting the stolen camper on the driveway before attempting to contact Chute. App. 19.

REASONS FOR GRANTING THE PETITION

There are two closely related issues here. First, after *Jardines* and *Collins v. Virginia*, 138 S.Ct. 1663 (2018), are police prohibited from engaging in knock-and-talks to gather evidence? Put another way, is subjective intent now determinative when reviewing the actions of an officer who – unaccompanied by a drug-sniffing dog or any other specialized equipment – enters an open-to-the-public pathway to a house?

Second, if an officer's entry onto curtilage to seek information or evidence remains permissible, does the Fourth Amendment prohibit the officer from deviating from the pathway to take time to look at (but not touch) what is in plain view from the pathway?

The Minnesota Supreme Court held that this Court's decision in *Jardines* renders such police conduct unconstitutional. Specifically, the Minnesota Supreme Court concluded that given Officer Kong's subjective intent, his visual inspection of the stolen camper parked on the driveway was unconstitutional. App. 16-17, 19.

As discussed below, there is a split in authority on these two important questions, the answers to which will affect every police force in the country. The law after *Jardines* and *Collins* needs clarification. The issues are squarely presented here as pure legal issues; there are no disputed determinative facts. This Court should grant certiorari and hold that Officer Kong's conduct was constitutional because it was objectively reasonable for him to enter Chute's property to ask about the camper – just as a Girl Scout could enter the property to try to sell cookies – and to stop along the way to visually inspect the in-plain-view camper before talking to the homeowner.

I. Lower courts are confused about whether, under *Jardines*, they must try to determine an officer's specific purpose in approaching a house.

In *Jardines*, this Court addressed a relatively narrow issue: whether "the government's *use of trained police dogs* to investigate a home and its immediate surroundings is a search within the meaning of the Fourth Amendment." 569 U.S. at 11-12 (emphasis added). Because officers used the drug-sniffing dog on a homeowner's porch to search for narcotics that were not plainly visible, this Court held that the officers' behavior was a search. *Id.* at 3-5, 11-12.

Jardines also recognized that the Fourth Amendment allows police to step onto private property – including onto curtilage – to approach a house to try to

seek out the owner. *Id.* at 8 (explaining that an "officer not armed with a warrant may approach a home and knock, precisely because that is 'no more than any private citizen might do' ") (quoting *Kentucky v. King*, 563 U.S. 453, 469 (2011)). This is the implied license that law enforcement has to conduct a knock-and-talk. *See id.*

But courts have struggled to understand the statement in *Jardines* that the scope of this implied license is "limited . . . to a specific purpose" (569 U.S. at 9), and how that squares with this Court's previous precedent. *See, e.g.*, *Whren v. United States*, 517 U.S. 806, 812 (1996) ("Not only have we never held . . . that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment, but we have repeatedly held and asserted to the contrary.").

The majority in *Jardines* acknowledged the principle that the subjective purpose of an officer is irrelevant. 569 U.S. at 10. It then indicated that the relevant inquiry is not what an officer's real reason for entering a property was, but "precisely whether the office's conduct [itself] was an objectively reasonable search." *Id.* It wrote, however, that the answer to this question "depends upon the purpose for which [the officers] entered" the private property, which seems to contradict the subjective-purpose-is-irrelevant principle the majority acknowledged and has repeatedly recognized. *See California v. Ciraolo*, 476 U.S. 207, 212 (1986); *Whren*, 517 U.S. at 812; *Bond v. United States*, 529 U.S. 334, 338 n.2 (2000); *United States v. Knights*, 534 U.S. 112, 122 (2001); *Brigham City v. Stuart*, 547 U.S. 398,

404 (2006); *Ashcroft v. al-Kidd*, 563 U.S 731, 736 (2011).

The dissent in *Jardines* recognized this problem. 569 U.S. at 22 (Alito, J., dissenting). The dissent explained that "police almost always approach homes with the purpose of discovering information[, and t]hat certainly is the objective of a 'knock and talk.'" *Id.* The dissent anticipated that courts would struggle with this purpose limitation, pointing out that there is "no meaningful way" of distinguishing the seemingly permissible "objective purpose" of a knock-and-talk from the apparently unlawful "objective purpose" of gathering evidence when approaching a house. *Id.*

The Minnesota Supreme Court fell victim to this confusion. It focused on Officer Kong's subjective purpose, and concluded that his real purpose in stepping onto the driveway was to "search" the stolen camper. App. 16. But not only did Officer Kong not search the camper (as explained below), his specific purpose in entering the driveway was "irrelevant." *Whren*, 517 U.S. at 812.

Other courts have also read *Jardines* to prohibit police from approaching a house when their subjective purpose is to gather information. For example, the Michigan Supreme Court held that because officers approached a house early in the morning "to obtain information about the marijuana butter they suspected each defendant possessed" – even though they "sought to gather their information by speaking with the homeowners rather than by peering through windows or

rummaging through bushes" – they violated the Fourth Amendment. *People v. Frederick*, 895 N.W.2d 541, 547-48 (Mich. 2017). *See also United States v. Lundin*, 817 F.3d 1151, 1159-60 (9th Cir. 2016) (holding that, because of *Jardines*, "the actual motivation of the officers matters," and that this analysis turns "on an officer's *subjective* intent") (emphasis added).

Other courts have issued conflicting interpretations of *Jardines*. For instance, the Fourth Circuit has distinguished *Jardines* and continued to recognize the principle that officers' "investigatory purpose" when approaching a house does not transform their conduct into a search. *See United States v. Mitchell*, 720 Fed. Appx. 146, 151-52 (4th Cir. 2018) (holding that, because officers' use of their own noses to investigate the source of a marijuana odor outside the front door for "several minutes" was something that any member of the public could do, the officers' sniffs were not a search). This makes sense because, practically speaking, the only purpose an officer has when conducting a knock-and-talk is investigatory. *See Jardines*, 569 U.S. at 9 n.4 (stating the "purpose of discovering information" in the course of conducting a knock-and-talk "does not cause it to violate the Fourth Amendment").

Some dicta in the recent *Collins v. Virginia* decision, however, casts further doubt on the continued legitimacy of the knock-and-talk procedure. *Collins* solely addressed the Fourth Amendment's automobile exception; the knock-and-talk procedure that authorizes police entry onto curtilage was not at issue. *See* 138 S.Ct. at 1670-73. But while concluding that the

automobile exception to the warrant requirement "does not afford the necessary lawful right of access to search a vehicle parked within a home or its curtilage" (*id.* at 1672), this Court also wrote that:

> When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred. *Jardines*, 569 U.S. at 11. Such conduct thus is presumptively unreasonable absent a warrant.

Id. at 1670. Because the only purpose of a knock-and-talk is to gather information, and an officer must enter the curtilage of a house to knock on the door, *Collins* arguably renders all knock-and-talks "presumptively unreasonable absent a warrant." *Id.*

Courts should not be in the business of probing the motive inside an officer's mind; a requirement that courts determine "for what purpose" an officer decides to approach a house is unworkable in practice. *See United States v. Leon*, 468 U.S. 897, 922 n.23 (1984) (stating "we believe that sending state and federal courts on an expedition into the minds of police officers would produce a grave and fruitless misallocation of judicial resources") (internal quotation omitted). While it was easy to conclude in *Jardines* that the officers had no intention of conducting a knock-and-talk – they never knocked on any door, and they never tried to talk to the homeowner (569 U.S. at 3-4, 9 n.4) – and the same is true with *Collins* – because that officer also immediately left the property after searching the motorcycle (138 S.Ct. at 1668) – it is far more difficult to

discern what an officer's "purpose" is in approaching a house when the officer does look for the homeowner while there, like Officer Kong did in this case and as officers typically do when they enter private property.[1]

In concluding that the Minnesota Supreme Court erred, this Court need not overrule *Jardines*; instead, it should clarify that the "purpose" discussion in *Jardines* addressed whether an officer's conduct in using specialized equipment to detect otherwise-undetectable contraband constituted a "search," not whether an officer had the subjective intent to gather evidence when the officer first stepped onto the path to a house.[2] Without such clarification, lower courts will continue to disagree about whether they need to determine what officers were thinking when they entered a driveway, walkway, or other recognized path.

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[1] Another key distinction between this case and *Collins* is that the motorcycle in *Collins* was covered by a tarp that concealed its VIN. 138 S.Ct. at 1668. Here, no precautions had been taken whatsoever to shield the stolen camper from public view. Indeed, not only were the unique bolts fully visible from the street (where its rightful owner saw them), but the partial VIN was not concealed or covered in any way. In looking at the stolen camper, Officer Kong did not have to touch or move anything.

[2] Similarly, the State of Minnesota is not asking this Court to overrule *Collins*, which involved a search of property on curtilage, not just observation of what was in plain view.

II. Lower courts disagree about the interplay between the implied license to approach a house described in *Jardines* and the plain-view doctrine.

Jardines held that police conduct a "search" when they enter the curtilage of a house "in order to do nothing but" use a trained police dog to detect concealed evidence. 569 U.S. at 9, 9 n.4, 11-12. A number of courts have limited the reach of *Jardines* to those circumstances.[3] But the Minnesota Supreme Court interpreted *Jardines* far more broadly, reading it to bar police from using their eyes to inspect what is in plain view when lawfully approaching a house. Such an interpretation conflicts with this Court's precedent. *See Illinois v. Andreas*, 463 U.S. 765, 771 (1983) (recognizing that the observation of effects left in plain view does not give rise to a Fourth Amendment search); *Ciraolo*, 476 U.S. 207 at 213 (holding that police officers are not compelled to "shield their eyes" from plainly visible criminal activity); *California v. Greenwood*, 486 U.S. 35, 41 (1988) (stating that "the police cannot reasonably be expected to avert their eyes from evidence of criminal activity that could have been observed by any member of the public").

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[3] *See United States v. Shuck*, 713 F.3d 563, 569 (10th Cir. 2013) ("*Jardines* can be distinguished from this case because the officers here did not use dogs or other devices to detect the marijuana odor."); *Covey v. Assessor of Ohio County*, 666 Fed. Appx. 245, 249 (4th Cir. 2016) ("Unlike the situation in *Jardines*, the officers did not introduce any detection equipment into the curtilage, but identified contraband using only their own senses.").

A. *Jardines* and *Collins* have left uncertain whether and how police officers may inspect objects in plain view when approaching a house.

Here, B.F. saw the camper (and the unique bolts that revealed it to be his stolen camper) from the street. Even if Officer Kong did not see the bolts then, B.F. pointed them out as they walked on the driveway. App. 4 ("At some point before they reached the camper, B.F. told the officer about the unique set of bolts on the trailer.").

In holding that Officer Kong "violated the spatial limitations" of his license to approach the house, the Minnesota Supreme Court relied on: (1) the statement in the dissent in *Jardines* that a "visitor cannot traipse through the garden, meander into the backyard, or take other circuitous detours that veer from the pathway that a visitor would customarily use"; and (2) its conclusion that Officer Kong "move[d] away from the path that a visitor would reasonably use to access the house or garage." App. 18 (quoting 569 U.S. at 19 (Alito, J., dissenting)).

It is undisputed, however, that Officer Kong did not leave the driveway; he walked on it. The stolen camper was parked *on the driveway*. Officer Kong did not "traipse through" any part of Chute's yard nor "veer *from* the pathway" to the house – he remained on it. And even if Officer Kong did, as the Minnesota Supreme Court determined, deviate "from the path that a visitor would reasonably use," that minimal

deviation – within the driveway – was justified by what he saw in plain view. The dissent in *Jardines* also explained that when officers approach a house, "they are permitted to see, hear, and smell whatever can be detected from a lawful vantage point." 569 U.S. at 21 (Alito, J., dissenting). That is what Officer Kong did here.[4]

All three opinions in *Jardines* – the majority, concurrence, and dissent – are silent on "how straight a line" an officer must walk on a defined path (such as a driveway) on the way to a house. The Minnesota Supreme Court's opinion conflicts with post-*Jardines* decisions from other jurisdictions about officers deviating from the most direct path to and from a door. *See, e.g., People v. Woodrome*, 996 N.E.2d 1143, 1145-46, 1149-51 (Ill. Ct. App. 2013) (holding that, in addition to knocking on the front door, officers, could legitimately walk "around to the back of the residence to knock on doors [to] make sure defendant 'wasn't climbing out the back window'" – which allowed them to see

[4] The Minnesota Supreme Court pointed out that the federal circuits have split on whether an implied license requires an officer to first approach the front door of a house when conducting a knock-and-talk. App. 17-18. *Compare Carman v. Carroll*, 749 N.W.2d 192, 199 (3d Cir. 2014) (officers must first knock on front door), *rev'd on other grounds*, 135 S.Ct. 348 (2014), *and United States v. Wells*, 648 F.3d 671, 680 (8th Cir. 2011) (same), *with Covey v. Assessor of Ohio County*, 777 F.3d 186, 193 (4th Cir. 2015) (an officer can bypass the front door), *and Shuck*, 713 F.3d at 568 (same). Without deciding this issue, the court assumed that Officer Kong could "bypass the front door of Chute's house," and then concluded that Officer Kong violated other limitations of the implied license. App. 18.

telephone cable and burnt copper wire in various locations in the yard – and "look[] in the open door of the garage [to see] copper wire in plain view" because these "constituted reasonable police actions in the midst of a criminal investigation"); *State v. Hiebert*, 329 P.3d 1085, 1092 (Idaho Ct. App. 2014) (holding that an officer could lawfully "deviate" from the "normal access route" on a property to more closely inspect a vehicle "that looked out of place" because "[a] criminal investigation is a legitimate societal purpose"); *Shuck*, 713 F.3d at 567-70 (holding that an officer, after receiving no response at the back door of a home, could lawfully get down on his knees to smell the end of a PVC pipe that was visible from the back door because police need not "avert their eyes from evidence of criminal activity that could have been observed by any member of the public") (internal quotation omitted).

These other decisions illustrate how the plain-view doctrine works in conjunction with the knock-and-talk procedure. "'Plain view' is perhaps better understood . . . not as an independent 'exception' to the warrant clause, but simply as an *extension* of whatever the prior justification for an officer's 'access to an object' may be." *Texas v. Brown*, 460 U.S. 730, 738-39 (1983) (plurality opinion) (emphasis added). Officer Kong was entitled to walk on Chute's driveway on his way to try to find Chute to ask him about the camper. From there, Officer Kong plainly saw the unique bolts that confirmed it was B.F.'s stolen camper, observed the partial VIN stamped on the camper's exterior, and

looked through the camper's door, which was hanging open. He acted lawfully.

B. There is a split of authority on whether looking at the exterior of an object (and through an opening) constitutes a search.

The officers in *Jardines* were hunting for something (drugs) that they could not see from the public road, from the path to the defendant's house, or even while standing on his front porch. 569 U.S. at 3-4. In stark contrast, the stolen camper in this case was plainly visible from the street, and even more so from the driveway. Other courts have held, post-*Jardines*, that police, when lawfully approaching a house, can inspect evidence of a crime that is in plain view on private property. *See, e.g.*, *United States v. Contreras*, 820 F.3d 255, 261 (7th Cir. 2016) (holding that officers' warrantless entry and search of an open garage was reasonable, and explaining that "[t]he police . . . may walk up to any part of private property that is otherwise open to visitors or delivery people. And, when they are legally in a place that they may be, they may look through windows and doors and other openings into homes and other places protected by the Fourth Amendment.") (citations omitted).

The Minnesota Supreme Court tried to sidestep the plain-view doctrine by stating that plain view is "not relevant . . . because it is an exception to the warrant requirement for a *seizure*, not for a *search*, of

property." App. 8 (emphases in original). The court relied on a statement in *Horton v. California*, 496 U.S. 128, 134 (1990). App. 8. But this Court explained in *Horton* that "an officer's mere observation of an item left in plain view . . . generally involves no Fourth Amendment search." 496 U.S. at 133 n.5 (quoting *Brown*, 460 U.S. at 738 n.4 (plurality opinion)).

Officer Kong looked at the exterior and through the open door of B.F.'s stolen camper, but he did not search it. In holding to the contrary, the Minnesota Supreme Court created a split of authority on whether looking at a VIN plainly visible on the exterior of a vehicle parked on private property is a "search" under the Fourth Amendment. *See McDonald v. State*, 119 S.W.3d 41, 45-47 (Ark. 2003) (holding that officers standing on a private driveway were entitled to inspect an off-road vehicle parked in the driveway and seize its VIN pursuant to the plain-view doctrine); *People v. Smith*, 413 N.W.2d 42, 43, 44-45 (Mich. Ct. App. 1987) (holding that an officer's inspection of the VIN on a vehicle parked in a driveway was not a search under the Fourth Amendment). In addition, this Court has held that examining a VIN on a vehicle that was stopped on a public road "does not constitute a 'search'" because the VIN is visible to the plain view of the public. *New York v. Class*, 475 U.S. 106, 113-14 (1986).

Here, Officer Kong looked for the missing VIN on the stolen camper and then, after speaking with the manufacturer, located the partial VIN on its frame. The Minnesota Supreme Court characterized this as an unconstitutional inspection. App. 4, 16-17. But

Officer Kong simply did what any "private citizen might do" – look at an identification number on the exterior of something that was plainly visible while he walked on the driveway of a house. *Jardines*, 569 U.S. at 8.[5]

C. Courts are divided about the existence of time limits on knock-and-talks, and whether they can be extended based on what an officer encounters while approaching a house.

The Minnesota Supreme Court further erred in concluding that Officer Kong "violated the time limitations of the implicit license." App. 19. The majority in *Jardines* did not expressly establish any time limitations for conducting a knock-and-talk. And although the dissent referenced a license's "temporal limits," it did not address how those applied to an officer who can plainly see, smell, or hear evidence of a crime while approaching a house. *See* 569 U.S. at 19, 20 (Alito, J., dissenting).

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[5] The Minnesota Supreme Court's conclusion that Officer Kong went "inside the camper to search for B.F.'s personal property" ignores the record, which establishes that B.F. and Officer Kong found the camper with its door hanging open, and together looked through the open door to see what remained inside. Transcript of Sept. 20, 2013 suppression hearing at 18; Exhibit 13. Furthermore, even if what Officer Kong did could constitute a search, it only occurred after Officer Kong confirmed – by looking at the exterior of the camper – that it belonged to B.F., who was, of course, standing with the officer on the driveway.

The Minnesota Supreme Court again disregarded the import of the plain-view doctrine and how that doctrine can justify an "extension" of "the amount of time it would customarily take to" conduct a knock-and-talk. *Brown*, 460 U.S. at 738 (plurality opinion); *Jardines*, 569 U.S. at 20 (Alito, J., dissenting). The time that Officer Kong and B.F. spent on the driveway on their way to the house was justified by what they saw while lawfully walking on the driveway. Officers need not – and should not – shield their eyes from plainly visible evidence of a crime. *Ciraolo*, 476 U.S. at 213.

Other courts have, post-*Jardines*, allowed officers to extend how long they spend approaching or leaving a house when they encounter evidence of a crime while doing so. *See Mitchell*, 720 Fed. Appx. at 148 (observing that officers lawfully spent "several minutes investigating the odor's source" before knocking on the front door); *Shuck*, 713 F.3d at 565-66 (holding it was permissible for an officer, after receiving no response at the back door, to get down on his knees to smell the end of a pipe near the back door); *Hiebert*, 329 P.3d at 1088, 1092 (holding that an officer, after receiving no response at the front door, legitimately walked along a pathway through the property and, when he spotted a vehicle that "appeared out of place," deviated from a "normal access route" to more closely inspect the vehicle). But some courts have interpreted *Jardines* to impose inflexible time constraints on a knock-and-talk. *See, e.g.*, *People v. Burns*, 50 N.E.3d 610, 622 (Ill. 2016) (relying on the dissent in *Jardines* to reason that police exceeded the scope of a knock-and-talk when "they

remained in the building for more than 'a very short period of time' ").

D. Officer Kong's actions were reasonable.

Knock-and-talks occur, and the plain-view doctrine arises, constantly during police investigations, but it is now unclear if officers' motives restrict whether they can enter private property, and if they can lawfully stop and look at evidence of a crime that is in plain view once they are on the property.

B.F. called 911 because he could see, from the street, his stolen camper parked on Chute's driveway, and he pointed out the unique bolts to Officer Kong. In this situation, Officer Kong did not need to apply for a search warrant because the cost of doing so exceeded the benefits – just as with searches incident to arrest, those authorized by a condition of probation, or those pursuant to community-caretaking duties, or any other well-recognized exception to the warrant requirement. *See, e.g.*, *United States v. Robinson*, 414 U.S. 218, 236 (1973); *Knights*, 534 U.S. at 121; *Colorado v. Bertine*, 479 U.S. 367, 371-73 (1987). These exceptions exist because both law enforcement and the judiciary have finite time and resources, and certain types of police conduct are minimally invasive – and potentially helpful to suspects.

For instance, this Court has long recognized that the expectation of privacy for items left in plain view is low. *Katz v. United States*, 389 U.S. 347, 351 (1967) ("What a person knowingly exposes to the public, even

in his own home or office, is not a subject of Fourth Amendment protection."). It is difficult to imagine a situation where evidence of a crime – the stolen property itself – could be more visibly in plain view than in this case.

In addition, Officer Kong's visual inspection of the camper as he walked on the driveway might have quickly exonerated Chute if the VIN did not match that of the camper that B.F. had reported stolen. *Cf. Minnesota v. Carter*, 525 U.S. 83, 105-06 (1998) (Breyer, J., concurring) (noting there is "benefit" to an officer's decision to confirm information from an informant – by looking through a window into an apartment – before acting on it, as doing so "would more likely have saved an innocent apartment dweller from a physically intrusive, though warrant-based, search" if looking through the window did not reveal any illegal activity).

Further, under the ruling in this case and others cited above (and arguably under the *Jardines* and *Collins* language discussed above), if the distinct bolts had not been visible – so there was no probable cause, just reasonable suspicion – the police could not have entered the property with the subjective intent of gathering information about the camper, or gotten a warrant, and B.F., the camper's owner, would have had no recourse but self-help.

The "touchstone" of the Fourth Amendment is reasonableness. *Knights*, 534 U.S. at 118. Far more so than the dog sniff in *Jardines*, or the search in *Collins*, B.F.'s and Officer Kong's mere observations "comport with

the reality of everyday life." *Collins*, 138 S.Ct. at 1681 (Alito, J., dissenting). This is the right case for this Court to resolve the split of authority and clarify that knock-and-talks are still permissible after *Jardines* and *Collins*, regardless of an officer's subjective intent, and to explain their proper scope in light of the plain-view doctrine. Certiorari is warranted.

CONCLUSION

This Court should grant this petition for writ of certiorari.

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