No. 18-48

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

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

ARGUMENT

Courts have struggled to understand the scope of *Florida v. Jardines*, 569 U.S. 1 (2013). Federal circuit courts and state supreme courts have split over the relevance of an officer's purpose when approaching a house. Courts have also disagreed about whether *Jardines* changed the longstanding principle that when a lawfully-positioned officer looks at something in plain view, this is not a search. In this case, the Minnesota Supreme Court took the position adopted by some courts but rejected by others that an officer violates the Fourth Amendment by visually inspecting an object on the curtilage in plain view – here, parked on a driveway that leads to a door – based on the officer's alleged purpose in entering the curtilage.

Respondent Quentin Todd Chute does not deny the split of authority on these related issues, and does not dispute that the Fourth Amendment questions presented in this case are critically important to law enforcement. Chute instead contends that this Court should deny review because, he claims, *Jardines* already answers these questions. BIO 8-14. But the scope of *Jardines* is far from clear, as demonstrated by the undisputed conflict among circuits and states. And it did not address the situation present here – and in countless other cases – where evidence was in plain view on curtilage. There is a pressing need for this Court to resolve the competing interpretations of *Jardines* by reviewing this decision, which effectively bans knock-and-talks and thereby significantly hinders law enforcement's ability to do its job.

I. The Petition for a Writ of Certiorari was Timely Filed.

Chute first claims that the petition for a writ of certiorari is untimely. BIO 6-7. He is mistaken. "[A] petition for a writ of certiorari to review a judgment . . . entered by a state court of last resort . . . is timely filed when it is filed with the Clerk of this Court within 90 days after *entry of the judgment*." S. Ct. R. 13(1) (emphasis added). On April 6, 2018, the Minnesota Supreme Court issued the "Judgment" that states: "Pursuant to a decision of the Minnesota Supreme Court . . . it is determined and adjudged that the decision of the Ramsey County District Court, Criminal Division . . . is affirmed in part, reversed in part, and remanded. *Judgment is entered accordingly*." Pet. App. 58 (emphasis added). 88 days later, the Clerk of this Court properly accepted for filing the State of Minnesota's petition.

Chute claims that judgment was entered when the Minnesota Supreme Court issued its decision on March 14, 2018, and characterizes the April 6 Judgment as the "mandate." BIO 7. But "[i]t is apparent that, however final the decision may be, it is not the judgment." *Puget Sound Power & Light Co. v. King County*, 264 U.S. 22, 25 (1924) (holding that this Court had "no doubt that that which the Washington statute calls the judgment is the judgment referred to in the [federal statute] fixing the time in which writs of error

must be applied for and allowed," and denying the motion to dismiss the writ as untimely filed).[1]

II. State Supreme Courts and Federal Courts of Appeals are Divided on the Fourth Amendment's Limits on Knock-and-Talks.

Chute's other core argument – that the Minnesota Supreme Court's decision is "in complete accord" with *Jardines*, *Collins v. Virginia*, 138 S.Ct. 1663 (2018), and *United States v. Jones*, 565 U.S. 400 (2012) – is similarly mistaken. BIO 9-10, 14.

Chute does not dispute that there is a split of authority in the aftermath of *Jardines*. Pet. 10-11, 14, 16-19, 21-22. For instance, whereas here the Minnesota Supreme Court held that *Jardines* established

[1] Chute incorrectly cites *Moua v. State*, 778 N.W.2d 286, 288 (Minn. 2010), for the proposition that the Minnesota Supreme Court's decision starts the period for filing a petition for a writ of certiorari. BIO 7. *Moua* merely determined when a conviction is deemed final for the time limit on state-court postconviction review. This Court has long held: "For the purpose of the finality which is prerequisite to a review in this Court, the test is not whether under local rules of practice the judgment is denominated final, but rather whether the record shows that the order of the appellate court has in fact fully adjudicated rights and that the adjudication is not subject to further review by a state court." *Dept. of Banking, State of Nebraska v. Pink*, 317 U.S. 264, 268 (1942) (internal citations omitted). One reason the Minnesota Supreme Court delays filing a judgment after issuing a decision is to allow parties to file for costs and fees, which then "shall be inserted in the judgment." Minn. R. Civ. App. P. 139.03. A party can also petition for a rehearing. Minn. R. Civ. App. P. 140.01. Therefore, the decision itself is not an "adjudication [that] is not subject to further review by a state court." *Pink*, 317 U.S. at 268.

purpose, spatial, and temporal limitations on knock-and-talks, the North Carolina Supreme Court has held that *Jardines* did nothing of the sort. In *State v. Grice*, two detectives were dispatched to a private property after receiving an anonymous tip that marijuana was being grown there. 767 S.E.2d 312, 314 (N.C. 2015). While one detective approached the house, the other, who remained on the driveway, noticed several buckets about 45 feet away – on the curtilage – that contained marijuana plants. *Id.* at 315-16. Without a warrant, the detectives walked across the yard and seized the buckets. *Id.* at 316. The North Carolina Supreme Court acknowledged *Jardines* and held the detectives' conduct of "[t]raveling within the curtilage to seize contraband in plain view within the curtilage did not violate the Fourth Amendment." *Id.* at 318. The court explained that, "law enforcement is not required to turn a blind eye to contraband or otherwise incriminating materials left out in the open on the curtilage," and "the presence of the clearly identifiable contraband justified walking further into the curtilage." *Id.* at 318, 317. Similarly, here the stolen camper was in plain view on Chute's driveway.[2]

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[2] North Carolina has continued to apply this interpretation of the Fourth Amendment, including to a case with facts that are strikingly similar to those here. *See State v. Welch*, 803 S.E.2d 871 (N.C. Ct. App. 2017) (holding that it was constitutionally permissible for a trooper, while walking on a driveway to a house, to look at the damage to the front of a truck parked on the driveway, because "notwithstanding the Trooper's subjective intent" (to allegedly conduct "an illegal inspection of the truck"), "the Trooper had a legitimate reason to be on the driveway; namely, to conduct a 'knock and talk' ").

To be clear, as set out in the petition, the State of Minnesota is not arguing that this Court should overrule *Jardines*, *Collins,* or *Jones*. Pet. 13. *Jardines* involved a drug-sniffing dog and officers who never attempted to knock on the door. 569 U.S. at 3-4. *Collins* involved a search *under* a tarp and the automobile exception to the warrant requirement. 138 S.Ct. at 1668-69, 1670-71, 1675. *Jones* involved a GPS-tracking device that electronically monitored a personal "effect" (an SUV), and no attempt to speak with its owner. 565 U.S. at 403. None of these cases addressed evidence, like the stolen camper in this case, that an officer saw in plain view from a path that leads to a door.

Chute disputes the petition's argument that the Minnesota Supreme Court's interpretation of ambiguous language in *Jardines* precludes knock-and-talks. BIO 11-12, 13. His claim comes down to this: the police can still enter curtilage to conduct a knock-and-talk, so long as their purpose is not "gathering evidence." BIO 12. This is like touting a diet by saying you can still have pizza, you just can't swallow it. The reason for a knock-and-talk (as opposed, say, to a safety check) is to gather information that is or will lead to evidence. Pet. App. 2 n. 1. Under Chute's argument, the police cannot knock on a homeowner's door to ask for permission to search, or to inquire about his or her whereabouts the day before, or even to ask if he or she heard or saw anything suspicious the previous evening. The purpose in all those situations would be "gathering evidence."

This Court should reject the notion that an officer's specific investigatory purpose is dispositive, and somehow is different than his or her subjective intent. Purpose is inherently subjective – it goes to the officer's motive for taking an action. Chute cites the discussion in *Michigan v. Bryant*, 562 U.S. 344, 360 (2011), regarding objective and subjective inquiries, but that distinction is nonexistent in the context of knock-and-talks. In a knock-and-talk, a police officer always approaches a door for the purpose of gathering information that might turn out to be, or lead to, evidence. *Jardines*, 569 U.S. at 22 (Alito, J., dissenting).[3]

Chute relies heavily on a quote from *Jardines* that concludes with the statement that the "behavior" of the officer in *Jardines* – entering the front porch with a drug-sniffing dog, and never attempting to contact the homeowner – "objectively reveals a purpose to conduct a search, which is not what anyone would think he had a license to do." BIO 10 (quoting 569 U.S. at 10). But here and in most knock-and-talk cases there is no search, just observation of what is in plain view.

Chute's suggestion that this Court wait for a different case – in which "the officer actually enters the

[3] Neither Chute nor any court that the State of Minnesota is aware of has ever explained how an officer who enters curtilage could have a purpose that differs from his or her subjective intent, or vice versa. There may be objective evidence of subjective intent, but the purpose question is still *why* an officer acted, not *what* the officer did, which should be the only issue.

curtilage of a home for the purpose of conducting a knock-and-talk" (BIO 13) – misses the point: the requirement that the purpose of entry not be gathering evidence effectively eliminates lawful knock-and-talks. Under the "purpose cases" – the decision below, the ambiguous language from *Jardines* and *Collins*, and the cases discussed in the petition that also turn on an officer's subjective intent or purpose – a court must determine an officer's specific purpose, which requires the court to decide what an officer had in mind at the moment he or she acted. This is something this Court has repeatedly discouraged courts from doing. *See, e.g., New York v. Quarles*, 467 U.S. 649, 655-56 & n. 6 (1984); *Rhode Island v. Innis*, 446 U.S. 291, 301-02 (1980); Pet. 9-10, 12. This Court should clarify that under the Fourth Amendment the question is only whether an officer went where others are impliedly licensed to go, without a drug-sniffing dog or other specialized equipment, and did what others could do: knock, talk, and observe what is in plain view.[4]

As the fact finder (the district court, not the state supreme court) found, Officer Kong merely used his

[4] Consider a hypothetical: an officer passing by the Lecter house noticed an odd smell, and while walking along the path to the front door saw a partially-eaten body behind a shrub. Under the "purpose cases," the admissibility of that evidence depends on whether the officer's intent in going on the property was gathering evidence. Identical actions by officers will lead to different results depending on the officers' reasons for acting. This is neither a just result nor one required by the Fourth Amendment.

eyes to look at the exterior of an object. Pet. App. 56 (explaining that Officer Kong could see the unique set of bolts, scratched-off VIN, and partial VIN on the camper "using just his eyes . . . in plain view"). Chute has never challenged this factual finding as erroneous, and it is owed deference by this Court. *Glossip v. Gross*, 135 S.Ct. 2726, 2739 (2015). Indeed, Chute concedes that the officer confirmed that the partial VIN in plain view matched that of B.F.'s camper *before* the officer allegedly entered the camper with B.F. BIO 4. As other courts have explained, inspecting a plainly visible VIN is not a search. Pet. 19.

Chute also claims that the stolen camper here was not in plain view from a valid knock-and-talk route. BIO 11. Under the district court's factual findings, he is wrong, as set out in the next paragraph. But even if he is right, this Court should still grant certiorari to address the caselaw split and clarify that an officer's purpose is irrelevant to the lawfulness of entry onto curtilage, and that the only question is whether the officer did no more than what a Girl Scout or any other citizen could do when approaching the door of a house, namely, observe what is in plain view. *Jardines*, 569 U.S. at 8.[5] This Court could then remand to the

[5] A Girl Scout also could divert in her route from the most-direct path to the house to walk up the driveway to look for the homeowner who – according to B.F.'s and Officer Kong's testimony here – could be heard behind the house in the garage to which the driveway led. Pet. App. 4, 31, 52.

Minnesota Supreme Court to answer the route question, or any remaining factual questions. *See, e.g., Collins*, 138 S.Ct. at 1675 (remanding for resolution of whether the officer's search of the motorcycle may have been justified by an exception to the warrant requirement other than the automobile exception).

This Court need not remand, however, because the district court found – and Chute does not dispute – that Chute "granted the public license to seek a back-door entrance to the house and garage." BIO 5. Importantly, the district court also found that the officer walked along the driveway that led to the back door, and visually inspected the camper as it sat in plain view on the driveway. Pet. App. 54-56. Chute had a low expectation of privacy for the stolen camper he left in plain view, and the police acted reasonably. Pet. 22-23.

In the wake of *Jardines* there is genuine disagreement – not "feigned confusion" (BIO 12) – between courts on what an officer can do (and think) when approaching a house without violating the Fourth Amendment. Chute contends this Court has already explained that *Jardines* is not limited to situations in which police use a drug-sniffing dog or other specialized equipment (BIO 12), but the Fourth and Tenth Circuits disagree. *See Covey v. Assessor of Ohio County*, 666 Fed. Appx. 245, 249 (4th Cir. 2016); *United States v. Shuck*, 713 F.3d 563, 569 (10th Cir. 2013). Chute also argues that "*Jardines* does not instruct lower courts to determine an officer's 'subjective intent'" (BIO 9), but

that is how the Ninth Circuit and the Minnesota Supreme Court interpret *Jardines*. *See United States v. Lundin,* 817 F.3d 1151, 1160 (9th Cir. 2016) ("After *Jardines*, it is clear that . . . the 'knock and talk' exception depends at least in part on an officer's subjective intent."); Pet. App. 16 (holding that Officer Kong's "purpose was not to question the resident of the house, but to inspect the camper"). And Chute's assertion that "trespass on a home's curtilage is itself a search for the purposes of the Fourth Amendment," regardless of what is plainly visible (BIO 13), has been refuted by courts across the country. *Grice*, 767 S.E.2d at 316-19; *State v. Hiebert*, 329 P.3d 1085, 1092 (Idaho Ct. App. 2014); *People v. Woodrome*, 996 N.E.2d 1143, 1149-50 (Ill. Ct. App. 2013); *Shuck*, 713 F.3d at 567-70.

The Minnesota Supreme Court's decision here is based on the officer's alleged purpose. Pet. App. 16-17, 19. This case is the appropriate vehicle to clarify that, contrary to the "purpose cases," subjective intent is irrelevant, knock-and-talks are still a permissible exception to the warrant requirement, and looking at plainly visible contraband on curtilage is not a search. This Court should grant review.

CONCLUSION

This Court should grant this petition for writ of certiorari.

Dated: September 28, 2018

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