In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1312

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JEREMY D. BANKS,

Defendant-Appellant.

Appeal from the United States District Court for the
Central District of Illinois.
No. 3:21-CR-30032 — **Sue E. Myerscough**, *Judge*.

ARGUED DECEMBER 14, 2022 — DECIDED FEBRUARY 13, 2023

Before SYKES, *Chief Judge*, and SCUDDER and LEE, *Circuit Judges*.

SCUDDER, *Circuit Judge*. In April 2021 the Springfield, Illinois police saw a Snapchat post of Jeremy Banks barbequing on his front porch with a gun sitting on the grill's side shelf. Because Banks was a convicted felon, the officers needed nothing more to request a warrant to arrest him for unlawful gun possession. But they skipped this step and instead proceeded to Banks's home, walked onto his porch, and, after a

tussle, arrested him in his family room. The Fourth Amendment did not permit the shortcut, as the Supreme Court has held in no uncertain terms that a front porch—part of a home's so-called curtilage—receives the same protection as the home itself. And no exception to the warrant requirement saves the officers' actions here. We therefore reverse the district court's denial of Banks's motion to suppress.

I

Jeremy Banks posted the video of the gun within arm's reach on the evening of April 8, 2021. Colton Redding, a Springfield police officer, saw the post, recognized Banks's voice, and knew him to be a convicted felon. Officer Redding gathered a group of colleagues and, within minutes of seeing the video, headed to Banks's home.

Upon arriving the officers saw Banks exactly where they expected to—on his porch, next to the grill. A few officers went around the back side of the house and, to avoid detection, approached the porch by walking through the backyard. The plan worked and resulted in the officers catching Banks by surprise, struggling with him, and eventually arresting him in the front room of the house. A pat down turned up a loaded 9mm semi-automatic pistol in Banks's pocket. The officers also saw a box of 9mm rounds in the same room. The police did not have a warrant to enter Banks's porch or to search his home.

Federal criminal charges followed for the unlawful gun possession. See 18 U.S.C. § 922(g)(1). For his part, Banks responded by moving to suppress the police's recovery of the gun and ammunition found in his home, arguing that the officers needed a warrant to enter his porch and arrest him.

At an evidentiary hearing before a magistrate judge, Officer Redding and Sergeant Justin Spaid testified that they went to Banks's home to arrest him. Officer Redding also stated that he did not believe he needed a search warrant to enter the porch because the police had reasonable suspicion that Banks, as a convicted felon, was committing a crime by possessing a gun. Nor did Officer Redding believe he had enough time to contact a judge to obtain a search warrant.

After the hearing, the magistrate judge issued a report recommending that the district court deny Banks's motion. The magistrate examined the case through the lens of *Terry v. Ohio*, which held that an officer who has reasonable suspicion to believe that dangerous criminal activity is afoot can briefly detain and frisk a person. 392 U.S. 1, 21–22 (1968). Pointing to the officers' reasonable suspicion that Banks possessed a gun and relying on our prior decision in *United States v. Richmond*, 924 F.3d 404 (7th Cir. 2019), the magistrate concluded that the officers had ample suspicion to step onto Banks's front porch. On these facts, the magistrate saw no Fourth Amendment violation.

The district court agreed, adopted the magistrate's recommendation, and denied Banks's motion to suppress. Banks then entered a conditional guilty plea and received a sentence of time served and three years' supervised release. He now appeals the district court's suppression ruling.

II

A

By its terms, the Fourth Amendment protected Jeremy Banks's right "to be secure" in his "hous[e]" from "unreasonable searches and seizures." U.S. Const. amend. IV. At the

"very core" of that protection, the Supreme Court has emphasized, stands "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States*, 365 U.S. 505, 511 (1961). Indeed, when measuring the strength of the Fourth Amendment, "the home is first among equals." *Florida v. Jardines*, 569 U.S. 1, 6 (2013). This principle finds deep roots in the common law backdrop against which the Fourth Amendment entered the U.S. Constitution in 1791. See, *e.g.*, *Semayne's Case* (1604) 77 Eng. Rep. 194, 195; 5 Co. Rep. 91 a, 91 b (KB) ("[T]he house of every one is to him as his castle and fortress, as well for his defen[s]e against injury and violence, as for his repose.").

By 1984 the Supreme Court made plain that the Fourth Amendment provides equal protection to a home's curtilage, the area immediately surrounding the home itself. See *Oliver v. United States*, 466 U.S. 170, 180 (1984). "[P]rivacy expectations are most heightened" in the curtilage, because that area is "intimately linked to the home, both physically and psychologically." *California v. Ciraolo*, 476 U.S. 207, 213 (1986). And the right to retreat into the home "would be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity." *Jardines*, 569 U.S. at 6. Put even more directly, the curtilage is "part of the home itself for Fourth Amendment purposes." *Id.* (quoting *Oliver*, 466 U.S. at 180).

The parallel and equivalency between a home and its curtilage means that law enforcement officers must have a warrant to enter either, unless one of a few limited exceptions applies. See *Lange v. California*, 141 S. Ct. 2011, 2017 (2021). The exceptions allow warrantless entry when, for example, exigent circumstances exist, the resident consents to entry, or the

officers conduct a knock-and-talk. See *id.* (explaining that exigent circumstances include rendering emergency aid, preventing the imminent destruction of evidence, or engaging in hot pursuit of a fleeing felon); *United States v. Correa*, 908 F.3d 208, 221 (7th Cir. 2018) (consent); see *Jardines*, 569 U.S. at 8 (knock-and-talk). These exceptions reflect and reinforce that the Fourth Amendment's "ultimate touchstone" remains "reasonableness." *Kentucky v. King*, 563 U.S. 452, 459 (2011) (citation omitted).

B

These principles find straightforward application on the record before us.

The police reacted to Banks's Snapchat post by immediately heading to his home to arrest him for unlawful gun possession. But they never paused to request a warrant. And that omission matters because the Fourth Amendment very much concerns itself with place, and the location of the planned arrest—Banks's front porch—is not one the police could enter without consent or exigent circumstances. Everyone agrees that neither existed before the police walked onto the porch, as Banks presented no imminent threat or flight risk in the circumstances. Nor did the police even attempt to conduct their encounter with Banks as a consensual knock-and-talk scenario. The officers needed a warrant to enter Banks's porch, and their failure to obtain one resulted in a clear Fourth Amendment violation.

The unlawful entry onto the curtilage tainted the evidence they discovered. Through their "unlicensed physical intrusion" onto Banks's porch, the officers created any exigent circumstances that might have developed during their ensuing

struggle with Banks. See *Jardines*, 569 U.S. at 7. The officers, in short, were unable to rely on those exigent circumstances to authorize the entry onto Banks's porch.

C

The government urges a different analysis, pointing us to our 2019 decision in *United States v. Richmond*. Milwaukee officers spotted Antoine Richmond on a sidewalk, acting suspiciously and carrying what appeared to be a gun in his shirt pocket. After following Richmond back to his duplex, the officers watched Richmond hide something on the front porch. The officers stepped onto the porch, confirmed Richmond was a convicted felon, and found that he had stashed a gun behind a screen door. See 924 F.3d at 408–09. On appeal Richmond conceded that he consented to the officers stepping onto his porch. See *id.* at 413. Because the officers also had reasonable suspicion that Richmond was engaged in criminal activity, we held that they could perform a protective search under *Terry* once they were "lawfully within the curtilage of a home." *Id.* at 412.

The government highlights one line in *Richmond* where we stated that reasonable suspicion "justified [the officers'] entry onto the porch." *Id.* at 413. From there the government reads *Richmond* as authorizing warrantless entry onto the curtilage based on reasonable suspicion, which the officers had in this case after viewing Banks's Snapchat video.

We cannot agree. Consent is a well-accepted exception to the warrant requirement, but reasonable suspicion is not. In *Richmond* both parties agreed that the officers had consent to enter the curtilage. See *id.* Our language about whether reasonable suspicion independently justified the officers' entry

was not essential to our holding given Antoine Richmond's consent to the police being on his porch. It does not control today's decision.

Even more, the government's reading would impermissibly expand exceptions to the warrant requirement. The government does not argue that reasonable suspicion authorizes warrantless entry into the home. For good reason—the Fourth Amendment expressly references the home and provides that "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." U.S. Const. amend. IV (emphasis added). And the home's curtilage, the Supreme Court has emphasized, receives "protection as part of the home itself." *Jardines*, 569 U.S. at 6. If reasonable suspicion does not allow an officer to enter the home, then it also does not constitute one of the "few permissible invasions" of the curtilage. *Caniglia v. Strom*, 141 S. Ct. 1596, 1599 (2021).

We also know that the Supreme Court is "not eager—more the reverse—to print a new permission slip for entering the home without a warrant." *Lange*, 141 S. Ct. at 2019. Indeed, the Court has refused to acknowledge new exceptions to the warrant requirement both in the home and within the curtilage, even where the circumstances would have allowed a warrantless search somewhere else. In *Collins v. Virginia*, 138 S. Ct. 1663 (2018), for instance, the Court held that the automobile exception—which ordinarily allows officers to conduct a warrantless search of a car based on probable cause—does not apply to a vehicle parked in a partially enclosed driveway. See *id.* at 1668. And in *Lange*, the Court concluded that there was no categorical exception to the warrant

requirement allowing officers to chase a fleeing misdemeanant into an attached garage. See 141 S. Ct. at 2016, 2021–22. These teachings apply here: reasonable suspicion was not enough to allow warrantless entry onto Banks's porch, even though it might have justified a *Terry* stop somewhere else.

The government further contends that even if the police's search violated the Fourth Amendment, the evidence should not be suppressed under the good-faith exception to the exclusionary rule. That exception provides that "[e]vidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule." *Davis v. United States*, 564 U.S. 229, 241 (2011). As the government sees it, the officers here relied in good faith on *Richmond*.

But recall that *Richmond* rooted itself in consent, a well-established exception to the warrant requirement. See *Correa*, 908 F.3d at 221. The decision does not authorize what the officers did here—intrude onto a front porch without a warrant and based solely on reasonable suspicion. Because the officers did not obtain evidence in "reasonable reliance on binding precedent," *id.*, the good-faith exception to the exclusionary rule does not apply.

D

The big picture takeaway from today's decision deserves underscoring. The police could have avoided this outcome by taking a small but necessary step. The suppression testimony confirmed that Sangamon County, where Springfield is located, has a judge on call 24 hours a day, 365 days a year to consider and issue search warrants. The officers here had more than enough to pick up the telephone, call the on-duty

judge, and get the authorization the Fourth Amendment required before stepping onto Banks's porch.

For these reasons, we REVERSE the judgment below and REMAND for further proceedings consistent with this opinion.